



SOUTHERN POVERTY LAW CENTER

PRESIDENTIAL TRANSITION PRIORITIES

ADDRESS SYSTEMIC RACISM
AND PROMOTE LGBTQ INCLUSION
AND EDUCATIONAL EQUITY

SPLC | ACTION 

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ADVANCE RACIAL AND GENDER JUSTICE FOR CHILDREN AND COMMUNITIES

Since our nation's founding, denying access to meaningful quality education has been a principal tool to perpetuate white supremacy, ignore basic human rights, and prevent an inclusive democracy.

In recent decades, increasing disinvestment in public education in the South has resulted in children in the region having fewer resources compared to children across the country, and the resources that do exist in Southern states are inequitably distributed across lines of race, socioeconomic status, ability, and language status. The COVID-19 crisis has exacerbated these inequities. However, even before the pandemic, public school funding in many Southern states had still not recovered to levels before the 2008 recession and was below the national average.¹ Federal programs intended to provide targeted supports to students experiencing poverty, students with disabilities, and other students who may need additional resources continue to go severely underfunded.²

One-third of the nation's English language learners and one-third of the nation's migrant students attend school in the South, where most public school students are from families with low incomes. The Deep South has the lowest rate of broadband adoption of any region in the country, and a quarter of rural communities lack access to high-speed internet, compared to about 2% in urban areas.³ Racial disparities also exist in children's access to internet at home.

As the region's public schools become more diverse, they are increasingly under-resourced to respond to systemic inequities in our communities and to meet the needs of their students. While students of color became a majority in the South's public schools over the past decade, Southern states created and expanded private school voucher programs that divert scarce public resources to whiter, wealthier, and discriminatory private schools.⁴ The state leaders pushing these privatization agendas have only been emboldened during the Trump administration.

Education policy has focused on high-stakes accountability that punishes schools based on unproven performance measures instead of focusing on removing obstacles that may prevent students from learning and growing. Students of color, students with disabilities, and LGBTQ students have been disproportionately affected by policies and practices that perpetuate the

school-to-prison, school-to-deportation, and school-to-mental institutionalization pipelines.

Yet, over the past four years, critical protections for these students have been weakened. The rates of arrest, institutionalization, and traumatic interaction with law enforcement have steadily increased with the rise of law-and-order campus cultures. These changes have diverted critical resources to staffing schools with more police officers than school nurses, psychologists, or counselors, who would be better equipped to support children instead of criminalizing them for normal adolescent behavior.

Every state in our nation has recognized that all children have a constitutional right to a free public education, but the disparate 50-state system results in varying experiences for students all over the country. Enacting an education amendment to the U.S. Constitution would clarify the scope of this right and strengthen the federal government's responsibility to augment state resources, ensuring that all children have fair access to fully funded, high-quality public education.

There are also executive and legislative actions the Biden administration can take to achieve this goal. It should appoint a head of the U.S. Department of Education who supports public schools and the students and communities they serve. This person, and leaders throughout the department, should have educational experience and should have students' civil rights at the forefront of their agenda. Public schools and communities need our federal government to provide investments that prioritize the whole child and oversight that is supports-based and focused on equity for all.

EXECUTIVE ACTION

➡ Restore and strengthen guidance on nondiscriminatory school discipline.

In 2014, in response to evidence that a disproportionate number of students of color are caught in the school-to-prison pipeline, the U.S. Department of Education and the Department of Justice issued important guidance on discriminatory school discipline — the “Joint Dear Colleague on the Nondiscriminatory Administration of School Discipline.”⁵ This guidance clarified that the Education and Justice departments expect schools and districts to treat all children fairly and provides practi-

cal guidelines for educators to create safe and inclusive environments for all students.

When this guidance was rescinded in 2019, the Trump administration sent the opposite message: that these departments are not concerned when schools discriminate against children of color by disproportionately excluding them from school, and that they will not work to help educators maintain safe schools that afford all students equal educational opportunities.

The 2014 guidance must be restored and strengthened, including by encouraging districts to end the use of law enforcement in schools. Further, recommendations issued by Secretary of Education Betsy DeVos' "school safety" task force threaten to make our nation's schools and students less safe, ignores settled law, ignore evidence-based solutions, and ignores progress made towards safe, welcoming, and healthy schools. It should be rescinded. A new task force consisting of students, educators, families, mental health professionals, student privacy experts, and civil and disability rights experts should be appointed.

➔ **Strengthen Department of Education Title IX protections for transgender students.**

In 2016, the Education and Justice departments issued important guidance regarding the responsibility of schools, districts, and states to protect transgender and gender-nonconforming students from discrimination — the "Joint Dear Colleague on Transgender Students."⁶ This guidance made clear that schools must provide access to restrooms and locker rooms for transgender students consistent with their gender identity, and it provides clarity on athletics, housing and overnight accommodations, and other sex-specific considerations.

The guidance also makes clear that schools must provide a safe and nondiscriminatory environment, use names and pronouns consistent with a student's gender identity, and respect students' privacy. Given recent Supreme Court case law that further affirms that discrimination on the basis of gender identity is a violation of federal civil rights law, the Department of Education should engage in rulemaking on LGBTQ protections and other civil rights matters under Title IX.

➔ **Repeal rule expanding Title IX religious exemptions for schools.**

In 2020, the Trump administration unlawfully expanded the religious exemption in Title IX of the Education Amendment Act of 1972 beyond what is permitted by the statute, stripping away key civil rights protections against gender-based discrimination and making it easier for schools to claim a religious right to discriminate.⁷ This rule opens the door to illegal discrimination that would seriously harm the very students and staff Title IX should protect, includ-

ing LGBTQ students and staff. This carve-out from anti-discrimination laws should be repealed.

➔ **Reinstate broad federal anti-discrimination protections for LGBTQ people, including:**

- ***Bureau of Prisons policy to house transgender people in facilities consistent with their gender identity.***

The bureau adopted the Transgender Offender Manual in January 2017 to properly identify, track, and provide services to the transgender population within its custody. Among other things, the manual required that housing for transgender persons be made on a case-by-case basis, considering whether a placement would ensure the person's health and safety and whether the placement would present management or security problems. The manual explicitly permitted housing by gender identity when appropriate.

This manual was an important supplement to the Prison Rape Elimination Act of 2003 and its implementing regulations, which recognize that transgender, intersex, and gender-nonconforming individuals are particularly vulnerable to sexual assault. The act prohibits, among other things, the housing of transgender persons simply based on anatomy or sex assigned at birth; it instead requires a case-by-case consideration that gives serious consideration to the person's own views regarding his or her safety.

In May 2018, the bureau published a change notice⁸ amending the Transgender Offender Manual to require that transgender persons be housed according to "biological sex" and to provide that housing by gender identity is appropriate only in rare cases and where there has been "significant progress towards transition as demonstrated by medical and mental health history." The change notice is devoid of any definition of "biological sex" and any guidance on how to determine a person's "biological sex" or whether the person has undergone "significant progress towards transition."

The changes announced by the Trump administration weaken protections for incarcerated transgender people — who are already 10 times more likely than the general prison population to be targeted for violence — and undercut compliance with the Prison Rape Elimination Act and constitutional protections. There is no penological reason that could justify the bureau's decision to roll back protections for transgender people in the federal prison system.

- ***Health and Human Services rule to provide nondiscrimination protections for LGBTQ people in health care***

and health insurance. In June 2020, the Department of Health and Human Services issued its final rule rolling back critical anti-discrimination protections in the Affordable Care Act (ACA).⁹ The department plans to abandon the protections under the Health Care Rights Law — Section 1557 of the ACA — which prohibits insurance companies, hospitals, and doctors that receive federal funding from denying patients care because of who they are, what language they speak, their sex or gender identity, or the color of their skin. Even though the repeal of this regulation does not change how the courts have interpreted Section 1557, it will open the door to rampant discrimination against LGBTQ patients by eliminating key protections. Stereotypes and discrimination should never determine access to health care services or quality patient care.

It is unconscionable that in the middle of a global health crisis, the Trump administration would issue a final rule rolling back protections for LGBTQ patients under the Affordable Care Act. It is even more cruel and dangerous to roll back anti-discrimination protections during a pandemic that is disproportionately harming Black and Brown people. This rollback will put patients' lives and health in danger. Millions of people who are already susceptible to discriminatory practices should not be left without federal protections.

This final rule also harms those who are already likely to face bigotry and discrimination in health care settings. According to one study, 56% of LGB people and 70% of transgender and gender-nonconforming people have been harassed or denied health care.

No one should be denied health care because of who they are. The Health and Human Services Department should put patients first and immediately rescind this regulation.

- **Ending the ban on transgender people serving in the military.** Transgender people were prohibited from serving openly in the U.S. military for decades based on antiquated and discriminatory views. However, after a study focusing on the “policy and readiness implications,” in June 2016, the U.S. military lifted the ban on transgender people openly serving and admitted that it is in the military's best interest to recruit and retain the best troops, without regard to their gender identity.

A year later, President Trump announced that “[t]he United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military.” Thirty days later, Trump released an official memorandum establishing the ban and directing Secretary of Defense James Mattis to make recommendations for its imple-

mentation. Those recommendations were issued in March 2018 and despite initially successful litigation against them, the administration began enforcing the ban in April 2019.

The ban is a complete prohibition on transgender military service. It bars transgender people from joining the military, and it stops anyone currently in the military from transitioning genders.

Thousands of transgender Americans have served — and are serving — this country with honor and courage in the military. While these brave Americans risk their lives, Trump's disgraceful and discriminatory attempt to change this policy — backed by the country's most extreme anti-LGBTQ hate groups — would do nothing to make our nation safer.

When the ban was lifted, no negative impacts on readiness were reported. In addition, there is no evidence that the cost of providing medical care to transgender troops is meaningfully higher than for cisgender troops. Finally, the American Medical Association,¹⁰ American Psychological Association,¹¹ and American Psychiatric Association¹² all stand against the ban, affirming that there is no medical rationale for barring transgender people from serving openly in the military.

LEGISLATIVE PRIORITIES

🔴 Pass the Equality Act.

The Equality Act (H.R. 5/S.788)¹³ is groundbreaking civil rights legislation that would explicitly prohibit discrimination on the basis of sexual orientation and gender identity by expanding the definitions of protected classes under several federal antidiscrimination laws, including the Civil Rights Act of 1964, the Fair Housing Act of 1968, and the Equal Credit Opportunity Act. If a federal law already includes sex as a protected class, the act would make explicit that unlawful discrimination includes discrimination on the basis of sexual orientation or gender identity.¹⁴

By expanding the reach of those laws, the Equality Act would affect certain areas of public life and federal policy that are subject to federal prohibitions against discrimination, including employment, housing, public spaces and services, education, access to credit (such as for mortgages), and all activities that receive federal funding. The Equality Act also would expand the definition of public accommodations to include places that provide exhibitions, recreation, exercise, amusement, gatherings, or displays; goods, services, or programs; and transportation services.

The Equality Act would prohibit the use of the Religious Freedom Restoration Act as a basis for a defense or claim in response to the enforcement of any antidiscrimination law amended by the Equality

Act. It would also authorize the attorney general to intervene in federal court in equal protection actions alleging discrimination on account of sexual orientation or gender identity.

These protections are essential in ensuring that LGBTQ people have the right to live with dignity and equality.

➔ **Ban corporal punishment in schools and the use of seclusion, and limit the use of restraint on students.**

Congress should pass the Protecting Our Students Act (H.R. 8460)¹⁵, introduced in September 2020, which would prohibit the practice of corporal punishment in any school that receives federal funding. The legislation would also establish much-needed enforcement protections and a federal grant program to assist states and school districts in improving the climate and culture of schools across the country.

Ten Southern states account for more than three-quarters of all corporal punishment in public schools. Just four of those states — Mississippi, Alabama, Arkansas, and Texas — account for more than 70%.¹⁶ And corporal punishment is administered disproportionately in the schools that practice it: Black girls were more than three times as likely to be struck as white girls (5.2% vs.1.7%) during the 2013-14 school year. Black boys were nearly twice as likely to be struck as white boys (14% vs. 7.5%).

In more than half of the schools practicing corporal punishment, students with disabilities were also struck at higher rates than those without disabilities. Corporal punishment is not only an ineffective practice for improving child behavior; it has been found to result in physical injury, lower academic gains, and damaged relationships between students and educators.

Congress should also pass the Keeping All Students Safe Act,¹⁷ which prohibits the harmful and traumatic use of seclusion — the involuntary confinement of students alone in a room — in schools and limits the use of restraint to protect students from physical and mental abuse.

➔ **Ensure due process protections for students, including parental notification of disciplinary actions and a right to a hearing for students facing suspension from school.**

In addition to making clear the federal government's role in eliminating discriminatory school discipline, Congress should also make sure that no student is unfairly or illegally pushed out of school. The U.S. Supreme Court found in *Goss v. Lopez* that the risk of error in school disciplinary proceedings is significant and should be safeguarded by procedural due process guaranteed by the U.S. Constitution. Procedural due process is the government's legal obligation to offer a fair process before depriving a person of a particular

right, such as a public education.

Many states adopted statutory due process protections following the *Lopez* decision, but some states — like Alabama — did not. Federal protections would ensure consistent rights for all students when they are facing exclusionary discipline.

EXECUTIVE/CONGRESSIONAL FUNDING PRIORITIES

➔ **Increase funding for language access services.**

Increasing funding of such services ensures that people with limited English proficiency are made aware of public health threats, their rights, and government services for which they are eligible.

➔ **Increase funding for the Department of Education Office for Civil Rights to ensure civil rights investigations can be completed in a timely manner.**

In addition to executive action to restore and strengthen critical guidance demonstrating that the Education Department will vigorously enforce the civil rights of students, Congress must also increase funding for the department's Office for Civil Rights to ensure that investigators can complete thorough investigations within 180 days, as opposed to taking years to resolve. Complainants, as well as schools, should not have to sacrifice vigorous enforcement or timeliness during investigations of discrimination in education institutions.

Congress should also ensure that the Office for Civil Rights has the resources to conduct an annual rather than a biannual Civil Rights Data Collection. It should also have the resources to expand the data it gathers, and to release the results of that data collection in a timely manner.

➔ **Prohibit federal funds for law enforcement in schools. Redirect funds to implement mental health supports, and to hire and train school counselors and psychologists, nurses, social workers, and staff in anti-racist practices.**

Congress should pass the Counseling Not Criminalization in Schools Act (H.R.7848/S.4360),¹⁸ which would divert federal funding away from school-based law enforcement and toward evidence-based and trauma-informed services that create positive learning environments.

As young people lead the call for police-free schools, Congress has a responsibility to use federal funds responsibly and effectively by engaging meaningfully with school communities about the supports they need to be safe, including investing in counselors, nurses, and other professionals who are specially trained to help build positive learning environments.

➡ **Ensure equitable school funding that is not based on the local property tax base, and provide incentives to states to revise school funding formulas to achieve this goal.**

An overreliance on local property taxes to pay for public schools has led to wide disparities between wealthy and poor districts. Congress should incentivize states to overhaul their funding formulas so that they provide the funding students need to learn, regardless of the community's wealth. According to the Education Law Center, Alabama, Florida, Louisiana, and Mississippi all score an "F" for either funding distribution, funding effort, or funding levels.¹⁹

Congress should also fully fund — and increase funding for — Title I of the Elementary and Secondary Education Act for students from families with low incomes and Title III for English learner students, Individuals with Disabilities in Education Act funding for students with disabilities, and other federal supports.

➡ **Eliminate taxpayer funding for private schools and oppose any future voucher initiatives.**

While most private school voucher programs in the country are funded with state money, Congress should phase out the sole federally funded voucher program — the D.C. voucher program, known as the "Opportunity Scholarship Program." Congress can phase this program out over the course of several years, allowing current participants to graduate or become ineligible through family income. Congress should reinvest the federal funds for this program into public schools.

Congress also can and should take steps to impose nondiscrimination and other student protections on state voucher programs, which often allow for discrimination against students on the basis of their disability status, religion, sexual orientation, or gender identity. In Florida, for example, where over \$1 billion is diverted annually to private schools, at least two-thirds of private schools receiving vouchers are religious. At least a third of those voucher schools use curricula that advance a wide variety of false and bigoted views, such as the idea that the "war between the states" was God's punishment for "religious apostasy and cultism."²⁰

Many of these schools also have religious tests for admission, as well as student and employee conduct policies that discriminate against LGBTQ people, or push conversion therapy on their students. Congress should ensure that all government-funded K-12 institutions, including charter schools, have public oversight and accountability.

And there are significant other steps that Congress should take to eliminate diversion of sorely needed federal tax dollars for private education uses. It should repeal the Trump administration's change to 529 col-

lege savings plans that allows them to be used for private K-12 tuition. It should close the IRS business-expense and capital gains tax loopholes that allow some donors to dodge tax liability by claiming tax credits for voucher programs. It should clarify that states' payments into Education Savings Accounts are federally taxable income for parents receiving them. And it should treat all other educational vouchers as taxable income.

➡ **Expand federal community schools model funding.**

Congress should focus on solutions that ensure students and their families can thrive. Community schools represent an improvement strategy in which schools partner with communities to provide an integrated focus on academics, health and social services, youth and community development, and community engagement. Many operate year-round, from morning to evening, and serve both children and adults, often in neighborhoods where poverty and racism create barriers to learning. Congress should expand federal funding for community schools, including through the Full-Service Community Schools federal grants and Title I.

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