

Dear Secretary Cardona,

First, our organizations would like to thank you for the passion and focus you have brought to your role as Secretary of Education. During your recent bus tour, it was clear that the well-being and success of educators and students was foremost in your mind. Your background was observable through the level of comfort you demonstrated interacting in each of the schools you visited.

We, the undersigned civil rights, education, and immigration organizations, strongly believe that robust monitoring and enforcement by the U.S. Department of Education (USED) is essential to advancing equity and an education system that serves all students. In order to realize USED's mission and responsibility of promoting educational excellence and protecting equitable access to education, we believe it is important for USED to continually identify priorities and reflect on current practices. Further, federal education laws protect civil rights; therefore, it is a duty of USED to regularly monitor state actions and enforce, where necessary, the upholding of these laws so that the full rights of students are not compromised by the actions (or lack thereof) of states and districts. As such, we urge you to re-evaluate existing monitoring protocols to ensure that schools and districts are providing timely data reporting; that resources are being used equitably; and that students are receiving effective, meaningful, and engaging educational opportunities.

To achieve these goals, and ensure that all students are being supported and their rights are being met, we strongly urge the Department to take action based on the suggestions below. The areas are not an exhaustive list of programs that deserve renewed attention, but are those we are elevating for their impact on students living in poverty, students with disabilities, students learning English, students experiencing homelessness, students in the foster care system, students who are incarcerated, undocumented students, Black and Brown students, Native students, Asian students, and students who identify as LGBTQ+, all of whom have been disproportionately affected by the on-going COVID-19 pandemic and financial crisis. We recognize these are cross-cutting and intersectional issues, and that many students experience multiple vulnerabilities due to the inequities within our system (e.g., students of color are dramatically over-represented among students who experience homelessness).

We recognize that USED cannot simply return to "business as usual." The Department must take into account the interruptions caused by the pandemic when it considers taking action to monitor and enforce existing federal laws. But our country is facing unprecedented challenges, which require significant and urgent federal action to appropriately address. These challenges are longstanding, linked deeply with inequity and systemic racism, and have been exacerbated by the COVID-19 crisis, thus requiring federal actions that can both advance systemic change and address the global pandemic.

As always, we continue to appreciate the commitment that you and the Department of Education have shown to supporting America's students. **We would value the opportunity to meet with members of your team to advance and improve the areas outlined below.** Additionally, if the USED has already examined and implemented new changes to its monitoring and enforcement procedures, updates on these actions are welcomed.

Thank you for your consideration of these concerns and priorities. We would like to partner with USED in the realization of our mutual goal to provide a high-quality education for all students, especially those underserved and those most impacted by COVID-19. We would appreciate the opportunity to meet with your team to discuss how we can collaboratively advance and support these issues at your earliest convenience.

Sincerely,

The Alliance for Excellent Education

Center for American Progress

Education Reform Now

The Education Trust

National Center for Learning Disabilities

National Urban League

SchoolHouse Connection

Teach Plus

UnidosUS

RECOMMENDATIONS FOR U.S. DEPARTMENT OF EDUCATION MONITORING AND ENFORCEMENT ACTIONS

American Rescue Plan

The American Rescue Plan (ARP) was designed to provide the resources necessary for a full recovery from the pandemic and was intentional in targeting resources to students who have been disproportionately impacted. As states and districts begin implementation of their ARP ESSER plans, it is imperative that funds are used in alignment with the intention of the ARP and continue to serve the full needs of students. Therefore, USED must take the following actions:

- *Stakeholder Engagement* - Provide guidance identifying USED's expectations for engaging a diverse set of stakeholders in the creation of state and local plans for the use of ESSER funding, as well as increasing accountability to ensure meaningful engagement. Identify best practices that continually and genuinely engage stakeholders through the creation and implementation of state and local plans.
- *Use of Funds* - Ensure all states are meeting USED's requirements for ARP plans, including the requirement that states add missing provisions, such as how ESSER funds will be used to meet the needs of students experiencing homelessness, and make program improvements.
- *Distribution of Funds* - Track and report if states are denying federal funds to any school districts due to state mask mandates and take action to ensure these school districts can access federal funding while maintaining student safety; ensure that states and districts are abiding by all Maintenance of Effort and Maintenance of Equity provisions within the law, as well as heavily scrutinizing state requests for waivers of these provisions.

Every Student Succeeds Act

Almost six years ago, the Every Student Succeeds Act (ESSA) began providing states with additional flexibility to meet the needs of their local contexts. Each state submitted a state plan to USED identifying how it met or will meet many of the law's requirements over the coming years. However, due to the pandemic, states faced realities that made abiding by those requirements difficult. In recognition of the immediate and continually unpredictable impacts of COVID-19, Congress and USED appropriately granted states narrow, time-bound waivers from some provisions of ESSA (e.g., administering statewide assessments in spring 2020, identifying new schools for Comprehensive and Targeted Support and Improvement for the 2021 - 2022 school year). As states and school districts begin to recover and will therefore revisit these interrupted state plans, it is critical that USED simultaneously recognize the ongoing impacts of the pandemic and ensure that implementation of the law's flexibility does not supersede the critical civil rights protections ESSA affords students. Therefore, USED must take the following actions:

- *Report Cards* - Ensure all state report cards include data required under the law, that they are issued in a timely manner, and that they otherwise meet the requirements outlined in the law.
- *Fiscal Transparency* - Ensure that states include school-by-school spending data in state report cards for all schools in the state, that the data are submitted on time, that they are accurate, and

that the reported data include spending totals in addition to data disaggregated by source of funds.

- *Assessment* - Ensure states are meeting ESSA's annual assessment requirements, including by issuing guidance to states to resume administration of state testing for the 2021-2022 school year and continuing Department policy to deny "blanket" waiver requests and other waivers that undermine comparable, disaggregated data for all schools.
- *Accountability and School Improvement/Support* - Issue guidance that takes into account the disruption of the pandemic including missing years of assessment data to support states in identifying schools for Comprehensive Support and Improvement (CSI), Targeted Support and Improvement (TSI), and Additional Targeted Support and Improvement (ATSI) in the 2022-2023 school year (based on data from the 2021-2022 school year) to ensure schools are identified for and receive additional resources and supports based on student learning and other outcomes identified under the law; provide support to states to address technical challenges (e.g., missing growth data) in identifying such schools; review exit criteria for previously identified schools; and ensure updates to state plans include "more rigorous State-determined" interventions that are actionable for CSI schools that do not exit.
- *Teacher Quality Requirements* - Ensure states and districts are meeting requirements to make progress toward closing gaps in rates at which students of color and students from low-income backgrounds are taught by inexperienced, out of field, or ineffective educators.
- *Title I Supplement Not Supplant Requirements* - Ensure Title I funds are supplemental and meet requirements under the law, including through issuing new guidance and negotiated rulemaking.
- *Resource Allocation Reviews* - Ensure states, districts, and schools are conducting meaningful reviews of resources to support CSI schools and/or groups of students within TSI schools, and that they have submitted a resource allocation methodology consistent with supplement not supplant requirements, including issuing clarifying guidance as needed.

Individuals with Disabilities Education Act

For 45 years, the Individuals with Disabilities Education Act (IDEA) has recognized that students with disabilities deserve access to a free appropriate public education. Fulfilling the civil rights obligations of IDEA requires educators and schools to provide the necessary supports, accommodations, and modifications tailored to the unique needs of every student with a disability. Therefore, USED must take the following actions:

- *Individualized Education Program (IEP) Services* - Ensure that schools and districts monitor and address the provision of required IEP services to students with disabilities who are enrolled in remote settings, and ensure that schools and districts provide compensatory services if services were undeliverable over the course of the pandemic.
- *Individualized Education Program (IEP) Placement* - There is a growing concern that students with behavioral challenges may be placed into remote learning settings as a form of discipline, without following the IDEA process for removal from in-person instruction for students with disabilities. USED should monitor and provide guidance around which students should be placed into remote

learning settings and under what conditions to ensure that schools and districts are not violating a student's right to be educated in the least restrictive environment.

- *618 Data Reporting* - Ensure all states report data required under the law, that they are publicized in a timely manner, and that they otherwise meet the requirements outlined in the law.
- *State Systemic Improvement Plan (SSIPs) and Results Driven Accountability (RDA)* - Connect the State Performance Plans and Annual Performance Reports directly to annual determinations for IDEA Part B and Part C. OSEP should evaluate the proposed SSIP by whether or not the plan attempts to: (1) close the biggest achievement gaps for students with disabilities; (2) bring the outcomes of students with disabilities in that state closer to the national averages; and (3) bring the outcomes of students with disabilities closer to those of their non-disabled peers.

McKinney-Vento

The pandemic has exacerbated the vulnerabilities that students experiencing homelessness face and has made clear that schools and districts need to reinforce their efforts to support this student population. The McKinney-Vento Homeless Assistance Act is a critical safeguard to help ensure that education leaders actively remove barriers to education for students experiencing homelessness. Therefore, USED must take the following action:

- *Oversight, Enforcement, and Communications* - Ensure states and districts are meeting immediate enrollment requirements for students experiencing homelessness, including through the issuing of guidance and including in all ED communications with states and districts (not just communication with McKinney-Vento coordinators), how to implement such provisions, ensure health, and ensure that local testing, vaccine, quarantine and other policies do not create conflicts with federal protections and create barriers for vulnerable students.

Supports for English Learners

Students identified as English Learners (ELs) have faced multiple crises and challenges throughout the pandemic - navigating the trauma of long-standing systemic health and social inequities which put families of racial and ethnic minority groups at increased risk of contracting COVID-19, caring for multi-generational families experiencing job loss, and inadequate access to high quality internet services, all while overcoming stress exacerbated by the sudden shift to remote learning.

The confluence of these challenges has led to ELs experiencing higher levers of chronic absenteeism and lower rates of return to in-person instruction. Supporting our ELs, who often exist at the intersections of multiple marginalized communities, should be a top priority for states and districts throughout this school year. Therefore, USED must take the following actions:

- *English Learner Instruction* - Require more proactive federal monitoring of instructional programs to be sure schools are providing instruction by qualified/trained educators and that academic supports are available to students regardless of the size of the EL population in the school.
- *Professional Development Opportunities* - Ensure that preservice and inservice professional

learning prioritizes EL needs, including how home language development can support and complement classroom instruction as well as anti-racist, and culturally responsive and sustaining approaches to pedagogy.

- *Language Access and Awareness of Accommodations* - Information about federal, state, and local education policies impacting ELs must be made available in families' home languages and conveyed in a manner that is culturally relevant. Such information should help families better understand, support, and continue to advocate for their children's education, including the identification and placement process, EL services, assessment, exit requirements, and post-exit monitoring. Increase guidance and monitoring to prevent over-reliance on machine translation (e.g. Google translate) and inadequate translation/interpretation for lower incidence languages.
- *Diagnostic Assessment* - Guidance and monitoring to ensure LEAs follow the statutory requirements of ESEA requiring that ELs are screened for eligibility for EL services within 30 days of enrollment.
- *English Language Proficiency (ELP) Assessment* - Provide guidance to states and districts on how they should calculate their ELP indicator in the case of missing data and in light of USED guidance on continuity of instruction, placement of ELs, and decisions on exiting students from EL status during the pandemic. Publicly report on the information collected from SEAs to inform stakeholders on the administration of ELP assessments in 2020-21.
- *Internet Access and Technology Support* - Monitor state and local digital access initiatives to ensure resources are appropriate for ELs and their families, that new arrivals are provided with resources, and that ELs continue to benefit from technology beyond the pandemic.