

June 30, 2021

The Honorable Patty Murray
Chair,
Committee on Health, Education, Labor, and
Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

The Honorable Richard Burr
Ranking Member,
Committee on Health, Education, Labor, and
Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

Dear Chair Murray and Ranking Member Burr,

On behalf of the undersigned organizations, we urge you to support the confirmation of Catherine Lhamon to be the next Assistant Secretary for Civil Rights (OCR) at the United States Department of Education (ED). All students deserve to have equal access to an education that is free from discrimination and harassment. Unfortunately, students with disabilities face significant barriers to success and safety due to inappropriate school discipline policies, higher rates of bullying, less access to high-quality education, and educational segregation. Our organizations strongly support Catherine Lhamon to be the next Assistant Secretary for Civil Rights and urge you to confirm her nomination. Ms. Lhamon has demonstrated a commitment to upholding the civil rights of all students, especially those with disabilities, and advancing equity and equality during her tenure at the U.S. Department of Education (ED).

The Importance of the Office of Civil Rights at the U.S. Department of Education

Education is a civil right in the United States and we must ensure the nation's students have equitable access to quality public educational opportunities. At ED, OCR's core mission is to enforce nondiscrimination laws passed by Congress in schools. As the Assistant Secretary, Ms. Lhamon would serve as the primary legal advisor on civil rights at ED. She would lead the critically important charge of protecting the rights of students who report discrimination on the bases of race, color, national origin, sex, disability, and age. Of particular importance to the populations we serve, Ms. Lhamon would be responsible for enforcement of Section 504 of the Rehabilitation Act which prohibits discrimination on the basis of disability and guarantees equal access to education. OCR also plays a critical role in not only resolving individual complaints of discrimination, but investigating systemic discrimination, collecting and reporting data, and offering technical assistance to schools to better assist them in meeting their obligations under the law. The National Center for Education Statistics estimated over 50 million students are currently enrolled in public elementary and secondary schools. And with 7.1 million, or 14 percent of all public school students receiving education services under the Individuals with Disabilities Education Act (IDEA) and 1.3 million or 2.7% of all public school students covered under Section 504 of the Rehabilitation Act, it is of the utmost importance that OCR be led by someone with a commitment to civil rights as well as the technical background and expertise to ensure equitable access to public education for all students.

Catherine Lhamon's Expertise and Accomplishments

Ms. Lhamon has a demonstrated commitment to the enforcement of civil rights and a record of accomplishments when she previously served as Assistant Secretary for Civil Rights at ED from 2013 to 2017. Ms. Lhamon has deep expertise in the practice of civil rights law having worked on cases at the National Center for Youth Law, Public Counsel Law Center, and the American Civil Liberties Union Foundation of Southern California. In addition to her prior government service at ED, Ms. Lhamon has chaired the U.S. Commission on Civil Rights and currently serves as a domestic policy adviser at the White House, focusing on racial justice issues. At a pivotal time when schools are preparing to usher in a new school year following one of the most difficult school years in our nation's history, we cannot think of anyone more qualified to take on this important role.

Ms. Lhamon also has a long list of accomplishments from her previous time at ED which serve as indisputable evidence that she is a most qualified candidate to build on previous work and lead the office toward even more equitable outcomes. For example, she led the publication of a large number of Frequently Asked Questions and Dear Colleague letters on the rights of people with disabilities, many of which are still in force today two Administrations later. Notably, she listened to the concerns of the disability community about inappropriate uses of restraint and seclusion and discipline and addressed them through OCR's discipline,¹ and restraint and seclusion guidance² documents. These documents are of particular importance to our communities as students with disabilities and students of color are disproportionately negatively impacted by punitive disciplinary practices and harmful and sometimes lethal seclusion and restraint techniques³ deployed in our nation's schools.

Dear Colleague Letter on School Discipline

In 2014, ED under the leadership of Ms. Lhamon at OCR, jointly with the U.S. Department of Justice released guidance clarifying the manner in which federal law applies to the prevention of discrimination on the basis of race and ethnicity.⁴ This document was often cited by advocates, and provided critical information to the field about the manner in which these laws apply to disciplinary analyses. This guidance document and other departmental decisions during the period were informed by data drawn from the Civil Rights Data Collection (CRDC), an important source of information that was championed by Ms. Lhamon during her appointment. While the 2014 joint guidance has been rescinded, it is indicative of her laser focus on the disproportionate impact discrimination has on underserved student populations and the desire to address these long standing issues in our nation's schools. As more and more schools return to in-person instruction, discipline issues will come to the forefront and it will be incumbent

¹ <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>

² <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf>

³ Civil Rights Data Collection (CRDC) reveals that 101,990 students were subjected to seclusion or restraint in the United States during the 2017-18 school year, 78 percent of whom were students with disabilities and disproportionately Black boys.

⁴ U.S. Department of Justice, Civil Rights Division and U.S. Department of Justice, Office for Civil Rights (2014) Dear Colleague Letter, Discipline, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>

upon OCR to ensure schools do not discriminate against students under the guise of discipline protocols.

Dear Colleague Letter on Responding to Bullying of Students with Disabilities

Students with disabilities are harassed or bullied based on sex, race, and disability at rates higher than their representation in the total school enrollment.⁵ However, Ms. Lhamon has a long history of working to protect students with disabilities from bullying and harassment. On October 14, 2014, Ms. Lhamon issued guidance on responding to bullying of students with disabilities. Under her leadership, ED clarified that anti-bullying protections extend to students receiving services under Section 504 of the Rehabilitation Act.⁶ This resulted in over three quarters of a million additional students being protected from bullying and harassment. When bullying occurs, schools must assess whether the bullying is related to a student's disability and whether the bullying affects a student's ability to receive a free, appropriate public education (FAPE). Until the guidance was issued, students receiving services under Section 504 who were bullied did not have any legal standing and this could result in a denial of FAPE. The guidance highlighted schools' obligations to address behavior that may constitute disability-based harassment, and explained schools' responsibilities to remedy any denial of FAPE for students who receive services either through the Individuals with Disabilities Education Act (IDEA) or Section 504. Without this clarification led by Ms. Lhamon, thousands of students with disabilities could be bullied or harassed and schools would not be obligated to remedy the effects of bullying on the services that the student with a disability receives to ensure FAPE.

Dear Colleague Letter on Charter Schools

Ms. Lhamon has played a significant role in addressing the emerging issues of civil rights in new education spaces, including in public charter schools. In 2014, Ms. Lhamon released guidance to detail how federal civil rights laws are to be equally applied to charter schools, including the services and activities (academic and nonacademic) that charter schools must provide, and that this must be in a manner that students with disabilities are given an equal opportunity to participate⁷. Since that time, charter schools have seen an increase in enrollment of students with disabilities and a narrowing gap between enrollment in charter schools and traditional public schools. In 2015-2016, students with disabilities comprised 10.79% of charter school enrollment (compared to 12.84% in traditional public schools); in 2009-2010, the enrollment was only 8.2% (compared to 11.2% in traditional public schools).⁸ The inclusion of students with disabilities in charter school settings is beneficial to both students with and without

⁵ U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2015–16

⁶ Lhamon, C. E. (2014). Dear Colleague Letter: Responding to Bullying of Students with Disabilities. Office for Civil Rights, US Department of Education.

⁷ Lhamon, C.E. (2014). Dear Colleague Letter: Charter Schools. Office of Civil Rights, US Department of Education.

⁸ Rhim, L. M., Kothari, S., & Lancet, S. (2019). Key Trends in Special Education in Charter Schools in 2015-2016: Secondary Analysis of the Civil Rights Data Collection. *National Center for Special Education in Charter Schools*.

disabilities. This guidance was rescinded in 2020 and the disability community believes that Ms. Lhamon, if confirmed, could play a valuable role in ensuring that students with disabilities and their families are protected from discrimination in public charter school settings.

Improved OCR Data Collection and Operating Procedures

In addition to her policy accomplishments at OCR, Ms. Lhamon also has a distinguished record of improving OCR data collection and operating procedures. Under her tenure, she strengthened the CRDC by beginning a process to obtain more reliable data from school districts, which is an important aspect within OCR as it gives ED a national data set and helps improve overall strategy for administering and enforcing the civil rights statutes. CRDC data is also used by many organizations in our community to identify disproportionate impacts on students with disabilities and other student subgroups. She also listened to our community's concerns about the inconsistency in decisions across OCR Regional Offices and took effective measures to bring about more consistency, including selective review of decisions. This was particularly apparent in OCR's decisions on restraint and seclusion in schools where we saw a much more consistent approach to these complaints and the legal framework became the basis for the Dear Colleague Letter on restraint and seclusion. Finally, Ms. Lhamon was successful in persuading OCR Regional Offices to consider more than the facts of an individual complaint and consider opening a broader systemic investigation when called for. This enabled OCR to better fulfill its mission of protecting the rights of all students with disabilities. It is almost indisputable that Ms. Lhamon is the person who can rise to the challenge of ensuring all students have equitable access to educational opportunities and there is a clear record to point to which supports her nomination and confirmation to this position. While much is left to be done at OCR, we are confident that Ms. Lhamon is best positioned to lead OCR to success.

We can think of no more crucial time than now to ensure that the OCR at ED has a leader committed to enforcement of laws that protect students from discrimination, unfair discipline practices, harassment, and bullying on the basis of disability status. The person responsible for leading OCR must be committed to enforcing federal laws on behalf of every single student in this country. Our nation's students — those with disabilities and those without — deserve nothing less. As such, we urge you to support the confirmation of Catherine Lhamon to be the next U.S. Assistant Secretary for Civil Rights.

Sincerely,

Alliance for Excellent Education
American Occupational Therapy Association
Association of People Supporting Employment First (APSE)
Association of University Centers on Disabilities (AUCD)
Autistic Self Advocacy Network
Center for Learner Equity

Council for Exceptional Children
Council of Parent Attorneys and Advocates
Disability Rights Education & Defense Fund (DREDF)
EDGE Consulting Partners
Educators for Excellence
Learning Disabilities Association of America
Legal Clinics at Southwestern Law School
Mass Insight Education & Research
National Association of Counsel for Children
National Center for Learning Disabilities
National Council of Jewish Women
National Council on Independent Living
National Crittenton
National Disability Rights Network (NDRN)
National Education Association
National Urban League
New Leaders
Next100
Public Justice
TASH
Teach Plus
Texas Appleseed
The Advocacy Institute
The Civil Rights Project at UCLA
The National Federation of the Blind

CC: Senate Health, Education, Labor and Pensions Committee Members