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December 19, 2022

Submitted via StrongerConnections@ed.gov

The Honorable Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Advance Safe, Healthy, and Inclusive School Climates: Stronger Connections Grant Program FAQs

Dear Secretary Cardona:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 29 undersigned organizations, we strongly urge you to update and strengthen the Bipartisan Safer Communities Act Stronger Connections Frequently Asked Questions Nonregulatory Guidance¹ so that it more directly supports safe, healthy, and inclusive learning environments for all students. Leadership and action from the U.S. Department of Education can and must advance policies that create real safety for communities without compounding the harms and discrimination of school hardening that already plague millions of students today.

After the Bipartisan Safer Communities Act was signed into law,² the civil rights community came together to call on federal agencies to ensure the health, safety, and well-being of students in schools through the implementation of the law.³ The letter to the attorney general

¹ U.S. Department of Education, Bipartisan Safer Communities Act Stronger Connections Grant Program Frequently Asked Questions (November 2022): https://oese.ed.gov/files/2022/11/BSCA_Stronger_Connections_FAQs_11-2022-FINAL.pdf

² Although the Bipartisan Safer Communities Act took a long-overdue step forward to address the public health emergency of gun violence that too often claims the lives of our most marginalized neighbors in their homes, schools, and communities, the law did not do enough to ensure federal investments are made to promote student care over school hardening. Violence against children requires action and serious investments in evidence-based policies and practices that keep students and staff safe and do not directly undermine academic success and criminalize children. Marginalized children, particularly Black children, Native children, LGBTQI+ youth, immigrant children, and children with disabilities, are disproportionately impacted by policies and investments that harden schools and promote criminalization.

³ In August 2022, The Leadership Conference and 35 organizations submitted a letter to the U.S. Department of Education, U.S. Department of Health and Human Services, U.S. Department of Homeland Security, and U.S. Department of Justice to join in the call for safe, inclusive, and healthy schools by investing in evidence-based programs that produce a safe and supportive learning environment through the implementation of the Bipartisan

and secretaries of the U.S. Departments of Health and Human Services, Education, and Homeland Security called for policymakers to reject practices that criminalize students and to commit to evidence-based programs that create positive school climates for everyone. We appreciate that the U.S. Department of Education uplifted some evidence-based programs that provide meaningful safe, healthy, and inclusive school climates in the Bipartisan Safer Communities Act Stronger Connections FAQ document; however, we are deeply concerned and disappointed by the insufficient use of civil rights compliance language and the inclusion of school policing and other school hardening practices in the document.

We appreciate the FAQ's inclusion of supportive approaches to improving school climates — such as restorative and trauma-responsive practices; whole-school systems of emotional, social, and academic support such as positive behavioral interventions and supports; culturally responsive mental health care; and additional counselors, nurses, and social workers — that have proven to be effective at producing a safe and supportive learning environment, including by helping students address the root causes of conflict and reducing school infractions.⁴ School safety funding should support school counselors, mental health professionals, nurses, supportive professionals, restorative programs, ongoing anti-bias training, and other evidence-based practices that build positive learning environments and support students' success. However, we believe that the changes described below are necessary to the success of this program and should also be addressed in the FAQ.

Reinforce all students' right to be free from discrimination and schools' obligation to respect that right

The federal government's role in ensuring schools are free from discrimination has been articulated and affirmed by the U.S. Supreme Court, Congress, and implementing guidance and regulation. As is the case with all federal funds, the U.S. Department of Education must make clear that recipients of these funds may not discriminate on the basis of race, color, national origin, sex (including sexual orientation, gender identity, sex characteristics, and sex stereotypes), and 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. With the passage and signing of the Bipartisan Safer Communities Act, school districts will be considering various options for actions they can take with respect to school safety. The FAQ document does not sufficiently address the aforementioned civil rights laws and must reinforce schools' obligations to protect students from discrimination in the administration of school discipline and with respect to school safety measures. Given longstanding evidence that policies implemented in the name of school safety — including, especially, increased contact with law enforcement — have had disproportionate negative effects on students of color and students with disabilities, clarity on this point is crucial. The department itself recently issued guidance on schools' obligations under Section 504⁵ and has been

Safer Communities Act: <https://civilrights.org/resource/invest-in-evidence-based-programs-through-the-bipartisan-safer-communities-act/>

⁴ Nance, J. (2016). Dismantling the School-to-Prison Pipeline. *Arizona State Law Journal*, 48. (citing Johnson, D., Allensworth, E., and Steinberg, M. (May 2011). Student and Teacher Safety in Chicago Public Schools: The Roles of Community Context and School Social Organization. Consortium on Chicago School Research at the University of Chicago Urban Education Institute. <https://consortium.uchicago.edu/sites/default/files/2018-10/SAFETY%20IN%20CPS.pdf>)

⁵ U.S. Department of Education's Office for Civil Rights and Office of Special Education and Rehabilitative Services, Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973 (July 2022): <https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf>

working on guidance regarding Title VI of the Civil Rights Act.⁶ We urge you to ensure that school districts have the necessary guidance on how to develop practices and policies that provide meaningful safe, healthy, and inclusive school climates and comply with federal civil rights laws while they are expending funds under the Bipartisan Safer Communities Act.^{7,8,9}

Highlight the harms of school-based law enforcement, school hardening strategies, threat assessment processes, and surveillance practices to Black students and other students of color, students with disabilities, and all students

Evidence-based investments in positive school climates are needed to prevent further disenfranchisement of marginalized children, including children of color, Native children, children with disabilities, LGBTQI+ youth, immigrant children, other marginalized children, and children living at the intersections of these identities. The funding included in the Bipartisan Safer Communities Act should be used to protect marginalized communities by investing in solutions and strategies to create positive school climates where there are meaningful improvements to school safety, including counselors, improved student engagement, and additional mental health support. It is critically important to disincentivize investments in practices and programs that perpetuate the school-to-prison pipeline and criminalize youth, such as school-based law enforcement, school hardening strategies, threat assessment processes,¹⁰ and surveillance,^{11,12} particularly as there is no conclusive evidence showing that school policing and

⁶ In November 2022, The Leadership Conference and 39 organizations submitted a letter to the U.S. Department of Education and U.S. Department of Justice to update and publish school discipline guidance under Title VI of the Civil Rights Act of 1964 to clarify all students' right to be free from racial discrimination: <https://civilrights.org/resource/update-and-publish-the-title-vi-school-discipline-guidance/>

⁷ Ibid.

⁸ We recommend that the FAQ document be amended to flesh out how to meaningfully engage communities and families with minimum requirements of how frequently it must occur, solicitation of public comment, and demonstration of consideration/responsiveness to community feedback.

⁹ One important element for safe, healthy, inclusive schools and a sense of belonging that is not addressed in the FAQs is to ensure that students with disabilities are educated in the general education classroom as required by the Least Restrictive Environment (LRE) provisions of the Individuals with Disabilities Education Act. Inclusive schools and a sense of belonging are not a reality for certain groups of students. The LRE data for students with an intellectual disability in the Annual Report to Congress on IDEA show that a mere 16.6 percent of these students are educated in the general education classroom. For students who take their state's alternate assessment the data is far worse — only 3 percent are educated in general education classrooms. This segregation for students who take alternate assessments has a disproportionate impact on students of color as we can see in the demographic data provided by states in their requests to waive the 1 percent cap on students taking alternate assessments. These students can be successfully included in the general education classroom with the use of Universal Design for Learning as part of Multi-Tiered Systems of Support and other evidence-based practices. We urge you to include this issue in the FAQs and any related guidance. For resources on best practices for inclusive education for students with significant cognitive disabilities see the work of the TIES Center at the University of Minnesota Institute on Community Integration. <https://ici.umn.edu/products/impact/312/Lessons-Learned/#Lessons-Learned>

¹⁰ Threat assessment poses major risks for and to students, including increased and early contact with law enforcement, overidentification of students of color and students with disabilities (and students at the intersection of those identities) for "threatening" behavior. Threat assessments facilitate racial profiling and open the door for discriminatory treatment of students.

¹¹ Video or still images from surveillance systems should be prohibited from being shared with external vendors, including but not limited to agents of law enforcement such as prosecutors and police departments. Furthermore, the amount of time surveillance footage is allowed to be stored should be severely restricted.

¹² One other form of maltreatment that is unfair, unnecessarily harsh, discriminatory, and disproportionately harmful to students with disabilities and students of color is the practice of seclusion and restraint. Students with disabilities in the United States are routinely subjected to dangerous, dehumanizing restraint and seclusion practices in public schools. These practices are used more often and disproportionately on Black youth and youth of color with disabilities. There is a clear denial of educational

hardening reduce school crime and prevent or reduce the severity of school shootings.^{13,14} The FAQ document should include language that mentions that these approaches lack a robust evidence base regarding their effectiveness and have long posed a disproportionate harm to Black students and other students of color, students with disabilities, and all students while undermining the learning community as a whole.¹⁵ We urge you to ensure that school districts have the necessary guidance that highlights that school policing and other school hardening practices disproportionately impact marginalized children, particularly Black children, Native children, LGBTQI+ youth, immigrant children, and children with disabilities (and especially children at the intersections of these identities).^{16,17,18}

The federal government should invest in and promote solutions and strategies to create positive school climates where there are meaningful improvements to school safety, including a positive learning environment, improved student engagement, and healthy interpersonal relationships. We urge you to join in the call for safe, inclusive, and healthy schools by investing in and promoting evidence-based programs that produce a safe and supportive learning environment through the implementation of the Bipartisan Safer Communities Act. We look forward to seeing updates to the Bipartisan Safer Communities Act Stronger Connections Frequently Asked Questions Nonregulatory Guidance to advance safe, healthy, and inclusive school climates without compounding harm or increasing discrimination against marginalized

opportunity, and children are dying because they are being restrained. In November 2018, a 13-year-old autistic child died after being restrained for nearly two hours in a school in El Dorado Hills, California. See: Fry, Hannah. "After autistic boy dies during school restraint, 3 educators charged with manslaughter." Los Angeles Times. November 13, 2019. Source:

<https://www.latimes.com/california/story/2019-11-13/autistic-boy-dies-schoolrestraint-educators-charged-manslaughter>

¹³ Between 1999 and 2019, a study of 179 school shootings found no evidence that school resource officers (SROs) lessened the severity of school shooting incidents. Livingston, M. D., et al. (2019). A descriptive analysis of school and school shooter characteristics and the severity of school shootings in the United States, 1999–2018. *Journal of Adolescent Health*, 64, 797-799. See, e.g., Gottfredson, D.C., et al. (2020). Effects of school resource officers on school crime and responses to school crime. *Criminology & Public Policy*, 19, 905-940

¹⁴ *K-12 Threat Assessment Processes Civil Rights Impacts*, National Disability Rights Network, (2022), at:

<https://www.ndrn.org/wp-content/uploads/2022/02/K-12-Threat-Assessment-Processes-Civil-Rights-Impacts-1.pdf>

¹⁵ Schools without police had an average arrest rate for students with disabilities of 17 per 10,000 students, while schools with police had an average arrest rate for these students that was three times as high, at 51 per 10,000 students, See: "Cops and No Counselors", American Civil Liberties Union, (2020): <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/cops-and-no-counselors>

See also, "School Resource Officers: When the Cure is Worse than the Disease", (2021): <https://www.aclu-wa.org/story/school-resource-officers-when-cure-worse-disease>

¹⁶ For example, evidence shows that schools where at least half of the student population is comprised of non-white students are the schools with the highest percentages of law enforcement officers on campus. This finding also applied to schools where at least 75 percent of the student population was eligible for free or reduced-price lunches, or "high-poverty schools." U.S. Comm'n on Civil Rights, *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities* 45 (2019), <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>

¹⁷ In 2018, the Center for American Progress found that "schools where the nonwhite population was greater than 50 percent of the school population were two to 18 times more likely to use a mix of metal detectors, school police and security guards, locked gates, and random sweeps than schools where the nonwhite population was less than 20 percent." Bayliss Fiddiman et al., *Smart Investments for Safer Schools* 6 (2018), https://cdn.americanprogress.org/content/uploads/2018/12/18112919/121918_SchoolSafety-report.pdf

¹⁸ Learning environments that prioritize criminalization and surveillance over student care undermine the trust and relationships students need to thrive in school. When constantly surveilled and policed, students report feeling "tangible anxiety," "powerless and stifled," and reduced attachment to school and educational aspirations. Jen Weiss, Scan This: Examining Student Resistance to School Surveillance, in *SCHOOLS UNDER SURVEILLANCE* 213, 215 (Torin Monahan & Rodolfo D. Torres eds., 2010); Jason P. Nance, Student Surveillance, Racial Inequalities, and Implicit Racial Bias, 66 *Emory L.J.* 765, 788 (2017); See Emily K. Weisburst, *Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-term Education Outcomes*, 38 *J. OF POL'Y ANALYSIS AND MANAGEMENT* 338 (2019).



students. If you have any questions, please contact Steven Almazán, k12 education senior program manager at The Leadership Conference on Civil and Human Rights, at almazan@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
The Leadership Conference Education Fund
AACTE
American Association of University Women
American Atheists
American Humanist Association
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
Clearinghouse on Women's Issues
Committee for Children
Education Law Center
Feminist Majority Foundation
Girls Inc.
GLSEN
Hispanic Federation
Human Rights Campaign
IDRA
Japanese American Citizens League
NAACP
NAACP Legal Defense and Educational Fund, Inc. (LDF)
National Association of Councils on Developmental Disabilities
National Center for Learning Disabilities
National Center for Transgender Equality
National Council of Jewish Women
National Disability Rights Network (NDRN)
National Down Syndrome Congress
National Education Association
National Women's Law Center
The Arc of the United States
The Education Trust