

**Recommendations for the Obama-Biden Transition Team:
Asian Americans and Educational Equity**

Submitted by:
Asian American Legal Defense and Education Fund (AALDEF)
and the
National Asian American Education Advocates Network

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I. Preamble

Public education has traditionally paved the road to a better life for working class immigrant and native-born Americans. However, in recent times, our public education system has lurched dangerously toward punitive accountability measures that only marginalize and push out struggling students. The Asian American Legal Defense and Education Fund (AALDEF) and the National Asian American Education Advocates Network (NAAEA) present this blueprint of policy changes needed to set our troubled public schools back on track.

Founded in 1974, AALDEF is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. In addition to educational equity and youth rights, AALDEF focuses on various critical issues affecting Asian Americans – such as immigrant rights, civic participation and voting rights, economic justice for workers, language access to services, Census policy, affirmative action, and the elimination of anti-Asian violence, police misconduct and human trafficking.

The NAAEA Network is comprised of Asian American youth groups, youth organizers, and youth advocates, and is dedicated to promoting the educational rights of Asian American young people. The following NAAEA members have signed on to this position paper:

Allies Working with Asian Pacific American Youth Network, Boston, MA
Asian American LEAD, Washington, DC
Asian Pacific Islander Youth Promoting Advocacy & Leadership, Oakland, CA
Center for Pan Asian Community Services, Atlanta, GA
Chinese for Affirmative Action, San Francisco, CA
Coalition for Asian American Children and Families, New York, NY
Detroit Asian Youth Project, Detroit, MI
Hmong American Partnership, St. Paul, MN
Khmer In Action, Seattle, WA
MQVN Community Development Corporation, New Orleans, LA
Providence Youth Student Movement, Providence, RI
Southeast Asia Resource Action Center, Washington, D.C.
Vietnamese American Young Leaders Association, New Orleans, LA
*Washington Asian Pacific Islander Families Against Substance Abuse,
Seattle, WA*

II. Introduction and Executive Summary

The vast income and ethnic diversity of the Asian American community makes it challenging to neatly encapsulate how our students fare in public schools. Some excel academically and fill the ranks of elite magnet schools and top undergraduate colleges. Others struggle because they do not know English, are racially harassed and profiled, or are forced to drop out for financial or other reasons. Often, these students do not receive the support they need due to a common misconception that most Asian American students do relatively well in school. Known as the “model minority” myth, this stereotype eviscerates vast differences in the actual achievement and needs of Asian American students.

In reality, nearly one out of four (24%) Asian American students is an English Language Learner (ELL), compared to only two percent of non-Hispanic black and one percent of non-Hispanic white children. Many Asian American students struggle because they come from households with little or no formal education. Sixty percent of Southeast Asian parents have less than three years of formal education. And, although 42.4% of all Asian Americans attain a college degree, only 16% of Vietnamese Americans and 5% of Cambodian Americans and Laotian Americans attain a college degree. Similarly, although 13.5% of Chinese Americans live below the poverty line, 37.8% of Hmong Americans and 29.3% of Cambodian Americans live below the poverty line.

Many Asian American students – especially those from low income, immigrant families – face similar challenges as other students of color, poor students and immigrant students. These challenges stem from a number of interlocking conditions in our public education system. These include an overemphasis on high-stakes testing, the school to prison pipeline, and inadequate academic support and materials in urban schools. As a result, less advantaged students must struggle even harder to attain comparable educational opportunities and outcomes as their more privileged counterparts.

Our public schools must give every American student the tools and resources necessary for academic success. Our schools are institutions of learning, and they should be held to high standards and expectations, coupled with the funding and resources to meet those expectations. The new presidential administration has a unique opportunity to revolutionize the public education system and transform our schools into institutions that truly give students and parents what they need. In this paper, AALDEF and NAAEA set forth our top legislative, executive and judicial priorities for meaningful education reform. We look forward to working with the new administration to implement these important policy changes.

Legislative priorities

- Deemphasize high stakes testing and emphasize multiple forms of assessment.
- Expand support for ESL, bilingual education and dual language programs.
- Increase funding for under-resourced Asian communities to improve school conditions, academic support and dropout prevention.
- Dismantle the school to prison pipeline.
- Disaggregate public education data by ethnicity, income, English Language Learner status, and other categories.
- Expand undocumented students' right to public secondary and higher education.

Executive priorities

- Affirm a commitment to diversity, language access and equal educational opportunities for students.
- Support public education and end the privatization of our education system.
- Hire staff at all levels who are supportive of and knowledgeable about civil rights.
- Collect and disseminate public education data that is disaggregated by ethnicity, income, English Language Learner status, and other categories.
- Issue executive orders and take other proactive steps to protect and promote students' public education rights.

- Vigorously enforce civil rights through Department of Justice and Department of Education Office For Civil Rights investigations and litigation.

Judicial priorities

- Appoint a diverse group of individuals to all levels of the judiciary who are supportive of and knowledgeable about civil rights.
- Affirm support for affirmative action and school integration.
- Advocate for the expansion of legal remedies for civil rights violations (e.g., disparate impact litigation under Title VI).

III. Legislative Priorities

a. Elementary and Secondary Education Act (ESEA) / No Child Left Behind Act (NCLB) Reauthorization

i. Devalue High Stakes Testing And End School Sanctions

Our public school system, currently anchored by the No Child Left Behind Act (NCLB), focuses unduly on standardized testing. NCLB had the laudable but challenging goal of closing the achievement gap between students of color and white students and improving all students' academic achievement. However, it is based on a standards-based philosophy that punishes schools that fail to meet impossibly high test standards. This is not what our youth need, and especially students with particular needs – like English Language Learners (ELLs) and immigrants and refugees from lower income communities. Solutions to the challenges of public education are better found by providing resources rather than imposing sanctions.

1. Emphasize Multiple Forms of Assessment

In reauthorizing the Elementary and Secondary Education Act (ESEA), which has been subsumed into NCLB, the new administration should foster a transition away from high stakes testing toward multiple forms of assessment. Testing should be only one of a variety of ways to assess students and curricula, identify groups with special needs, and inform educational priorities. Multiple forms of assessment, including portfolio assessments, classroom grades and coursework, teacher recommendations, and other measures of student achievement are more meaningful than a single high stakes standardized test.

2. Develop and Utilize Native Language Assessments

ESEA must also emphasize the development of native language assessments for ELL populations. When testing of ELLs is mandated, native language assessments measure substantive knowledge more accurately than English language tests.¹

¹ However, it should be noted that it is dangerous to rely too much on even native language testing when ELLs have not been taught substantive content in a language they understand.

ESEA should use population triggers at the *school district* or *county* (rather than *statewide*) level to determine when to develop native language testing instruments. *Absolute numerical thresholds* in addition to *population ratios of school districts or counties* are the best gauge of language needs. Nationally, citywide ELL demographics relative to statewide populations indicate that Asian American ELL students (as well as most ELLs) are highly concentrated in particular urban districts in geographically discrete pockets.

Recent reauthorization proposals have recommended mandating native language assessments when 10% or more of a *state's* ELL student population speak the same native language. Such a statewide trigger would leave many vulnerable Asian American populations unserved. Applying this trigger across all 50 states, only one state – Minnesota – would be required to create an Asian language assessment (for its Hmong speaking population).

By contrast, a trigger using 10% of a school district's or county's student ELL population would include many Asian languages across the country. Among these are:

- Chinese in New York City (NY), San Francisco (CA) and Quincy (MA).
- Vietnamese in Seattle (WA), Santa Clara (CA), and Quincy (MA).
- Khmer (Cambodian) in Lowell (MA).
- Hmong in Fresno (CA) and Sacramento (CA).

b. English Language Learner Student Programs

i. Expand English As A Second Language (ESL), Bilingual Education, And Dual Language Programs

Federal mandates must give states the incentive to develop, implement, and maintain funding for bilingual programs where large ELL populations exist. Research shows that bilingual education is much more effective than English-only approaches in promoting academic achievement and helping ELLs grasp substantive content. Nearly half (47%) of all Asian Americans ages 5 to 17 speak an Asian or Pacific Islander language. Such students should have the opportunity to continue their education in their native languages and in English. Bilingual education gives them a better chance to succeed academically and their bilingualism will inevitably be an asset in our global society.

Despite Asian American ELLs' need for bilingual education, very few bilingual education resources exist in Asian languages. While there are not nearly enough bilingual programs in Spanish, even fewer are offered in Asian languages. For example, in New York City, 66 dual language schools teach curricula in both English and another language for the benefit of both ELLs and non-ELLs. However, out of these 66 schools, disproportionately few focus on Asian languages. Currently, there are only 4 Chinese language schools and 1 Korean language school, although Chinese and Korean speaking ELLs collectively constitute over 12% of New York City's ELL population.

For one Vietnamese American teenager in Georgia, the lack of ELL programs created a dire educational void. After arriving in the U.S. as a refugee at age ten, he

was still in seventh grade six years later at age sixteen. Struggling with limited English skills and often harassed because of his age, he dropped out the same year. Without institutional support to learn English, he also found himself unable to pursue his GED, qualify for a job training program, or even find a regular job. In the two years since he dropped out, this teenager has been exposed to risky behaviors such as alcohol and drug use and gang affiliation.²

Finally, federal mandates must encourage schools to improve the processes for identifying when students become proficient in English. Such students must be identified sooner so they can be transferred into the appropriate mainstream classes. Hmong families in Minnesota and Cambodian families in Philadelphia report that their students remain in ELL classes longer than needed and, as a result, miss opportunities for more rigorous instruction.³

ii. Emphasize Teacher Hiring, Certification And Training

The new administration must increase resources for teacher training to include ELL teaching methodology and multicultural awareness. Such training is particularly essential in school districts or counties with high or growing ELL populations. Although ELLs are the fastest growing group in kindergarten to 12th grade education, only 2.5% of teachers nationwide have received appropriate professional development for the instruction of ELLs.

Furthermore, ESL and bilingual teacher shortages are pervasive throughout the country. In some cases, a single ESL teacher must work with up to 80 students of varying grade levels and language abilities. Other teachers must work with multiple schools in a single district, only visiting each school once a month. For example, in the 2000-01 school year, Massachusetts had only 1 certified ESL teacher for every 66 ELLs, while Minnesota had only 1 certified ESL teacher for every 51 ELLs and 1 certified bilingual teacher for every 530 ELLs. Faced with a severe shortage of ESL teachers, some schools have resorted to assigning teachers without ESL training to ESL classes.

Teachers who are bilingual in Asian languages are in particularly high need. California public schools have only 1 Vietnamese bilingual teacher for every 662 Vietnamese speaking students, 1 Hmong bilingual teacher for every 1113 Hmong speaking students, and 1 Khmer (Cambodian) bilingual teacher for every 21,000 Khmer speaking students.

In New Orleans, Vietnamese American high school students report that their schools have very few, if any, Asian American teachers and staff. Even worse, the students describe some current teachers and principals as “racist,” and decry how they give preferential treatment to certain students.⁴ Based on these accounts, the schools these students attend would gain much from increased multicultural awareness in teacher certification and training.

² Anecdote from the Center for Pan Asian Community Services, Atlanta, Georgia.

³ Anecdote from the Southeast Asia Resource Action Center, Washington, D.C.

⁴ Anecdote from the Vietnamese American Young Leaders Association, New Orleans, Louisiana.

Asian American high school students in New York City echoed the same need. They indicate that they have been harassed at school, and that school staff chronically fail to address harassment. One student informs us that Pakistani, Bangladeshi, and Afghani students at her school are particularly vulnerable to harassment, and that teachers generally do not intervene in incidents of harassment.⁵ The New York City Department of Education recently issued a regulation expanding staff training on diversity and harassment, which hopefully will ameliorate this problem.

iii. Provide Interpretation And Translation To Better Serve ELL Students

Federal mandates must also emphasize the expansion of interpretation and translation services for ELLs. Under Title VI of the Civil Rights Act of 1964, school districts must provide ELLs with equal educational opportunity and language assistance. Specific interpretation and translation mandates vary with the number and proportion of ELLs in a district as well as available resources. Accordingly, the new administration must maximize interpretation and translation resources available to school districts.

In order to fully access school curricula, ELLs deserve interpretation and translation of crucial communications such as, but not limited to, academic standards, report cards, graduation requirements, discipline codes and notices, school handbooks, and attendance policies. More work is needed to realize this goal for Asian American ELLs, especially those in emerging communities with high rates of population growth.

In Bensonhurst, Brooklyn, where Chinese, South Asian and other immigrant populations have swelled in recent years, the lack of interpretation and translation services for students exacerbated problems concerning ELL services and anti-Asian harassment at Lafayette High School. New immigrant students could not communicate with their academic counselors or report harassment to staff and security officers. Conditions deteriorated to the point that the United States Department of Justice commenced an investigation, culminating in an unprecedented consent decree overseeing the school's treatment of ELLs and Asian students.

c. Limited English Proficient Parent Outreach

i. Foster Interpretation and Translation Services for Limited English Proficient Parents

The new administration must expand resources for parental interpretation and translation as well, especially in school districts or counties with large or growing ELL and immigrant or refugee populations. Robust parental involvement is needed to promote the most effective learning environment for Asian American students. A high rate of limited English proficiency among Asian American parents makes meaningful parent engagement a daunting challenge. According to the 2000 census, 46% of all Vietnamese households are linguistically isolated, as are 41% of

⁵ Anecdote from the Coalition for Asian American Children and Families, New York, New York.

Korean households and 31.5% of Chinese households. By contrast, only 4.1% of all United States households are linguistically isolated.

Title VI of the Civil Rights Act of 1964 mandates equal access for limited English proficient parents. The Department of Education Office for Civil Rights' guidelines require school districts to "adequately notify national origin minority group parents of school activities which are called the attention of other parents." The guidelines specifically indicate that such notice "may have to be provided in a language other than English."

As such, the federal government must allocate sufficient resources to enable widespread translation of important school documents into the native languages of limited English proficient parents. Verbal interpretation must also be available for and easily accessible to such parents. School districts must also take the initiative to actively outreach into Asian American and other ethnic enclaves. Finally, adult literacy and ESL programs are needed to provide parents the necessary skills to foster a healthy educational environment for their children.

For one Southeast Asian refugee family in the greater Atlanta area, adult literacy and ESL enabled the parents to get involved in their children's schooling. All of the adults in the family were hampered by limited English ability until they enrolled in ESL classes at a local Asian American community organization. These language classes, coupled with parenting and cross-cultural communication training, provided much needed support. Now, the parents actively participate in school activities, and even occasionally volunteer their time. Their children's academic performance has also improved accordingly.⁶

ii. Develop Cultural Competency

The new administration must give school districts initiative to provide needed services and conduct outreach to Asian American communities in a culturally appropriate manner.

Vietnamese American high school students in New Orleans report that their parents feel too intimidated to visit their schools. They are afraid to ask questions and are unable to get involved in their children's education. The lack of translation and interpretation services has erected a barrier at the door of the school. The students also say their parents are too busy working and cannot attend parent-teacher conferences, which are usually scheduled on weekdays.⁷ To meaningfully involve immigrant communities, school districts must adopt new modes of outreach that consider and address specific obstacles faced by immigrant and refugee parents.

d. Data Disaggregation Legislation

The new administration should encourage the passage of legislation requiring state departments of education to collect and disseminate comprehensive data that is disaggregated by ethnicity, native language, socioeconomic status, ELL status,

⁶ Anecdote from the Center for Pan Asian Community Services, Atlanta, Georgia.

⁷ Anecdote from the Vietnamese American Young Leaders Association, New Orleans, Louisiana.

and ELL program type. Such data must be available in a variety of areas including, but not limited to, dropout and graduation rates, school discipline statistics, and test and achievement data.

The lack of disaggregated data masks vast differences among Asian American students, which break down along ethnic and income lines as well as ELL status. Without data to document these differences, it is extremely challenging to identify which groups of Asian American students need additional support and resources.

The disaggregated data that *is* available reveals that Asian American students' achievement and needs vary by ethnicity, class, and ELL status. For example, the 2000 Census found that 42% of children of Vietnamese immigrants in pre-kindergarten to 5th Grade are ELLs, 41% are low-income, and 26% have parents that lack high school degrees. Among children of Korean immigrants, 24% are ELLs, 26% are low-income, and only 3% have parents that lack high school degrees. Similarly, the 1999 college attainment rate for all Asian Americans was 42.4%. By contrast, it was 16% for Vietnamese Americans and approximately 5% for both Laotian and Cambodian Americans.

e. Support for Under-Resourced Asian American Communities

i. Institute More Dropout Prevention Programs

Aggregated data collection and the “model minority” myth obscure the fact that certain Asian American students are at high risk of dropping out. For example, in Boston, the attrition rate of low-income Asian American students is higher than that of the general population, meaning that they are less likely to graduate in four years than the general population.

An increase in dropouts is also an unintended side effect of high stakes testing and standards-based accountability measures. Concerned that such students will drag down test scores, some schools allow struggling students to quietly drop out – or even intentionally push them out. They are forced into General Educational Development (GED) programs, allowed to drop out with little or no intervention, or expelled under questionable circumstances.

ELLs and students from lower income ethnic enclaves (including many Asian American immigrant and refugee communities) are at particular risk of dropping out or being pushed out. These students are often truant and no intervention is provided before they are pushed out of school. For example, in Lowell, MA, one Cambodian student with a serious health condition and medication that induced dizziness and drowsiness was pushed out after a series of absences, even though she requested a modified school schedule. Another student, who had a baby, missed over 50 days of school; however, when she actively sought out tutoring and a modified schedule, she was denied.⁸

To adequately address this phenomenon, we must create and fund effective intervention programs that identify truant students *before* they drop out and provide

⁸ Anecdote from the Asian American Legal Defense and Education Fund, New York, New York.

intensive support. Struggling and truant students often need case management to keep them on track, and their parents must be notified of attendance problems in languages they understand. Finally, ELLs and other special needs students require directed resources and research-supported programs (like those discussed here) to help them attain their highest potential.

ii. Provide More Academic Support In Schools and Community-Based Organizations

Many Asian American students, particularly Southeast Asians, struggle to access academic support in their schools. Community-based organizations frequently provide tutoring, academic assistance, and other services to Asian American students because their needs are not met in school. The federal government should help school districts develop capacity to better serve these students. This includes training staff about the model minority myth and the differences between Asian subgroups, as well as developing and raising money to provide services in a linguistically appropriate and culturally competent manner. Finally, community-based organizations need additional funding to continue and expand their academic support services.

In Philadelphia, local budget cuts have impeded one community-based organization's ability to provide much needed after school programming. The Cambodian Association of Greater Philadelphia runs a successful after school program serving a diverse population drawing from the Southeast Asian and African American communities. When funding cuts and the withdrawal of a local funding consortium resulted in a net loss of \$44,000, the Cambodian Association had to downsize the program from thirty students to twenty-five and begin charging a participation fee. Now, the city is pressuring the program to expand its hours without increasing funding.⁹

iii. Increase Funding For School Materials, Safe Facilities, Qualified Teachers and Smaller Class Sizes

Schools must provide students with basic educational necessities and foster a conducive learning environment. These basics include adequate school materials, safe and healthy school facilities, qualified teachers, and smaller class sizes. Poorly funded schools are often unable to provide their students with school materials, such as textbooks. In many classrooms, textbooks are woefully out of date. In others, there are simply not enough textbooks for each student.

A student's physical learning environment is also an important factor to educational success. Many public schools are slowly deteriorating, exposing students to unhealthy and even hazardous conditions. Across California, public schools suffer from rodent and insect infestations and lack functioning bathroom facilities, safe water, and heating. Schools need resources to fix structural problems and ensure that students have a safe and comfortable learning environment.

In *Williams v. California*, a lawsuit filed in 2000, advocates and community groups sued the state for failing to provide basic educational necessities, such as

⁹ Anecdote from the Cambodian Association of Greater Philadelphia, Philadelphia, Pennsylvania.

adequate school facilities and learning materials. A settlement of the case in 2004 mandated higher standards, additional funding, and greater accountability to improve school facilities and materials for students. The federal government must ensure that schools have funding to provide students with basic educational necessities such as safe facilities and adequate school materials.

Closures of “failing” urban schools, along with a growing student population, has led to severe overcrowding in many urban schools. In New York City, larger struggling high schools are being gradually closed and replaced by small schools. This has led to severe overcrowding in remaining larger high schools because the new small schools cannot accommodate all the students displaced from large school closures. Students of color, poor students, and immigrant students have been disproportionately pushed into overcrowded schools. When schools are closed, districts must open new schools providing the same number of – if not more – seats for displaced students. The districts must also take care to ensure that the new schools have the capacity to serve students with specific needs – like ELLs and special education students.

Schools must also have adequate funding to hire more teachers and ensure that all teachers are highly qualified. Overcrowding is a severe problem in many schools. In California, one out of every three students attends an overcrowded school. As discussed above, the replacement of large high schools in New York City with small schools has resulted in overcrowding throughout the city’s remaining large high schools. School districts must hire more teachers to relieve overcrowded classrooms and provide a good learning environment.

Finally, in addition to hiring more teachers, school districts must also ensure that its teachers are well qualified to teach. Students in schools with high numbers of low-income and students of color are more likely to be taught by an inexperienced or an “out-of-field”¹⁰ teacher. This administration should ensure that school districts have the resources to hire effective, qualified teachers in high-need schools.

In Chicago, a Korean American high school student reports that classrooms are extremely overcrowded in his school building, which was not meant to house over 1,600 students. One class with nearly fifty students is so full that some students sit on the floor. Students are constantly distracted by these conditions, and it is nearly impossible for the teacher to teach.¹¹

Chinese American students from a New York City high school report similar problems. Due to the impending closure of another nearby school, their school is gradually becoming more crowded. As a result, hallways and stairwells are constantly crowded, especially during “free periods” when students do not have class. To make matters worse, the students observed an increase in general unruliness and problems with school staff’s ability to maintain order.¹²

¹⁰ “Out-of-field” refers to a teacher who lacks a college major or minor in the field s/he is teaching. (Teacher Quality Report)

¹¹ Anecdote from the Korean American Resource & Cultural Center, Chicago, Illinois.

¹² Anecdote from the Coalition for Asian American Children and Families, New York, New York.

f. The School to Prison Pipeline

i. Reduce the police presence in our schools

The “school to prison pipeline” is the increasingly close relationship between our public schools and the juvenile justice system. It pushes youth into the juvenile justice system, effectively denying them meaningful access to a public education. The new administration must do its best to break down the school to prison pipeline. Instead, it must fund school intervention programs that encourage schools to create positive learning environments rather than rely overly on punitive measures.

One reflection of the increasing interconnectedness between our education and juvenile justice systems is a marked increase in armed police presence at many public schools. The police presence in our schools has contributed to an increase in student arrests and prosecutions. However, there is little or no evidence suggesting that it actually makes schools safer or curbs disruptive behaviors. Some school districts also collaborate with police departments to pinpoint students who are suspected of deviant behavior *before* criminal incidents occur. These collaborations, while intended to make schools safer, simply lead to more arrests, suspensions, and expulsions and deprive students of their education.

Among American high school students in Detroit report that they are constantly stopped, questioned, and even physically harassed by police officers at their schools. They also report that police conduct random classroom and locker checks, and that school staff unduly refer problems to the police.¹³ Such policing on school premises creates an unwelcoming environment for students and interferes with their ability to view schools as institutions of learning.

ii. Eliminate Zero Tolerance Discipline Policies

“Zero tolerance” policies remove school administrators’ traditional discretion in school disciplinary matters, mandating strict penalties that fail to take into account underlying circumstances. Since the 1980s, zero tolerance policies and mandatory school discipline have emerged as a way to make schools safer and protect students. Once limited to serious violations like bringing weapons to school, zero tolerance policies now apply to relatively trivial conduct like disrespect or disruption. Zero tolerance policies have almost *doubled* the number of out-of-school suspensions each year. From 1974 to 2000, it is estimated that out-of-school suspensions increased from 1.7 million to 3.1 million suspensions each year.

There is no evidence that zero tolerance policies alone are effective in preventing violence or changing behaviors. They have, however, led to a large increase in the number of suspensions, expulsions, and criminal arrests of youth, often for minor offenses. Instead of fostering zero tolerance policies, the new administration should provide schools with concrete incentives to create supportive intervention programs.

¹³ Anecdote from the Detroit Asian Youth Project, Detroit, Michigan.

iii. Decrease Reliance On Disciplinary Alternative Schools

Alternative schools are promoted as effective intervention options for students with behavioral or disciplinary problems. In reality, alternative schools frequently fail to provide students with a meaningful education. These schools are often not held to the same accountability standards as other public schools. Generally speaking, students who attend alternative schools are ill-prepared to return to regular schools. Even those students who excel in the alternative schools may face an uphill battle returning to regular schools.

Like relying on armed police officers and overly punitive zero tolerance policies, warehousing “problem” students in disciplinary alternative schools feeds the school to prison pipeline. The federal government must instead focus on funding supportive intervention programs, like Positive Behavioral Interventions and Supports, described below.

iv. Support the Positive Behavior for Effective Schools Act

Positive Behavior Interventions and Supports (PBIS) is a term of art encompassing a variety of proactive methods that promote positive behaviors and constructive interventions. For example, PBIS methods stress counseling and mediation, rather than disciplinary sanctions. PBIS has already been implemented in several large school districts around the country.

The Positive Behavior for Effective Schools Act would allow schools to use Title I funds to implement evidence-based intervention programs, including PBIS. The new administration should support the passage of the Positive Behavior for Effective Schools Act.

g. Establish Undocumented Students’ Right To Higher Education

i. Pass The DREAM Act

Children account for 1.8 million (or 15%) of the roughly 12 million undocumented immigrants living in the United States. Approximately 13% of undocumented immigrants are from Asia. Most undocumented immigrant children came to the U.S. at a very early age and have grown up in American society.

Only 5-10% of all undocumented high school graduates go to college. Barriers to higher education severely limit undocumented students’ ability to pursue more skilled and higher-paying jobs. The Development, Relief and Education for Alien Minors (DREAM) Act would provide undocumented high school students with a high school diploma (or its equivalent) the opportunity to obtain legal permanent status by going to a 2- or 4-year college. The DREAM Act would also create incentives for undocumented students to complete high school and continue on to higher education. The new administration must support the DREAM Act, which would throw open the doors of higher education and provide a path to citizenship for undocumented students.

ii. Support Undocumented Students' Right To In-State Tuition

The ability to pay for college remains another major obstacle to higher education for many undocumented students. Most state universities charge significantly higher tuition to out-of-state students. Because undocumented students are often unable to prove legal residence in the state, undocumented students are likely to face difficulty qualifying for in-state tuition. Furthermore, Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) sets strict limits on when a state may offer in-state tuition to undocumented students. Under Section 505, states may not provide undocumented immigrants with any higher education benefit based on residency unless all U.S. citizens are eligible for the benefit. Currently, ten states have enacted laws in compliance with Section 505 permitting undocumented students to qualify for in-state tuition.

Nevertheless, in the majority of states, high out-of-state tuition rates remain a bar to higher education for many undocumented students. This administration should push to repeal Section 505 of IIRIRA and allow undocumented students easier access to in-state tuition. Furthermore, the administration should actively encourage more states to enact laws allowing undocumented students to qualify for in-state tuition.

h. Individuals with Disabilities in Education Act (IDEA) Regulations

i. Address The Needs of ELLs With Learning Disabilities

The particular needs of Asian American students with disabilities are often overlooked. For example, school staff may mistakenly believe an ELL student with a learning disability is not advancing due to language difficulties. Conversely, other ELLs maybe dumped into special education classes and are not given appropriate ESL and other language training.

As a result, Asian American ELLs with learning disabilities often receive fragmented services that fail to take into account both language needs *and* special education needs. The lack of collaboration between ELL programs and special education programs prevent students from reaching their full academic potential. Individuals with Disabilities in Education Act (IDEA) regulations should recognize and take into account this crucial intersection between ELL needs and special education needs. A free appropriate public education for Asian American ELLs with disabilities requires adequate simultaneous and coordinated support as an ELL and as a student with a disability.

ii. Protect The Due Process Rights Of Asian American Children With Disabilities And Their Parents

In the spring of 2008, the Secretary of Education released proposed regulations on Assistance to States for the Education of Children with Disabilities. Promulgated under IDEA, the current and proposed rules raise different issues affecting Asian American students with disabilities and their parents.

1. Ensure Language Access For Limited English Proficient Parents In Special Education Proceedings

Language access for limited English proficient parents of children with disabilities is essential to ensure that parents can make informed decisions about their children's educational programs. IDEA requires schools to provide interpreters for parents when requested, and adequate language access is also mandated by Title VI of the Civil Rights Act of 1964, as discussed elsewhere in this paper. Thus, this administration must ensure that school districts are well funded for interpretation and translation so that non-English speaking parents receive proper interpretation and support under IDEA and Title VI.

2. Allow Parents To Opt For Non-Attorney Representation In Due Process Hearings

The currently proposed IDEA regulations allow states to limit the right of parents to be represented by non-attorneys at due process hearings. However, many knowledgeable advocates and service providers for children with disabilities are not lawyers. Non-attorney representatives can play a crucial role in guiding parents through the special education system and advocating on their behalf. Further, hiring a lawyer can be a costly burden on low-income families. As such, the new administration should revise IDEA regulations to once again allow parents the assistance of non-attorney representatives in due process hearings.

IV. Executive Priorities

- a. Department of Education

- i. Appoint and Hire Qualified Staff

The DOE should hire highly qualified staff who are dedicated to protecting the educational rights of all students. These individuals must recognize the importance of diversity and understand that many students – including students of color, poor students, and immigrant students – struggle to receive equal educational opportunities in the public education system. DOE staff must value and take into account the vast diversity of students' and parents' experiences, backgrounds and cultures.

- ii. Invest In Our Public Education System

1. Put An End To Vouchers And Privatization

Supporters of school vouchers and privatization measures argue incorrectly that such proposals will give parents more choice and control over their children's education.

In reality, vouchers and privatization direct money away from public education and actually widen the resource gap between white students and students of color, poor students, and immigrant students. Under the guise of increasing "school choice," in reality, vouchers fail to expand parental choice or improve student

achievement significantly. Furthermore, poor children in the most under resourced schools cannot afford private school, with or without vouchers. Such children would remain trapped in struggling schools, even after voucher programs siphon funds out of the public school system.

The federal government should increase funding for public education and should call on states to do the same. Rather than directing money out of the public education system through vouchers and other privatization efforts, more financial support should be provided to public schools to increase teacher salaries, funding for school materials, and support for educational programs like arts, music and sports.

2. Approach Charter Schools With Caution

The charter school movement has also gained support over the years as an alternative for parents concerned about failing public schools. Some charter schools have done an admirable job at educating students from high needs backgrounds. For example, Asian American community-based organizations in Chicago and Philadelphia established charter schools to focus on the unique needs of Asian American students, as have Hmong communities in Minnesota and Wisconsin and the Vietnamese community in New Orleans. Conversely, other schools struggle and fail to produce results. Nationally, studies are mixed on whether charter schools produce better or worse results than traditional public schools.

Like vouchers and privatization, the charter school movement's rapid growth has had the net effect of taking money away from already poorly funded public schools. Charter schools are not accountable to school districts or state education departments in any meaningful way. As such, this administration must approach the charter school movement with caution. Also, it must redouble its efforts to improve funding and support for public school systems rather than directing money away from them.

3. Stop The Corporatization Of Our Public Schools

The poor financial state of many public schools and the perceived inefficiency of school district bureaucracies have led to an influx of corporate funding into our public education system. While additional resources and management expertise can be helpful, we must be mindful that the enterprise of educating our children cannot be run like a for-profit business.

Corporate principles, like "quality control" and "achievement," have led to outcome-based conditions on school funding. This has forced teachers, students and schools to shift emphasis away from actual, nuanced student learning and towards producing objective outcomes like increased standardized test scores. Ultimately, this approach prepares students to take tests, but fails to impart the joy and empowerment of learning.

The outcome-based policies imposed on schools have harmed struggling schools more than they have helped them. One New York City Asian American high school student told us an alarming story about what happened after her middle school was labeled "in need of improvement" under NCLB. Students who scored higher on standardized tests left the school, while lower-scoring students remained.

School-wide test scores dropped further, and the school came in danger of closing. During this process, immigrant parents were left confounded about what was occurring while their children struggled at the school.¹⁴

4. Protect Undocumented Students' Right To Education

In 1982, the Supreme Court found in *Plyler v. Doe* that undocumented immigrant children have the right to access public education. Over the years, numerous efforts have attempted to curtail this broad right. Such efforts have included California's Proposition 187¹⁵ in 1994 and the Gallegly Amendment in 1996¹⁶, both of which sought to deny public education benefits to undocumented students. Education allows undocumented immigrant children to reach their full potential in this country. As a result, the Department of Education must affirm its commitment to upholding and enforcing *Plyler v. Doe* and implement policies that protect undocumented students' rights.

a. Keep Schools As Learning Institutions, Not Immigration Enforcement Centers

In 1993, the then-Immigration and Naturalization Service stated that it would avoid apprehending individuals on school premises. Nevertheless, "campus chases," where Immigration and Customs Enforcement (ICE) agents detain suspected undocumented students on their way to and from school, are a disturbing trend throughout the country. These chases have even led to threats and physical assaults against students and faculty. The patrolling of school campuses by ICE agents has transformed schools into immigration enforcement centers, rather than institutions for learning. Schools should "provide an oasis of safety and freedom for the students and staff who reside within the school district." The new administration must ensure that ICE agents stay out of our public education system and immediately curtail ICE's practice of intercepting and detaining students suspected of being undocumented. The Department of Education must also be empowered to prevent ICE from conducting enforcement activities at or near school facilities.

b. Provide Undocumented Students Access to Federal Student Loans

Currently, federal student aid is not available to undocumented students. Generally, citizenship or legal permanent residence is an eligibility requirement for federal student loans. As discussed above, paying for college is a major obstacle for many undocumented students. The new administration should advocate for making federal financial aid available to undocumented students.

¹⁴ Anecdote from Coalition for Asian American Children and Families, New York, New York.

¹⁵ Proposition 187 was a California state ballot initiative that sought to deny undocumented immigrants access to social services, healthcare, and public education. Although passed by voters, opponents immediately challenged its constitutionality and it was eventually overturned.

¹⁶ The Gallegly Amendment was an effort to overturn the Supreme Court's decision in *Plyler v. Doe* through federal legislation. Representative Elton Gallegly proposed amending IIRIRA to deny undocumented students access to public education.

iii. Address The Need For Uniformity In Data Collection And Dissemination

Large differences in what categories of data are collected and disseminated by the U.S. Department of Education and state education departments render it difficult to obtain an accurate picture of our education system. While some states gather and publish data disaggregated by ethnicity and ELL status, other states do not even disaggregate data by more than three racial groups (black, white, and Hispanic). National and state level data collection should be made uniform including data disaggregated by race (including Asian Americans), ethnicity, and ELL status.

The lack of uniform data collection, dissemination and analysis ultimately lead to discrepancies in results. For example, states calculate dropout rates using widely different methods. The National Center for Education Statistics (NCES), for its part, calculates the dropout rate using the “status rate” – which looks at the percentage of students in a particular age range who have not finished high school or who are not enrolled in high school. Status rate calculations tend to be higher than the actual dropout rate. To avoid confusion, the U.S. Department of Education should establish a uniform method of calculating the dropout rate. Both states and the NCES should use the “cohort rate” – which looks at a single group of students to see who drops out over several years as the group advances through school. The cohort rate has been shown to be the most accurate method of measuring dropout statistics.

The U.S. Department of Education and state education departments must also coordinate their statistical methods and data categories to include graduation rates, test score reporting, in-school and out-of-school suspension rates, length of time students were excluded, and reasons.

iv. Office for Civil Rights Must Reaffirm Its Commitment to Diversity And Language Access

The United States Department of Education Office For Civil Rights (OCR) must reaffirm its commitment to equal educational access, a diverse school environment and meaningful engagement of limited English proficient families and other minorities. OCR must hire diverse staff at all levels that are committed to expanding educational opportunity, and must direct its investigatory resources toward this goal.

1. Support Affirmative Action

In the 2003 case of *Grutter v. Bollinger*, the United States Supreme Court reaffirmed the legality of affirmative action programs that use race as one of many factors in higher education admissions. In addition, colleges and universities use a variety of other legal tools to expand educational opportunity, including, among others, race-conscious outreach and recruitment, financial aid and scholarships, as well as student retention programs.

Notwithstanding this settled legal framework, OCR has in recent years colluded with anti-affirmative action groups to pressure educational institutions to abandon these valid practices. In addition to hiring staff from anti-affirmative action advocacy groups, OCR has actively encouraged the abandonment of race-conscious

measures in favor of race-neutral alternatives. It issued a formal report in 2004 encouraging educational institutions to use race-neutral measures, and has vigorously investigated anti-affirmative action claims. As a result, OCR's activities have imposed a severe chilling effect on legal diversity programs across the country.

Under the new administration, OCR must abandon these efforts and resume its traditional role of enforcing civil rights laws, expanding opportunities and promoting diversity in our institutions of higher education. Asian Americans benefit from diversity in our institutions of higher education, and, in particular, certain groups of Asian Americans need affirmative action to secure equal access to higher education.

The 2000 Census found that 26.2% of Cambodian and 45% of Hmong adults over 25 had no formal schooling whatsoever. Although Asian American enrollment overall increased somewhat in the undergraduate University of California system after the anti-affirmative action Proposition 209 was passed, a 2003 estimate by the Southeast Asia Resource Action Center (SEARAC) found less than 50 total Cambodian and Laotian undergraduate students enrolled at the flagship University of California – Berkeley. Prior to Prop 209, Southeast Asians, like Cambodians, Laotians, and Hmong, had been included in many of the University of California campuses' affirmative action plans.

2. Enforce The Language Access Mandate of Title VI of the Civil Rights Act of 1964

Another important directive of OCR is the enforcement of language access rights under Title VI of the Civil Rights Act of 1964. As discussed above, Title VI mandates equal educational access for ELL students and limited English proficient parents including, among other things, interpretation and translation of certain school communications. OCR must diligently investigate and enforce the language access rights of ELL students and limited English proficient parents under Title VI.

3. Refer Discrimination Matters To the Department of Justice For Litigation

In addition to investigating and negotiating consent decrees and settlements on its own behalf, the OCR also has authority to refer cases to the Department of Justice's (DOJ) Educational Opportunities Division for litigation. OCR must make a concerted effort to refer substantiated claims of racial and linguistic discrimination against minorities to the Department of Justice for litigation.

b. Department of Justice

Among other things, the Educational Opportunities Division of the DOJ oversees enforcement of Title IV of the Civil Rights Act of 1964, the Equal Educational Opportunities Act of 1974 and the Equal Protection Clause, and has authority to intervene on behalf of the United States in education-related private civil rights litigation.

Recently, the DOJ has used this authority to aggressively pursue a number of religious liberties matters. In the new administration, we hope the DOJ will also

redouble its efforts to enforce the civil rights of racial and language minorities in public education.

One case where the DOJ vigorously investigated racial and linguistic discrimination against minorities concerned Lafayette High School in Bensonhurst, Brooklyn, New York. The DOJ's Educational Opportunities Division began investigating Lafayette in 2001 due to allegations of discrimination against Asian students in violation of Title VI of the Civil Rights Act of 1964, a desegregation statute. Three years later, the DOJ entered into an unprecedented consent decree with the New York City Department of Education, finding that Lafayette violated ELL programming mandates and maintained a racially hostile environment. AALDEF has worked actively with student activists at Lafayette to oversee and ensure implementation. Below, we will use the Lafayette investigation as an example of how the DOJ can aggressively pursue cases of discrimination against racial and linguistic minorities.

i. Enforcement of Equal Educational Opportunities Act of 1974

The Equal Educational Opportunities Act of 1974 violations that instigated the Lafayette consent decree concerned Lafayette's failure to "overcome language barriers [impeding ELLs'] equal participation in the school's educational programs." The problems were pervasive and concerned issues such as "assessment, class placement, academic counseling, monitoring of exited students, and communication with ELL parents and students."

Among other things, the consent decree, which required 3 years of federal monitoring, mandated a strict timetable for ELL assessment and placement, set forth clear interpretation and translation protocols, and clarified ELL program requirements. The DOJ should pursue similar remedies in other schools with rampant ELL program violations.

ii. Enforcement of the Equal Protection Clause

Anti-Asian harassment is a growing national problem. In the Lafayette consent decree, the DOJ also found that school officials failed to protect immigrant Asian students from severe racial harassment. They determined that Lafayette denied Asian students equal protection through its "deliberate[] indifferen[ce] to an objectively hostile educational environment . . . characterized by pervasive peer-on-peer harassment of Asian students based on their race and national origin[.]"

Among other things, the consent decree required Lafayette to adopt a clear anti-harassment policy, implement anti-harassment trainings for staff and students, and create a detailed tracking and reporting system, all to be overseen by the DOJ. As in Lafayette, the DOJ must continue to vigorously pursue and prosecute other school districts that fail to protect students from severe bias-based harassment.

Anti-Asian harassment also persists in other communities across the country. For example, recent immigrant students from Washington, DC report that they are mocked and insulted on a regular basis at school. In some instances, these incidents escalate into physical conflict. One student tells us he punched his

harasser in retaliation, and was ultimately suspended. Another student actually walked away from his harasser, but was nonetheless later suspended by school.¹⁷

iii. Intervention in Private Civil Rights Suits

The DOJ should increase its efforts to intervene for the public interest on the side of private litigants in civil rights cases concerning racial and linguistic discrimination against minorities.

IV. Judicial Priorities

The new administration must appoint a diverse group of individuals to the United States Supreme Court and lower federal courts who will vigorously enforce civil rights laws and expand educational opportunities for all.

a. Support Affirmative Action

In the 2003 cases of *Grutter v. Bollinger* and *Gratz v. Bollinger*, the United States Supreme Court confirmed the legality of and continuing need for race conscious affirmative action programs in public institutions of higher education. These cases upheld the admission plans of University of Michigan's law school, which had the laudable goal of increasing diversity in their incoming classes. Under *Grutter* and *Gratz*, admissions programs considering race as one of many factors in a holistic, non-mechanical process are valid.

The new administration must appoint Supreme Court justices who will uphold these important cases, and further expand opportunities for public universities to create meaningful affirmative action plans. It must also appoint lower court judges who value and understand diversity.

b. Support School Integration

In *Meredith v. Jefferson County Board of Education* and *Parents Involved in Community Schools v. Seattle School District No. 1*, both of which were decided in 2007, the United States Supreme Court upheld local school districts' compelling interest in avoiding racial isolation. However, the high court struck down the particular racial integration plans used in Seattle, Washington and Louisville, Kentucky, finding their methods were not narrowly tailored to fit that compelling interest.

Moving forward, federal courts at all levels will have the daunting task of interpreting this complicated decision. As such, the new administration must appoint individuals to all levels of the federal bench who understand the need for racial integration in public schools and will support the ability of local school boards to implement plans to achieve integration.

The administration must also appoint Supreme Court justices who will clarify *Meredith* and *Parents Involved* in order to confirm local school boards' discretion to

¹⁷ Anecdote from Asian American LEAD, Washington, D.C.

enact racial integration plans. The four dissenting judges in *Meredith* and *Parents Involved* emphasized the role of context in strict scrutiny analysis. The dissenters suggested that a somewhat relaxed version of strict scrutiny is appropriate in situations where local governments have exercised their “longstanding legal right to use race-conscious criteria for inclusive purposes in limited ways.” Local school boards have traditionally utilized race-conscious school integration plans to make their communities more inclusive. As such, courts reviewing school integration cases must give local school boards leeway to continue exercising their discretion in this limited capacity. Future Supreme Court appointees must confirm and uphold this line of reasoning, which will preserve local school boards’ ability to pursue racially integrated classrooms.

c. Civil Rights Litigation

The 2001 Supreme Court case of *Alexander v. Sandoval* gutted an important civil rights remedy by denying plaintiffs the right to sue privately on account of disparate impact¹⁸ under Title VI of the Civil Rights Act of 1964. As described above, Title VI prohibits agencies that receive federal funding from discriminating on account of race, color, or national origin. In *Sandoval*, the high court found that private individuals may sue under Title VI for intentional discrimination, but not for disparate impact.

Sandoval marked an abrupt change from previous precedent, which had clearly supported a private right of action for disparate impact under Title VI. The new administration must appoint justices to the Supreme Court who will restore private individuals’ ability to enforce their civil rights under Title VI using a disparate impact theory. Among other things, Title VI cases concerning public education include language access matters based on a national origin discrimination theory, racial harassment and racially hostile environment matters.

V. Conclusion

Public education has always been a cornerstone of American society, helping young people become productive and responsible members of society. However, in recent decades, public education has struggled with funding decreases, the widening gap between the rich and the poor, and the changing demographics of this country. Public education continues to be undermined by the school to prison pipeline, privatization, and severe under-funding. Far too often, it is students of color, poor students and immigrant and refugee students who suffer the consequences of various misguided efforts to fix our public education system.

The new administration has a unique opportunity to improve the educational experience of millions of children across the country. Legislative, executive and judicial efforts should focus on ensuring that each and every child in the United States has an equal opportunity to an adequate education. Continuing disparities between students based on race, class and ELL status demonstrate that the opportunity to achieve academic success is only a reality for some. Thus, whether it

¹⁸ “Disparate impact” refers to when a policy or practice seems neutral and nondiscriminatory on its face, but which adversely impacts a particular group of individuals in practical application.

is in the form of school materials, ELL services, or simply access to public education, we must ensure that each child has the support and resources to succeed to his or her highest potential.

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