



July 6, 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,

The undersigned Protection & Advocacy (P&A) agencies 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. 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).

P&As are a nationwide network of congressionally mandated, cross disability organizations operating in every state, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands). There is also a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations located in the Four Corners region of the Southwest. Thousands of individual education cases comprise a significant percentage of P&A caseloads each year and tens of thousands are impacted by the systemic education work carried out by the P&As.

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.

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), 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.

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. 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.

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.

Students with disabilities are harassed or bullied based on sex, race, and disability at rates higher than their representation in the total school enrollment.⁴ 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.⁵ 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 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.

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 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

⁴ U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2015–16

⁵ Lhamon, C. E. (2014). Dear Colleague Letter: Responding to Bullying of Students with Disabilities. Office for Civil Rights, US Department of Education.

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 support the confirmation of Catherine Lhamon to be the next U.S. Assistant Secretary for Civil Rights.

Sincerely,

Alabama Disabilities Advocacy Program
Arizona Center for Disability Law
Disability Law Center– Massachusetts Protection and Advocacy
Disability Law Center of Alaska
Disability Law Center, Utah
Disability Law Colorado
Disability Rights Arkansas
Disability Rights California
Disability Rights Center - New Hampshire
Disability Rights Center of Kansas
Disability Rights Connecticut
DisAbility Rights Idaho
Disability Rights Iowa
Disability Rights Louisiana
Disability Rights Maine
Disability Rights Michigan
Disability Rights Nebraska
Disability Rights New Jersey
Disability Rights New Mexico
Disability Rights New York (DRNY)
Disability Rights North Carolina
Disability Rights Oregon
Disability Rights Pennsylvania
Disability Rights Rhode Island
Disability Rights South Carolina

Disability Rights Tennessee
Disability Rights Vermont
Disability Rights Washington
Disability Rights Wisconsin
Indiana Disability Rights
Kentucky Protection and Advocacy
Minnesota Disability Law Center/Mid-Minnesota Legal Aid
Native American Disability Law Center
Nevada Disability Advocacy & Law Center

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