

United States Senate

WASHINGTON, DC 20510

February 9, 2022

Secretary Miguel Cardona
Department of Education
400 Maryland Ave, SW
Washington, D.C. 20002

Dear Secretary Cardona,

We write today to express our concerns regarding the lack of state compliance with Section 8546 of the Elementary and Secondary Education Act (ESEA), which requires state and local educational entities to have laws, regulations, or policies in place to address the Aiding and Abetting of Sexual Abuse. This practice is known as “Passing the Trash.” The Department of Education (the Department) has continued to extend ESEA funding to states who have failed to properly safeguard students from sexual predators, which is in violation of this funding requirement. We urge the Department to use the powers at its discretion to address this lack of enforcement.

When parents send their children to school, they expect them to be safe. However, this is not always the case. A study published by the Department estimated around 10 percent of students experience sexual misconduct by a school employee.¹ Even more concerning are the attempts by school administrators to cover the abuse up. In 2010, the Government Accountability Office found that “school officials allowed teachers who had engaged in sexual misconduct toward students to resign rather than face disciplinary action, often providing subsequent employers with positive references.”² This practice became so common that it was named “Passing the Trash.”

Instead of ensuring that educators that abuse their students can never do so again, “Passing the Trash” continues a cycle of abuse by allowing educators to move to new institutions with a recommendation from their previous school. This has frequently led to additional student victimization. In 1972, a teacher in Delaware County, PA, molested several students. Instead of reporting him to the authorities, his school wrote a recommendation for the teacher’s transfer to a West Virginia school. There, he continued his abuse and eventually tragically sexually assaulted and murdered student Jeremy Bell.

To put an end to this heinous practice, we introduced legislation in 2014 to ensure that the failures that led to the death of Jeremy Bell cannot happen again. This legislation was incorporated into the 2015 Every Student Succeeds Act (ESSA) and amended Section 8546 of the ESEA. As amended, this law requires every state, state educational agency (SEA), or local

¹ Carol Shakeshaft, “Educator Sexual Misconduct: A Synthesis of Existing Literature,” Dept. of Education, Office of the Undersecretary, Policy and Program Studies Service, 2004.

² United States Government Accountability Office, “Selected Cases of Public and Private Schools that Hired or Retained Individuals with Histories of Sexual Misconduct,” Report to the Chairman, Committee on Education and Labor, House of Representatives, Dec. 2010.

educational agency (LEA) receiving funding under this act to have laws, regulations or policies explicitly prohibiting “Passing the Trash” to receive federal funding under the ESEA. Despite passage of this legislation in 2015, three-quarters of states receiving funds have still failed to pass laws pursuant to this goal, yet continue to receive billions in federal funds. A 2018 report funded by the Office of Justice Programs found that as of January 2017, only four states were fully in compliance with this provision.³ In response, the Department sent a letter to the Chief State School Officers of every state reminding them of their obligation to fulfill this requirement as a condition of funds. Specifically, the letter stated that, “**Failure to meet these requirements may result in the Department taking appropriate enforcement action.**”⁴ The Department also stated that they would discuss the specifics of enforcement with individual state officials to ensure compliance.

Over three years after this letter was sent, and nearly six years after the passage of the ESSA, approximately 39 states continue to shirk this responsibility yet continue to receive federal funding for ESEA.⁵ This violation of the law must be addressed by the Department immediately. In the first three months of 2021 alone, the media has reported at least 94 educator arrests for inappropriate sexual conduct with a minor, totaling over one per day.⁶ These arrests confirm that the issue of educator sexual assault continues to impact the lives of children and raises concerns that the true number of cases is far higher than is being reported.

As you stated in your confirmation hearing, we must “[do] everything to make sure that our learning environments are safe for students not only physically but also where they can go there free of harassment...” We must follow up with concrete action and that starts with shielding students from predators in the classroom. We urge the Department to take immediate steps to ensure that all policies to protect children are enforced, including the ESEA’s prohibition on Aiding and Abetting Sexual Abuse. Additionally, we ask that you promptly provide information in response to the following questions regarding the work the Department has done to ensure compliance:

- 1) Has the Department developed a standard or certification process to evaluate a State, SEA, or LEA’s compliance with the statutory funding requirement found in ESEA Section 8546 (20 U.S.C. 7926)?
 - a. An OJP funded report from 2018 stated that 24 states believed that they were in compliance with this provision based on existing ethics codes when they were not.⁷ Has the Department made efforts to ensure states understand whether their existing laws are sufficient?

³ Billie-Jo Grant, Stephanie Wilkeson, and Molly Henschel, “Passing the Trash: Absence of State Laws Allows for Continued Sexual Abuse of K-12 Students by School Employees,” *Journal of Child Sexual Abuse*, 28:1, 84-101, June 12, 2018.

⁴ Jason Botel, Principle Deputy Assistant Secretary, Office of Elementary and Secondary Education, “Letter to Chief State School Officers,” Dept. of Education, June 27, 2018.

⁵ Washington, Oregon, Missouri, Pennsylvania, Connecticut, Nevada, Wisconsin, New Jersey, Vermont, Washington D.C., Maryland, and Montana have passed laws related to the aiding and abetting prohibition; “A Call to Action for Policymakers and Advocates: Child Sexual Abuse Prevention Legislation in the States,” Enough Abuse Campaign, June 2021.

⁶ Google Alerts, (2021), 2021 list of reported cases of school employee misconduct, compiled by Tess Skehan, Senator Toomey’s Office.

⁷ Billie-Jo Grant, Stephanie Wilkeson, and Molly Henschel, “Passing the Trash: Absence of State Laws Allows for Continued Sexual Abuse of K-12 Students by School Employees,” *Journal of Child Sexual Abuse*, 28:1, 84-101, June 12, 2018.

- 2) What steps has the Department taken to ensure that states are brought into compliance with this statutory requirement?
- 3) In the Department's June 27, 2018 letter to Chief State Officers, Jason Botel, Principal Deputy Assistant Secretary for the Office of Elementary and Secondary Education, stated that "Failure to meet these requirements may result in the Department taking appropriate enforcement action." However, no state has been denied ESEA funding despite lack of compliance.
 - a. Despite the change in Administrations, does the Department under your leadership plan to define what "failure" to comply looks like? After what length of time would this "failure" result in "appropriate enforcement action"?
 - b. Does the Department consider "appropriate enforcement actions" actions to include withholding of ESEA funds? If not, what would be an example of "appropriate enforcement actions"?
- 1) On October 28, 2019, the Department of Education published a Federal Register notice to submit comments regarding a study it was conducting to "Examine states' development and implementation of laws and policies to prohibit aiding and abetting sexual misconduct in schools" (FR Doc. 2019-23436). As of the date of this letter, the Department of Education has not yet released this report.
 - a. What is the current status of this report?
 - b. When does the Department anticipate the report will be released?

We ask that you provide answers to these inquiries by March 4, 2022. Thank you for your commitment to cultivating a safe environment in which children can learn. We look forward to your response.

Sincerely,



Pat Toomey
United States Senator



Joe Manchin III
United States Senator