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on Civil and Human Rights

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May 7, 2020

The Leadership Conference

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20510

Dear Speaker Pelosi, Majority Leader McConnell, Minority Leader McCarthy, and Minority Leader Schumer,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 61 undersigned organizations, we urge you to take immediate and comprehensive action to ensure equal educational opportunity during the COVID-19 public health crisis and beyond. Long term closures of early childhood settings, K12 schools, and college campuses, necessary to protect the safety and health of communities, have significantly exacerbated longstanding inequities in our educational system. Leadership and action from Congress can, and must, minimize the harm to marginalized students as long as COVID-19 continues to threaten the public health.

We call on you to:

- Ensure Federal Funds are Not Used to Discriminate
- Preserve Civil Rights Protections and Halt Unrelated Rulemaking
- Ensure Funds are Targeted to Marginalized Students
- Ensure Oversight of Federal Funding
- Ensure Marginalized Students Have Access to Distance Learning
- Ensure Equal Educational Opportunity for Students with Disabilities, English Learners, Students Experiencing Homelessness, and Migrant Youth
- Ensure Students Have Access to Nutritional Supports
- Ensure Educators and Other School Staff are Safe and Protected
- Protect the Health, Well-Being, and Education of Children in Secure and Congregate Settings
- Cancel Student Loan Debt
- Maintain Access to Supports for College Students

Ensure Federal Funds are Not Used to Discriminate

Any legislation related to this public health crisis and economic recovery should include provisions to ensure that no person is excluded from participation in, denied the benefits of, or subjected to discrimination under the administration of programs and services funded by

federal COVID-19 response legislation based on non-merit factors such as (but not limited to) age, disability, sex (including sexual orientation, gender identity, and pregnancy, childbirth, and related medical conditions), race, color, national origin, English proficiency, immigration status, or religion, and ensure that fund recipients treat as valid all marriages that are valid under federal law.

Additionally, as national leaders you have a unique opportunity and responsibility to call for unity and to publicly denounce the increase in racist attacks and discrimination against the Asian American community generally, and Asian American students specifically, in the context of the novel coronavirus and COVID-19.[1]

Preserve Civil Rights Protections and Halt Unrelated Rulemaking

Congress should not take any action to change or weaken the protections provided to students under existing civil rights law, including the Civil Rights Act of 1964, the Education Amendments of 1972, the Rehabilitation Act of 1973, the Equal Educational Opportunities Act of 1974, the Americans with Disabilities Act of 1990, or the Individuals with Disabilities Education Act (IDEA). Additionally, Congress should not grant any additional authority to the Secretary of Education to change these laws or their requirements, or to change the Elementary and Secondary Education Act of 1965, the Higher Education Act of 1965, or the Carl D. Perkins Career and Technical Education Act of 2006. States and districts have the flexibility they need under current law to navigate this extremely difficult time and, as Secretary DeVos has also noted, there is no need to provide additional authority or to change or scale back protections.[2]

We urge members of Congress to call on the executive branch to halt any rulemaking process for any regulatory actions not directly responsive to the COVID-19 public health crisis, including a halt to the finalization of a Department of Education rule on Title IX related to the rights of victims of sexual harassment, including sexual assault,[3] a Department of Health and Human Services rule that seeks to dramatically undermine the Affordable Care Act's nondiscrimination provisions, and a Department of Agriculture rule weakening Supplemental Nutrition Assistance Program (SNAP) eligibility and benefits. It is reckless and coldhearted to take advantage of this current moment – when students and educators are focused on health, safety, and overcoming barriers to learning – to advance controversial and harmful policies.

Ensure Funds are Targeted to Marginalized Students

As decisions are made about how to distribute much needed supplemental funds to families, educators, schools, and communities, Congress should prioritize children and families in the greatest need. Prior to the COVID-19 public health crisis, public schools in the United States were among the most inequitably

[1] See, for example: https://d3n8a8pro7vhmx.cloudfront.net/ncapa/pages/89/attachments/original/1583935643/NCAPA_Letter_to_House_Leadership.pdf?1583935643 and https://drive.google.com/file/d/1iF6XYlk5XOjP_Sey_TYnfOZqMzMmLuXN/view?usp=sharing

[2] See: https://www2.ed.gov/documents/coronavirus/cares-waiver-report.pdf

[3] While this letter was being developed, the U.S. Department of Education finalized its rule on Title IX. See, for example, statements regarding this reckless and coldhearted action: https://civilrights.org/2020/05/06/department-of-education-betrays-sexual-assault-survivors/ and https://nwlc.org/press-releases/nwlc-responds-to-department-of-educations-gutting-of-protections-for-sexual-assault-survivors/

funded of any in the industrialized world[4] and state and local education funds were routinely used in a way that provided greater funding to school districts with a higher concentration of White children than of children of color.[5] Similar disparities can be seen in higher education with states and the federal government sending more funding to predominantly White institutions than Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions (MSIs).[6]

Urgency or simplicity in aid distribution should not be used as a justification for reinforcing longstanding inequities or allowing federal aid to displace funds owed to children by their state or community. There must be a clear mandate from Congress to prioritize low-income children, children of color, Native children, English learners, and other marginalized children and to include children in all supports without regard to their immigration status (or that of their parents) or their status as a justice impacted person. Additionally, the formula for distributing aid to institutions of higher education should target low-wealth public and non-profit institutions with high enrollments of low-income students, taking into account institutions that may have low Pell participation even though they have a large share of low-income students. Future legislation must clarify that the Department of Education was incorrect when it wrongly suggested that CARES Act emergency financial aid grants could not be provided to immigrant students, including undocumented students, or students without a high school diploma who are eligible for funds allocated through Title IV of the Higher Education Act (HEA) under Ability-to-Benefit alternatives. The Department's assertion is harmful to students and has no basis in the law Congress passed.[7] Given the scarcity of available resources, and the historical ways that for-profit institutions have exploited students (especially students of color),[8] these institutions should be excluded from all COVID-19 related federal funding.

Ensure Oversight of Federal Funding

As decisions are made about the expenditure of relief funds, stakeholders representing marginalized communities must be meaningfully engaged. It is imperative that Congress and the public have a clear understanding of how, where, and for whom funds are spent, both to inform decision making during this crisis, and to inform better practice in future decision making. Congress should insist on transparency and reporting that will demonstrate the degree to which funds advanced or undermined educational equity.

Ensure Marginalized Students Have Access to Distance Learning

School closures due to coronavirus have impacted at least 124,000 U.S. public and private schools and affected at least 55.1 million students.[9] For these children, in-person instruction is not an option and access to the Internet and Internet-connected devices is essential. Although physical school buildings have closed, children's need for continued education is unchanged. The COVID-19 public health crisis is happening in the context of gross racial inequities in access to the Internet and connected devices. According to a 2015 study, while 81 percent of White Americans and 83 percent of Asian Americans

[4] https://learningpolicyinstitute.org/sites/default/files/product-files/Investing_Student_Success_BRIEF.pdf
[5] See, for example, https://edtrust.org/resource/funding-gaps-2018/.
[6] See: https://www.gse.upenn.edu/pdf/gasman/FundingApproachesHBCUs.pdf
[7] See (for the Secretary's misinterpretation): https://www2.ed.gov/about/offices/list/ope/heerfstudentfaqs.pdf. And See (for Congress' direction regarding funds): CARES Act § 18004.
[8] See: http://civilrightsdocs.info/pdf/education/Gainful-Employment-Brief-Final.pdf
[9] See: https://www.edweek.org/ew/section/multimedia/map-coronavirus-and-school-closures.html

have home Internet, only 72 percent of American Indian/Alaska Natives, 70 percent of Latinos, 68 percent of African Americans, and 68 percent of Native Hawaiian/Pacific Islanders are connected at home.[10] For Native people living on American Indian reservations or other tribal lands, the barriers to access are even greater. Only 53 percent of Native Americans living on American Indian reservations or other tribal lands with a computer have access to high-speed Internet service.[11]

Differences in income across race and ethnicity do not explain the entirety of this digital divide. There is still a racial/ethnic digital divide even among persons in the lowest income quintile. Among those with annual family incomes below $20,000, 58 percent of these low-income White people have home Internet access, versus just 51 percent of Latino people and 50 percent of Black people in the same income bracket.[12] Viewing this problem specifically through the lens of children's access to high-speed Internet (the type of connection needed to engage in video chats, up/download materials), while 15 percent of all households with school-aged children lack access to high-speed Internet connections, for Black and Latino households with school-aged children, 25 and 23 percent of households lack that access.[13]

The availability of an Internet connection is of limited value if students lack access to a computer or tablet. Data show that Black and Latino people are more likely to rely on a smartphone for Internet access than are White people.[14] This racial disproportionality reinforces the need for funding to support the availability of additional computers and tablets. Congress should ensure that funds are available to equip families with sufficient connected devices to enable all students to participate in remote learning activities. Students with disabilities may need access to additional technology or specialized devices in order to remotely take part in the general curriculum alongside their nondisabled peers.

Students and their families, especially those who are low-income or of color, need Internet access and connected devices immediately. Congress should appropriate $3 billion per month for the duration of the COVID-19 emergency to an Internet benefit for low-income people that is adequate to meet the needs of multiple people sheltering-in-place while working and learning via video technology simultaneously[15] and additionally appropriate $2 billion for an Emergency Connectivity Fund, administered through the Federal Communications Commission's (FCC) E-Rate program, for schools and libraries for the duration of the COVID-19 emergency. Ensuring funds are available both through a program targeted based on individual family income and through a program targeted based on poverty levels in communities will help to overcome the myriad barriers facing children as they seek to continue their education in diverse settings across the country. Low-income college students must also be able to benefit from support for connectivity.

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[10] See: www.freepress.net/sites/default/files/resources/digital_denied_free_press_report_december_2016.pdf
[11] See: https://www.npr.org/2018/12/06/673364305/native-americans-on-tribal-land-are-the-least-connected-to-high-speed-internet
[12] See: www.freepress.net/sites/default/files/resources/digital_denied_free_press_report_december_2016.pdf
[13] See: https://www.pewresearch.org/fact-tank/2018/10/26/nearly-one-in-five-teens-cant-always-finish-their-homework-because-of-the-digital-divide/
[14] See: https://www.pewresearch.org/fact-tank/2015/04/30/racial-and-ethnic-differences-in-how-people-use-mobile-technology/
[15] See: https://civilrights.org/resource/leadership-conference-letter-affordable-broadband-needed-for-public-health-economic-security/

Children should not be expected to forgo their access to an education because of an unpaid bill.[16] Congress should ensure that service is available to children and their families and that previous inability to pay does not prevent a family from connecting to the Internet while schools are closed.

Congress should additionally ensure that support is available for educators and families to receive technical assistance and professional development so that they are able to access and use remote learning platforms (this may include how to use the devices, where to find help/troubleshooting if a device isn't working, how to stay secure online, etc.). We know that educators will continue to be the most important factor to student learning and that professional development, when well-designed and effectively implemented, leads to improvements in teacher practice and student outcomes. Professional development is especially relevant as many educators have not taught in the ways that the COVID-19 emergency has and will continue to demand. Special attention must be paid to ensure that information is in a language that parents understand and is accessible to parents with disabilities.

Internet connectivity enables students to access crucial supports beyond academic instruction. For students who are lesbian, gay, bisexual, transgender, and/or queer (LGBTQ), the ability to join virtual GSA (Gay-Straight Alliances or Gender and Sexuality Alliances) meetings not only allows them to remain connected to a network of peers, it also provides a venue to address barriers to educational achievement and well-being, such as experiencing cyberbullying.

In addition to providing more funding to enable Internet access as well as Internet-ready devices and technical assistance, Congress should ensure that students' privacy is protected while students are accessing distance learning. Education technology companies should limit their personal information gathering to only what is directly necessary and disable any surveillance functions that may accompany their remote learning platforms.[17] Students should not have to sacrifice their privacy to access an education.

Ensure Equal Educational Opportunity for Students with Disabilities, English Learners, Students Experiencing Homelessness, and Migrant Youth

Congress has an additional responsibility to ensure that students with disabilities, English learners, students experiencing homelessness (including LGBTQ youth who are more than twice as likely to experience homelessness when compared to their non-LGBTQ peers[18]), and migrant youth have access to remote learning. Congress should make funds available to support schools and school districts in meeting their obligations to students and ensuring equal educational opportunity.

As mentioned above, Congress must uphold and protect the core tenets of IDEA, ensuring that: districts continue to meet their obligation to provide a free, appropriate public education (FAPE) to students with disabilities and that parents maintain their right to be involved in all educational decisions and their right to due process. To assist districts in complying with the law and ensure students with disabilities have equal access, Congress should provide significant additional funds for IDEA, including providing funding

[16] See: https://in.chalkbeat.org/2020/4/13/21225502/unpaid-bills-put-free-internet-offers-out-of-reach-for-some-indianapolis-families
[17] See, for example: https://www.aclu.org/news/privacy-technology/those-free-remote-learning-apps-have-a-high-cost-your-students-privacy/
[18] See: https://truecolorsunited.org/wp-content/uploads/2020/01/LGBTQ-Youth-Homelessness-Research-Agenda-_-Final.pdf

to help offset the costs of compensatory education. Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs) provide critical assistance to families and should receive additional funding.

Congress should also provide $1 billion in supplemental funding through Title III of the Every Student Succeeds Act (ESSA) to meet the needs of English learners (ELs). Despite educators' best efforts during this crisis, it is proving difficult to provide high-quality online instruction for ELs due to lack of electronic devices, connectivity, digital curricula specifically designed for ELs, and teacher training for online instruction (especially when there may be a language barrier). Additional resources are needed now to meet the challenges of distance learning for ELs, and to prepare for the increased support EL students will need in the coming school year.[19]

Students experiencing homelessness face even greater barriers to Internet connectivity, connected devices, and special education and English learner services. Congress should provide dedicated funds to support schools and districts in connecting with and supporting children and families experiencing homelessness. In addition to children who are experiencing homelessness, college students who have been required to vacate their campus housing may now also be experiencing homelessness. Assistance should be available through emergency grants and access to campus housing (without compromising health and safety) to ensure that students have a place to go, that includes access to distance learning.

Congress should provide increased funding for Title I, Part C of ESSA to help meet the unique needs of migrant children, including ensuring that they can enroll in and receive services from a new school district when they move to a new area, even when the doors are closed. It is also critical to ensure the children of migrant farmworkers have a safe place to go that is supportive of ongoing learning so that they don't end up in the fields with their parents. Immigration enforcement during this crisis must be halted so that kids normally protected in school or Head Start are protected while studying in their new location.

Ensure Students Have Access to Nutritional Supports

For millions of low-income children, school is a critical source of nutrition. With school buildings closed, education leaders have found creative solutions to ensure that children and their families can safely access meals.[20] Congress should support these creative solutions and allow school districts to be reimbursed for transportation costs associated with meal delivery. Whether an individual child is unable to receive a meal directly from a school because of their own health or that of someone in their household, or an entire community is unable to travel to a central meal distribution location, Congress should ensure that transportation costs do not create a barrier to nutrition. Additionally, Congress should ensure that children do not face barriers to school meals because of their own immigration status or that of their family members.

The Pandemic Electronic Benefit Transfer (P-EBT) program is an important opportunity to provide nutritional resources to families who have lost access to free or reduced-price school meals. This program should be extended through at least the summer to continue assisting families.

The Supplemental Nutrition Assistance Program (SNAP) continues to be a crucial source of support for children's learning and development. Congress should boost the maximum SNAP benefit by 15 percent

[19] See, for example: http://publications.unidosus.org/handle/123456789/2043
[20] See: https://www.npr.org/2020/03/20/818300504/schools-race-to-feed-students-amid-coronavirus-closures

The Leadership Conference

and increase the minimum monthly benefit from $16 to $30. Food and Nutrition Services (FNS) must also have the authority to issue Disaster SNAP (D-SNAP) benefits and grant eligibility and work requirement waivers to public benefit programs like SNAP and reduce other administrative barriers so college students can connect and remain enrolled in these programs even while schooling is disrupted.

Ensure Educators and Other School Staff are Safe and Protected

In order to protect school employees and the students and families they interact with when preparing and distributing meals to students, preparing and delivering educational materials and supplies to students, ensuring the security, clerical, and technological needs of schools are met, and cleaning and disinfecting school buildings, at least $56 million is needed for Personal Protective Equipment (PPE) for Education Support Professionals (ESPs) and other school staff interacting with the community, in addition to proper training and guidance on how to use them to mitigate disease transmission.

Ensure Parents' and Guardians' Civil Rights Are Protected and They Have the Information They Need

Parents and guardians who have limited English proficiency and/or who have a disability may need additional supports or accommodations to meaningfully communicate with their child's school.[21] Congress should provide resources that assist schools and districts in meeting these ongoing legal obligations and help to ensure that information about the availability of school meals, the process for participating in distance learning (including support in adjusting to unfamiliar technology or accessing the Internet and connected devices), and any other vital information is available to all families.

Protect the Health, Well-Being, and Education of Children in Secure and Congregate Settings

As noted by the National Association of School Psychologists[22] and public health researchers[23], the COVID-19 crisis and related long-term school closures are presenting additional challenges to the mental health and well-being of all children. Even prior to the pandemic, LGBTQ youth have been found to be at significant increased risk for depression, anxiety, substance use, and suicidality. These risks are even more pronounced among youth who are transgender and/or nonbinary. Thus, LGBTQ youth may be particularly vulnerable to negative mental health impacts associated with the COVID-19 pandemic.[24]

Secure and congregate care settings have long posed a threat to the health and well-being of young people[25] and – given their particular risk of contracting COVID-19[26] – they should be released as quickly as possible with the supports necessary to re-engage in education and receive health and mental health supports from home. Additional dedicated funds under Title I Part D of the Every Student Succeeds Act

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[21] See: https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf
[22] See: https://www.nasponline.org/resources-and-publications/resources-and-podcasts/school-climate-safety-and-crisis/health-crisis-resources/helping-children-cope-with-changes-resulting-from-covid-19
[23] See, for example: https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642(20)30109-7/fulltext
[24] See: https://www.thetrevorproject.org/2020/04/03/implications-of-covid-19-for-lgbtq-youth-mental-health-and-suicide-prevention/
[25] See, for example: https://www.apa.org/pubs/journals/features/ort-0000005.pdf and https://www.aecf.org/resources/the-dangers-of-detention/#
[26] See: https://www.usatoday.com/story/news/politics/2020/04/27/coronavirus-juveniles-risk-covid-19-spreads-facilities/3000637001/

should be made available to ensure continued access to education, including special education services, for children who are returned to their homes and for those who cannot be released.

For the small number of youth who must be in an out-of-home congregate care setting, ensure that youth and their families receive written and verbal communications on COVID-19, prompt access to medical care, including testing for the coronavirus, PPE, continued access to education, including special education, services, continued access to legal counsel (through in-person visitation or teleconferencing), continued access to family members and supportive individuals (through in-person visitation or teleconferencing), and access to unlimited and free phone/video calls to family members and supportive individuals.

Cancel Student Loan Debt

Even prior to the COVID-19 public health crisis, student debt had become a significant drag on the national economy, weighing the heaviest on African Americans, Latinos,[27] and women.[28] That weight is likely to be exponentially magnified given the disproportionate toll COVID-19 is taking on both the health[29] and financial lives of people of color[30] and women.[31] In order to minimize the harm to the next generation, ensure students are able to use the degrees they have earned, and limit the expansion of the racial and gender wealth gaps that hinders students' educational opportunity, it is crucial that Congress take bold action to protect student loan borrowers and cancel existing debt. Broad universal debt forgiveness should be provided for all federal student loan borrowers (including PLUS loan borrowers) with a guaranteed minimum of $30,000 to ensure the benefits of cancellation reach the lowest income and most vulnerable borrowers.

The federal government should pay borrowers' payments each month so that they can continue to be eligible for Public Service Loan Forgiveness and count an uninterrupted year of service for the purposes of Perkins loan cancellation (similar to the process applied to the TEACH Grant Program in previous legislation). All collections on federal student loans, including offsets against or seizures of Social Security benefits and other federal or state payments, tax refunds, wages, and other forms of involuntary collection should cease. Student debt suspension and cancellations provided in previous legislation should be expanded to commercially held FFEL loans and Perkins Loans held by institutions. Students forced to withdraw due to the pandemic, whose schools or programs closed, or who were defrauded by schools such as Corinthian or ITT Tech and have pending claims should also receive full relief without having to navigate bureaucratic red tape, and Congress should ensure oversight of Department of Education loan collection activities.[32]

Maintain Access to Supports for College Students

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[27] See, for example: https://www.responsiblelending.org/research-publication/quicksand-borrowers-color-student-debt-crisis
[28] See, for example: https://www.aauw.org/app/uploads/2020/03/DeeperinDebt-nsa.pdf
[29] See, for example: https://www.urban.org/urban-wire/covid-19-racial-health-disparities-highlight-why-we-need-address-structural-racism
[30] See: https://www.npr.org/2020/04/22/840276956/minorities-often-work-these-jobs-they-were-among-first-to-go-in-coronavirus-layo
[31] See: https://www.nytimes.com/2020/04/18/us/coronavirus-women-essential-workers.html and https://www.businessinsider.com/women-could-be-most-financially-impacted-by-the-coronavirus-2020-4
[32] See: https://www.washingtonpost.com/education/2020/05/01/devos-lawsuit-student-loans/

Along with providing high-quality online education, require institutions to continue to provide access to financial aid counselors, academic counseling, tutoring, health care, and other essential supports, along with information about public benefits and unemployment insurance. These supports help students with low incomes, students of color, first-generation college students, immigrants, adult learners, student parents, and students impacted by the criminal justice system to succeed in school and provide them with economic security. Congress should also extend work authorization for DACA-eligible students, Temporary Protected Status, and Deferred Enforced Departure recipients to help to mitigate economic hardship on their families due to layoffs and job losses.

As Congress continues to respond to the massive upheaval and disruption to the lives of families and communities across the country, it is vitally important that those who were most marginalized before this current public health crisis and are bearing the brunt of the crisis itself are at the center of any and all responses – especially with regard to education. Without a doubt, COVID-19 will have lasting effects for many decades to come. There is an opportunity and a responsibility to minimize the harm to the next generation. We urge you to consider these recommendations and look forward to the opportunity to continue to communicate with you about civil rights, educational equity, and the COVID-19 public health crisis. If you have any questions, please contact Leadership Conference Director of the Education Equity Program, Liz King, at king@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
ACCESS
Alianza Nacional de Campesinas
American Association of University Women (AAUW)
American-Arab Anti-Discrimination Committee (ADC)
Arab American Institute (AAI)
Asian Pacific American Labor Alliance, AFL-CIO
Association of University Centers on Disabilities
Augustus F. Hawkins Foundation
Bazelon Center for Mental Health Law
Campesinos Sin Fronteras
Center for Law and Social Policy (CLASP)
Center for Responsible Lending
Centro de los Derechos del Migrante, Inc.
Children's Defense Fund
Clearinghouse on Women's Issues
Disability Rights Education & Defense Fund (DREDF)
Equal Justice Society
Equality California
Farmworker Association of Florida
Girls Inc.
GLSEN
Hispanic Federation
Human Rights Campaign

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Japanese American Citizens League
Justice for Migrant Women
League of United Latin American Citizens
Learning Policy Institute
MALDEF
Matthew Shepard Foundation
Multicultural Efforts to end Sexual Assault (MESA)
Muslim Public Affairs Council (MPAC)
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Alliance for Partnerships in Equity (NAPE)
National Association of Councils on Developmental Disabilities
National Center for Learning Disabilities
National Center for Lesbian Rights
National Center for Special Education in Charter Schools
National Center for Transgender Equality
National Center for Youth Law
National Consumer Law Center (on behalf of its low-income clients)
National Council of Asian Pacific Americans
National Council of Jewish Women
National Disability Rights Network
National Fair Housing Alliance
National Indian Education Association
National Organization for Women
National Urban League
National Women's Law Center
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