

August 20, 2021

Kate Mullan

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Office of Chief Data Officer, Office of Planning, Evaluation & Policy Development
400 Maryland Ave. SW, LBJ, Room 6W208D
Washington, DC 20202-8240.

Re: Comments from GLSEN regarding Agency Information Collection Activities; ESSER I/ESSER II/ARP ESSER Fund Recipient Data Collection Form [Docket ID ED-2021-SCC-0096]

To Whom It May Concern:

I write to you on behalf of GLSEN, the nation's leading organization on lesbian, gay, bisexual, transgender, queer, nonbinary, gender nonconforming, and intersex (LGBTQ+) issues in K-12 education, regarding the Department's proposed form for collecting data from agency recipients of Elementary and Secondary School Emergency Relief Funds (ESSER I, ESSER II, and ARP ESSER).

We strongly support the Department's inclusion of questions regarding agency efforts to address the disproportionate impact of Covid-19 on students who experience marginalization, but ask that the Department amend its list of disproportionately impacted students to align with the Department's Covid-19 guidance, its State Plan template for ESSER/ARP funds, and administrative priorities. Specifically, GLSEN urges the Department to amend Section 3, Subsection C, Questions 3 and 5 of the proposed ESSER ARP Integrated Reporting Form (1810-0749) by adding LGBTQ+ students so that they read as follows:

Section 3, Subsection C, Question 3:

Which activities or interventions did the LEA count towards the LEA's mandatory 20% set-aside, which respond to students' academic, social, and emotional needs and address the disproportionate impact of Covid-19 on underrepresented student groups, including each major racial and ethnic group, children from low-income families, children with disabilities, English learners, gender, migrant students, students experiencing homelessness, youth in foster care, and lesbian, gay, bisexual, transgender, queer, nonbinary, gender nonconforming, and intersex (LGBTQ+) students (select all that apply):...

Section 3, Subsection C, Question 5:

Please describe how the selected activities or interventions address the disproportionate impact of Covid-19 on underrepresented student groups, including each major racial and ethnic group, children from low-income families, children with disabilities, English learners, gender, migrant students, students experiencing homelessness, youth in foster care, and lesbian, gay, bisexual, transgender, queer, nonbinary, gender nonconforming, and intersex (LGBTQ+) students.

The Department's inclusion of "gender" does not expressly include lesbian, gay, bisexual, and other queer young people who have been disproportionately impacted by the pandemic. Without express clarification by enumerating "LGBTQ+ students" or "gender identity," agency respondents may assume a gender binary and fail to report supportive programming for transgender and nonbinary students.

As the Department of Education acknowledged in its guidance specific to the pandemic, LGBTQ+ young people have been disproportionately impacted by Covid-19:

- The Department's Office of Civil Rights report, *Education in a Pandemic: The Disparate Impacts of COVID-19 on America's Students*, includes LGBTQ+ students among those disproportionately impacted and clarifies how pre-pandemic disparities are exacerbated by the pandemic.¹
- The *ED COVID-19 Handbook, Volume 1* "recognizes the unique challenges students in underserved communities face, including students from low-income backgrounds, students of color, LGBTQ+ students, English learners, students with disabilities, American Indian and Alaska Native students, students who are migratory, students in foster care, students in correctional facilities, and students experiencing homelessness."²
- The *ED COVID-19 Handbook, Volume 2: Roadmap to Reopening Safely and Meeting All Students' Needs* includes the same acknowledgement that appeared in Volume 1 (above), applies an intersectional lens in discussing how "LGBTQ+ students, especially those who are Black or Native American, are more likely than others to be homeless," and affirms the need for "identity-safe classrooms and schools that support our students who are LGBTQ+."³
- The *ED COVID-19 Handbook, Volume 3* lists LGBTQ+ students among those that Institutes of Higher Education (IHEs) are reporting increased needs for mental health supports.⁴

Early studies on the impact of Covid-19 shed light on the experiences of LGBTQ+ young people during the pandemic. Many LGBTQ+ young people experience rejection from family members; for those who do, social distancing and shifts to virtual learning may increase their exposure to unsupportive, discriminatory, or violent home environments.⁵ These shifts during the pandemic have also resulted in LGBTQ+ youth having less access to supportive before, during, and after school programs, such as GSAs (Gender-Sexuality Alliances or Gay-Straight Alliances) and school-based mental healthcare services.⁶ Online programming such as virtual educator office hours and online communities can offer invaluable supports,⁷ but it is unclear if and how schools have leveraged ESSER/ARP to fund these or other activities to support LGBTQ+ young people.

GLSEN strongly supports the inclusion of each major racial and ethnic group, children from low-income families, children with disabilities, English learners, migrant students, students experiencing homelessness and youth in foster care in Section 3, Subsection C, Question 3 and 5 of the proposed ESSER ARP Integrated Reporting Form (1810-0749). However, without including disproportionately impacted LGBTQ+ students, the Department may fail to capture critical information regarding supportive programming for students at the intersection of two or more disproportionately impacted groups, such as LGBTQ+ young people experiencing homelessness. LGBTQ+ youth are more than twice as likely (120% more likely) to experience homelessness, compared to non-LGBTQ+ youth, making it all the more important for this data collection to expressly include LGBTQ+ youth.⁸

In addition to guidance related to COVID-19, the Department’s State Plan template for ESSER/ARP funds enumerates LGBTQ+ students among those that a State Education Agencies (SEA) may identify as disproportionately impacted by the pandemic.⁹ As of the date of this letter, eleven approved ESSER/ARP State Plans include some discussion of LGBTQ+ students as a population disproportionately impacted by the pandemic.¹⁰ Anecdotally, we also know some states are disseminating resources on supportive programming for LGBTQ+ youth as part of their response to the pandemic. For example, Wisconsin includes training on “[c]reating safe and supportive environments for LGBTQ Youth” and lists an approved vendor as an allowable use of ESSER funds in its guidance to Local Education Agencies.¹¹ Enumerating LGBTQ+ students in Section 3, Subsection C, Question 3 and 5 of the proposed ESSER ARP Integrated Reporting Form (1810-0749) will improve our understanding of these and other programs that aim to support and reengage LGBTQ+ students who have been disproportionately impacted by the pandemic.

In addition to aligning with the Department’s existing guidance related to COVID-19 and its State Plan template for ESSER/ARP funds, revising the ESSER ARP Integrated Reporting Form (1810-0749) to enumerate LGBTQ+ students aligns with President Biden’s recent Executive Orders—including those on implementing the landmark *Bostock* ruling, advancing gender equity and equality, and advancing racial equity and support for underserved communities—which collectively call for an “ambitious whole-of-government equity agenda.”¹²

We thank the Department for considering these comments and recommendations. To discuss GLSEN’s recommendations, please contact me at 202-621-5815 or aaron.ridings@glSEN.org.

Sincerely,

Aaron Ridings
Interim Chief of Staff
Director of Public Policy

¹ U.S. Department of Education. Education in a Pandemic: The Disparate Impacts of COVID-19 on America’s Students. Washington, DC: 2021. <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf>. (pp. 1, 27-30, 45-48).

² U.S. Department of Education. ED COVID-19 Handbook, Vol. 2: Roadmap to Reopening Safely and Meeting All Students’ Needs. Washington, DC: February 2021 (Updated April 2021). <https://www2.ed.gov/documents/coronavirus/reopening.pdf>. (p. 1).

³ U.S. Department of Education. ED COVID-19 Handbook, Vol. 2: Roadmap to Reopening Safely and Meeting All Students’ Needs. Washington, DC: April 2021. <https://www2.ed.gov/documents/coronavirus/reopening-2.pdf>. (pp. 9, 12, 14.)

⁴ U.S. Department of Education. ED COVID-19 Handbook, Vol. 2: Volume 3: Strategies for Safe Operation and Addressing the Impact of COVID-19 on Higher Education Students, Faculty, and Staff. Washington, DC: June 2021. <https://www2.ed.gov/documents/coronavirus/reopening-3.pdf>. (p. 47).

This handbook also specifies that recipients of federal funds have “Title IX obligations” to address sex-based harassment, including “harassment of lesbian, gay, bisexual, transgender, and queer (LGBTQ+) students” (p. 7) and suggests that IHES “consider providing counselors with expertise or specialized experience” in counseling marginalized students, including students who are LGBTQ+ (p. 49).

⁵ According to the Trevor Project’ 2021 LGBTQ Youth Mental Health Survey, more than 80% of LGBTQ+ youth reported that COVID-19 made their living situation more stressful. See: The Trevor Project, National Survey on LGBTQ Youth Mental Health 2021, “Covid-19” (2021). <https://www.thetrevorproject.org/survey-2021/?section=Covid19>.

See also: Fish, J. N., McInroy, L. B., Pacey, M. S., Williams, N. D., Henderson, S., Levine, D. S., Edsall, R. N. (2020). “I’m Kinda Stuck at Home with Unsupportive Parents Right Now”: LGBTQ Youths’ Experiences with COVID-19 and the Importance of Online Support. *The Journal of Adolescent Health* 67, 3. doi:10.1016/j.jadohealth.2020.06.002.

Salerno, J. P., Williams, N. D., Gattamorta, K. A. (2020). LGBTQ populations: Psychologically vulnerable communities in the COVID-19 pandemic. *Psychological Trauma: Theory, Research, Practice and Policy* 12, Suppl 1. doi:10.1037/tra0000837.

⁶ Fish et al.; Salerno et al.

⁷ Fish et al.; The Trevor Project. (2020). Implications of COVID-19 for LGBTQ Youth Mental Health and Suicide Prevention. <https://www.thetrevorproject.org/2020/04/03/implications-of-covid-19-for-lgbtq-youth-mental-health-and-suicide-prevention/>.

⁸ Voices of Youth Count. (2017). Missed Opportunities: Youth Homelessness in America. Chicago: Chapin Hall at the University of Chicago.

<https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf>.

See also: Choi, S. K., Wilson, B. D., Shelton, J., & Gates, G. J. (2015). Serving our youth 2015: The needs and experiences of lesbian, gay, bisexual, transgender, and questioning youth experiencing homelessness. Los Angeles: The Williams Institute.

<https://williamsinstitute.law.ucla.edu/publications/serving-our-youth-lgbtq/>.

True Colors United and the National LGBTQ Task Force. (2019). At the Intersections: A Collaborative Resource on LGBTQ Youth Homelessness. <https://truecolorsunited.org/wp-content/uploads/2019/04/2019-At-the-Intersections-True-Colors-United.pdf>.

⁹ U.S. Department of Education. (2021). State Plan for the American Rescue Plan Elementary and Secondary School Emergency Relief Fund. (pp. 4-5). Available at https://oese.ed.gov/files/2021/04/ARP-ESSER-State-Plan-Template-04-20-2021_130PM.pdf, (Accessed August 16, 2021).

¹⁰ DC, Kansas, Kentucky, Massachusetts, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah have approved ARP/ESSER State Plans as of August 20, 2021 that include LGBTQ+ students in discussing population disproportionately impacted by the pandemic. Other SEAs, including Alaska, California, Illinois, Maine, Michigan, Nebraska, and Nevada have submitted State Plans—pending approval—which include discussion of LGBTQ+ students. State Plans available here: <https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/stateplans/> (Accessed August 16, 2021).

¹¹ Wisconsin Department of Public Instruction. ESSER Funds (I, II, and III) Guidance on Public Allowable Costs. Available at <https://docs.google.com/document/d/1K78BQsDluMQ0aDTzd0Qb1gOKmLXVhfRYkBzXm6S3bCY/edit> (Accessed August 16, 2021).

¹² Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government). 86 Fed. Reg. §14 (January 25, 2021). <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf>.

Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation). 86 Fed. Reg. §14 (January 25, 2021). <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>.

Executive Order 14021 of March 8, 2021 (Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity). 86 Fed. Reg. §46 (March 11, 2021). <https://www.govinfo.gov/content/pkg/FR-2021-03-11/pdf/2021-05200.pdf>.