

March 9, 2016

Dr. John King, Acting Secretary of Education
Ann Whalen, Senior Advisor to the Secretary
United States Department Education
400 Maryland Ave., SW
Washington, DC 20202

Dear Dr. King and Ms. Whalen:

In response to the announcement of March 4, 2016, we are writing to ask that the Secretary select additional negotiators who are representatives of parents and students (including from civil rights or other organizations representing them). We believe that this action is required by the Elementary and Secondary Education Act.

Section 1601(b)(3)(B) of the Act (20 U.S.C. 6571(b)(3)(B)) states that *the Secretary shall "select individuals to participate in such process . . . in such numbers as will provide an equitable balance between representatives of parents and students and representatives of educators and education officials."* Of the 24 negotiators, 6 are representatives of parents and students,¹ while at least 15 are representatives of educators and education officials² -- i.e., a ratio of two-and-one-half to one.

In requiring equitable balance, the Act has recognized a fundamental distinction between the two in regard to regulations. One group represents the intended beneficiaries of the Act, whom the program is designed to serve (students and, because they are minors, their families). The other represents those who are required to implement the Act, bear its burdens, and comply with any regulations (educators and education officials). This distinction in roles and responsibilities in no way reflects negatively upon educators or education officials, who of course have chosen education as a field because of their dedication to the education of children. It is simply the recognition of an eminently natural tendency for entirely dedicated educators and education officials nevertheless to prefer not to be told what to do or to involuntarily take on additional administrative burden.³

The Act's requirement for an equitable balance in the numbers between these two groups does not mean that the numbers must be precisely equal. But a ratio of two-and-one-half representatives of educators and education officials to one representative of students and parents is not equitable. In the effort to make sure that every individual in the room is heard, the 2.5:1 ratio will have a vast impact on the amount of time devoted to the views of the members of each of the two groups.⁴ Further, just as different representatives of educators and education officials

¹ 2 are listed as representing parents and students, including historically underserved students; 4 are from the civil rights community, including representatives of students with disabilities, English learners, and other historically underserved students. Of the 6, 2 are non-voting members of the committee.

² They include 2 representatives of State administrators/State boards of education; 3 representatives of local administrators/local boards of education; 3 teachers; 2 principals; 2 other school leaders, including charter school leaders; 2 paraprofessionals; and at least 1 tribal leader. (There are two tribal leaders on the committee. One is the director of a language immersion program and thus clearly fits within the category of educators and education officials. The other is the chairman of a tribe, and might or might not be considered an education official, and we have not counted him in the 15.) Of the 15, 5 are non-voting members. There are also 2 business representatives on the committee, whom we have not counted in either category identified by Section 1601.

³ Any argument that educators and education officials at the table are also representatives of students since they serve students -- an argument that would of course apply to any educator or education official -- would thus render the required distinction in the Act meaningless; even negotiated rulemaking done in a room consisting solely of educators and education officials would meet the standard. And any argument that many educators and education officials are also parents and thus represent parents would similarly make the language of the Act meaningless.

⁴ The designation of certain members as "non-voting" suggests that there may be substantive or procedural issues during the negotiation that will be decided by a vote, rather than by consensus. In that case, the impact of the inequitable imbalance on the

bring different things to the table, so too do representatives of students and parents, in terms of terms of knowledge, experience, perspectives, approaches to resolving problems, etc. The 2.5:1 ratio drastically limits the range of those assets brought to bear upon the issues by student/parent representatives in comparison with educator/education official representatives.

While strict numerical equality is not required, it is an obvious starting point for making sure there is equitable balance. In departing from it, as in other areas where distinctions are made between equality and equity, the main standard should be what adjustment is necessary to better ensure equitable balance. From that point of view, there is a strong argument that any adjustments to ensure equity counsel in favor of greater than equal representation of the millions of primarily low-income children (and their families) whose educational lives and futures are at stake and whom the whole purpose of the Act is to serve. It is hard to see how a ratio of two-and-a-half to one in the opposite direction fosters that equity.

It is our hope and assumption that all members of the committee will work together across their roles to come up with the best regulatory solutions for serving the educational interests of children. Doing so will be aided by fulfilling the letter and spirit of the legal requirement for equitable balance in who is at the table.

We would be happy to discuss with you our concerns, or how best to address them. Please contact Kathleen Boundy, Center for Law and Education at kboundy@cleweb.org [617-451-0855]. Thank you for your consideration.

Yours truly,

The Advocacy Institute
Center for Law and Education
Charles Hamilton Houston Institute for Race and Justice
The Civil Rights Project/ Proyecto Derechos Civiles
Council of Parent Attorneys and Advocates
Federation for Children with Special Needs (MA)
League of United Latin American Citizens
Massachusetts Law Reform Institute
Mexican American Legal Defense and Educational Fund
National Center for Parent Leadership, Accountability, and Community Empowerment (National PLACE)
National Down Syndrome Congress
PACER Center
PEAK Parent Center
Statewide Parent Advocacy Network
Tennessee Disability Coalition
Vermont Family Network

outcomes will be far greater still. (There are 10 voting representatives of educators/education officials and 4 voting representative of students/parents, i.e., the same 2.5:1 ratio). But even if the voting/non-voting distinction is only for purpose of who counts in reaching consensus, the basic problems identified in the text of the paragraph remain.