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June 10, 2013

The Honorable Tom Harkin, Chairman
Senate Committee on Health, Education, Labor and Pensions
615 Dirksen Senate Office Building
Washington, DC 20515

Dear Chairman Harkin:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of 210 national organizations charged with the promotion and protection of the rights of all persons in the United States, we write to congratulate you for introducing S. 1094, the "Strengthening America's Schools Act of 2013," to reauthorize and strengthen the Elementary and Secondary Education Act. S. 1094 seeks to ensure that all students are afforded a high quality education by focusing on closing achievement gaps, reducing dropout rates, and improving school climate. The bill is vital for all students, both girls and boys, and particularly important for students of color, students from low-income families, students with disabilities and English learner students, who far too often receive inadequate educations that do not prepare them for our 21st Century economy.

We are pleased that the bill would extend the longstanding role of the federal government in ensuring educational equity and excellence. The federal government has a long history of safeguarding and promoting the interests of individuals and groups who are denied access and opportunity to a wide array of public and private benefits, including voting, employment, transportation, housing, health and safety, and other government services. In the area of public education, the courts, Congress, and the Executive branch have traditionally recognized inequality, deprivation and discrimination and have acted to ensure that all children – regardless of their race, national origin, sex, family income, level of English proficiency, or whether or not they have a disability or stable home environment – have the opportunity to obtain a quality public education. The Leadership Conference is particularly pleased that the Chairman's bill would reaffirm this important federal role, and significantly, would enhance federal protections in a number of areas critical to each and every student's success and well-being. It is also contains critical protections against harms inflicted on lesbian, gay, bisexual and transgender ("LGBT") children and other students who are subjected, often on a daily and relentless basis, to the painful and life-threatening impact of bullying and harassment.

The Leadership Conference is pleased that S. 1094 both retains important provisions in current law, and also includes new provisions that we have advocated as a coalition. These include but are not limited to:

Improving Student Safety and School Climate

The Strengthening America's Schools Act of 2013 marks the first time a comprehensive ESEA reauthorization bill has recognized the urgent need to ensure that all schools create positive, welcoming and nurturing environments for all students and their families. Previous authorizations have invested federal dollars largely in punitive or ineffective programs that have not succeeded in addressing non-academic barriers to learning within schools. We applaud you and your colleagues for your commitment to, and historic inclusion of, a bold set of programs and reforms that include:

The Student Non-Discrimination Act (SNDA). SNDA would establish a comprehensive federal prohibition against discrimination and harassment in all public elementary and secondary schools across the country based on a student's actual or perceived sexual orientation or gender identity. SNDA would provide LGBT students with long overdue and much needed explicit federal protections against discrimination and harassment. The legislation also protects students who associate with LGBT people, including students with LGBT parents and friends. There is overwhelming evidence establishing a compelling need for action at the federal level to protect LGBT students from discrimination and harassment in schools. For example, a 2011 study of more than 8,500 LGBT middle and high school students found that eight out of ten reported experiencing harassment at their school within the past year based on their sexual orientation. Six in ten LGBT students reported feeling unsafe at school because of their sexual orientation. The effect of a hostile school climate on LGBT students has a direct and negative impact on the students' education. Nearly a third of LGBT students reported skipping a class at least once and three in ten reported missing at least one entire day of school in the past month because of safety concerns. Most tragically, LGBT youth face significantly increased risks for suicide related to mental health issues that often arise from poor treatment and discrimination in schools.

Support for Pregnant and Parenting Students. The bill calls for the inclusion in State Report Cards of (non-personally identifiable) data on pregnant and parenting students and their outcomes (to the extent it is available, such as by self-reporting the way that single parent data is collected per the Perkins CTE Act) and calls on SEAs and LEAs to include in their plans a description of how they will plan for pregnant and parenting students to be enrolled in, attend, and succeed in school. This is critical, as many pregnant and parenting students are still pushed out of school in violation of Title IX of the Education Amendments of 1972, the federal civil rights law prohibiting sex discrimination in education. Pregnancy and parenting responsibilities are leading causes of dropout among at-risk girls and boys, impacting not only them but also their children, our country's next generation of students, yet the educational needs of pregnant and parenting students have, for far too long, been overlooked by federal education policy.

Successful, Safe and Healthy Students Act. The bill would replace the current law's *Safe and Drug-Free Schools* provisions with a more comprehensive approach to improving the learning environment for all students. Relying on data and surveys of the school community, schools would identify their most significant needs toward reducing violence, bullying, and harassment, improving mental and physical health, and creating safe and supportive school climates. The bill would require states receiving these funds to prevent and prohibit identity-based harassment (including the harassment of LGBT students, students who are perceived as LGBT, and students who associate with LGBT students), a requirement that mirrors the bipartisan Safe Schools Improvement Act. Notably, the bill

requires an assurance that such prevention and prohibition efforts do not result in increased reliance on exclusionary discipline and the type of “zero tolerance” disciplinary policies that have resulted the doubling of the nation’s discipline rates since the 1970s. Instead, the bill calls for evidence-based interventions, like School-Wide Positive Behavior Supports and Restorative Justice practices, which have been shown to reduce out-of-school punishments while improving student attendance and perceptions of school safety.

School-to-Prison Pipeline. The bill takes several other significant steps to reduce the over-reliance on harsh and exclusionary discipline known as the “School-to-Prison Pipeline.” Currently, over 3.3 million U.S. public school students are suspended at least once each year; another 100,000 are expelled; and thousands are arrested or referred to courts, often for matters that were handled by a trip to the principal’s office in a prior generation. This over-reliance is especially acute in schools serving low-income communities, and as disciplinary rates grow, racial and disability-related disparities in discipline only continue to widen. Given the documented, significant academic and social harms that suspension, expulsion, corporal punishment and arrest have on students’ futures, we strongly support the following provisions of the bill:

- The requirement that states’ plans “reduce suspensions, expulsions, referrals to law enforcement and other disciplinary actions that remove students from instruction,” facilitate successful re-entry of juvenile offenders and disconnected youth, and provide other protections for juvenile offenders.
- The inclusion of disaggregated school disciplinary data in School, LEA, and State Report Cards, as well as in the new Equity Score Cards.
- The requirement that a state’s lowest performing schools (“Priority Schools”) review disaggregated disciplinary data and implement evidence-based approaches, like School-Wide Positive Behavior Supports, where lower performing subgroups receive a disproportionate share of exclusionary punishments.

Parent and Community Engagement

The bill takes several steps to enhance parent and community engagement. We support the following provisions in the bill:

- The inclusion of the right of parents to transfer their child to a better performing public school.
- Authorization of the Promise Neighborhoods program, based on the comprehensive approach of the Harlem Children’s Zone.
- Reauthorization of the 21st Century Community Learning Centers, which provide vital after-school extended learning opportunities.
- Reauthorization and improvement of Parent Information and Resource Centers.
- A requirement for each LEA to develop a comprehensive family engagement plan.
- Maintenance and strengthening of school report cards and parent “right to know” provisions.
- The requirement that parent and school surveys, parent advisory boards, and community outreach and engagement be created or undertaken.

Other Provisions to Improve Conditions for Learning. The bill would establish the importance for all states to mitigate barriers to learning by requiring states’ Title I plans to address discipline, re-entry and

recidivism. In addition, the bill also requires states to provide assistance and training to LEAs in developing and implementing positive behavioral interventions and supports, implement positive approaches to school discipline, and to conduct evaluations of the impact of PBIS and other supports on student outcomes.

College and Career-Ready Standards and Assessments

Standards. S. 1094 requires all states to set college-and career-ready academic and achievement standards and to develop aligned statewide assessments. The standards will require the same expectations for achievement and growth for all students in all schools and LEAs. When met, the standards will ensure that high school graduates do not need remediation before enrolling in credit-bearing courses in state colleges and universities and they are fully prepared for a rigorous career-education program. The bill also requires each state to set standards for English language proficiency.

Assessments. The bill would maintain critically important provisions in Title I requiring state assessment systems aligned with the state's standards, including:

- Inclusion of all students in state assessments (95 percent participation rule).
- Multiple measures.
- Each assessment must be valid and reliable and meet professional, technical standards.
- Assessment of English learners in the language and form that will provide the most accurate information on their knowledge and skills.
- Disaggregation of assessment results by "each major racial and ethnic group, English proficiency status, migrant status, status as a student with a disability, and economically disadvantaged status.
- Participation by states in the National Assessment of Educational Progress.

The bill also requires states to develop new and better assessments, which would be aligned to the Common Core State Standards or comparable college and career-ready standards. It breaks new ground in providing for the use of new forms and approaches to statewide assessments, provided they are valid and reliable, such as:

- Portfolios, projects, or extended performance tasks.
- Choice to use annual assessments or periodic assessments throughout the school year.
- Computer adaptive assessments.
- Universal design principles (per the Assistive Technology Act).
- Competency-based assessments.

These measures will help ensure better alignment of assessments with the needs of all learners as well as with interdisciplinary and project-based learning, research and writing, critical thinking, and other skills needed for college and career-readiness.

With respect to **English learners**, the bill helps ensure that such children are provided the language support and instruction they are entitled to under federal law by transferring the

requirement for assessment of English language proficiency from Title III to state plan and accountability requirements under Title I.

With respect to **students with disabilities**, the bill sets strict limits on the use of alternate standards and assessments for students with the most severe cognitive disabilities. It completely eliminates the use of modified, or watered down, standards and assessments, and instead requires that students with disabilities be provided appropriate accommodations on and/or adaptations of the state's grade-level assessments for all students.

Finally, the bill requires states to set standards and develop aligned assessments in science.

Accountability and School Improvement

The accountability provisions in S. 1094 are a notable improvement over the Department of Education's guidelines for waivers, as well as the reauthorization bills considered by the Committee in the 112th Congress. The improvements include the following:

Statewide system. The bill requires each state to develop a single statewide accountability system that includes and differentiates all schools and LEAs in the state based on both achievement and growth, acquisition of English language proficiency, and graduation rates, and that accounts for achievement, growth, graduation and gap closing for each subgroup.

Performance targets: Each state must set achievement, growth, and graduation targets for each subject, grade level, school, LEA and the State itself.

Accountability for subgroups of students. The bill maintains accountability for each subgroup of students, including each major racial and ethnic group, English learners, migrant students, students with disabilities, and economically disadvantaged students. It would prohibit the use of inflated "n" sizes and so-called "super-subgroups." These methods of gaming the system have created significant transparency and accountability problems under both NCLB and the Secretary's waivers. Under the bill, schools and LEAs would be accountable for the academic achievement, growth, and graduation rates of each subgroup with 15 or more students.

School improvement. The bill includes the following provisions targeted to the lowest performing schools:

- "Priority schools," which include sensible provisions for a comprehensive diagnosis of the school's problems and solutions to address the causes of poor academic performance.
- "Focus schools," which will capture all "dropout factories" in each state, i.e., those high schools that graduate less than 60 percent of students.
- Turnaround strategies include conversion to a magnet school.

Achievement gaps. Schools that do not fall into the "priority" or "focus" school categories would be held accountable for closing achievement gaps between subgroups.

Capacity building: The bill has new provisions for the development of the capacity of LEAs and schools to deliver effective education to students, including through the identification and replication of successful practices, parent involvement, community engagement and teacher professional development. This is especially important as college and career-ready standards are implemented.

Equity Report Card. The bill requires LEAs to publish additional data and information about schools and their students in an equity report card. This report card will include information about school funding from federal, state and local sources, student achievement and graduation rate information disaggregated and cross-tabulated, information on educational opportunities and participation in Advance Placement or International Baccalaureate courses and school climate data. Publishing an equity report represents an important step toward ensuring access to high quality education for all students. It will mark the first time that schools will be required to publicly report finance data by source.

Promoting Diversity and Reducing Racial Isolation. The bill includes the following important provisions:

- Reauthorization of the Magnet Schools Act and includes diversity under the Charter School Program.
- Creation of an option to use magnet schools as a school improvement strategy.
- Right-to-transfer provisions, which when done well, will contribute to racial and socioeconomic diversity.

Fiscal and Resource Provisions. The bill addresses the following:

- Closing the “comparability loophole” that has allowed districts to spend more per-pupil in lower-poverty schools than in high-poverty schools.
- Continuing to require the equitable distribution of teachers.
- Requiring the Equity Report card to report school spending.
- Maintaining the important “maintenance of effort” and “supplement not supplant” provisions.

Federal Enforcement. The bill maintains the current federal responsibility to review state plans and to require approval by the Secretary following peer review. In an improvement over current law, states must submit revised plans (with revised performance targets) to the Secretary every four years.

Recommended Improvements to S. 1094

Standards, Assessments, and Accountability:

Transition. We recognize the need for a workable and orderly transition from current standards and assessments to college- and career-ready ones, in which educators and students have the time, support, and resources they need to teach and learn to the new standards. The two-year transition period in the bill is a reasonable one. Nonetheless, during this time, we believe we need to ensure that the many children who are currently below grade level get caught up. Students who are below grade level on current proficiency standards will surely test below grade

level on the new ones, with even more ground to make up. Based on current and historic achievement gaps, we know these children will be disproportionately children from low-income families, children of color, children with disabilities, English learners and migrant and transitory students. We worry that if, attention is not focused on getting students caught up to current grade level standards, these children will be put at high risk of failing to meet the new standards and dropping out. Thus, we recommend the following:

- All schools and LEAs that are now in school improvement, as well as those in corrective action, including all “priority” and “focus” schools under waiver approval, should be required to continue their improvement efforts under Sec. 1116 of current law. We further recommend that these schools and LEAs continue in improvement or corrective action or as “priority” and “focus” schools in waiver states until the new assessments confirm that they are meeting the new performance targets.
- With regard to schools that are neither focus nor priority, we believe students who are struggling now in schools with persistent achievement or graduation gaps should also get immediate support. Consequently, we recommend that the bill be improved to require states to identify proficiency gap schools in “the other 85” percent of schools immediately following enactment.

LEA-directed school improvement. The bill should clarify that stronger state-directed improvement measures will be taken if an identified school does not close gaps and meet its targets after three years. We further recommend that states be assigned the responsibility of improving these schools when the LEA itself is not performing.

School Improvement and Turnaround. All schools identified for interventions under the law should engage in the “School Improvement Strategies” identified in Sec. 1116(d)(3). These include a needs assessment as well as other necessary and commonsense steps toward school improvement (timely access to student performance data, time for teacher collaboration, review of disciplinary data, etc.). In addition, we would support the inclusion of community based schools as part of school improvement. Finally, we support adding language indicating that school closings should be used as turnaround strategy only when: other efforts to fix the school have not succeeded and students who would be displaced by the closing are guaranteed a seat in a better performing school, with appropriate services and transportation.

Accountability for Subgroups of Students. The bill should clarify that stronger state-directed improvement measures will be taken if an identified school does not close gaps and meet its targets after three years. It is critical for states to own and remedy chronic low performance and to provide the necessary resources for success. We further recommend that states be assigned the responsibility of improving these schools when the LEA itself is not performing. In addition, the bill should ensure that accountability for graduation rates for each subgroup of students includes data disaggregated by gender for each subgroup.

School Targets, Improvement and Turnaround. All schools identified for interventions under the law should engage in the “School Improvement Strategies” identified in Sec. 1116(d)(3). These include a needs assessment as well as other necessary and commonsense steps toward school improvement

(timely access to student performance data, time for teacher collaboration, review of disciplinary data, etc.).

Waivers.

We believe the bill should eliminate the state waiver authority for focus and priority schools. Permitting states to avoid identifying their bottom 15 percent of schools for the most rigorous interventions undermines the purpose and intent of the law. In addition, the bill should:

- Add accountability for subgroups, data collection and reporting requirements, including disaggregation, to list of federal requirements that cannot be waived.
- Require focus schools to undergo a needs assessment to better inform and support the intervention plan they must develop with the local education agency.
- Ensure that states set annual performance targets for each subgroup with accelerated progress for each low-performing subgroup of students to reach the same goal and on the same day without the use of any “super subgroups.”

Fiscal and Resource Requirements. As a requirement for receiving federal funds, states and districts should be required to construct a resource equity plan with definable goals and timelines that ensures all students attend schools with the resources necessary to meet college-and-career ready standards and to implement other recommendation of the Department of Education’s Equity and Excellence Commission. And the bill should provide real consequences for states and districts not meeting the goals and timelines in these resource equity plans. In addition, the bill should:

- Require states that use a multiple year fiscal cycle to measure the intervening years against the preceding year.
- Require states to provide evidence or realistic plans to ensure, on both an inter- and intra-district basis, that students of color, low-income students, English learners and students with disabilities are not taught at greater rates than other students by inexperienced, unqualified, out-of-field, or less effective school teachers and leaders. The language in Sec. 1111 should clarify that data on inexperienced, unqualified and out-of-field teachers must still be collected and used to equalize teacher assignment even after valid measures of teacher effectiveness are available.

School Climate Improvements. The bill should:

- Require states to demonstrate or provide realistic plans to severely reduce the use of restraint and seclusion and collect and report data disaggregated and cross-tabulated for all enumerated subgroups of students.
- Prohibit the use of corporal punishment and collect and report data disaggregated and cross-tabulated for all enumerated subgroups of students.

English Learners. The bill should:

- Include the use of valid and reliable home language surveys, diagnostic assessments, and summative assessments for measures of EL student progress.
- Create a pilot program to incentivize and study SEAs’ use of further disaggregated EL student data into the following five sub-subgroups: (a) recent-arrival ELs; (b) ELs with significant interrupted formal education; (c) late-arrival ELs; (d) long-term ELs; and (e) former ELs.
- Ensure all non-citizens authorized to work within the United States have a fair shot to sit for teacher and/or principal licensure or certification exams.

Data. The bill should:

- Further disaggregate Asian American, Pacific Islander data to include all sub-subgroups, for example, Cambodian, Laotian, Vietnamese and Hmong that meet the reporting requirement of 15 students. And, further disaggregate English learner students to include: former English learner, student with interrupted education, recent arrival, long-term English learner, and late arrival.
- Ensure that data is cross-tabulated by gender in all Titles requiring reporting or consideration of student data, including, e.g., Sec. 1111(a)(2)(B)(x), and further ensure that all subgroups of students are appropriately included in reporting and program requirements.
- Add to Title I the High School Data Transparency Act (S. 217), which would require high schools to report basic data on the number of students in their athletics programs and the expenditures made for their sports teams. Requiring that all schools report such data will enhance compliance with Title IX of the Education Amendments of 1972 and aid in the continued expansion of athletic opportunities for girls at the high school level. This is important because girls in high school still receive 1.3 million fewer opportunities to participate in sports than boys. Ensuring equal opportunities for girls in athletics is critical, as participation in athletics leads to better educational and employment outcomes and improved physical and mental health for women.
- Where the bill calls for reported data on school climate including incidents of violence, bullying, drug abuse, and disciplinary incidents, add “harassment” between “bullying,” and “drug abuse.”

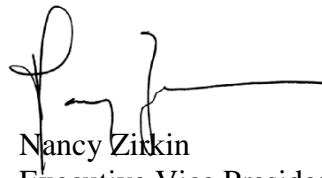
Thank you for your consideration. We look forward to continuing to work with you and members of the committee to improve the achievement and learning conditions of all students.

If you have any questions, please contact Dianne Piche, Senior Counsel, at piche@civilrights.org.

Sincerely,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President