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June 6, 2018

United States Senate  
Washington, DC 20510

Dear Senator:

On behalf of our three million members and the 50 million students they serve, we urge you to VOTE NO on the confirmation of Kenneth Marcus as Assistant Secretary for Civil Rights at the U.S. Department of Education. Votes on this issue may be included in NEA's Report Card for the 115th Congress.

The Assistant Secretary of Civil Rights is responsible for ensuring justice for students who report that they have encountered discrimination based on race, color, national origin, sex, disability, and/or age. Based on his previous record as Acting Assistant Secretary for Civil Rights, his views on harassment related to students' sexual orientation or gender, and his views on sexual assault, we believe that Mr. Marcus would undermine rather than fulfill this mission.

At the Office of Civil Rights (OCR), Mr. Marcus was involved in developing regulations governing single-sex education that relied on sex stereotypes. The regulations invited schools to create separate-and-unequal programs based on pseudoscientific "preferences" and "belief[s]" despite overwhelming empirical evidence that separating students by sex does not improve educational outcomes but does reinforce harmful gender stereotypes. Mr. Marcus has also repeatedly demonstrated indifference toward the rights of LGBTQ students. For example, at OCR, he elevated the right of a male student to express "conservative Christian views" about homosexuality over the right of LGBTQ students to learn in a non-hostile environment. At a U.S. Commission on Civil Rights hearing that addressed LGBTQ bullying, he was silent on whether anti-LGBTQ harassment is prohibited by federal law.

During his confirmation hearing, Mr. Marcus stated that he supports Secretary of Education Betsy DeVos' rescission of important guidance clarifying the responsibilities of educational institutions in cases of sexual assault and that he opposes using a preponderance of the evidence standard in sexual assault investigations. Mr. Marcus also stated that he supports the decision to roll back protections for survivors and to provide special rights to students accused of sexual assault — e.g., allowing appeals to be made available only to accused students, tilting the evidentiary standard in favor of accused students and against survivors, and removing the 60-day timeframe for completing an investigation. In addition, he would not commit to continuing to publish the list of colleges and universities under investigation regarding sexual assault.

Mr. Marcus' record with regard to the rights of students with disabilities, as articulated in Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, is troubling as well.

In short, we are deeply troubled by his record of anti-civil rights positions and lack of support for robust civil rights enforcement, particularly in light of the anti-civil rights actions of this administration. During his confirmation hearing, Mr. Marcus gave no indication that he would oppose ongoing efforts to roll back systemic investigations, undermine regulations, and cut resources from the Office for Civil Rights.

We urge you to VOTE NO on confirming Mr. Marcus as Assistant Secretary for Civil Rights at the U.S. Department of Education.

Sincerely,

A handwritten signature in black ink that reads "Marc Egan". The signature is written in a cursive, flowing style.

Marc Egan  
Director of Government Relations  
National Education Association