

November 1, 2011

The Honorable Tom Harkin
Chairman, Senate Health, Education, Labor and Pensions Committee
U.S. Senate
Washington, D.C. 20510

The Honorable Mike Enzi
Ranking Member, Senate Health, Education, Labor and Pensions Committee
U.S. Senate
Washington, D.C. 20510

RE: Incorporate LGBT Student Protections in the Elementary and Secondary Reauthorization Act of 2011

Dear Chairman Harkin and Ranking Member Enzi:

As legal and advocacy organizations committed to ensuring that lesbian, gay, bisexual, and transgender (“LGBT”) students, as well as those who are perceived to be LGBT, have access to an education unhindered by discrimination and harassment, we are writing to express our grave concerns with the Elementary and Secondary Education (“ESEA”) Reauthorization Act of 2011, which we do not support in its current form.

Discrimination and harassment of LGBT students, and those perceived to be LGBT, is a serious problem in public elementary and secondary school districts across the United States. Despite this fact, the ESEA Reauthorization Act of 2011 fails to include any express protections for this vulnerable student population, or even to make reference to them. While we recognize and appreciate the leadership of some members, including Senators Casey and Franken, who have been tireless in their advocacy on behalf of *all* students, including those who are LGBT, this reauthorization fails to ensure that LGBT students have access to a public education unhindered by discrimination and harassment.

This failure comes despite overwhelming evidence establishing a compelling need for action at the federal level. LGBT youth face significantly increased risks for suicide related to mental health issues that often arise from poor treatment and discrimination in schools.¹ A 2009 study of more than 7,000 LGBT middle and high school students across the U.S. found that nine out of ten reported experiencing harassment at their school within the past year based on their sexual orientation or gender identity, and two-thirds said they felt unsafe at school because of who they are.² Nearly one-third skipped at least one day of school within the previous month because of concerns for their safety. It is critical that the federal government and schools act to address this very serious problem facing LGBT youth, and that they do so in a manner

¹ See, e.g., Massachusetts Youth Risk Survey 2007; Grossman, A.H., D’Augelli, A.R. (2007). “Transgender youth and life threatening behaviors.” *Suicide and Life Threatening Behavior*, 37(5): 527-537.

² GLSEN National School Climate Survey 2009.

that does not rely on overly punitive school discipline policies which worsen the problem of the school-to-prison pipeline.

Federal laws currently protect students on the basis of their race, color, sex, religion, disability and national origin. Yet there are no express protections on the basis of actual or perceived sexual orientation or gender identity. This reauthorization is the ideal vehicle to rectify this shortcoming in federal law and the absence of such a provision simply ensures that such discrimination and harassment will continue.

We share the concerns of numerous civil rights organizations, business groups, and education officials regarding the reauthorization's weak federal accountability system, which will have a particularly harmful impact on students with disabilities, low-income students, students of color, and English-language learners and migrant students. LGBT students, of course, are also included among each of these categories, further heightening our concern. We recognize the importance of attaching federal funding to firm and ambitious demands for higher achievement, high school graduation rates, achievement-gap closing, and other barriers to learning for *all* student subgroups. To be effective, this must also be coupled with measurable achievement and progress targets, and the availability of tailored federal interventions and remedies when necessary for more than just a small percentage of the very worst performing schools. Unfortunately, this reauthorization, in its current form, will permit far too many low-achieving students across the country to slip through the cracks, without any federal accountability.

We hope to work with both of you, as well as other senators, to address our significant concerns as this process continues to move forward.

Sincerely,

American Civil Liberties Union
Family Equality Council
Gay & Lesbian Advocates & Defenders
Lambda Legal
National Black Justice Coalition
National Center for Lesbian Rights
National Gay and Lesbian Task Force Action Fund
PFLAG National (Parents, Families and Friends of Lesbians and Gays)

Cc: Senate Majority Leader Reid
Senate Minority Leader McConnell
Senate HELP Committee