



May 17, 2018

The Honorable Virginia Foxx
Chair
U.S. House Committee on
Education and the Workforce
2176 Rayburn H.O.B.
Washington, DC 20515

The Honorable Robert C. Scott
Ranking Member
U.S. House Committee on
Education and the Workforce
2176 Rayburn H.O.B.
Washington, DC 20515

Dear Chairwoman Foxx and Ranking Member Scott:

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On behalf of the American Civil Liberties Union (“ACLU”) and our more than two million members and supporters, we submit this letter for the record of the House Committee on Education and the Workforce hearing that is being held today. Although we appreciate the Committee’s interest in protecting privacy, promoting data security, and exploring ways in which schools and states can keep data safe, we note that this hearing is taking place on the 64th anniversary of the landmark decision in *Brown v. Board of Education of Topeka*,¹ and believe this is an opportune time to discuss and reflect on the state of civil rights and racial justice in our schools.

The *Brown* decision, delivered on May 17, 1954, marked a defining moment in the history of the United States. On that day, Chief Justice Earl Warren, on behalf of the U.S. Supreme Court, declared, “In the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.” Although the decision outlawed many of the racist practices of states that engaged in mandatory or permissive segregation in public education, *Brown*’s promise has not yet been fulfilled. As a 2016 Government Accountability Office (GAO) report revealed, inequities in education continue to be driven by increasing racial economic segregation.² Similarly, a 2018 GAO report showed that students of color suffer harsher discipline for lesser offenses than their white peers.³

The reality is that every day millions of students enter schools where they will face racially discriminatory policies and practices that police and punish them more severely than their peers, that fuel the school-to-prison pipeline, and that rob them of their dignity. These inequities are made more acute by the Department of Education’s abdication of its responsibility to pursue educational

¹ *Brown v. Board of Education*, 347 U.S. 483 (1954).

² U.S. Gov’t Accountability Office, *K-12 EDUCATION: Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination*, GAO-16-345, Apr. 21, 2016, <https://www.gao.gov/products/GAO-16-345>.

³ U.S. Gov’t Accountability Office, *K-12 EDUCATION: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, GAO-18-258, Mar. 22, 2018, <https://www.gao.gov/products/GAO-18-258>.

equity for all students. Ensuring equal access to education for students of color, LGBTQ students, young women and girls, students with disabilities, children of immigrants, and undocumented students requires robust enforcement of the nation’s civil rights laws — and a basic recognition that these students have been historically underserved and marginalized in systemic ways. Instead, the Department of Education has undermined protections and advancements, while shifting the Office for Civil Rights’ (OCR) focus away from systemic violations and allowing investigators to disregard cases that are part of serial filings or that they consider burdensome to the office.⁴⁵ The Department of Education has done this while undercutting support for public education and schools that are required to uphold students’ civil rights and to serve every child.

This hearing should serve as an opportunity for this Committee to examine the current status of civil rights in education and the many issues that require attention, especially now. The Committee should also examine issues of civil rights and racial justice next Tuesday, May 22, when Secretary DeVos is scheduled to testify about the policies and priorities of the Department of Education.

Racial Justice in Education

The ACLU has long had a role in school desegregation efforts, as a friend-of-the-court participant in the landmark *Brown* case,⁶ and with an ACLU lawyer serving as lead counsel when the case was re-opened to desegregate Topeka’s public schools in the 1980s and ‘90s.⁷ The ACLU’s Racial Justice Program is still involved in litigation to advance integration in Hartford-area public schools, in accordance with the Connecticut Supreme Court’s 1996 decision in *Sheff v. O’Neill*.⁸ Just last week, the Racial Justice Program filed a motion to intervene in a lawsuit challenging the role of race-conscious decisions in integration plans.⁹

Although the decision in *Brown* outlawed many of the racist practices of states that engaged in mandatory or permissive segregation in public education, the promise of *Brown* has remained elusive and, in fact, segregation has increased in recent years along race and class lines.¹⁰¹¹ Court-mandated desegregation orders, once a powerful tool for advancing integration, have been

⁴ U.S. Dep’t of Educ., Office for Civil Rights, *How the Office for Civil Rights Handles Complaints*, Mar. 2018, <https://www2.ed.gov/about/offices/list/ocr/complaints-how.html>.

⁵ Erica L. Green, *DeVos Education Dept. Begins Dismissing Civil Rights Cases in Name of Efficiency*, N.Y. Times, Apr. 20, 2018, <https://www.nytimes.com/2018/04/20/us/politics/devos-education-department-civil-rights.html>.

⁶ American Civil Liberties Union, *ACLU Amicus Brief in Brown V. Board of Education*, Oct. 1952, <https://www.aclu.org/legal-document/aclu-amicus-brief-brown-v-board-education>.

⁷ American Civil Liberties Union, *Interview with Chris Hansen*, accessed May 16, 2018, <https://www.aclu.org/other/interview-chris-hansen>.

⁸ American Civil Liberties Union, *Sheff V. O’Neill*, accessed May 16, 2018, <https://www.aclu.org/cases/sheff-v-oneill>.

⁹ Matthew Kauffman, *Sheff Supporters Look To Intervene In Suit Challenging Connecticut Schools’ Racial Quotas*, Hartford Courant, May 8, 2018, <http://www.courant.com/news/connecticut/hc-news-sheff-intervene-20180508-story.html>.

¹⁰ Alvin Chang, *The data proves that school segregation is getting worse*, Vox, Mar. 5, 2018, <https://www.vox.com/2018/3/5/17080218/school-segregation-getting-worse-data>.

¹¹ U.S. Gov’t Accountability Office, *K-12 EDUCATION: Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination*, GAO-16-345, Apr. 21, 2016, <https://www.gao.gov/products/GAO-16-345>.

lifted over the last four decades¹² or left unenforced because of a lack of oversight by the federal government. A Government Accountability Office report from 2016 found that the Department of Justice does not track key cases and many cases remain dormant for long periods of time.¹³ Additionally, a 2014 investigation by ProPublica found that many school districts do not know the status of their desegregation orders, or wrongly believe they have ended, while federal courts have lifted orders in places where segregation still exists.¹⁴

When these systems fail, segregation can flourish through mechanisms like school district secession¹⁵ and voucher schemes, which drain public schools of resources and benefit a small number of students at the expense of the rest. Over time, as public money flows to private and religious schools — students who use vouchers are predominantly already enrolled in, or whose families can afford private schools — the ones who remain in the public school system are left with even less. This process would take desperately-needed resources away from public schools and the millions of students they serve. Yet, these are the same policies championed by Secretary DeVos in public statements and proposed budgets.

The Committee and Department of Education should work to preserve and fulfill the promise of *Brown*. In addition to working to end segregation, the Committee and Department of Education should work to assure that schools have the necessary resources to provide students with equal educational opportunities.

Discrimination in Discipline

Students of color are robbed of educational opportunity through discriminatory and disproportionate application of discipline. Each year, significant numbers of students of color and students with disabilities are disproportionately suspended and expelled for minor infractions of school rules. These practices lead to time not spent in the classroom and play a significant role in lowering achievement¹⁶ and increasing the likelihood of dropping out and engaging with the criminal justice system.¹⁷

¹² Yue Qui and Nikole Hannah-Jones, *A National Survey of School Desegregation Orders*, ProPublica, Dec. 23, 2014, <http://projects.propublica.org/graphics/desegregation-orders>.

¹³ U.S. Gov't Accountability Office, *K-12 EDUCATION: Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination*, GAO-16-345, Apr. 21, 2016, <https://www.gao.gov/products/GAO-16-345>.

¹⁴ Nikole Hannah-Jones, *Lack of Order: The Erosion of a Once-Great Force for Integration*, ProPublica, May 1, 2014, <https://www.propublica.org/article/lack-of-order-the-erosion-of-a-once-great-force-for-integration>.

¹⁵ Valerie Strauss, *Back to the future: A new school district secession movement is gaining steam*, The Washington Post, May 2, 2018, <https://www.washingtonpost.com/news/answer-sheet/wp/2018/05/02/back-to-the-future-a-new-school-district-secession-movement-is-gaining-steam/?noredirect=on>.

¹⁶ Alan Ginsburg, Hedy Chang, Phyllis Jordan, *Absences Add Up: How School Attendance Influences Student Success*, Attendance Works, Aug. 2014, <http://www.attendanceworks.org/absences-add-up/>.

¹⁷ Daniel J. Losen and Jonathan Gillespie, *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*, The Civil Rights Project, Aug. 7, 2012, <https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-crr-research>.

These race and disability-based disparities prompted the Obama-era Department of Education to issue school discipline guidance in 2014 to combat bias in the nation’s public schools.¹⁸ The guidance is based on a substantial body of research as well as the department’s own investigations, which included findings of “cases where African-American students were disciplined more harshly and more frequently because of their race than similarly situated white students.”¹⁹ The Department’s final analysis: “Racial discrimination in school discipline is a real problem.”

Yet the Trump administration and the current Department of Education seem intent on withdrawing this guidance. As part of a new Federal Commission on School Safety created by President Trump, Secretary DeVos was tasked with making recommendations on a number of policies, including ‘Repeal of the Obama Administration’s “Rethink School Discipline” policies.’²⁰ The Secretary has since held several listening sessions on the subject.²¹

But withdrawing the guidance would not increase school safety, as more evidence of disparities in discipline mounts. An April 4 report from the Government Accountability Office found that Black students account for 15.5% of all public-school students, but about 39% of students suspended from school.²² Rescinding the 2014 guidance would be a step backward in remedying such disparities, and continue the criminalization of children of color.

A Failure to Protect the Rights of Transgender Students

One of the first actions taken following the arrival of Secretary DeVos was the rescission of a guidance document outlining how Title IX protects transgender students from discrimination. The decision to rescind the guidance was contrary to numerous federal court rulings holding that discrimination based on gender identity is a form of sex discrimination. This legal foundation — grounded in case law — served as the basis for the joint guidance document issued by the Departments of Education and Justice in 2016. The decision to rescind the guidance was driven by anti-transgender animus emanating from the highest levels of this administration.

Following the decision to rescind the guidance on Title IX and transgender students, Secretary DeVos issued the following statement:

We have a responsibility to protect every student in America and ensure that they have the freedom to learn and thrive in a safe and trusted environment. This is not merely a federal mandate, but a

¹⁸ U.S. Dep’t of Educ., *School Climate and Discipline*, Jan. 4, 2017, <https://www2.ed.gov/policy/gen/guid/school-discipline/index.html>.

¹⁹ U.S. Dep’t of Educ., Office for Civil Rights and U.S. Dep’t of Justice, Civil Rights Division, *Nondiscriminatory Administration of School Discipline* (Dear Colleague letter), Jan. 8, 2014, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

²⁰ White House, *President Donald J. Trump is Taking Immediate Action to Secure Our Schools*, Mar. 12, 2018, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-taking-immediate-actions-secure-schools/>.

²¹ U.S. Dep’t of Educ., *Secretary DeVos Hosts School Safety and Climate Listening Sessions*, Apr. 4, 2018, <https://www.ed.gov/news/press-releases/secretary-devos-hosts-school-safety-and-climate-listening-sessions>.

²² U.S. Gov’t Accountability Office, *K-12 EDUCATION: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, GAO-18-258, Mar. 22, 2018, <https://www.gao.gov/products/GAO-18-258>.

moral obligation no individual, school, district or state can abdicate. At my direction, the Department's Office for Civil Rights remains committed to investigating all claims of discrimination, bullying and harassment against those who are most vulnerable in our schools.²³

Although Secretary DeVos appeared to state unambiguously that OCR at the Department of Education would investigate claims of discrimination against transgender students, nothing could be further from the truth.

Earlier this year, information obtained under FOIA revealed that of 19 total complaints of discrimination against transgender students at all education levels received by the Department of Education between January 20, 2017 and February 21 of this year, 15 were dismissed, three were under “evaluation,” and one was resolved.²⁴ None of the complaints were under active investigation.

The Department of Education has now confirmed what was already clear: the federal government, under President Trump and Secretary DeVos, does not view discrimination against transgender students as a violation of Title IX.²⁵ The Department of Education is no longer investigating complaints of discrimination against transgender students who are denied access to single-sex spaces like restrooms and locker rooms that accurately reflect the student’s gender identity.

Through its inaction, the Department of Education is attempting to write transgender students out of the protections of Title IX. However, federal courts have repeatedly concluded that federal civil rights laws protect transgender students from discrimination, including in the context of restroom and locker room use.

Discriminatory Policies Affecting Students with Disabilities

While the discipline guidance currently remains in place, the Department of Education has already forward with a proposal to delay by two years compliance with Equity in IDEA regulations.

The Individuals with Disabilities Education Act (IDEA) requires that states collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the identification of children with disabilities, the placement of children in particular educational settings, and disciplinary actions. When a state identifies a district as significantly

²³ U.S. Dep’t of Educ., *U.S. Secretary of Education Betsy DeVos Issues Statement on New Title IX Guidance*, Feb. 22, 2017, <https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-issues-statement-new-title-ix-guidance>.

²⁴ Caitlin Emma, *Scoop: The scope of transgender student complaints under DeVos*, Politico Morning Education, Feb. 28, 2018, <https://www.politico.com/newsletters/morning-education/2018/02/28/scoop-the-scope-of-transgender-student-complaints-under-devos-118460>.

²⁵ Moriah Balingit, *Education Department no longer investigating transgender bathroom complaints*, The Washington Post, Feb. 12, 2018, https://www.washingtonpost.com/news/education/wp/2018/02/12/education-department-will-no-longer-investigate-transgender-bathroom-complaints/?noredirect=on&utm_term=.fbb38b156399.

disproportionate, it must require the district to reserve funds for early intervening services to address the overrepresentation.

Students of color are more likely to be identified as having disabilities than are their peers — nationally, Black students are 40 percent more likely, and American Indian or Alaska Native students are 70 percent more likely, to be identified as having disabilities than are their peers.²⁶ Despite this, in 2010, only 2 percent of all districts were identified as having significant disproportionality.²⁷

Once identified as having disabilities, students of color are more likely to be placed in more restrictive environments than their peers, removing them from the regular classroom and turning special education into a tool of educational segregation. Relative to white students, Black students with disabilities ages 6 to 21 are less likely to be in the regular classroom at least 80% in the day (57.4% vs. 65.3%) and more likely to be inside the regular classroom less than 40% of the day (17.1% vs. 10.8%).²⁸

Finally, the over-identification of disabilities among students of color takes place against the backdrop of concerning racial and disability disproportionality in school discipline. Students with disabilities served by the IDEA (12%) are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities (5%), despite legal protections within the IDEA limiting the extent to which districts may suspend students for disability-related behavior.²⁹ Delay in the regulation will limit the effectiveness of IDEA provisions on discipline in protecting all students with disabilities, but especially those of color given racial disparities in discipline described above.

In light of disparities in identification, placement, and discipline, the Department of Education proposed the Equity in IDEA regulation in 2016. They required a common standard for identifying significant disproportionality in representation of students within special education, and states had until July 1, 2018 to comply. As we wrote in comments to the Department of Education opposing the proposal, the “The proposed delay in these regulations is not a harmless administrative change – it has concrete and real consequences for students with and without disabilities. There are actual children who will be harmed.”³⁰

²⁶ U.S. Dep’t of Educ., *Thirty-Eighth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, Parts B and C*, 2016, <https://www2.ed.gov/about/reports/annual/osep/2016/parts-b-c/index.html>.

²⁷ U.S. Gov’t Accountability Office, *Individuals With Disabilities Education Act: Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education*, GAO-13-137, Feb. 27, 2013, <https://www.gao.gov/products/GAO-13-137..>

²⁸ U.S. Dep’t of Educ., *Thirty-Eighth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, Parts B and C*, 2016, <https://www2.ed.gov/about/reports/annual/osep/2016/parts-b-c/index.html>.

²⁹ U.S. Gov’t Accountability Office, *K-12 EDUCATION: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, GAO-18-258, Mar. 22, 2018, <https://www.gao.gov/products/GAO-18-258>.

³⁰ American Civil Liberties Comment to the U.S. Dep’t of Educ. On Proposed Rule: Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities, RIN 1820-AB77, <https://www.regulations.gov/document?D=ED-2017-OSERS-0128-0289>.

The Committee should urge the Department of Education to abandon its proposed delay, and instead fully implement the Equity in IDEA regulations on schedule.

We are also concerned by the continued use of restraint and seclusion against students with disabilities. Approximately one out of every 100 special education students was restrained or subject to seclusion in the 2013-14 school year,³¹ but this figure likely underrepresents the problem given that almost 80 percent of districts reported no data on students with disabilities being subject to restraint and seclusion. These practices – which often result in injury and at times even death – represent an appalling example of institutionalized violence against children with disabilities. The Department of Education must take further action to address the scourge of restraint and seclusion, and to ensure that students with disabilities can both feel and be safe when in school.

Finally, we believe the Department of Education must work to address the continued educational segregation of students with disabilities. Nationally, 13.41% of students with disabilities ages 6 to 21 spend less than 40% of their day in the general education classroom and 2.87% of students with disabilities ages 6 to 21 are placed in a separate school.³² However, these rates vary dramatically from state to state, suggesting that educational placement is driven by political factors rather than educational need. Segregation of students because of disability type is also of great importance. For example, 33.39% of autistic students are in the general education classroom for less than 40% of the day, and 7.37% are in separate schools altogether. Similarly, almost half of all students with intellectual disabilities spend less than 40% of their day in the general education classroom while approximately 6% are in separate schools.

Students with and without disabilities deserve the opportunity to access a high-quality education within the general education environment. The use of special education as a tool of educational segregation corrupts the intent and promise of IDEA for all students.

Sexual Harassment and Gender-Based Violence

All educational institutions have an obligation under Title IX to respond to gender-based violence and to harassment that is sufficiently severe or pervasive to limit a student's ability to participate in or benefit from school programs or activities. Due to impressive student activism, the issues of sexual harassment and gender-based violence on campus have finally begun to receive the attention they deserve. Last year, OCR narrowed the scope of its investigations of complaints, rescinded guidance from 2011 and 2014, and issued interim guidance that departs from the 2001 guidance that remains in force, raising concerns about its ongoing commitment to vigorously enforcing Title IX to address sexual violence.

School districts' responses to sexual harassment in the K-12 grades similarly require increased focus, as sexual harassment and assault occur at significant rates in that context as well.³³

³¹ Christina A. Samuels, *70,000 Students With Disabilities Secluded, Restrained in School*, Education Week, May 16, 2017, <https://www.edweek.org/ew/articles/2017/05/17/70000-students-with-disabilities-secluded-restrained-in.html>.

³² U.S. Dep't of Educ., Office of Special Education and Rehabilitative Services, *Child Count and Educational Environment. IDEA Section 618 Data Products: State Level Data Files*.

³³ A report by the American Association of University Women found that in grades 7–12, “girls were more likely than boys to be sexually harassed, by a significant margin (56 percent versus 40 percent) . . . both in person (52

Compared to colleges and universities, school districts are less likely to have formal policies, procedures, and training on the proper response to sexual violence. In addition, K-12 students are rarely educated about their rights under Title IX. For all these reasons, raising awareness about and enforcement of Title IX is vitally important at all levels. Schools must adopt and implement comprehensive sexual harassment and assault policies and must never penalize victims for reporting sexual harassment or assault. OCR must ensure that schools are responding to incidents of sexual harassment and assault through appropriate remedial measures that center the victim's right to learn.

Single-Sex Education

Single-sex classes have been proliferating over the past decade. Many educators — desperate to solve the very real education crisis facing our public schools, particularly for low-income and minority students — have turned to single-sex programs as a sort of a magic bullet. However, the ACLU's investigation has shown that many of these programs are based on invidious sex-role stereotypes and discredited theories about purported differences between the ways boys and girls learn, and that very few are in compliance with the legal requirements under Title IX and its implementing regulations and guidance.³⁴ Moreover, mounting evidence shows these programs fail to improve academic results. A system that makes crude judgments about learning ability based only on sex limits opportunities for all, and should never be a price we are willing to pay for education reform.

Despite these numerous legal concerns, OCR recently closed an investigation into two single-sex schools in Austin, Texas where male and female students are taught differently based on pseudoscientific claims about their inherent learning differences, resulting in a toothless agreement that leaves it up to the District to monitor its own compliance with Title IX.³⁵ Through the closure of this complaint, OCR signaled that schools are free to base their pedagogy on overly broad and harmful sex stereotypes, which is part of a broader pattern of failure to enforce Title IX in a meaningful manner.

Discriminatory Enforcement of Dress Codes

Schools across the country are enforcing dress codes selectively against female students in a manner that reinforces invidious sex stereotypes in violation of Title IX. Often, female students are pulled out of the classroom because of claims that their clothing or bodies are “distracting” their male peers. This jeopardizes girls' equal access to education by forcing them to miss important class time, and prioritizes male students' freedom from “distraction” over female students' physical comfort and emotional wellbeing. Additionally, the disproportionate enforcement of dress codes against female students reinforces a culture of victim blaming,

percent versus 35 percent) and via text, e-mail, Facebook, or other electronic means (36 percent versus 24 percent).” CATHERINE HILL AND HOLLY KEARL, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, CROSSING THE LINE: SEXUAL HARASSMENT AT SCHOOL, 2 (2011) available at <http://www.aauw.org/files/2013/02/Crossing-the-Line-Sexual-Harassment-at-School.pdf>.

³⁴ 20 U.S.C. § 1681; 34 C.F.R. § 106.34; United States Dep't of Educ., Office for Civil Rights, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities*, <https://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

³⁵ Letter from Timothy D. Caum, Supervisory Attorney, OCR, Dallas Office to Galen Sherwin, Senior Staff Attorney, ACLU, Apr. 5, 2018 (on file with ACLU).

conveying the message that female students are at fault for experiencing sexual harassment and violence if they make certain clothing choices.

The Department of Education amended its regulations in 1982 to declare that it would no longer investigate violations of Title IXs related to rules regarding dress and appearance.³⁶ It is time for the agency to revisit that decision and resume enforcement of Title IX under other existing regulations, including the regulation prohibiting different rules of conduct or discipline based on sex,³⁷ in order to ensure that schools are not subjecting female students to systemic disparate treatment through the discriminatory enforcement of dress codes.

Pregnant and Parenting Students

Since 1972, when Title IX was enacted, it has been illegal for schools to exclude pregnant and parenting students from school.³⁸ Young people have a right to complete their education regardless of their sex or whether they become pregnant. Students should not have to choose between completing their education and taking care of themselves and their children. Nevertheless, many schools fail to help pregnant and parenting teens stay in school, and some actually exclude or punish them. Only 50 percent of teen mothers receive a high school diploma by age 22, and, evidence suggests that illegal discrimination is a major contributing factor to this high dropout rate.³⁹

Congress should pass legislation authorizing the Secretary of Education to establish a formula grant program that provides robust support to state and local education agencies working to ensure the educational success of pregnant and parenting students. At the same time, OCR must vigorously enforce Title IX regulations that bar discrimination against pregnant and parenting students,⁴⁰ as well as the 2013 guidance on how educational institutions can best comply with Title IX in order to support the educational success of pregnant and parenting students.⁴¹

Ensuring Educational Rights of Children of Immigrants and Undocumented Students

The Department of Education and Congress need to do more to ensure the educational rights of children of immigrants and undocumented students, who cannot be denied their right to a free public education, or discriminated against on the basis of race, color, or national origin. This includes ensuring that schools are a place where these children encounter a safe, welcoming learning environment and not fear that their families will be ripped apart. For example, in Tennessee—after the single largest workplace raid in a decade—over 500 children, including

³⁶ See *Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance*, 47 Fed. Reg. 32,526-27 (July 28, 1982).

³⁷ 34 C.F.R. 106.31(b)(4).

³⁸ 20 U.S.C. § 1681; 34 C.F.R. § 106.40.

³⁹ Center for Disease Control and Prevent, Reproductive Health: Teen Pregnancy, <https://www.cdc.gov/teenpregnancy/about/index.htm>.

⁴⁰ 34 C.F.R. 106.21, 106.40.

⁴¹ United States Dep't of Educ., Office for Civil Rights, *Supporting the Educational Success of Pregnant and Parenting Students* (Dear Colleague letter), Jun. 25, 2013, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.pdf>.

U.S. citizens, were afraid to go to school.⁴² In Los Angeles, a father was detained after dropping his daughter off at school.⁴³ In Houston, an undocumented high school student ended up in immigration detention following an altercation with a fellow student.⁴⁴ These incidents are just a sample of the draconian immigration enforcement that is taking place nationwide, and despite Department of Homeland of Security's policies allegedly limiting enforcement at schools.

These families and children aren't able to live their lives, communities are shaken, and immigrants are worried about being detained, deported, and separated from their families—including mixed-status families—every single day. The Trump White House is taking the infrastructure of American communities and weaponizing it against immigrants and communities of color. Given the serious impact of immigration enforcement on the ability of children to attend school without fear, Congress should consider immigration enforcement to be a matter of educational equity. When students are too fearful to attend school, their equal access to education is denied.

The issues and recommendations outlined above are not the only ones necessary to ensure educational equity, but the anniversary of *Brown* should be an opportunity for this Committee to evaluate what steps can be taken to advance civil rights, and where oversight is needed. Considering the ways the Secretary DeVos-led Department of Education has taken us backward on civil rights, that oversight is needed more than ever.

If you have any questions, please contact Mike Garvey at 202-675-2310 or mgarvey@aclu.org.

Sincerely,



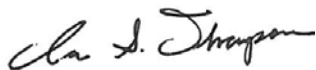
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⁴² Jonathan Blitzer, *An ICE Raid Has Turned The Lives of Hundreds of Tennessee Kids Upside Down*, The New Yorker, Apr. 24, 2018, <https://www.newyorker.com/news/dispatch/an-icesmall-raid-has-turned-the-lives-of-hundreds-of-tennessee-kids-upside-down>.

⁴³ Andrea Castillo, *L.A. father detained by ICE after dropping daughter at school may be deported*, Los Angeles Times, July 31, 2017, <http://www.latimes.com/local/lanow/la-me-romulo-avelica-deportation-20170731-story.html>.

⁴⁴ Suzanne Gamboa, *In Houston, outrage over a school arrest that landed a student in immigration detention*, NBC News, Feb. 15, 2018, <https://www.nbcnews.com/news/latino/houston-outrage-over-school-arrest-landed-student-immigration-detention-n848141>.