

**Improving the Elementary and Secondary Education Act:  
A Civil Rights Perspective**

Presented at

**“H.R. 3989, ‘Student Success Act’ and H.R. 3990, ‘Encouraging Innovation  
and Effective Teachers Act’”**

Submitted to

**U.S. House of Representatives Committee on Education and the Workforce**

Submitted by

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## **Introduction**

Thank you Chairman Kline, Ranking Member Miller, and members of the Committee for providing me the opportunity to present testimony this morning. My name is Delia Pompa; I am the Senior Vice President for Programs at the National Council of La Raza (NCLR). NCLR—the largest national Hispanic civil rights and advocacy organization in the United States—works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated community-based organizations, NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas—assets/investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families.

Founded in 1968, NCLR is a private, nonprofit, nonpartisan, tax-exempt organization headquartered in Washington, DC. NCLR serves all Hispanic subgroups in all regions of the country and has regional offices in Chicago, Los Angeles, New York, Phoenix, and San Antonio, as well as state operations in Colorado, Florida, Nevada, and New Jersey.

In my role as Senior Vice President, I oversee programs ranging from prekindergarten and early childhood education to early college high schools and charter schools. My work on public school reform has been shaped by more than 35 years of experience leading local, state, and federal agencies and national and international organizations. I began my career as a kindergarten teacher in San Antonio, and went on to serve as a district administrator in Houston and as Assistant Commissioner of the Texas Education Agency. I was formerly the Director of Education, Adolescent Pregnancy Prevention, and Youth Development for the Children's Defense Fund, and Director of the Office of Bilingual Education and Minority Language Affairs at the U.S. Department of Education. In particular, I am focused on helping academic institutions understand and respond to the needs of underserved children and their teachers.

NCLR appreciates the Committee's efforts to hold this hearing on the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). While I am here as a representative of NCLR, I hope to present the views of a large network of civil rights and education reform organizations working on behalf of children. In my testimony today I will focus on provisions of the "Student Success Act" which address accountability, resource equity, and teacher quality.

Specifically, I will provide a brief description of the public school student population; background on the importance of ESEA to children of color, English language learners (ELLs), students with disabilities, and low-income children; discuss how the "Student Success Act" addresses the needs of these children; and provide a broad framework for moving forward with ESEA.

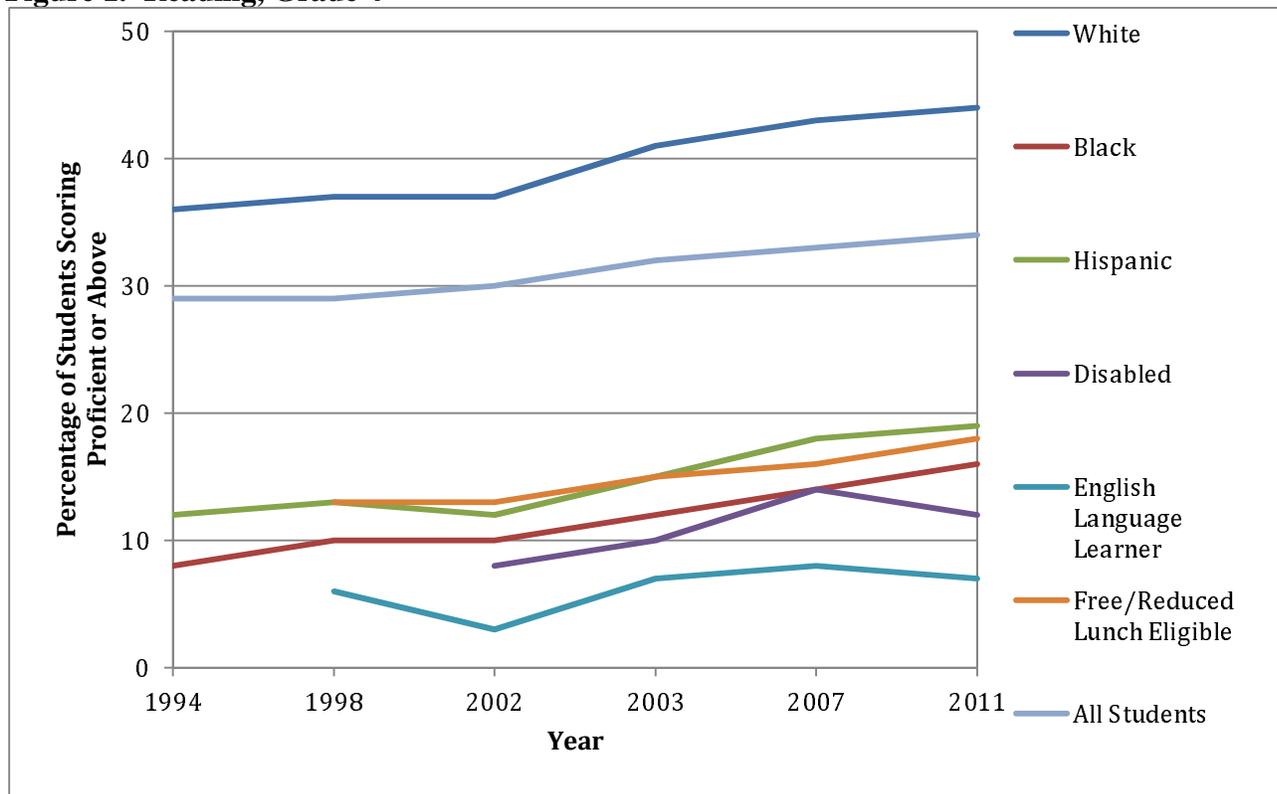
## **Status of Public Education**

Today's public school student population is diverse. In 2009, students of color represented 41.3% of all public school students (22.3% Hispanic, 15.3% Black, 3.7% Asian).<sup>1</sup> The share of

Latino students in public school doubled between 1989 and 2009 from 11% to 22%.<sup>2</sup> That year, in the 65 largest urban school districts, Latinos accounted for 37% of all students, the highest proportion among all groups. Taken together, students of color represent 80% of all students in the 65 largest urban school districts (37% Latino, 35% Black, 7% Asian, 1% American Indian/Alaskan Native).<sup>3</sup> However, students of color are attending suburban schools in growing numbers. Suburban schools have added 3.4 million students between 1993 and 2006, with nearly all of this increase due to an increase in the enrollment of children of color.<sup>4</sup>

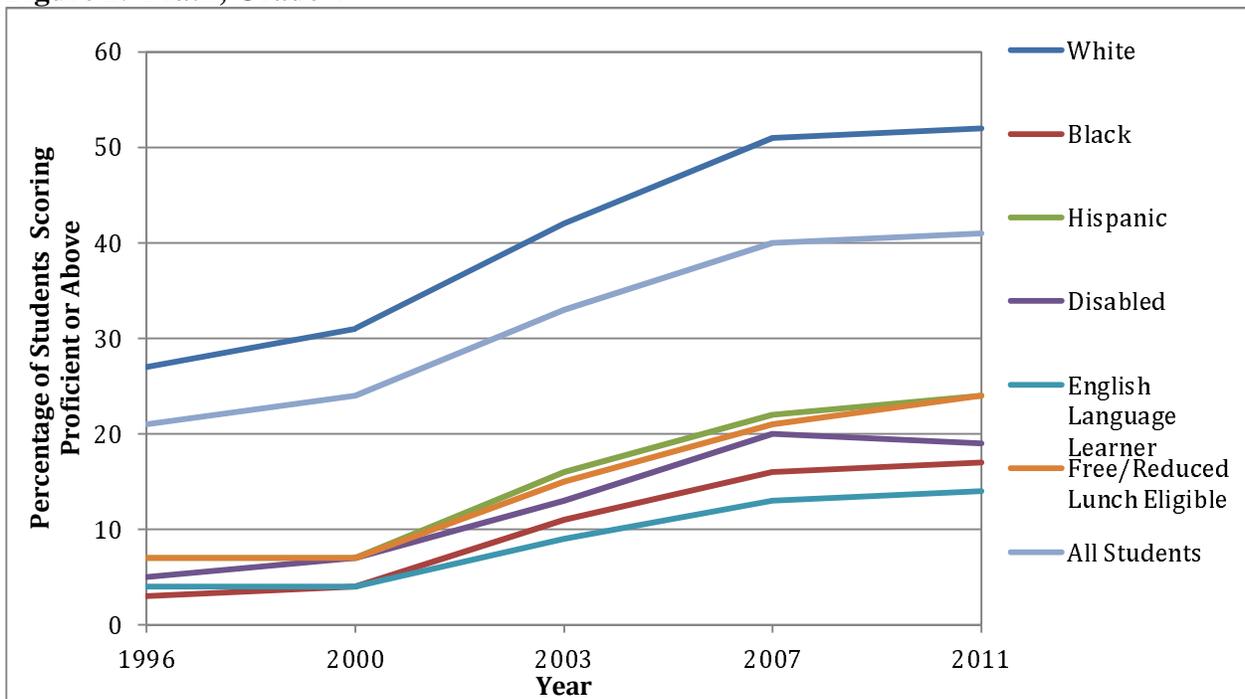
As the charts below show, student achievement, as measured by the National Assessment of Educational Progress, has improved slowly over the past decade and a half. Hispanic, Black, and economically disadvantaged students have made steady progress, while ELLs and students with disabilities have lost ground after years of improvement. Gaps between these students and White students have not sufficiently closed.

**Figure 1. Reading, Grade 4**



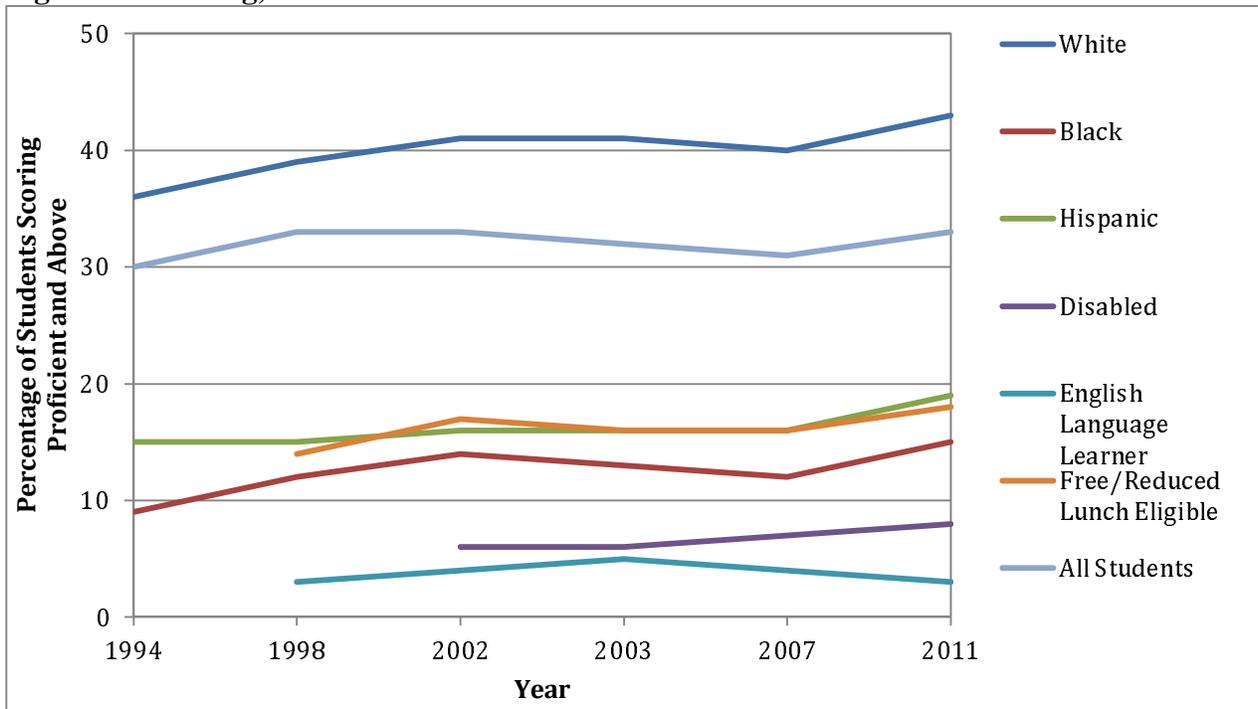
Source: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), 1994, 1998, 2000, 2003, 2007, and 2011 Reading Assessments.

**Figure 2. Math, Grade 4**

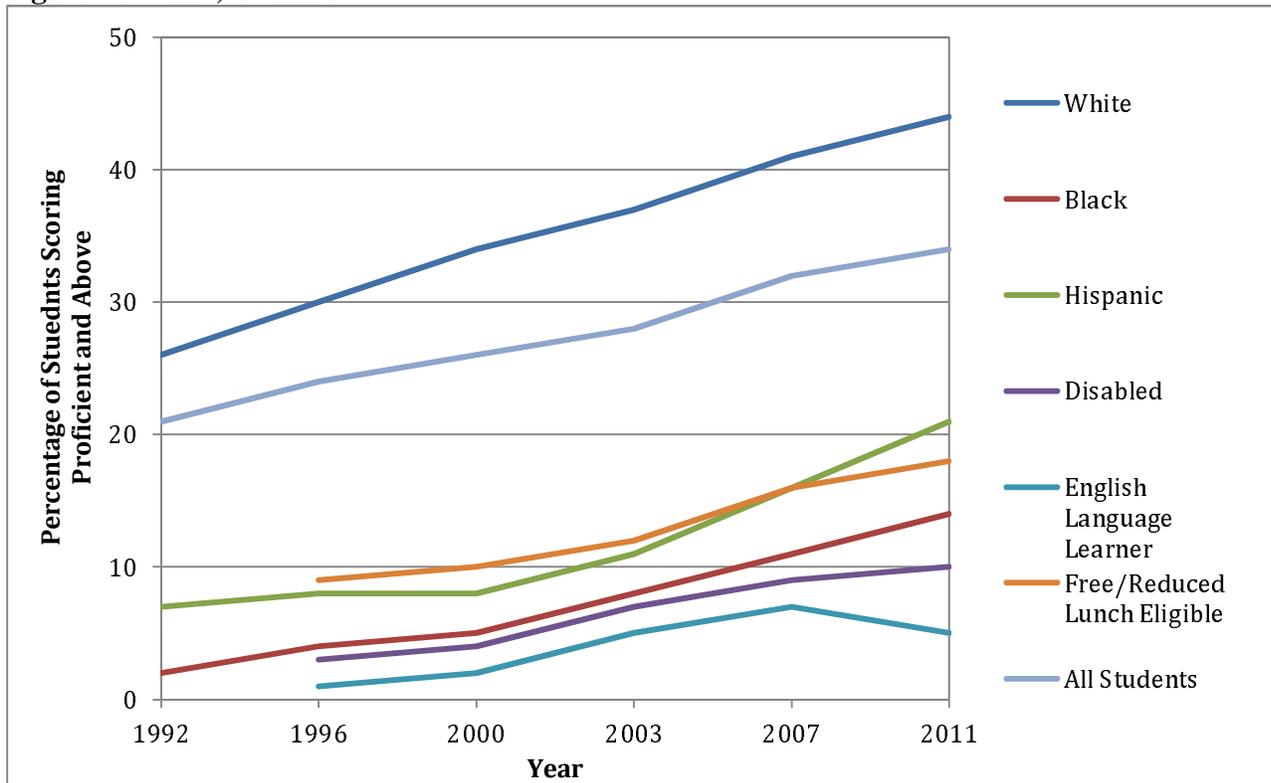


Source: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), 1996, 2000, 2003, 2007, and 2011 Mathematics Assessments.

**Figure 3. Reading, Grade 8**



Source: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), 1994, 1998, 2002, 2003, 2007, and 2011 Reading Assessments.

**Figure 4. Math, Grade 8**

Source: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), 1992, 1996, 2000, 2003, 2007, and 2011 Mathematics Assessments.

Spending gaps between schools within districts may have impeded greater progress among children of color and those from low-income communities. For example, one study found that a school in New York City received about \$2,000 less per student than another school in the same district serving fewer students who were from low-income families.<sup>5</sup>

While there has been some progress in improving student achievement, it is clear that the children from low-income and minority backgrounds lag behind their peers. Addressing this challenge requires federal policy interventions grounded in the origins of ESEA.

### Importance of ESEA

The Elementary and Secondary Education Act of 1965 is a civil rights law, enacted along with the Civil Rights Act of 1964 and Voting Rights Act of 1965. Similar to those laws, ESEA was designed to break down legal and social barriers to equal opportunity. Since then, our nation has made enormous progress in many areas of American life, including the elimination of Jim Crow laws, greater access to the ballot box, as well as the end of legal school segregation. However, challenges remain. Even today, states are enacting laws that would make voting more difficult for people of color, as well as immigration laws that would effectively close the schoolhouse door to U.S. citizen children. Just as in the civil rights era, a strong, smart federal role is needed in public education. ESEA remains the main vehicle for expanding opportunities for children of

color, ELLs, students with disabilities, and children from low-income households. Reauthorization of ESEA must be designed to meet this goal.

Early versions of ESEA relied almost exclusively on providing additional resources to schools serving poor students. Without real performance standards, however, these schools simply provided students at the low end of the achievement gap with remedial instruction. As a result, an environment of low expectations and poor results pervaded many schools attended by Latino, Black, and other economically disadvantaged students, and children with disabilities were seldom expected to complete high school with a regular diploma.

As a response to the need for public school reform, Congress passed the Goals 2000: Educate America Act (Goals 2000, P.L. 103-277) and the Improving America's Schools Act (IASA, P.L. 103-382) in 1994 to encourage states to set higher academic standards. Passage of these laws was possible in part because of the belief that under the "old Title I," schools focused too much on providing basic services to disadvantaged students and that this strategy failed to close the achievement gap between these students and their more affluent peers.<sup>6</sup>

The "new Title I," contained in the IASA, was designed to encourage states to raise academic standards for all students, including ELLs and children with disabilities. Specifically, the IASA required states to show that they have developed or adopted challenging standards and high-quality assessments. Furthermore, schools and school districts were to be held accountable for demonstrating that students in schools receiving Title I funds made progress as measured by the new assessments. For example, school districts and schools that did not make "adequate yearly progress" were subject to "corrective action" under that law.\* However, these provisions had little impact on the education of children because the accountability system under the IASA was based on a foundation of "continuous and substantial improvement," a provision too vague to generate the serious raising of academic standards among states. Advocates have identified that under the IASA:

"Many [states] set their goals far too low: 'improve mean performance level across grades by an average of .05;' and as nonsensical as 'decrease the percentage of students scoring in the lowest quarter of state assessments.' Others set un-ambitious goals such as 'progress means not sliding backward.' Moreover, only two states, Texas and New Mexico, included subgroup performance as part of federal accountability determinations."<sup>7</sup>

The IASA's failure to shift how the public schools used federal taxpayer dollars to educate students created momentum for enactment of changes under the No Child Left Behind (NCLB) law. Though designed to accelerate school reform, NCLB contains loopholes that have undermined student achievement and attainment.

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\* As contained in the IASA, adequate yearly progress (AYP) meant "continuous and substantial" school and district improvement as measured by student scores on performance assessments. Corrective action included withholding of funds and reconstitution of school and school district personnel. In NCLB, these definitions are largely unchanged. However, the corrective action provisions in NCLB focus on improving specific areas of weakness related to a school's failure to improve outcomes for students.

## **No Child Left Behind: Key Provisions and Challenges**

In 2002, President George W. Bush enacted NCLB. This bipartisan legislation reauthorized ESEA and encouraged states and school districts not only to “stay the course” with standards-based school reforms, but to strengthen them through ambitious new requirements designed to close the achievement gap that exists between low-income, minority, and ELL students and their more affluent, White, and English-proficient peers. NCLB also required states to ensure that the vast majority of students with disabilities are afforded the same opportunity to earn a meaningful diploma similar to other children. As such, NCLB sought to bring attention to the needs of ELLs and students with disabilities, groups of students whose educational achievement had been largely ignored before NCLB’s enactment.

Under NCLB, achievement is measured primarily by reading and mathematics assessments in grades three through eight. States and school districts are required to increase test score results for all students in these grades, but particularly for students at the low end of the achievement gap. Furthermore, NCLB places particular emphasis on improving the academic achievement and English proficiency of ELLs.

An important element of NCLB is the flexibility granted to state departments of education in determining how to implement the legislation, particularly the testing and accountability provisions. While this was seen as an opportunity for states to demonstrate that they can drive school improvement, research has shown that in many states, proficiency standards are lower than those which would prepare students for success on the NAEP tests.<sup>8</sup>

NCLB also includes provisions requiring states to hold high schools accountable for both improving performance on state assessments and increasing graduation rates for all students. However, implementation of these provisions has been hampered by a flaw in the law and by the U.S. Department of Education’s regulations on NCLB. Under current law, states may use their own graduation rate calculations and may disguise low graduation rates by counting students who drop out of school as “transfers.” In addition, the Department’s regulations allowed states to use graduation rates in the aggregate, which can mask low graduation rates of subgroups of students, including ELLs and students with disabilities.

Additionally, states and school districts were also encouraged to end the practice of placing the least qualified teachers in classrooms with students who need the best teachers. However, children attending schools in low-income neighborhoods continue to be taught by teachers who are less qualified than students from more affluent communities.<sup>9</sup>

NCLB was also intended to close equity gaps between schools by requiring districts to provide services to students attending schools in low-income communities on par with students in more affluent communities. However, districts have been able to mask funding gaps between schools by excluding teacher salaries in their budgeting. Because teachers working in low-income schools tend to be less experienced, their salaries are lower than more experienced teachers in the

same school district. Thus, low-income communities are being denied resources that are equitable to those flowing to more affluent communities.<sup>10</sup>

While NCLB has highlighted key areas for improving schools, it is clear that it has not met its promise. However, the civil rights community believes the law must be improved, not discarded. Changes to ESEA must be undertaken with great care, with an eye toward the law's initial purpose to provide equitable opportunities for children whose education has been undermined by ineffective practices at best, and aggressive neglect at worst. In particular, the reauthorization should consider the educational experiences and prospects of students with disabilities and ELLs, which I discuss briefly in the next section.

### **Addressing the Needs of Special Populations of Students**

There are currently 5.9 million students with disabilities, and 2.5 million public school students are eligible to receive special education.<sup>11</sup> The disparities between these children and youth and those without disabilities are stark. On average, students with learning disabilities test more than three grades below in math and reading than those who are not learning disabled.<sup>12</sup> About one-fourth (24%) of students with disabilities live in poverty, compared with 16% in the general population.<sup>13</sup> Only 56% of students with disabilities graduate with a regular diploma compared to 70% of students in the general population.<sup>14</sup> Lacking a diploma has negative consequences on the employment and earnings of people with disabilities. People with disabilities are more likely to be unemployed (13.8%) than are people without a disability (9.5%).<sup>15</sup> The average annual income for people with disabilities (\$36,300) is far below that of people without a disability (\$65,400).<sup>16</sup>

The number of ELLs in public schools reached 5.3 million in the 2008–2009 school year, a 51% increase in enrollment since the 1997–1998 school year.<sup>17</sup> More than one in ten (10.8%) U.S. public schools students are ELLs. As noted above, ELLs have shown steady improvement in math on the National Assessment of Educational Progress, but achievement in reading has been inconsistent.

In the next section, I provide a brief analysis of the “Student Success Act,” applying a civil rights lens.

### **Analysis of the “Student Success Act” from a Civil Rights Perspective**

The “Student Success Act” is designed to provide more control over the education system to state and local authorities. While NCLB understands the need to address shortfalls in NCLB, we believe that reforms to the law do not necessitate a major shift away from the purpose of the original ESEA legislation, which was focused on providing educationally and economically disadvantaged children with opportunities for success in school and life. As such, we believe that the “Student Success Act” must be improved in several areas:

- **Setting high academic standards.** One of NCLB's flaws is that it requires states to set standards, but provides no guidelines for how high those standards should be set. The “Student Success Act” would effectively continue this approach. The bill would only require

that states align their content and achievement standards and apply them to all schools and students in the state. Without a high bar, it is unclear that states would set academic standards at a level that would prepare students for college and the workplace.

- **Improving NCLB’s accountability system.** NCLB’s accountability system is based on an unnecessarily complicated Adequate Yearly Progress (AYP) system that paints a static picture of student achievement and does not clearly show what’s truly happening in schools. The “Student Success Act” does not address this. Instead, it effectively shifts away from real accountability altogether. The legislation requires states to set their own accountability systems with no framework leading to improved outcomes for children. Specifically, the accountability provisions of the “Student Success Act”:
  - *Lacks achievement goals.* This means that even if students show academic improvement, they could still lag behind students in other states or internationally, placing students at risk of not being competitive for 21st century jobs.
  - *Does not set student performance targets.* States may hold schools accountable for meeting very unambitious performance targets, such as the low goals set under the IASA.
  - *Does not include graduation rate accountability.* Currently, only 69% of America’s students graduate with a diploma. The statistics are worse for children of color, with only 56% of Hispanic, 54% of Black, and 51% of Native American youth graduating from high school.<sup>18</sup> As noted, students with disabilities are also less likely to finish high school with a regular diploma. It is clear that our nation has a graduation crisis, but the “Student Success Act” does not address it. In fact, it would reverse current policy. Under NCLB, states are required to include graduation rates in their accountability systems. The “Student Success Act” strikes those provisions.
- **Supporting school improvement.** Under NCLB, districts must identify failing schools (those failing to meet AYP requirements) and implement a set of sanctions and improvement strategies to help them achieve better academic outcomes for students. As noted, the current AYP is imperfect and in need of retooling. However, replacing AYP with no real parameters for improving schools is an insufficient response. It is certainly true that educators know how best to improve schools, but they also need to know how best to identify schools in need of improvement, a clear set of improvement targets to strive for, and a timeframe for achieving desired results. In addition, parents, taxpayers, and other stakeholders need to understand that there will be consequences for schools that do not improve. The “Student Success Act” provides none of these.
- **Encouraging transparency.** NCLB includes several provisions to provide information to parents, taxpayers, and other stakeholders about how schools are performing for all students, as well as for subgroups of students. Those provisions are critical, and recall the original purpose of the ESEA, which was to make sure that all students receive a quality education, especially economically disadvantaged and minority children. NCLB requires states and school districts to report on student achievement and to disaggregate those data by race,

ethnicity, disability status, language status, income status, migrant status, and gender. The “Student Success Act” removes gender and migrant status from this requirement.

- **Encouraging resource and teacher equity.** Section 1120A of NCLB requires districts to provide comparable services to all schools within their district. As mentioned above, districts have been circumventing this provision by excluding teacher salaries in their budgeting processes. The “Student Success Act” does not address this “comparability loophole.”

In addition, as currently drafted, the “Student Success Act” would fail to address the specific needs of students with disabilities and ELLs. While the Individuals with Disabilities Education Act (IDEA) mandates the provision of a free appropriate public education (FAPE) for students with disabilities, it contains no provisions that set high expectations and hold schools accountable for student progress. It is NCLB that has provided the long-needed requirement of school accountability and emphasis on doing what works to improve results for students with disabilities. For ELLs, NCLB’s Title III and case law, such as *Castaneda v. Pickard*, set standards for program quality. However, without a robust system of high standards and accountability, these policies are insufficient mechanisms for improving schooling for ELLs. In addition to the issues outlined above, the “Student Success Act” must be improved for these students by:

- **Ensuring the inclusion of students with disabilities in assessment and accountability systems.** The “Student Success Act” would eliminate the current cap (often referred to as the 1% regulation) that restricts, for accountability purposes, the use of the scores on less challenging assessments being given to students with disabilities. Such assessments—known as the alternate assessment on alternate achievement standards—are intended for only a small number of students with the most significant cognitive disabilities.
- **Ensuring English proficiency and achievement for ELLs.** Titles I and III of current law are designed to work together to encourage schools to help students learn English while providing access to the full curriculum, particularly reading and math. While the “Student Success Act” requires states to develop English language proficiency (ELP) standards, it does not require states to set high ELP standards, nor does it set a timeframe for when students should attain full English proficiency.

## Recommendations

NCLR appreciates the effort of the Committee and the commitment of its members to improving our public schools. We are concerned, however, that the changes to NCLB contained in the “Student Success Act” are designed to address the challenges that school administrators face in implementing current law. We ask that Committee members, in reforming NCLB, place a stronger emphasis on what children need in order to compete in a 21st century, global workforce; what parents hope for their children and need from local public schools; and what taxpayers would expect the school system to achieve with its taxpayer dollars. We believe this can be achieved by improving the “Student Success Act” by, among other provisions:

- **Requiring states to develop and implement college- and career-ready standards, including English language proficiency standards.**
- **Including state, district, and school accountability for improving education for all students, including students with disabilities and ELLs, using a system based on progress targets and a timeframe in which to produce results, and leading to robust school improvement.**
- **Including graduation rate accountability that is disaggregated by race, ethnicity, disability status, language status, income status, migrant status, and gender, and includes graduation rate targets, as well as a timeframe in which to produce results.**
- **Closing the “comparability loophole.”**
- **Strengthening transparency by restoring gender and migrant status as part of state and school district report cards.**
- **Restoring the cap on alternate assessment and alternate achievement standards for students with disabilities.**
- **Restoring a set of English proficiency and achievement targets for ELLs.**

## **Conclusion**

Children today face barriers to excellent public schools. Some say that family poverty predetermines the academic prospects of millions of children, and that poverty must be eradicated before schools can be held accountable for helping children learn. We reject this notion. We believe that you cannot eradicate poverty unless you educate these children. Children of color represent 41.3% of today’s public school students. Their numbers are more likely to grow than to decrease. If we do not educate these children, then we do not have a functioning public education system. Our policies should ensure that all children must have the opportunity to obtain an excellent education, irrespective of the neighborhoods in which they live, their parents’ education level, and their family’s income. We believe that a smart and robust federal role is necessary to achieve this.

<sup>1</sup> Susan Aud et al., *The Condition of Education 2011* (Washington, DC: National Center for Education Statistics, 2011), Table A-5-1.

<sup>2</sup> Susan Aud et al., *The Condition of Education 2011*.

<sup>3</sup> Candace Simon et al., *Today's Promise, Tomorrow's Future: The Social and Education Factors Contributing to the Outcomes of Hispanics in Urban Schools* (Washington, DC: The Council of Great City Schools, 2011).

<sup>4</sup> Richard Fry, *Sharp Growth in Suburban Minority Enrollment Yields Modest Gains in School Diversity* (Washington, DC: Pew Research Center, 2009), <http://www.pewhispanic.org/2009/03/31/sharp-growth-in-suburban-minority-enrollment-yields-modest-gains-in-school-diversity> (accessed February 13, 2012).

<sup>5</sup> Daria Hall and Natasha Ushomirsky, *Close the Hidden Funding Gaps in Our Schools* (Washington, DC: Education Trust, 2010) <http://www.edtrust.org/dc/press-room/press-release/close-the-hidden-funding-gaps-in-america%E2%80%99s-public-schools> (accessed February 13, 2012).

<sup>6</sup> *Title I in Midstream: The Fight to Improve Schools for Poor Kids* (Washington, DC: The Citizens' Commission on Civil Rights, 1998).

<sup>7</sup> See letter to Senators Tom Harkin and Mike Enzi on Reauthorization of the Elementary and Secondary Education Act, October 11, 2011, [www.nclr.org/images/uploads/pages/Harkin\\_Enzi\\_ESEA\\_GoalsLTR.pdf](http://www.nclr.org/images/uploads/pages/Harkin_Enzi_ESEA_GoalsLTR.pdf) (accessed February 13, 2012).

<sup>8</sup> Victor Bandeira de Mello, *Mapping State Proficiency Standards Onto NAEP Scales: Variation and Change in State Standards for Reading and Mathematics, 2005–2009*. National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC, 2011, <http://nces.ed.gov/nationsreportcard/pubs/studies/2011458.asp> (accessed February 13, 2012).

<sup>9</sup> Sarah Almy and Christin A. Theokas, *Not Prepared for Class: High-Poverty Schools Continue to Have Fewer In-Field Teachers* (Washington, DC: Education Trust, 2010), [www.edtrust.org/sites/edtrust.org/files/publications/files/Not%20Prepared%20for%20Class.pdf](http://www.edtrust.org/sites/edtrust.org/files/publications/files/Not%20Prepared%20for%20Class.pdf) (accessed February 13, 2012).

<sup>10</sup> U.S. Government Accountability Office, *Elementary and Secondary Education Act: Potential Effects of Changing Comparability Requirements*. Washington, DC, 2011, <http://www.gao.gov/new.items/d11258.pdf> (accessed February 13, 2012).

<sup>11</sup> Candace Cortiella, *The State of Learning Disabilities: Facts, Trends and Indicators* (New York: National Center for Learning Disabilities, 2011), <http://www.nclld.org/stateofld> (accessed February 13, 2012).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> *The Growing Numbers of English Learner Students 1998/99–2008/09* (Washington, DC: National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs, 2011), [http://www.ncela.gwu.edu/files/uploads/9/growingLEP\\_0809.pdf](http://www.ncela.gwu.edu/files/uploads/9/growingLEP_0809.pdf) (accessed February 13, 2012).

<sup>18</sup>“About the Crisis,” Alliance for Excellent Education, [http://www.all4ed.org/about\\_the\\_crisis](http://www.all4ed.org/about_the_crisis) (accessed February 13, 2012).