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October 7, 2019

Dear Senator,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, we write to share with you our education-related oversight priorities for the 116<sup>th</sup> Congress.

Congress plays a critical oversight role on a wide variety of administrative actions that affect the civil and human rights of our nation's students, and The Leadership Conference Education Task Force has identified and developed a comprehensive list of education-related oversight priorities that we urge Congress to address this session.

The Education Task Force works to ensure that students in grades K-12 and in institutions of higher education experience positive school climates, are safe in their academic environment, and have equitable access to high-quality educational services. We also strive to protect and expand students' civil rights, as well as remove barriers to education for historically marginalized students. We present our oversight priorities as advocates for the excellent and equitable education of all children in the United States, especially those who are African American, Latinx, Asian American or Pacific Islander, Native students, immigrants, girls, LGBTQ+, English learners, religious minorities, have a disability, or come from a low-income household. All of our coalition priorities are important and are not organized in order of urgency or significance. They do not reflect the full agenda of all of our member organizations, but rather the issues that are at the top of the task force's agenda that can and should be addressed during the 116<sup>th</sup> Congress. We are eager to engage with you in advancing our task force's priorities. We urge you to resist any action that will politicize civil and human rights. We suggest that your oversight activities be robust, frequent, and address civil rights enforcement and legislative and regulatory rollbacks; defend against dilution or weakening of federal civil rights statutes, including funding and staffing cuts; and ensure that the federal courts recognize and uphold all students' civil rights.

If you have any questions, please contact co-chairs of the Education Task Force: Liz King, The Leadership Conference on Civil and Human Rights, at [king@civilrights.org](mailto:king@civilrights.org) or 202.466.0087; Nicole Dooley, the NAACP Legal Defense & Educational Fund, at [ndooley@naacpldf.org](mailto:ndooley@naacpldf.org) or 202.216.2739; Adam Fernandez, MALDEF, at [afernandez@MALDEF.org](mailto:afernandez@MALDEF.org) or 202.572.0601; or Adaku Onyeka-Crawford, the National Women's Law Center, at [aocrawford@nwlc.org](mailto:aocrawford@nwlc.org) or 202.319.3052.

Sincerely,

October 7, 2019  
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The Leadership Conference on Civil and Human Rights  
NAACP Legal Defense and Educational Fund, Inc.  
National Women's Law Center  
MALDEF

### Education Oversight Priorities for the 116<sup>th</sup> Congress

We ask Congress to conduct robust oversight, through both letters and hearings, regarding the following areas of concern to the Education Task Force in order to help uphold and protect the rights of children and youth.

1. **The Department of Education (ED) Office for Civil Rights (OCR).** OCR has repeatedly taken actions that negatively impact the civil rights of public school students across the country. This includes:
  - a. Rescinding guidance on discrimination against transgender students<sup>1</sup>; on campus sexual misconduct<sup>2</sup>; on the nondiscriminatory administration of school discipline<sup>3</sup>; on the complaint handling process for students with disabilities and students of color; and on promoting diversity in K-12 schools and higher education<sup>4</sup>.
  - b. Shifting attention and resources away from investigating systemic issues, instead focusing on individual issues.<sup>5</sup>
  - c. Refusing to investigate claims of discrimination against LGBTQ students.<sup>6,7</sup>
  - d. Refusing to investigate disparate impact claims.<sup>8</sup>
  - e. Attempting to weaken Title IX in a manner that undermines sexual harassment protections.<sup>9</sup>
  - f. Opening a spate of investigations challenging gender-conscious affirmative action programs.
  - g. Revising the Case Processing Manual to remove the right to appeal and allow discretionary dismissals of complaints from complainants who filed against multiple recipients of federal funds.<sup>10</sup>

Considering the hostility of the administration to the rights of immigrants, we also request oversight regarding how OCR will uphold the right to education for all students, regardless of citizenship status<sup>11</sup>, including children and youth in the custody of the federal government or the agencies authorized to care for them.

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<sup>1</sup> Please see our February 24, 2017 letter for more information. <https://civilrights.org/2017/02/24/updated-civil-and-human-rights-community-condemns-rescission-of-title-ix-guidance-clarifying-protections-for-transgender-students/>

<sup>2</sup> Please see our September 20, 2017 letter for more information. [https://civilrights.org/resource/joint\\_ed\\_reg\\_review/](https://civilrights.org/resource/joint_ed_reg_review/)

<sup>3</sup> Please see our January 10, 2019 letter for more information. <https://civilrights.org/resource/letter-to-ed-and-doj-opposition-to-rescission-of-joint-school-discipline-guidance-package/>

<sup>4</sup> Please see our July 3, 2018 statement for more information. <https://civilrights.org/2018/07/03/devos-sessions-rescind-key-guidance-school-diversity/>

<sup>5</sup> Please see <https://www.propublica.org/article/trump-administration-rolls-back-civil-rights-efforts-federal-government>

<sup>6</sup> Please see *The New York Times* July 29, 2019 article for more information.

<https://www.nytimes.com/2019/07/29/us/politics/gay-transgender-rights-devos.html>.

<sup>7</sup> Please see our June 16, 2017 statement for more information. <https://civilrights.org/2017/06/16/civil-human-rights-coalition-condemns-administrations-new-instructions-transgender-student-discrimination/>

<sup>8</sup> Please see *The Washington Post* July 30, 2018 article for more information.

[https://www.washingtonpost.com/local/education/how-do-you-enforce-civil-rights-under-betsy-devos-a-stark-shift-in-approach/2018/07/30/0ebf6e3e-8eb2-11e8-bcd5-9d911c784c38\\_story.html?utm\\_term=.9353926c2089](https://www.washingtonpost.com/local/education/how-do-you-enforce-civil-rights-under-betsy-devos-a-stark-shift-in-approach/2018/07/30/0ebf6e3e-8eb2-11e8-bcd5-9d911c784c38_story.html?utm_term=.9353926c2089)

<sup>9</sup> Please see the *Rewire* December 5, 2018 article for more information. <https://rewire.news/article/2018/12/05/the-proposed-title-ix-rules-make-no-practical-moral-or-legal-sense/>

<sup>10</sup> Both of these changes have since been reversed.

<sup>11</sup> Please see our June 4, 2018 letter for more information. <https://civilrights.org/resource/secretary-devos-respect-plyer-protect-immigrant-children/>

We are also concerned by OCR's recent reopening of a complaint<sup>12</sup> that had already been resolved involving free speech on campus. We request oversight on the impact of the decision to reopen complaints instead of using limited resources to investigate current complaints, along with the decision to change the definition of anti-Semitism without public comment or input.

Additionally, we request oversight into how OCR upholds the right to education without discrimination regarding segregation of students with disabilities, especially those who take alternate assessments, including disproportionality based on race.<sup>13</sup>

2. **The Department of Education (ED) Office of Special Education and Rehabilitative Services (OSERS).** Although protections for students with disabilities are woven throughout our oversight requests, there are significant laws and regulations specifically protecting students with disabilities that need oversight. This includes:
  - a. ED's intention to change the significant disproportionality rule.<sup>14</sup> Students of color and Native students are disproportionately misidentified for certain categories of special education, placed in restrictive learning environments at higher rates than their White peers with disabilities (where their outcomes are significantly worse than those of other students), and subjected to punitive discipline practices more often. We wholeheartedly support the collection of data on significant disproportionality and recognize that these data, once collected, should inform action to address systemic barriers to students' success. Any changes to the significant disproportionality rule must serve to strengthen data collection and advance actions that eliminate these systemic barriers.<sup>15</sup>
  - b. The Individuals with Disabilities Education Act (IDEA). We request oversight on IDEA implementation and outcomes, including a review of students' placement in their least restrictive environment; disciplining of students; academic outcomes; and graduation rates. This review must include any disproportionate impact on outcomes based on disability category and race/ethnicity. We are particularly concerned by the fact that students with intellectual disabilities, students on the autism spectrum, and students with multiple disabilities are placed in segregated classrooms at a much higher rate than their peers. We urge further oversight to ensure that state and local education authorities are working to promote inclusive education for these and all students with disabilities.
3. **The Federal Commission on School Safety and its Risk of Exacerbating the School to Prison and School to Deportation Pipelines.** This oversight must address common sense gun and school safety legislation.<sup>16</sup> Militarizing schools does not make schools or students safer. To make schools safer, we must improve school climate. We must oppose expanding the presence of law enforcement in schools, particularly elementary schools, and instead expand access to services like trauma-informed resources for school staff; specialized instructional support personnel; wrap-around services and other resources/services to address the emotional, mental, and behavioral health needs of

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<sup>12</sup> See: <https://www.nytimes.com/2018/09/11/us/politics/rutgers-jewish-education-civil-rights.html>

<sup>13</sup> Please see the following for more information: our November 29, 2017 letter, <https://civilrights.org/resource/letter-urging-rejection-new-yorks-essa-waiver-request/>; our February 4, 2019 letter, <https://civilrights.org/resource/letter-to-state-chiefs-urging-review-and-amendments-to-their-essa-state-plans/>.

<sup>14</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1820-AB80>.

<sup>15</sup> Please see our May 14, 2018 letter for more information. <https://civilrights.org/comments-enforcement-significant-disproportionality-provisions-individuals-disabilities-education-act-idea/>.

<sup>16</sup> Please see our March 13, 2018 letter for more information. <https://civilrights.org/resource/support-positive-solutions-keep-children-safe-schools-oppose-criminalization-youth/>

students; and implicit bias training. Congress must also ensure that efforts to address school violence and changes in investigatory practices at ED suggested in the Federal Commission on School Safety report do not compromise students' privacy rights under the Family Educational Rights and Privacy Act (FERPA). We urge particular oversight to ensure that threat assessment teams are not permitted in any way to interfere with or compromise protections for students with disabilities or to allow for the stereotyping of students of color or religious minorities.

4. **The Student, Teachers and Officers Prevent (STOP) School Violence Act.** When the STOP School Violence Act was passed in 2018, many civil rights advocates were concerned<sup>17</sup> about the law's potential to exacerbate the militarization of schools (e.g. through the use of "school hardening" infrastructure), to violate students' privacy rights, and to contribute to the profiling of marginalized students in the name of "threat assessment." We ask for oversight into how this program has been implemented, and what the impact has been on the educational experience and rights of marginalized students.
5. **The Every Student Succeeds Act (ESSA).** ESSA is essential legislation to ensure that schools are receiving resources to serve all students, and details how schools, districts, and states will be held accountable for student academic performance. ED has taken several actions that have weakened the implementation of ESSA. We ask for oversight regarding the following<sup>18</sup>:
  - a. ED's failure to clarify that ESSA funds cannot and should not be used to arm teachers.<sup>19</sup>
  - b. The overuse of alternate assessments, including flaws in the 1 percent cap waiver process and failure to ensure that states properly implement ESSA and IDEA for students with the most significant cognitive disabilities.
  - c. ESSA's requirement that states' Title I plans address how the states will work with districts to reduce incidents of bullying and harassment, the use of exclusionary disciplinary practices such as suspension and expulsion, and the use of aversive practices such as seclusion and restraint.
  - d. ESSA accountability provisions that require states to hold schools accountable for the achievement of, and provide support for, historically marginalized student groups. Oversight should include whether excessively large N sizes are preventing schools from being held accountable for subgroup performance and whether methods of disaggregating data for accountability purposes ensure that attention is paid when any individual group of students is underserved. Accountability provisions must also include protections for children and youth in or exiting the juvenile justice system, in foster care, experiencing homelessness, and who are English learners.
6. **Postsecondary Education.** ED has taken several actions to weaken or eliminate protections for postsecondary students. Additionally, there are many examples of challenges in the higher education system where ED has taken inadequate action to advance equity and protect students' civil rights. We request oversight of the following:

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<sup>17</sup> Please see our March 13, 2018 letter for more information. <https://civilrights.org/resource/support-positive-solutions-keep-children-safe-schools-oppose-criminalization-youth/>

<sup>18</sup> Please see our April 10, 2018 letter for more information. <https://civilrights.org/resource/civil-human-rights-coalition-letter-re-essa-oversight/>

<sup>19</sup> Please see our September 17, 2018 letter for more information. <https://civilrights.org/resource/civil-and-human-rights-community-opposition-to-use-of-essa-funds-for-weapons/>

- a. Weakening of regulations designed to provide relief for students harmed by low-quality schools that saddle them with debt without providing educational services of any value, including those related to borrower defense to repayment and gainful employment.<sup>20</sup>
  - b. Lack of relief for students following the closures of for-profit institutions, particularly the effect of delayed or denied relief on marginalized communities.
  - c. The degree to which existing Transition and Postsecondary Programs for Students with Intellectual Disabilities provide students identified as having an intellectual disability with information indicating how a student not identified as having an intellectual disability in K-12 schools may be eligible to participate; and provide support for students to be socially and academically integrated with non-disabled students to the maximum extent possible<sup>21</sup>.
  - d. Implementation of Universal Design for Learning in higher education.
  - e. The rescission of guidance clarifying institutions' nondiscrimination obligations under Title IX, attempts to push institutions to adopt grievance procedures that inequitably burden sexual assault complainants by giving named harassers and abusers special rights that aren't available for other violations of school policy, and the influence of extremist groups opposed to gender justice on ED policy and practice.
  - f. Coordination between state Vocational Rehabilitation agencies and educational agencies in preparing students with disabilities for postsecondary education and employment and the transition process.<sup>22</sup>
  - g. Higher education access and success for especially marginalized students, including those who are parents, homeless or in foster care, students of color, Native students, justice-involved, students with disabilities, or undocumented immigrants.
  - h. Barriers to postsecondary education for marginalized communities in the Free Application for Student Aid (FAFSA), including question 23 regarding students' past drug offenses.
  - i. ED and the Department of Justice's use of private law firms to handle student default litigation that disproportionately targets communities of color.<sup>23</sup>
  - j. Barriers to professional and graduate school enrollment for students of color and Native students.
7. **Religious Exemptions to Title IX.** We request oversight on the extent to which the use of religious exemptions under Title IX have perpetuated gender-based discrimination against students and working people; specifically, whether Title IX's religious exemption is being construed to broadly sanction discrimination against LGBTQ+ students, pregnant and parenting students, and/or students seeking birth control or reproductive health services. We also urge oversight into why the Department of Education in 2016 stopped publicly posting a list of schools that have claimed a religious exemption; steps the Department of Education is taking to ensure schools proactively inform current

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<sup>20</sup> Please see our September 19, 2017 letter for more information. <https://civilrights.org/resource/letter-re-concerns-impact-student-loan-servicing-debt-collection-changes-undermined-regulations-black-latino-borrowers/>

<sup>21</sup> As required by the Higher Education Opportunity Act.

<sup>22</sup> This includes protection of Workforce Innovation and Opportunity Act (WIOA) regulations defining competitive integrated employment (CIE) and determination of the degree to which students with disabilities are given opportunities to pursue CIE; determination of the number of adolescents and adults with disabilities who are referred to segregated employment when they leave school versus CIE; and the degree to which schools are complying with the wage requirements included in Section 511 of WIOA. Please see our June 22, 2017 letter for more information. <https://civilrights.org/resource/h-r-2353-the-strengthening-career-and-technical-education-for-the-21st-century-act.>

<sup>23</sup> Please see the National Consumer Law Center's report, "Inequitable Judgments: Examining Race and Federal Student Loan Collection Lawsuits" for more information. [https://www.nclc.org/images/pdf/student\\_loans/report-inequitable-judgments-april2019.pdf](https://www.nclc.org/images/pdf/student_loans/report-inequitable-judgments-april2019.pdf)

and prospective students of the protections the law provides against discrimination; and the specific exemptions schools have claimed.

8. **Restraint and Seclusion.** Our highest priority for legislative action on restraint and seclusion is establishing national standards. Aversive practices and seclusion are never appropriate and should be prohibited in their entirety. The use of restraint outside of emergency situations where a student's behavior poses an imminent danger of serious physical injury to the student, school personnel, or others is inappropriate and should be prohibited. For students with disabilities, the inappropriate use of restraint and seclusion may constitute a violation of rights under IDEA. We are also deeply concerned regarding the failure of many large school districts to report restraint and seclusion data to the Civil Rights Data Collection, indicating the need for more rigorous data collection efforts.
9. **Protect Families from Immigration Enforcement Activities and Advance a Path to Citizenship for Students.** We urge you to conduct oversight to ensure the U.S. Customs and Border Protection (CBP) refrain from conducting enforcement activities at or near public schools and other sensitive locations, consistent with ICE's 2011 memo and CBP's 2013 memo on the topic.<sup>24</sup> Additionally, we urge legislative action to provide a path to citizenship for undocumented immigrant youth, Dreamers, and beneficiaries of Temporary Protected Status (TPS) and Deferred Enforced Departure (DED).
10. **Continued Collection and Dissemination of Data.** This cross-cutting issue should be considered in oversight of each of the preceding points, as effective data collection and dissemination are necessary for evaluation and review of all other programs and activities. Data should be disaggregated by race, ethnicity, native language, socioeconomic status, EL status, disability status, disability type, sexual orientation, and gender identity. This should include protection of and compliance with the Civil Rights Data Collection (CRDC) and any collection of information related to student discipline.<sup>25</sup> The CRDC should include data from the private and non-public schools in which school districts place students with disabilities.

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<sup>24</sup> See <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> and [https://foiarr.cbp.gov/docs/Policies\\_and\\_Procedures/2013/826326181\\_1251/1302211111\\_CBP\\_Enforcement\\_Actions\\_at\\_or\\_Near\\_Certain\\_Community\\_Locations\\_%7BSigned\\_M.pdf](https://foiarr.cbp.gov/docs/Policies_and_Procedures/2013/826326181_1251/1302211111_CBP_Enforcement_Actions_at_or_Near_Certain_Community_Locations_%7BSigned_M.pdf)

<sup>25</sup> Please see our February 28, 2018 letter for more information. <https://civilrights.org/resource/comment-letter-re-mandatory-civil-rights-data-collection/>