

January 9, 2017

U.S. Senate Health, Education, Labor and Pensions Committee

Dear Senator:

The Council of Parent Attorneys and Advocates (COPAA) writes today regarding the nomination of Elisabeth “Betsy” DeVos as the U.S. Secretary of Education. COPAA is the premier advocacy organization for the six million children with disabilities eligible for special education services under the Individuals with Disabilities Education Act (IDEA) and the 400,000 additional students with disabilities protected by Section 504 of the Rehabilitation Act of 1973.

To date, we know too little about Mrs. DeVos’ knowledge, perspective and opinions on the education of students with disabilities, and especially on how students with disabilities can be educated alongside their non-disabled peers. This Committee needs to probe her views on this, and many other, subjects prior to determining whether she should be confirmed as the Secretary of Education. To that end, we implore the Committee to secure firm commitments from Mrs. DeVos prior to recommending her confirmation to the full Senate. Specifically,

Excellent Education for Children with Disabilities

For children identified with disabilities in our nation’s schools, the Secretary’s role is essential in ensuring the IDEA and Section 504 are fully upheld by states, private entities and school districts. Students with disabilities are general education students first and are also afforded important and needed protections under the IDEA – which since 1975 has required schools to provide a free, appropriate public education in the least restrictive environment. Because of the IDEA and Section 504, the Elementary and Secondary Education Act, amended in a bipartisan manner in the last session as the Every Student Succeeds Act (ESSA) and the Americans with Disabilities Act (ADA), more students with disabilities than ever are graduating high school. Still, the achievement gap between students with disabilities and other students is huge and has not narrowed in the last decade. For instance, only:

- 37 percent of 8th grade students with disabilities scored at or above basic in reading on the National Assessment of Education Progress (NAEP), compared with 81 percent of students without disabilitiesⁱ;
- 63% of students with disabilities graduate from high school as compared to 82 percent of students without disabilitiesⁱⁱ; and,
- 19.1% of people with disabilities are participating in the U.S. Labor force as compared to 68.2% of people without disabilitiesⁱⁱⁱ.

The IDEA opens the door to educational achievement for tens of thousands of students each year. It has resulted in a multitude of individuals with disabilities who can live and work independently, instead of being dependent on governmental support for their entire lives. We ask the Committee to secure a commitment from Mrs. DeVos that, as Secretary, she will fight to safeguard the protections of the IDEA.

Eliminate Discrimination in Voucher and Charter School Programs

- COPAA’s 2016 report, [*School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice*](#) found that the majority of school choice programs available to families across the

U.S. do not provide children and families full access to and protection under the Individuals with Disabilities Education Act (IDEA).

- The GAO has found that voucher programs allow schools to cherry-pick student applicants for admission, often discriminating against students based on their disability. These programs often ‘counsel out’ or discharge students with disabilities because they required more services than the schools would provide^{iv}.
- To date, public charter schools have a poor track record of recruiting, admitting, retaining and providing a quality education for students with disabilities^v.
- In some states, students must explicitly waive their rights under the IDEA before they accept the funding. The purpose of a voucher must only be to provide choice, not to deny rights or abdicate responsibility of the school, district or state.

These findings demonstrate that charter schools and voucher programs often work discrimination against students with disabilities. Given this documented discrimination, COPAA urges the Committee to seek a commitment from Mrs. DeVos that she will, as Secretary of Education, ensure that all schools receiving federal dollars are held to upholding the law regarding the equitable recruitment, admission, retention and provision of educational services to students with disabilities. In addition, the structure of charter and voucher programs pose inherent threats to public education and as currently constructed may result in discriminatory access to the private and charter schools. Mrs. DeVos must commit to:

- Taking action that insures all children, including children with disabilities, continue to have access to high quality, geographically accessible appropriate education, including those students that are not participating in charter or voucher programs, and commit to maintaining public funding levels and formulas to insure that high quality public options remain available.
- Assuring that charter/voucher program have mechanisms to insure that these schools are available in urban and rural areas (where there it is less profitable for the schools to locate) and assuring funding or pricing is controlled in a manner that prevents the schools from pricing out poor families and those with children with disabilities.

Ensure State Compliance with the IDEA

The IDEA is fundamentally a civil rights law, designed to protect the right to education of students with disabilities. It achieves this through creating a contract between the federal government and the States. In exchange for federal dollars, the States voluntarily commit themselves to implementing the provisions of the IDEA. As in any contract, both parties have the right to demand compliance of the other party. For that reason, the federal government needs to continue to ensure that States comply with the IDEA. We ask the Committee to secure a commitment from Mrs. DeVos that federal oversight of State compliance will not be reduced.

Ensure State Compliance with Key Provisions of ESSA

COPAA has established important partnerships with the business, civil rights and disability communities in its work to support the ESSA and to assure every child, especially those most at-risk and for whom the law was historically intended, do in fact have access to a high-quality education. COPAA believes the Secretary is integral to helping states set high standards through ESSA and, provide accountability for the achievement of all students. Please obtain a commitment from Mrs. DeVos that as Secretary she will use the full authority provided under the statute to assure that states work with schools and districts to align resources and provide teachers the necessary tools so that all students can gain a regular diploma, career skills and/or access to postsecondary education.

Eliminate the Overuse of Seclusion, Restraint, Discipline

The ESSA, as passed by bipartisan agreement specifically calls for state Title I plans to include new information indicating how states will support districts *...to improve school conditions for student*

learning, including through reducing—“(i) incidences of bullying and harassment;“(ii) the overuse of discipline practices that remove students from the classroom; and“(iii) the use of aversive behavioral interventions that compromise student health and safety^{vi}. The uncontested data show:

- Over 700,000 students with disabilities received one or more out-of-school suspensions and students with disabilities served by IDEA are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities.
- Male school children of color with disabilities are two and a half times more likely to be suspended than white boys with disabilities.
- Multiracial girls with disabilities are four times more likely to be suspended than white girls with disabilities.
- Students with disabilities served by IDEA represent 14% of all students, yet 65% of students with disabilities are subject to physical restraint in school^{vii}.

COPAA is concerned about the use of restraints, seclusion and aversive interventions as part of educational programs for children with disabilities. Restraints, seclusion and aversive interventions are neither educational nor effective. Abusive methods not only place the student at risk of serious physical and psychological harm, but also violate his or her dignity and right to be free from abusive treatment. Every child is entitled to be treated with dignity and respect. No child with a disability should be subjected to abusive treatment under the guise of providing educational services. We implore the Committee to secure a commitment from Mrs. DeVos that she will, as Secretary of Education, develop policies and rules to reduce the use of restraint and seclusion and end the discriminatory use of these discipline practices against students with disabilities.

We thank you for this opportunity to provide input to the nomination process and hope you will press Mrs. DeVos to make commitments on each of these issues. The future of America’s children depends on you to do so.

Sincerely,



Denise Marshall
Executive Director

COPAA is an independent, nonprofit organization of parents, attorneys, advocates, and related professionals. COPAA members nationwide work to protect the civil rights and secure excellence in education on behalf of the 6.5 million children with disabilities in America. COPAA’s mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares him or her for meaningful employment, higher education and lifelong learning, as well as full participation in his or her community.

ⁱ National Center on Education Statistics, National Assessment of Educational Progress (NAEP), 2015, retrieved at <http://nces.ed.gov/nationsreportcard/pubs/main2013/2014451.aspx>

ⁱⁱ National Center on Education Statistics, 2013-2014, retrieved at https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2013-14.asp

ⁱⁱⁱ U.S. Department of Labor, 2015 retrieved at www.dol.gov

^{iv} School Choice: Private School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students, GAO-16-712: 2016, retrieved at: <http://www.gao.gov/products/GAO-16-712>

^v Charter Schools: Additional Federal Attention Needed to Help Protect Access for Students with Disabilities, GAO-12-543: 2012, retrieved at <http://www.gao.gov/products/GAO-12-543>

^{vi} Sec. 1111(g)(c) [20 U.S.C. 6311], Every Student Succeeds Act of 2015, Pub. L. No. 114-95 § 114 Stat. 1177 (2015-2016).

^{vii} Civil Rights Data Collection 2013-2014, U.S. Department of Education, retrieved at: <http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>