Congress of the United States
Washington, DC 20515

July 26, 2017

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

We are writing to request information about how the Department of Education ("Department") will work with states to reduce exclusionary and aversive discipline in public schools around the country. We are pleased to see the Department open investigations in districts such as Richmond, VA; however, we believe these investigations are limited in scope and do not adequately address the systemic issue of discipline disparities in our nation's schools.

In the 2013-14 school year, approximately 2.8 million students received one or more out of school suspensions from public schools according to the biennial Civil Rights Data Collection (CRDC). The CRDC also showed that black students and students with disabilities were more likely to be subjected to exclusionary discipline measures than their same age peers. Under the previous administration, a growing reversal of the "zero-tolerance" or "no excuses" disciplinary approach helped decrease national rates of exclusionary discipline practices that included out-of-school suspension and expulsions. Despite these national trends, many public schools continue to suspend and expel minority students and students with disabilities at alarmingly disproportionate rates.

Investigations are necessary to eliminate discriminatory practices, yet research is clear that proactive, systemic measures are also needed to truly make an impact on reducing exclusionary and aversive discipline. School-wide implementation of positive behavioral interventions and supports (PBIS), multi-tiered systems of support (MTSS), universal design for learning (UDL), trauma-informed care, crisis intervention, and de-escalation strategies can lead to decreased exclusionary and aversive discipline practices when implemented with fidelity. The previous administration worked to improve school climate and "rethink" discipline over its tenure with guidance documents on seclusion and restraint, ending corporal punishment, and strategies to address the behavioral needs of students with disabilities; improved access to the CRDC; initiatives with the Department of Justice; and policies such as the Equity in IDEA rule.

We believe it is well within the scope of the Department's authority to continue taking steps towards reducing exclusionary and aversive discipline practices in schools and that the Department has an obligation to take such steps under the Every Student Succeeds Act (ESSA). As such, the reduction of exclusionary discipline practices was explicitly addressed by the 114th Congress in the bipartisan 2015 amendments to the Elementary and Secondary Education Act (ESEA), known as ESSA, through inclusion of provisions in Title I-A. State educational agencies are, for the first time, required by federal law to describe in their Title I state plan, how they will support local education agencies (LEAs) to "improve school conditions for student learning including through reducing – (i) incidences of bullying and harassment; (ii) the overuse of discipline practices that remove students from the classroom; and (iii) the use of aversive behavioral interventions that compromise student health and safety" (Sec. 1111(g)(1)(C)). ESSA also encourages schools implementing a Title I schoolwide program to include "implementation of a schoolwide tiered model to prevent and address problem behavior" as a strategy to meet the needs of all students in their required plans (Sec. 1114(b)(7)(A)(iii)(III)).

Currently, states are developing and submitting their ESSA state plans to the Department. On May 12, the Department announced the 16 states that submitted plans in the first submission period were complete and that the plans were aligned to the framework released earlier in the year. The peer review process recently began for the 16 state plans, and it is critical this process ensures not only completion but quality elements in the state plan, especially regarding exclusionary discipline and school conditions. The peer review process should ensure states adequately described the steps they will

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take to support LEAs to reduce practices and develop proactive discipline approaches rather than suspensions, expulsions, seclusion, and restraint.

In light of the statutory requirements to address school conditions and our ongoing concern of the discipline procedures used by schools, we request answers to the following questions:

1. Please describe the concrete steps you will take to support reduction in the use of exclusionary discipline practices through ESSA implementation, specifically support for states to develop Title I or consolidated state plans that provide sufficiently descriptive information on how they will support LEAs in reducing the use of exclusionary and aversive behavioral interventions, and your commitment to disapprove state plans that fail to fulfill this requirement.

2. What steps will be taken through the peer-review process to ensure states provide high-quality descriptions of how they will support local education agencies in reducing aversive practices? Further, will you deny a state plan that does not meet the quality checks during the peer review process?

3. Describe how you plan to support the expansion of research-based practices, such as PBIS, MTSS, UDL, trauma-informed care, crisis intervention, and de-escalation strategies, to reduce exclusionary discipline practices in schools.

4. Please describe additional steps, such as technical assistance, regulations, or guidance, the Department will take to reduce exclusionary discipline practices and identify disproportionate and discriminatory policies related to discipline.

Thank you for your attention to these critical issues impacting our nation's students. Reducing exclusionary and aversive discipline issues is an important step forward in ensuring all students receive an equitable, high-quality education.

Sincerely,

A. Donald McEachin
Member of Congress

Tim Kaine
United States Senator

Donald S. Beyer Jr.
Member of Congress

Mark R. Warner
United States Senator

Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce

Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions

Richard J. Durbin
Senate Minority Whip

Chris Van Hollen
United States Senator

Tammy Baldwin
United States Senator

Cory A. Booker
United States Senator

Edward J. Markey
United States Senator

Robert P. Casey, Jr.
United States Senator

Christopher S. Murphy
United States Senator

Sherrod Brown
United States Senator

Margaret Wood Hassan
United States Senator

Gerald E. Connolly
Member of Congress

Cedric L. Richmond
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Eleanor Holmes Norton
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John Lewis
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Sean Patrick Maloney
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Marcy Kaptur
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Bonnie Watson Coleman
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Danny K. Davis
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Dwight Evans
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Lucille Roybal-Allard
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Suzanne Bonamici
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