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September 23, 2020

The Honorable Rosa DeLauro  
Chair  
Subcommittee on Labor, Health and  
Human Services, Education, and  
Related Agencies  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Roy Blunt  
Chairman  
Subcommittee on Labor, Health and  
Human Services, Education, and  
Related Agencies  
U.S. Senate  
Washington, DC 20510

The Honorable Tom Cole  
Ranking Member  
Subcommittee on Labor, Health and  
Human Services, Education, and  
Related Agencies  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Patty Murray  
Ranking Member  
Subcommittee on Labor, Health and  
Human Services, Education, and  
Related Agencies  
U.S. Senate  
Washington, DC 20510

Dear Chairwoman DeLauro, Ranking Member Cole, Chairman Blunt, and Ranking Member Murray,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 17 undersigned organizations, we urge you to take immediate and comprehensive action to ensure equal educational opportunity during the COVID-19 public health crisis and beyond. Long term closures of early childhood settings, K-12 schools, and college campuses, necessary to protect the safety and health of communities, have significantly exacerbated longstanding inequities in our educational system. Without significant federal assistance, cuts to state education budgets this year and well into the future due to significant declines in state revenue and additional COVID-19 related costs will further exacerbate these inequities.<sup>1</sup> Leadership and action from Congress can, and must, minimize the harm to marginalized students as long as COVID-19 continues to threaten public health.

We call on you to ensure sufficient targeted education funding so that learning continues – especially for the most marginalized children – and that children, educators, and other school staff are able to return to in-person instruction as soon as it is safe to do so. As is the case with all federal funds, it must be clear that recipients of these funds may not discriminate on the basis of race, color, national origin, sex<sup>2</sup>, or disability as prohibited by the Civil Rights Act of 1964, the Education Amendments of 1972, the Americans with Disabilities Act, and the Rehabilitation Act of 1973. Additionally, we urge you to reject reckless policies that

<sup>1</sup> See: <https://www.cbpp.org/research/state-budget-and-tax/states-start-grappling-with-hit-to-tax-collections>

<sup>2</sup> Prohibitions on discrimination based on sex necessarily include sex discrimination manifest as discrimination based on sexual orientation, gender identity, pregnancy, termination of pregnancy, and related medical conditions or expectant or parenting status. See, for example, *Bostock v. Clayton County*

would cause greater harm to Black, Latino, Native American, Asian American, immigrant, English Learner, disabled, and low-income communities already facing overwhelming challenges, such as higher incidences of illness and death from COVID-19, health disparities, and higher unemployment rates.

### **Ensure Sufficient Targeted Funding**

As decisions are made about how to distribute much needed supplemental funds to families, educators, schools, and communities, Congress should prioritize children and families facing the greatest barriers to their educational success. Prior to the COVID-19 public health crisis, public schools in the United States were among the most inequitably funded of any in the industrialized world<sup>3</sup> and state and local education funds were routinely used in a way that provided greater funding to school districts with a higher concentration of White children than of children of color.<sup>4</sup> Similar disparities can be seen in higher education with states and the federal government sending more funding to predominantly White institutions than Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions (MSIs).<sup>5</sup>

Urgency or simplicity in aid distribution should not be used as a justification for reinforcing longstanding inequities or allowing federal aid to displace funds owed to students by their state or community. There must be a clear mandate from Congress to prioritize low-income students, students of color, Native students, English Learners, and other marginalized students and to include students in all supports without regard to their immigration status (or that of their parents), their identity as an LGBTQ+ person (especially transgender, nonbinary, and gender nonconforming children), or their status as a justice impacted person. Additionally, the formula for distributing aid to institutions of higher education should target low-wealth public and non-profit institutions with high enrollments of low-income students, taking into account institutions that may have low Pell participation even though they have a large share of low-income students.

To that end, we seek:

- **\$230 billion for public K-12 schools as part of the Education Stabilization Fund.** We urge you to appropriate \$230 billion for the Education Stabilization Fund to deliver public K-12 schools the support they need to provide ongoing teaching and learning for children, whether in-person (where safe) or remotely. Critically, these funds must be tied to compliance with maintenance of effort and supplement, not supplant provisions to ensure that education dollars support education. In some states, advocates have worked for years to ensure that their state budgets reflected the additional costs of educating children in concentrated poverty. We implore Congress to adopt a requirement that states, as a condition of receiving funds, be precluded from exacerbating funding inequities that may have preceded this crisis. While we hope that no districts will see a loss in funding, we must ensure that higher poverty school districts receive at least as much money relative to lower-poverty districts as they did in the years before the COVID-19 public health crisis and the related fiscal impact on state budgets. Whether there was equity before or not, at a minimum, we must ensure that the situation is not worsened.
- **\$1 billion for Title III of ESSA to Support English Learners.** Currently, there are more than 4.9 million English Learners (ELs) enrolled in K-12 public schools, constituting one in 10

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<sup>3</sup> See: [https://learningpolicyinstitute.org/sites/default/files/product-files/Investing\\_Student\\_Success\\_BRIEF.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/Investing_Student_Success_BRIEF.pdf)

<sup>4</sup> See, for example, <https://edtrust.org/resource/funding-gaps-2018/>.

<sup>5</sup> See: <https://www.gse.upenn.edu/pdf/gasman/FundingApproachesHBCUs.pdf>

students and continuing to grow as a share of the student body.<sup>6</sup> The overwhelming majority of ELs are U.S.-born citizens with immigrant roots.<sup>7</sup> Regardless of the politics of immigration, the success of English Learners is critical to our nation's future. Title III is the only federal funding stream specifically dedicated to the teaching and learning of EL students and is sorely underfunded. Since 2009, the EL population has grown by over 11.35 percent and when adjusting for inflation, Title III funding has decreased by 9.4 percent.<sup>8</sup> In fact, 43 states have seen their number of ELs increase, with growth as high as a 765 percent increase in South Carolina.<sup>9</sup> In nine states, the EL population is above 10 percent, including California (20.2 percent), Washington (11.1 percent), Texas (17.2 percent), and Florida (10.3 percent). Title III must become a federal funding priority in order to ensure that millions of English Learners are not denied a high-quality education. \$1 billion in emergency COVID funding for Title III is needed now to meet the challenges of distance learning for ELs, and to prepare for the increased support EL students will need during the school year.<sup>10</sup> Nearly 60 percent of ELs are living in households where income levels are less than 185 percent of the federal poverty line and more than 700,000 ELs also have disabilities.<sup>11</sup> Despite educators' best efforts during this crisis, it is proving difficult to provide high-quality online instruction for ELs due to lack of electronic devices, connectivity, digital curricula specifically designed for ELs, and teacher training for online instruction.

- **\$12.5 billion for IDEA to Support Children with Disabilities.** To help states meet their obligations and provide school leaders and educators with resources to deliver educational services and supports to students served under the IDEA, Congress must invest additional funds. The COVID-19 pandemic has illuminated the impact of the historic and continuous gross underfunding of IDEA and the great strain that this underfunding places on state and local education systems. Within this next relief package, Congress should also provide \$55 million for funding under the Assistive Technology Act of 1998, which can help make virtual learning more accessible for students with learning disabilities. The CARES Act funding levels were not sufficient to meet the needs facing states and districts now and in the coming months. State budget cuts and teacher layoffs will exacerbate the existing critical shortage of special education teachers. Without these critical funds, children with disabilities who are disproportionately facing significant barriers to learning during extended school closures will be left even further behind.
- **\$11.9 billion for Title I of ESSA to Support Children Who Are Low-income, from Migrant Families, Justice Impacted, or Experiencing Homelessness.** Even before the pandemic, childhood poverty rates in the United States were among the highest of the Organization for Economic Co-operation and Development (OECD) nations, reaching 21 percent in the most

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<sup>6</sup> See: <http://publications.unidosus.org/handle/123456789/2022>

<sup>7</sup> See: <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states-2013>

<sup>8</sup> See:

[https://nces.ed.gov/programs/digest/d18/tables/dt18\\_204.20.asp](https://nces.ed.gov/programs/digest/d18/tables/dt18_204.20.asp) and

[http://publications.unidosus.org/bitstream/handle/123456789/2057/unidosus\\_titleIII\\_funding\\_factsheet.pdf?sequence=4&isAllowed=y](http://publications.unidosus.org/bitstream/handle/123456789/2057/unidosus_titleIII_funding_factsheet.pdf?sequence=4&isAllowed=y)

<sup>9</sup> See: [https://ncela.ed.gov/files/fast\\_facts/19-0193\\_De14.4\\_ELDemographicTrends\\_021220\\_508.pdf](https://ncela.ed.gov/files/fast_facts/19-0193_De14.4_ELDemographicTrends_021220_508.pdf)

<sup>10</sup> Ibid.

<sup>11</sup> See: [https://edfunders.org/sites/default/files/Educating%20English%20Language%20Learners\\_April%202013.pdf](https://edfunders.org/sites/default/files/Educating%20English%20Language%20Learners_April%202013.pdf) and [https://nces.ed.gov/programs/coe/indicator\\_cgf.asp](https://nces.ed.gov/programs/coe/indicator_cgf.asp)

recent published statistics.<sup>12</sup> More than half of children attending U.S. public schools qualified for free or reduced-price lunch – the highest percentage since the National Center for Education Statistics began tracking this figure decades ago.<sup>13</sup> With nearly 30 million Americans – disproportionately people of color<sup>14</sup> – having lost their jobs,<sup>15</sup> the economic impact of the COVID-19 pandemic has made many more families financially insecure. Title I-A of the ESSA is specifically designed to target funding to schools serving students from families with low incomes. During this time of increased need and extreme economic hardship, Congress should provide \$11 billion in emergency Title I-A relief. Additionally, some of the most marginalized children in our society before this crisis face ever greater barriers to their learning now. Congress should also provide additional support by allocating \$300 million to Title I-C to support children from migrant families, \$100 million Title I-D to support justice impacted students, and \$500 million to McKinney-Vento to support students experiencing homelessness, including LGBTQ+ students who are more than twice as likely to experience homelessness as their non-LGBTQ+ peers.<sup>16</sup>

- **\$6.8 billion to Address the Digital Divide.** The COVID-19 pandemic caused a near-total shutdown of the U.S. school system, forcing more than 55 million students to transition to home-based remote learning practically overnight. In most cases, that meant logging in to online classes and accessing lessons and assignments through a home internet connection. For one out of three Black, Latino, and American Indian/Alaska Native households, that was not an option. Nationwide, across all racial and ethnic groups, 16.9 million children remain logged out from instruction because their families lack the home internet access necessary to support online learning, an injustice known as the “homework gap.” According to an analysis of data from the 2018 American Community Survey conducted for the Alliance for Excellent Education, National Urban League, UnidosUS, and the National Indian Education Association, millions of households with children under the age of 18 years lack two essential elements for online learning: (1) high-speed home internet service and (2) a computer.<sup>17</sup> For LGBTQ+ students, lack of access to in-person instruction and disrupted connectivity may limit their access to peer networks of support, including GSAs (Gender and Sexuality Alliances or Gay Straight Alliances). These networks of support are especially important for children who may be sheltered in place with families who do not affirm their identities, leading to greater risk of mental health concerns. Most of the burden for equipping students with devices and internet access for ongoing online learning will fall to schools, districts, and states. But they cannot resolve the existing disparities alone. Bringing high-speed home internet access to all 8.4 million households that currently are offline will require Congress to approve additional funding to support students’ learning needs. Congress must also provide funding for necessary infrastructure for long-term expansion of broadband access to support synchronous learning, especially in rural communities of color.

## Reject Reckless Policies

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<sup>12</sup> See: [https://learningpolicyinstitute.org/sites/default/files/product-files/LPI\\_Ed2020\\_BRIEF.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/LPI_Ed2020_BRIEF.pdf)

<sup>13</sup> See: <https://www.southerneducation.org/what-we-do/research/newmajorityreportseries/>

<sup>14</sup> See: <https://www.epi.org/indicators/state-unemployment-race-ethnicity/>

<sup>15</sup> See: <https://www.washingtonpost.com/business/2020/08/27/unemployment-claims-last-week-are-1-million-labor-market-continues-feel-pain-coronavirus/>

<sup>16</sup> See: <https://news.uchicago.edu/story/lgbtq-young-adults-experience-homelessness-more-twice-rate-their-peers>

<sup>17</sup> See: <https://futureready.org/homework-gap/>

There are those who callously seek to take advantage of this public health crisis – one which has disproportionately harmed the health and well-being of Black, Latino, and Native American families especially – to advance a policy agenda that is immoral and indefensible. We urge you to focus on making needed funds available to ensure ongoing teaching and learning for marginalized children, and to reject these uncaring policy proposals.

- **Preserve Federal Education Funds for Public Schools.** In a time when resources are too scarce, and the challenges are too significant, it is vital that limited public funds are reserved for public schools. Private schools, which often exist outside of the nondiscrimination requirements enforceable in public schools, too often exclude children or families on the basis of sex (including sexual orientation and gender identity), disability, race or ethnicity, and religion. No taxpayer should ever be expected to support an institution that discriminates against them and the federal government should never subsidize discrimination.
- **Preserve Public Health and Reject Conditioning Funds on In-Person Instruction.** The shameless political effort to force children and school staff into unsafe school conditions by holding urgently needed funds hostage<sup>18</sup> must be completely and totally rejected by congressional leaders. While in-person instruction is preferred, it must not come at the expense of the health and safety of children, school staff, families, and communities. In fact, withholding needed federal funding may render physical reopening less practicable due to the inability of schools and districts to purchase necessary equipment or services necessary to ensure a safe school environment. Decisions about reopening schools to in-person learning must be based on public health and science. Conditioning education funding on whether students are inside a physical classroom will only further disadvantage students in communities most ravaged by the coronavirus pandemic. All children deserve to learn. It is clear that, to date, federal funding has fallen short of what is necessary to provide a high-quality education to students. Increased support must be provided for remote learning where in-person learning is inappropriate, and significant attention must be paid to reducing community transmission of the coronavirus so that it is safe to reopen schools for in-person instruction.
- **Support the Learning of Immigrant Students.** Once again there are those who seek to exclude enrolled students solely based on their immigration status.<sup>19</sup> This agenda serves only to advance the heartless anti-immigrant policies of the current administration and undermines the education and futures of vital members of the school and campus community. For enrolled students, immigration status is and should be treated as irrelevant.

As Congress continues to respond to the massive upheaval and disruption to the lives of families and communities across the country, it is vitally important that those who were most marginalized before this current public health crisis and are bearing the brunt of the crisis itself are at the center of any and all responses – especially with regard to education. Without a doubt, COVID-19 will have lasting effects for many decades to come. There is an opportunity and a responsibility to minimize the harm to the next generation. We urge you to consider these recommendations and look forward to the opportunity to continue to communicate with you about civil rights, educational equity, and the COVID-19 public health

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<sup>18</sup> See, for example: <https://www.nytimes.com/2020/07/08/us/politics/trump-schools-reopening.html>

<sup>19</sup> See, for example: <https://www.washingtonpost.com/education/2020/06/11/devos-doubles-down-policy-shutting-vulnerable-college-students-out-emergency-grants/>



crisis. If you have any questions, please contact Steven Almazan, K12 Education Program Analyst at The Leadership Conference on Civil and Human Rights, at [almazan@civilrights.org](mailto:almazan@civilrights.org).

Sincerely,

The Leadership Conference on Civil and Human Rights  
American Association of University Women (AAUW)  
American Atheists  
Americans United for Separation of Church and State  
Association of University Centers on Disabilities  
Children's Defense Fund  
Council of Parent Attorneys and Advocates  
Education Law Center-PA  
GLSEN  
Hispanic Federation  
NAACP  
NAACP Legal Defense and Educational Fund, Inc.  
National Center for Learning Disabilities  
National Disability Rights Network  
National Urban League  
National Women's Law Center  
Southeast Asia Resource Action Center (SEARAC)  
UnidosUS