



July 15, 2015

RE: Vote “NO” on Final Passage of S. 1177, the Every Child Achieves Act

Dear Senator,

The American Civil Liberties Union (“ACLU”) strongly urges you to vote “NO” on final passage of S. 1177, the “Every Child Achieves Act of 2015,” which is currently being considered on the Senate floor and may come up for a vote this week.

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On February 26, 2015, we submitted recommendations to the Senate Committee on Health, Education, Labor, and Pensions for strengthening the discussion draft of revisions to the Elementary and Secondary Education Act (“ESEA”). Our recommendations were rooted in the principle that all students should have equal opportunity to a high-quality, safe, and supportive learning environment. Unfortunately, this bill falls short and undermines the legacy of the ESEA as an important civil rights law. Therefore, we oppose the bill in its current form.

I. S. 1177 Undermines Meaningful Accountability for Addressing Achievement Gaps.

The Every Child Achieves Act does not require that states act to close achievement gaps and turn around persistently underperforming schools. Instead, as the bill is written, states can decide whether or not to respond. The bill limits the federal government’s ability to enforce the law if state policies fall short or fail to support student success. This leaves students vulnerable to discriminatory practices that the ESEA was designed to address.

States must be required to intervene—and the federal government must have the authority to compel states to intervene—when low-performing schools or categories of students within those schools are struggling, and resources and investments must be equitably distributed according to greatest need.

II. S. 1177 Fails to Ensure That School Discipline Disparities Will Be Addressed.

The bill fails to incentivize states to implement school discipline reform and foster positive school climate. Further, while the bill includes important reform measures limiting restraint and seclusion and supporting the expansion of School-wide Positive Behavioral Interventions and Supports (SWPBIS), the bill fails to ensure that the federal government can hold states accountable to remedy discipline disparities. The bill must include meaningful accountability and a mechanism for federal support and intervention in cases of states and districts with persistent disparities.

This problem with the bill is particularly striking, because our country’s most vulnerable students continue to be pushed out of schools through counterproductive and excessively harsh punishments, including suspensions, expulsions, mandatory transfers or referrals to disciplinary alternative programs, and referrals to law enforcement or the juvenile justice system. Excessive disciplinary measures impact African American students, Latino students, and students with disabilities disproportionately and are particularly harmful for African American and Latino girls.¹ Whether through involvement in the juvenile justice system or compromised educational outcomes due to loss of valuable instruction time, the consequences of discriminatory discipline are severe.

III. S. 1177 Does Not Require States to Strive for Resource Equity.

S. 1177 requires states merely to identify resource inequities, but imposes no mandate to address such inequities. Under the ESEA, states are required to report on measures of school climate and discipline, per pupil expenditures, access to advanced coursework and other indicators. While reporting is a helpful tool, it will not remedy inequities that exist in access to educational resources.

IV. S. 1177 Misses the Opportunity for Important Data Collection.

The bill requires states to report data on student performance that is disaggregated by gender, race/ethnicity, disability status, English proficiency, economic status, and migrant status, but significant issues can be masked without further disaggregation. In most states, there is no way to compare achievement for students who fall into more than one category—for example, African American boys, Native American girls, or Latino students with disabilities. Yet, the intersection of these categories can contribute to and inform student experiences and outcomes. The bill must require transparent and meaningful reporting of data that allows schools, families and communities to better target interventions for students who fall into more than one subgroup.

V. S. 1177 Seriously Curtails the Federal Role Necessary for Enforcing Civil Rights.

The bill does not protect our most vulnerable children or move us toward a more equitable education system. Instead, it weakens accountability and hinders the federal government’s ability to protect students when states’ policies fail to address education inequities or discriminatory discipline policies. Congress must remain true to the spirit of the ESEA as a civil rights law, and not abandon its responsibility to ensure that federal dollars given to states and school districts are spent in a way that gives all students equal opportunity to learn.

We urge you to vote “NO” on final passage of S. 1177, and instead work to address the serious civil rights concerns raised by the bill. If you have any questions, please contact Jennifer Bellamy, Legislative Counsel, at jbellamy@aclu.org or (202) 715-0828.

Sincerely,



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Acting Director



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Legislative Counsel

¹ Kimberle Williams Crenshaw, Priscilla Ocen and Jyoti Nanda, *Black Girls Matter: Pushed Out, Over policed and Under protected*, African American Policy Forum and the Center for Intersectionality and Social Policy Studies at Columbia Law School (Feb. 4, 2015), available at http://www.law.columbia.edu/null/download?&exclusive=filemgr.download&file_id=613546.