

January 21, 2016

Deborah Spitz  
U.S. Department of Education  
400 Maryland Avenue SW  
Room 3E306  
Washington, DC 20202

RE: Programs under Title I of the Elementary and Secondary Education Act of 1965  
(Docket Number: ED-2015-OESE-0130)

Dear Ms. Spitz:

The undersigned organizations have long advocated for improving the educational needs of young people in and returning from the juvenile justice system, some of the country's most educationally disadvantaged students. We are pleased that the Every Student Succeeds Act (ESSA) includes strengthened provisions to support smooth education transitions into and out of correctional facilities, as well as access to a quality education inside facilities. We submit these comments to the Department of Education regarding regulations and guidance for Title I to promote effective implementation of Title I, Part D of ESSA.

We thank the Department of Education for ensuring that the educational needs of young people involved in and reentering from the juvenile justice system are fully met as it develops regulations and other activities to robustly implement ESSA. We would appreciate the opportunity to discuss any or all of our comments with you in further detail or provide additional information about the educational needs of young people involved in the juvenile justice system.

Sincerely,

*National Organizations:*

American Psychological Association  
Campaign for Youth Justice  
Center for Children's Law and Policy  
Center for Educational Excellence in Alternative Settings  
Charles Hamilton Houston Institute for Race and Justice, Harvard Law School  
Child Welfare League of America  
Children's Home Society of America  
Children's Advocacy Institute  
Children's Defense Fund  
Coalition for Juvenile Justice  
Dalton-Daley Group  
First Focus Campaign for Children  
Forum for Youth Investment  
Foster Family-based Treatment Association  
Girls Inc.  
Healthy Teen Network

Human Rights Project for Girls (Rights4Girls)  
Justice for Families  
Juvenile Law Center  
Lutheran Services in America  
NAACP  
NAACP Legal Defense and Educational Fund, Inc.  
National African American Drug Policy Coalition, Inc.  
National Association for the Education of Homeless Children and Youth  
National Association of Counsel for Children  
National Center for Youth Law  
National Disability Rights Network  
National Education Association  
National Education Policy Center  
National Foster Parent Association  
National Juvenile Justice Network  
National Network for Youth  
National Youth Advocate Program, Inc.  
North American Council on Adoptable Children  
Open Society Policy Center  
Peace Alliance  
Robert F. Kennedy Children's Action Corps  
Robert F. Kennedy Juvenile Justice Collaborative  
Southern Poverty Law Center  
SparkAction  
Student Peace Alliance  
The National Crittenton Foundation

*State Organizations:*

Advocates for Children of New York  
American Civil Liberties Union  
Anti-Recidivism Coalition  
Children Awaiting Parents  
Children's Action Alliance  
Children's Law Center, Inc.  
Children's Aid Society  
Children's Home + Aid  
Children's Justice Clinic  
Children's Law Center of Massachusetts  
Children's League of Massachusetts  
Citizens for Juvenile Justice  
Community Associations Institute  
DC Lawyers for Youth  
Disability Rights Network of PA  
Education Law Center-PA  
Family and Youth Law Center at Capital University Law School  
Further the Work  
Home for Little Wanderers

Justice Resource Institute  
Michigan's Children  
Missouri Juvenile Justice Association  
ROCA, Inc.  
Rocky Mountain Children's Law Center  
Rutgers Criminal and Youth Justice Clinic  
Texas Appleseed  
Texas Criminal Justice Coalition  
The Center for Civil Rights Remedies at The Civil Rights Project at UCLA.  
Treehouse  
Youth Sentencing & Reentry Project

# RECOMMENDATIONS FOR IMPLEMENTATION OF TITLE I, PART D OF THE EVERY STUDENT SUCCEEDS ACT TO IMPROVE ACCESS TO EDUCATION FOR YOUNG PEOPLE INVOLVED IN AND REENTERING FROM THE JUVENILE JUSTICE SYSTEM

Docket Number: ED-2015-OESE-0130

Docket Name: Programs under Title I of the Elementary and Secondary Education Act of 1965

## I. Introduction

The above signed organizations write in response to the request for public comment on the Every Student Succeeds Act (ESSA). We urge you to support prompt and appropriate access to a quality education and the success of students involved in and reentering from the juvenile justice system through the development of effective regulations and guidance as well as other activities to fully implement reauthorization of Title I, Part D in ESSA.

Youth involved in and returning from the juvenile justice system are some the nation's most educationally vulnerable. They frequently have unmet needs and sometimes are excluded from accessing critical resources for improving life outcomes. Unfair or ineffective school discipline policies, lack of access to appropriate education services and supports, and inappropriate referrals to law enforcement for school disciplinary violations all too often push youth into the justice system early and unnecessarily. Research has found that these students are chronically behind in school upon juvenile justice entry,<sup>1</sup> and Department of Education data show that most youth in juvenile justice facilities make no meaningful progress in learning or academic achievement while incarcerated.<sup>2</sup> Perhaps most distressing, approximately two out of three students drop out after exiting the juvenile justice system.<sup>3</sup>

ESSA strengthens protections for juvenile justice system-involved youth in Title I, Part D. Positive changes to the law include smoother education transitions when students enter juvenile justice facilities, educational assessments when practicable upon entry to a facility, increased emphasis on connecting young people to an appropriate education or career and technical education program upon reentry, smooth record sharing and credit transfer, timely and

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<sup>1</sup> Southern Education Foundation, *Just Learning: The Imperative to Transform Juvenile Justice Systems into Effective Educational Systems—A Study of Juvenile Justice Schools in the South and the Nation 14* (2014), <http://www.southerneducation.org/getattachment/cf39e156-5992-4050-bd03-fb34cc5bf7e3/Just-Learning.aspx> (2/3 of juveniles entering state institutions were below grade level in math and reading and 44% entering local juvenile justice facilities were below grade level in math and reading).

<sup>2</sup> *Id.* at 15-17.

<sup>3</sup> *Id.* at 18 (citing Joseph C. Gagnon, Brian R. Barber, Christopher L Van Loan, and Peter E. Leone, "Juvenile Correctional Schools: Characteristics and Approaches to Curriculum," *Education and Treatment of Children*, Vol. 32, no. 4, 673-696, 2009; Joseph C. Gagnon, "State-Level Curricular, Assessment, and Accountability Policies, Practices, and Philosophies for Exclusionary School Settings," *The Journal of Special Education*, vol. 43, No. 4, 206-219, February 2010; Joseph C. Gagnon, Christopher L Van Loan, and Brian R. Barber, "Secondary Psychiatric Schools: Characteristics and Approaches to Curriculum," *Preventing School Failure*, Vol. 55, No.1, 42-52, 2010; Joseph C. Gagnon and Brian Barber, "Characteristics of and Services Provided to Youth in Secure Care Facilities," *Behavioral Disorders*, vol. 36, no. 1, 7-19, November 2010.).

appropriate re-enrollment, and supportive reentry programs. Additionally, the reauthorized law prioritizes attainment of a regular high school diploma, and includes a new option to use funding to support and serve youth touched by both the child welfare and juvenile justice systems.

The strengthened education protections for justice-involved youth codified in ESSA have significant support from the field. Improvements made to ESSA in this area reflect recommendations made to the Department of Education and other federal agencies in 2013. Those recommendations, attached here as an Appendix, resulted from eight regional listening sessions nationwide with over 100 community leaders and experts from the education, justice, and youth advocacy fields. A diverse group of 127 organizations and 84 individuals supported and signed those recommendations.

## **II. Needed Regulations**

We urge you to enact regulations to ensure the provisions described above in Title I, Part D of ESSA are robustly implemented and enforced to help ensure ready access to quality education for young people involved in and returning from the juvenile justice system. Specifically, we urge the Department of Education to:

### **1. Broadly interpret and clarify when conducting an education assessment upon entry is “practicable.”**

ESSA provides that States accepting funding should describe the procedures they will use to assess students’ educational needs. They must do so upon entry to a correctional facility “to the extent practicable.” This is a critical step of ensuring appropriate education at the correct grade level while youth are in custody. It also represents a key point to intervene and begin to make a positive difference in the youth’s education—for example, by illuminating for the first time that a student should be referred for a special education evaluation. We urge the Department to describe what constitutes “to the extent practicable” so that as many States as possible institute this initial assessment. For example, “to the extent practicable” could be defined as “whenever possible unless facilities are prevented from doing so due to circumstances beyond their control.”

### **2. Ensure that upon reentry, students are immediately re-enrolled in appropriate quality education programs and not automatically sent to alternative schools or placed in GED or Adult Basic Education (ABE) programs that do not meet their needs.**

#### *a. Prohibit blanket policies that force returning students to enroll in alternative schools.*

ESSA leaves open the option that young people involved in the juvenile justice system may transition back into alternative education programs upon reentry. However, some jurisdictions have implemented policies or practices requiring that *all* young people reentering from the juvenile justice system return to an alternative school as opposed to an educational program that best meets each young person’s individual educational needs. This practice creates a type of “dumping ground” in alternative schools for reentering students; from there, many youth drop out of school instead of making it back into an appropriate community school or career path. The

Department of Education’s regulations should prohibit blanket policies that force reentering students to enroll in alternative schools, which often fail to adequately address the educational and reentry needs of young people returning to the community.

- b. *Define the process for determining which school or educational program, including both which curricula and other supports needed for educational success, best meet a young person’s needs upon reentry into the community.*

Related to the issue described in (a) above, ESSA requires States receiving Title I, Part D funds to establish procedures to ensure timely re-enrollment into the education program or career and technical education program **that best meets the needs of the student**. The Department should clarify the process for determining how to assess which school or educational program, including which education reentry supports, best meets the student’s needs, including:

- Who makes the decision and within what time frame;
- Requiring that the decision be based on individual student-centered considerations, driven by the expressed wishes of the student and family after meaningful discussion, consistent with Title I, Part D’s new emphasis on family engagement;
- What specific factors the decision-maker should consider, including:
  - the student’s education record prior to and during placement,
  - educational assessments, and
  - other types of records, including consultations with experts; and
- What type of dispute or appeals process should be available to young people and their families or advocates.

- c. *Define “timely” re-enrollment.*

The Department should clarify that “timely” re-enrollment means immediate re-enrollment. Re-enrollment should occur immediately and in no case later than 3 business days after the local educational agency receives notice of the student’s discharge from a correctional facility. The Department also should clarify that re-enrollment includes enrollment of young people into new schools or educational programs that they have not yet attended, but that best meet their needs. Finally, the local educational agency should be prohibited from preventing enrollment or re-enrollment of students because of administrative issues beyond a young person’s control, such as lack of a proper mailing address.

Early, thoughtful, youth- and family-driven re-entry planning across state and local educational agencies, the juvenile justice system, and correctional facilities, is fundamental to ensuring youth are immediately re-enrolled in an appropriate educational program. School choice decisions and transfer of records and credits must occur before the youth is discharged from custody and local education agencies should be notified of a student’s re-enrollment no later than two weeks prior to discharge whenever possible. The Department should emphasize and require this

robust re-entry planning through regulation, in order to ensure States receiving Title I, Part D funds will indeed be able to carry out the assurances they must now make in their application for funding.

**3. Ensure that state educational agencies emphasize credit-bearing secondary and postsecondary coursework, and career and technical education.**

ESSA requires States receiving Title I, Part D funding to establish “opportunities for students to participate in credit-bearing coursework while in secondary school, postsecondary education, or career and technical education.” The Department should clarify that all three options should be available to students involved in the juvenile justice system. Specifically, although career and technical education is extremely important to engage students and build skills towards family-sustaining careers, youth in the juvenile justice system should have equal access to traditional coursework that leads to recognized academic credit. In order to effectuate access to credit-bearing coursework, secondary schools and programs must align with a State’s current academic curriculum standards as set forth in state statute, regulations and/or guidance.

Since ESSA does not specify whether this provision applies to youth in correctional facilities, the community, or both, we urge the Department to interpret this provision to ensure youth have access to these critical opportunities both while in custody as well as upon reentry into the community.

**4. Define when a youth has “come into contact with both the child welfare and juvenile justice systems.”**

ESSA requires States receiving Title I, Part D funding to note when a youth has had “contact” with both systems. It also allows funds to be used to support services for these youth. The Department should clarify through regulation what constitutes “contact” to avoid confusion and promote consistent data collection across jurisdictions. We recommend the following definition, which includes youth who are dually-adjudicated and have other contact with the systems but is not so broad as to overburden jurisdictions in obtaining the information:

Youth who have concurrent involvement (diversionary, formal, or a combination of the two) with both the child welfare and juvenile justice systems.<sup>4</sup>

**5. Develop a process for states to track the number of students involved in and returning from the juvenile justice system, including dual status youth, who achieve a traditional high school diploma.**

Tracking this data is essential to monitoring educational achievement of youth in the juvenile justice system, and enforcing the Title I, Part D provisions to ensure appropriate use of the funds.

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<sup>4</sup> See definition of “Dually-involved Youth” in Tuell, John et al., Robert F. Kennedy Children’s Action Corps, Dual-Status Youth - Technical Assistance Workbook 4 (Models for Change 2013), <http://www.modelsforchange.net/publications/515>.

In particular, the Department should clarify the language in Title VIII that creates a loophole through which States may remove from the graduation cohort students who have “transferred to a prison or juvenile facility.” Complete removal of these students from the cohort renders them invisible—and Congress did not intend to eliminate accountability for states and local educational agencies with respect to these students. Indeed, 1111(c)(4) subsection (F) dictates that a student who attends a school for at least half the year is counted in the cohort of the local educational education which he/she attended for the greater part of the year; not counting students who transfer to prisons or juvenile facilities for even a short time creates an unintended perverse incentive for districts to push struggling students into the juvenile or adult justice system and undermines the strengthened emphasis on reentry supports in Title I, Part D.

We recommend that the Department clarify that students should only be removed from the cohort if (a) a student has transferred to a prison or juvenile facility for a year or more *and* (b) the student has an opportunity to earn a diploma in the prison or juvenile facility to which he/she transfers. This definition is consistent with another exception ESSA allows for removal from the graduation cohort: transfer to another school or program from which the student is expected to earn a high school diploma. In addition, the Department must further clarify that when a youth returns to a local educational agency within the one year, he/she must again be included in the graduation cohort.

### **III. Other Requested Activities to Support Full Implementation of ESSA**

In addition to developing regulations to address the issues described above, the Department of Education should take the actions described below to support access to quality education for students in and returning from the juvenile justice system. Specifically:

- Hire a dedicated staff person or team to focus on issues impacting vulnerable youth, including those involved in the juvenile justice or foster care systems, as well as dual status youth;
- Highlight models from jurisdictions that currently provide excellent access to quality education for young people involved in or returning from the juvenile justice system;
- Provide technical assistance and grant discretionary funding to jurisdictions to help provide the resources needed to successfully implement aspects of Title I, Part D impacting young people involved in or returning from the juvenile justice system, dual status youth, and young people in the foster care system;
- Assess and address barriers to improve youth success in obtaining a traditional high school diploma that leads to post-secondary education or career and technical training; and
- Devote more resources to help jurisdictions implement the December 2014 correctional and reentry education guidance package—juvenile justice and education stakeholders report that additional dissemination, education and enticement/enforcement activities are needed.