



September 3, 2018

The Honorable Chuck Grassley  
Chairman  
U.S. Senate Committee on the Judiciary  
Washington, DC 20510

The Honorable Dianne Feinstein  
Ranking Member  
U.S. Senate Committee on the Judiciary  
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein,

The National Center for Special Education in Charter Schools (NCSECS) is dedicated to ensuring that students with disabilities have equal access to charter schools and that charter schools are designed and operated to enable all students to succeed. Public charter schools have the opportunity to create effective, inclusive learning environments and to be exemplars of educational equity, quality, and innovation. NCSECS works intently with the civil rights and disability communities in advocating for the fundamental principle that public schools must be required to serve all students.

To this end, we believe that Supreme Court Justices must recognize and preserve the historical and practical value of education, civil rights, and disability laws. We urge the United States Senate Committee on the Judiciary to clarify Supreme Court nominee Judge Kavanaugh's history with and views on the importance of civil rights protected under the law, particularly as they relate to students with disabilities and their families.

We are concerned that his legal record indicates a lack of commitment to upholding civil rights protections under the law, as evidenced by his rulings in *Doe ex rel. Tarlow v. D.C.* and *Hester v. D.C.*, as well as his dissent in *Seven-Sky v. Holder*. Moreover, his record suggests a lack of understanding about how school choice intersects with issues of equity, evidenced by his strong support of government funded private and religious school voucher programs, many of which require students and families to waive their rights under the Individuals with Disabilities Education Act (IDEA).

On behalf of students with disabilities, their families, and advocates, we urge the Judiciary Committee to ask Judge Kavanaugh the following questions to clarify his position on the laws impacting students with disabilities:

- 1) Do you support the unanimous U.S. Supreme Court opinion issued in *Endrew F. v. Douglas County School District* which interpreted the scope of IDEA's free appropriate public education requirements as ensuring that schools must proactively provide every child with a disability the chance to meet challenging objectives? And furthermore, do you agree the Court was right to reject the Tenth Circuit's reasoning that the child may only be offered a program to provide "merely more than de minimis" educational benefit?
- 2) Will you commit to assuring that the Court will clarify the legal expectations that attach to schools receiving public funding through voucher programs and that such programs uphold and do not waive any student's rights under the IDEA and all other civil rights statutes?

- 3) Do you uphold the need for the Office for Civil Rights and that it must support the role intended by Congress: to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools?
- 4) Do you agree that charter schools are fundamentally public schools and that they must uphold all federal education and civil rights laws as well as state sunshine laws?

It has been 43 years since the passage of the IDEA, 45 since the passage of Section 504 of the Rehabilitation Act, and 28 since the passage of the Americans with Disabilities Act, yet students with disabilities continue to lag behind their peers in important educational outcomes. Vetting Judge Kavanaugh provides an opportunity to explore the importance of upholding the collective protections of equity that these laws provide. In your hands lies the impact of the next lifetime appointment to the Supreme Court of the United States on future generations of American students to come and we therefore ask you to take great care in making this monumental decision.

Sincerely,



Lauren Morando Rhim, Ph.D.  
Executive Director

cc: Members of the U.S. Senate Committee on the Judiciary  
Chairman Lamar Alexander  
Ranking Member Patty Murray