

Congress of the United States
Washington, DC 20515

July 12, 2011

The Honorable John Kline
Chairman
Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, DC 20515

The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
2101 Rayburn House Office Building
Washington, DC 20515

The Honorable Duncan D. Hunter
Chairman
Subcommittee on Early Childhood,
Elementary, and Secondary Education
Committee on Education and the Workforce
223 Cannon House Office Building
Washington, DC 20515

The Honorable Dale E. Kildee
Ranking Member
Subcommittee on Early Childhood,
Elementary, and Secondary Education
Committee on Education and the Workforce
2107 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Kline, Ranking Member Miller, Chairman Hunter and Ranking Member Kildee:

Thank you for your leadership on the reauthorization of the *Elementary and Secondary Education Act (ESEA)*. As the Committee considers the third bill in the proposed series of *ESEA* Reauthorization, the *State and Local Funding Flexibility Act (SLFFA)*, the Congressional Black Caucus, the Congressional Hispanic Caucus and the Congressional Asian Pacific American Caucus (jointly referred to as the Tri-Caucus) wanted to take the opportunity to inform you of the harmful results this bill will have on our communities, not just in our own districts, but all across the country.

It is necessary to tell the history of *ESEA* in order to understand the full implications *SLFFA* will have on communities of color. Historically, our nation's schools have not provided equal opportunity to all students. This was affirmed in 1954 when the Supreme Court declared in *Brown v. Board of Education* that every child in this country has a right to equal access to education—a separate education for Black and White students is not equal. Unfortunately, there was only passive compliance with the court decision, which led to a second *Brown* decision in 1955, in which the court ordered a “prompt and reasonable start toward full compliance.”

Despite these Court decisions, students of color continued to face challenges to equal access. In 1957, the Little Rock Nine garnered the attention of a nation as nine children risked their lives to attend Central High School in Little Rock, Arkansas. Confronted by a hostile crowd and escorted by the Screaming Eagles of the 101st Airborne, they shouldered the burden of integrating a then segregated public school system. This made it clear that not all of our schools were offering an equal opportunity in education.

During this time, education was not the only example of inequality in our country and Congress and the Administration came together in 1964 to pass the Civil Rights Act. Shortly thereafter, in 1965, the *Elementary and Secondary Education Act* was signed into law. It launched a comprehensive set of programs targeted to assist children across the country who faced inequities in education and served to push schools to deliver the promise of equal access to education. Therefore, *ESEA* is at its core a civil rights bill. The Supreme Court reinforced the necessity of this commitment to equity in *Lau v. Nichols* in 1974 when it ruled that school districts must take steps to ensure that English Language Learner (ELLs) students have opportunities to meaningfully participate in district education and provide resources for those students to overcome language obstacles.

Since its inception, *ESEA* has slowly pushed for equity in our public education system by ensuring that resources are focused on child populations that have been historically underserved by schools, including: children of color, disadvantaged children and children in poverty. For example, traditionally underserved populations are funded in the following formula programs: Title I-A (Education of the Disadvantaged); Title I-C (Education of Migratory Children); Title I-D (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk); Title III-A (English Language Acquisition, Language Enhancement, and Academic Achievement Act); and Title VII-A (Indian Education). Resources targeted through these provisions help to achieve equity for these populations. Furthermore, Congress has always required that these resources be *supplementary* and cover the *additional* cost of educating children in concentrated poverty (or concentrations of children learning English as a second language).

Unfortunately today, more than 50 years after the *Brown* decision and almost 50 years since *ESEA* became law, severe inequities in education continue to exist. Recent data demonstrates all too clearly that there are still wide achievement gaps based on income, race, ethnicity, gender, disability, and English language status within seemingly high-performing schools and between high- and low-performing schools. Far too many young people of color still enter high school unprepared and the gaps separating the achievement of White students from African Americans, Hispanics, Native Americans, ELLs and students with disabilities remain glaring. Seventy-six percent of White students graduate from high school in four years compared to 51 percent of African Americans, 55 percent of Hispanics, and 50 percent of Native Americans. The high school drop-out rate among Southeast Asian Americans is staggering: 40 percent of Hmong, 38 percent of Laotian, and 35 percent of Cambodian populations do not complete high school. The promise of an equal access to education has not yet been realized.

Further, the recently released data by the Office of Civil Rights clearly demonstrates that students of color lack access to many educational opportunities, including the following findings: only 2 percent of students with disabilities take at least one Advanced Placement class; schools serving mostly African American students are twice as likely to have teachers with one or two years of experience than are schools within the same district that serve mostly White students; and students with limited English proficiency make up 6 percent of the high school population (in grades 9-12), but are 15 percent of the students for whom algebra is the highest-level math course taken by the final year of their high school career. For these reasons, *ESEA*

reauthorization ought to seek to reduce these disparities and ensure that all children have access to a high quality education. Unfortunately, *SLFFA* would do the exact opposite.

Let us be clear, the federal role in education is not to provide sole or primary financial support or decision making, these responsibilities are retained by states and local school districts. The federal role in education is a moral compass to ensure equal access for students of color and disadvantaged students, access that has historically been—and is currently—denied. As drafted, *SLFFA* would negate the promise of equal access to education by endangering explicit funding for historically-underserved students.

Our concerns are evidenced by recent history. When *The American Recovery and Reinvestment Act of 2009* increased funding for special education, state education agencies allowed local school districts that were not meeting the most basic standards under the *Individuals with Disabilities Education Act* to reduce their funding permanently in order to divert these dollars to general education, thereby dramatically reducing current and future investments in disability services. Rather than requiring local education agencies (LEAs) that have failed to provide basic protections for students with disabilities to use the stimulus dollars to improve their services for these students, states provided additional “flexibility” that allowed districts to reduce spending on children with disabilities and to ignore problems related to how they treat students of color with disabilities.

Another example for concern stems from the lack of comparable state and local funding for high-poverty schools. Research from Marguerite Roza, the Education Trust and the Center for American Progress has all shown that even with the current federal comparability fiscal requirement for Title I, LEAs routinely underfund higher-poverty schools and often supplant (rather than supplement) state and local resources. It is reasonable to assume that, generally, LEAs will choose to transfer funds meant to address the additional costs of educating children in concentrated poverty to other purposes. The Title I funds will be stolen from their purpose—to provide equitable access to students in high-poverty schools. Further, *SLFFA* threatens to disregard accountability measures and remove any federal assurance that all students will receive an equal access to education.

At its core, the *SLFFA* undermines the federal role in education, removes from vulnerable students their protections to an equal access to education, and undermines the civil rights protections put in place by the *Brown* decision and *ESEA* at a time when data demonstrates that education disparities still exist. These actions also come at a time when school districts across the country are experiencing substantial increases in enrollment of students with little or no English proficiency who require specific and appropriate support services. It is unconscionable to allow the siphoning away of targeted funds from low-income students and students learning English as a second language.

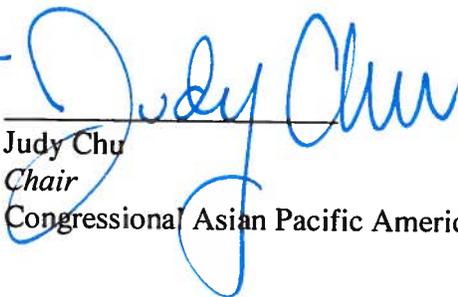
While we welcome the opportunity to work with you on bipartisan legislation in order to move *ESEA* reauthorization forward, we cannot support a proposal that has such dire ramifications for so many of our nation's young people. Therefore, the Tri-Caucus must fervently oppose the *State and Local Funding Flexibility Act*.

Thank you for your consideration of our concerns and we look forward to working with you to ensure a reauthorized ESEA that provides flexibility empowering local decision making while protecting the civil rights of students. If you or your staff have any questions, please feel free to contact us or Brandon Garrett with the Congressional Black Caucus (Brandon.Garrett@mail.house.gov; 202-226-1990), Joseph Mais with the Congressional Hispanic Caucus (Joseph.Mais@mail.house.gov; 202-225-2435), or Lelaine Bigelow with the Congressional Asian Pacific American Caucus (Lelaine.Bigelow@mail.house.gov; 202-225-5464).

Sincerely,



Emanuel Cleaver
Chair
Congressional Black Caucus



Judy Chu
Chair
Congressional Asian Pacific American Caucus



Charles A. Gonzalez
Chair
Congressional Hispanic Caucus