

December 10, 2020

Dear Members of the Biden Education Transition Team,

The signatories of this letter are national advocacy organizations that represent students with disabilities, their families, and the educators who serve them. Together, we advocate for policies that ensure students with disabilities are included in all aspects of society and have every opportunity to succeed. We write to express serious concern about the potential nomination of Lily Eskelsen Garcia as the Secretary of Education and positions previously taken by the National Education Association (NEA) while she served as their president.

Eskelsen Garcia served as President of the NEA from 2014 through 2020 and, in that role, led and oversaw the development of many positions that stood in direct opposition to those taken by parents and parent advocacy organizations in support of children with disabilities. The positions taken by NEA were detrimental to the success of students with disabilities. These include but are not limited to the following:

- 1. Opposing the core legal tenet of “least restrictive environment” in the Individuals with Disabilities Education Act (IDEA).** IDEA makes clear that every child with a disability must receive their education alongside students without disabilities to the maximum extent appropriate. This fundamental promise within the law is known as the “least restrictive environment” (LRE) requirement. Students with disabilities are general education students first. Any student receiving specialized services (e.g., students with disabilities, low-income students, English Learners) is first and foremost a student in the general education system. Research overwhelmingly shows that providing students with disabilities an education in the general education classroom has clear academic, social, and behavioral benefits for students with disabilities and their peers without disabilities.¹ Despite this, in 2016, NEA published an article suggesting that inclusion does not prepare students for life after high school and that following the law’s requirement of LRE is not always appropriate.²
- 2. Opposing statewide assessments, citing their harm on students with disabilities.** NEA’s “2020 Policy Playbook” indicates their opposition to statewide assessments and calls on policymakers to reexamine the assessment system due to the tests’ “negative effects on students from all backgrounds, especially those from under-resourced communities, English language learners, children of color, and those with disabilities.”³ Ironically, statewide assessments are the only comparable indicator available to the public demonstrating how all students with disabilities are performing compared to their grade level peers in multiple grades. It wasn’t until the passage of No Child Left Behind in 2001 that students with disabilities were counted in state and district accountability systems. Before this, parents did not know how their children were performing against state grade level standards. Disability and civil rights advocates strongly oppose a return to an era when students with disabilities and other systemically marginalized students were

¹ National Council on Disability (2018). IDEA Series: The Segregation of Students with Disabilities. Washington, DC

² Available at: <https://www.nea.org/advocating-for-change/new-from-nea/inclusion-some-not-all#:~:text=The%20federal%20law%20calls%20this,receive%20additional%20supports%20and%20services.>

³ National Education Association (2020). “2020 NEA Policy Playbook for Congress and the Biden-Harris Administration.” Available at: <https://www.nea.org/resource-library/2020-nea-policy-playbook-congress-and-biden-harris-administration>

invisible.

3. **Opposing the 1% cap on the use of alternate assessments in the Every Student Succeeds Act.** Research shows that the vast majority of students with disabilities can and should be achieving at grade level content standards.⁴ It is only appropriate for a small percentage of students with disabilities to participate in statewide alternate assessments based on alternate achievement standards (AA-AAS). Thus, the Every Student Succeeds Act imposes a 1% cap, limiting participation in these assessments to 1% of students (approximately 10% or less of students with disabilities). NEA opposed this cap and fought to allow more students to be held to this lower standard, despite students' ability to achieve at higher levels. Despite it being contrary to the law, being assigned to the AA-AAS can have very significant negative consequences for students with disabilities, including removal from general education instruction and lowering expectations for students to achieve grade level standards, being assigned to segregated classrooms, and being unable to graduate with a regular high school diploma.
4. **Opposing the elimination of the "2 percent" assessment.** After the passage of No Child Left Behind (when students with disabilities were first included in the assessment and accountability system) and before the passage of the Every Student Succeeds Act (ESSA), states were permitted to develop alternate assessments on modified achievement standards (AA-MAS).⁵ According to the National Council on Disability (NCD), "[t]hese assessments allowed districts and states to count students with disabilities who were 'unlikely to achieve grade-level proficiency' as proficient if they scored proficient on alternate assessments on modified achievement standards (AA-MAS) as long as students included as proficient did not exceed 2% of all students assessed (2% translates to approximately 20 of students with disabilities)."⁶ In practice, this assessment (and the instructional practices that accompanied it) was used to lower expectations for students with disabilities and many states assessed more than 2% of their students using this test. In some places, such as districts in California, as many as 70% of students with disabilities were tested under the AA-MAS.⁷ With the support of the disability community, the U.S. Department of Education issued a rule in 2015 to prohibit the 2 Percent rule.⁸
5. **Opposing efforts to eliminate seclusion and reduce physical restraint in schools.** Data from the U.S. Department of Education Civil Rights Data Collection continues to show that most students restrained and secluded were students with disabilities, who comprised 13 percent of all students enrolled, yet represented 80 percent of all students physically restrained, and 77 percent of all students secluded.⁹ Restraint and seclusion are dangerous practices that continue

⁴ Thurlow, M., Quenemoen, R., & Lazarus, S. (n.d.) Meeting the Needs of Special Education Students: Recommendations for the Race to the Top Consortia and States. Available at: https://nceo.umn.edu/docs/OnlinePubs/Martha_Thurlow-Meeting_the_Needs_of_Special_Education_Students.pdf

⁵ The Advocacy Institute (2015). Assessment & Accountability for Students with Disabilities A Look Back at the Alternate Assessment on Modified Academic Achievement Standards. Available at: <https://www.advocacyinstitute.org/ESEA/AA-MAS.Look.Back.Jan2015.pdf>

⁶ National Council on Disability (NCD) (2018). IDEA Series: Every Student Succeeds Act and Students with Disabilities. NCD: Washington, DC. Available at: https://ncd.gov/sites/default/files/NCD_ESSA-SWD_Accessible.pdf

⁷ Ibid.

⁸ See: <https://www.federalregister.gov/documents/2015/08/21/2015-20736/improving-the-academic-achievement-of-the-disadvantaged-assistance-to-states-for-the-education-of>

⁹ Civil Rights Data Collection, Office for Civil Rights, U.S. Department of Education (2020) at: https://www2.ed.gov/about/offices/list/ocr/docs/restraint-andseclusion.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

to cause children trauma, injury, and death. The disability community has advocated for many years that federal legislation is needed to establish national minimum standards to prohibit the use of seclusion and prevent the use of physical restraint in schools. NEA supported the Keeping All Students Safe Act in 2014 but then failed to do so under Eskelsen Garcia's leadership through 2020.

As the leader of NEA, Eskelsen Garcia had the opportunity to steer the organization toward equity and access for students with disabilities but failed to do so. We have serious concerns about placing someone with such values at the helm of the U.S. Department of Education -- a federal agency that is charged with upholding the civil rights of students with disabilities and improving outcomes for all students.

We would be happy to discuss these concerns in greater detail and hope you'll seriously consider them as you develop and finalize the slate of potential nominees. We encourage you to ensure that any nominee for Secretary of Education has a strong track record of supporting the inclusion of and ensuring high standards for students with disabilities.

Sincerely,

Association of University Centers on Disabilities
Autistic Self Advocacy Network
Center for Public Representation
Council of Parent Attorneys and Advocates
Little Lobbyists
National Center for Learning Disabilities
National Center for Special Education in Charter Schools
National Down Syndrome Congress
The Advocacy Institute