



March 31, 2017

United States Senate
Committee on the Judiciary
Washington, DC 20510

Dear Senator:

On behalf of the three million members of the National Education Association and the 50 million students they serve, we strongly urge you to **VOTE NO** on confirming the nomination of Judge Neil Gorsuch to the United States Supreme Court. Votes associated with this issue may be included in NEA's Report Card for the 115th Congress.

In the overwhelming majority of cases, Judge Gorsuch has ruled against disabled students and expressed a very narrow understanding of their educational rights. Under the Individuals with Disabilities in Education Act (IDEA), he lowered an already low legal standard by ruling that students with disabilities are only entitled to an education that is barely more than nothing. The Supreme Court repudiated Judge Gorsuch's standard in an 8-0 decision issued last week, while he was appearing before this committee.

IDEA, along with complementary civil rights laws and protections, could be hollowed out if the Supreme Court were to adopt Judge Gorsuch's views. Of specific concern in his record:

- First, Judge Gorsuch has repeatedly ruled that students with disabilities are owed only a bare minimum of education — for example, his opinion in *Thompson R2-J School District v. Luke P.*, asserts that IDEA requires educational progress that is “merely ... more than de minimis.” The Supreme Court unanimously repudiated this recklessly low standard in *Endrew F. v. Douglas County School District*.
- Second, Judge Gorsuch has erected technical legal barriers against the legal claims of students with disabilities — barriers of the type that the Supreme Court has subsequently rejected unanimously. For example, in *A.F. v. Española Public Schools*, he would not allow a student to assert her rights under the Americans with Disabilities Act because she had previously reached a settlement under IDEA.
- Third, Judge Gorsuch has joined deeply troubling opinions that hold the constitutional rights of students with disabilities are not violated even when they are segregated and subjected to abusive confinement — for example, in *Muskrat v. Deer Creek Public Schools* and *Couture v. Board of Education*.

- Fourth, Judge Gorsuch appears to favor dismantling the power of administrative agencies to enforce regulatory protections, including those for students with disabilities. In *Gutierrez-Brizuela v. Lynch*, Judge Gorsuch calls the *Chevron* doctrine — which holds that courts defer to agencies’ interpretation of ambiguous statutory language — a “behemoth” that “swallow[s] huge amounts of core judicial and legislative power.” In *Caring Hearts Personal Home Services, Inc. v. Burwell*, he mocks federal agencies as so-called “experts.”

In addition to deeply troubling rulings in numerous cases involving students with disabilities — fully detailed in NEA’s report, “Judge Neil Gorsuch’s Record on Students with Disabilities” (available at <http://bit.ly/2oHBJQ2>) — he has consistently sided with big business at the expense of working people. Judge Gorsuch has embraced extreme views that could endanger workers’ rights on issues like employment discrimination, worker safety, and wages.

The next Supreme Court justice could cast the deciding vote in cases involving students with disabilities, as well as other critical issues: public education funding, the validity of labor and employment regulatory protections, the scope of First Amendment protections for corporations and for individuals, and much more. An independent Supreme Court is a check on abuse of executive power, which is more important than ever. It is essential for the next Supreme Court justice to be fair and impartial — not influenced by politics, parties, or the president.

NEA supports the rights of students with disabilities to receive a high quality education, to live free from discrimination, and to be vindicated by the courts when those rights are violated. Providing students with disabilities the opportunity to succeed academically is a moral and professional responsibility of the educator community and the nation as a whole. We strongly urge you to **VOTE NO** on the nomination of Judge Neil Gorsuch to the Supreme Court.

Sincerely,



Marc Egan
Director of Government Relations
National Education Association