June 4, 2018

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary DeVos:

On Tuesday, May 22nd you appeared before the Committee on Education and the Workforce of the U.S. House of Representatives to provide testimony on the policies and priorities of the Department of Education (Department). We write seeking swift, decisive, and widely disseminated correction to the inaccuracy in your sworn testimony that was provided in response to Rep. Espaillat:

"Rep. Espaillat: There are many undocumented children attending schools right now, all over the country. Do you feel that government – that we in government – should fund the education of these children?

Sec. DeVos: Well, of course, we do because this was a Supreme Court decision rendered many years ago, and so there are undocumented children in K12 education today that we support and we give education to on a daily basis.

Rep. Espaillat: ...Inside the school, if a principal or a teacher finds out that a certain child is undocumented or his or her family members are undocumented, do you feel that that principal or teacher should, is responsible to call ICE and to have that family reported?

Sec. DeVos: Sir, I think that’s a school decision. It’s a local community decision, and again, I refer to the fact that we have laws and we also are compassionate, and I urge this body to do its job and address and clarify where there is confusion on this."

The Supreme Court decision you seemingly reference, the 1982 ruling in Plyler v. Doe1 (Plyler), affirmed the constitutional right of all children, regardless of a child’s or a child’s parent’s immigration status, to a public K-12 education. This constitutional right was reaffirmed by the 2012 unanimous ruling of the 11th Circuit in Hispanic Interest Coalition of Alabama v. Alabama2 (HICA). You rightly note that the precedent set by Plyler requires states and school districts to provide, including through the obligation of public funds, “education on a daily basis” to undocumented children. Regrettably, that is where the accuracy of the exchange ends.

---

1 457 U.S. 202
2 Hispanic Interest Coalition v. Governor of Ala., 691 F.3d 1236 (11th Cir. 2012)
Your clear assertion of local or even school-based discretion to set policies or employ practices empowering school personnel to report undocumented children or their family members to Immigration and Customs Enforcement (ICE) for potential deportation is not only wrong, but also dangerous. As established by *Plyler*, reaffirmed in *HICA*, and further clarified in your Department’s existing sub-regulatory guidance, any such policy or practice would burden an undocumented child’s right to a public education under the Equal Protection Clause of the U.S. Constitution, in direct contravention of *Plyler*. On this point, there should be no confusion. In fact, in a November 2017 letter to the Ranking Members of the House Committees on Education and the Workforce, Judiciary, and Homeland Security, a top Department official referred to the existing guidance, promulgated in 2014, as evidence of the Administration’s intent to uphold *Plyler*.

Additionally, any such practice would violate Titles IV and VI of the Civil Rights Act of 1964 and accompanying regulations, which prohibit discrimination on the basis of race, color, or national origin (among other factors), by public schools, and discrimination by recipients of Federal financial assistance on the basis of race, color, or national origin, respectively. As your Assistant Secretary noted in the above-referenced November 2017 letter, the Federal Government is charged with enforcement of the Civil Rights Act.

As the chief official for our nation’s public education system, it is your job to uphold federal law and protect and promote the civil rights of all students. Your words and actions matter. Left uncorrected, your testimony leaves state and district officials and public school personnel with the false impression that they may willfully violate the U.S. Constitution, potentially subjecting any such officials or personnel who rely on your statement to liability. Left uncorrected, your testimony leaves immigrant communities fearful of interaction with public schools. Left uncorrected, your testimony could do irreparable harm to educational opportunity for undocumented children.

In closing, while a statement issued by the Department to limited stakeholders on Wednesday, May 30th affirms your commitment to broadly uphold *Plyler*, it fails to sufficiently clarify what that commitment means in light of your factually inaccurate and widely-viewed testimony that is a matter of public record. Your claim, in the May 30th statement, that your words are being intentionally misrepresented, is baseless, as the public record clearly reflects.

---

3 https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf
4 42 U.S.C. § 2000c-6, 28 C.F.R. § 42.104(b)(2)
5 42 U.S.C. § 2000d, 34 C.F.R. § 100.3(b)(2)
As you stated on May 30th, “all children should feel safe going to school.” Unfortunately, due to your conflicting and ambiguous public statements and inaccurate testimony as a matter of public record, families are left to fear deportation at the hands of school personnel. We reiterate our call for swift, decisive, and widely disseminated correction to your testimony that unequivocally clarifies state and school district obligations to serve all children, regardless of immigration status.

Sincerely,

Adriano Espaillat  
United States Representative  
New York 13th District

Robert Menendez  
United States Senator  
New Jersey

Raul M. Grijalva  
United States Representative  
Arizona 3rd District

Catherine Cortez Masto  
United States Senator  
Nevada

Michelle Lujan Grisham  
United States Representative  
New Mexico 1st District  
Chair, Congressional Hispanic Caucus

Patty Murray  
United States Senator  
Washington  
Ranking Member, Committee on Health, Education, Labor, and Pensions

Cedric L. Richmond  
United States Representative  
Louisiana 2nd District  
Chair, Congressional Black Caucus

Robert C. “Bobby” Scott  
United States Representative  
Virginia 3rd District  
Ranking Member, Committee on Education and The Workforce

Judy Chu  
United States Representative  
California 27th District  
Chair, Congressional Asian Pacific American Caucus

Jerrold Nadler  
United States Representative  
New York 10th District  
Ranking Member, Committee on the Judiciary
Jamie Raskin  
United States Representative  
Maryland 8th District  

Benjamin L. Cardin  
United States Senator  
Maryland  

Joe Courtney  
United States Representative  
Connecticut 2nd District  

Richard Blumenthal  
United States Senator  
Connecticut  

Donald Norcross  
United States Representative  
New Jersey 1st District  

Cory A. Booker  
United States Senator  
New Jersey  

Anthony G. Brown  
United States Representative  
Maryland 4th District  

Chris Van Hollen  
United States Senator  
Maryland  

A. Donald McEachin  
United States Representative  
Virginia 4th District  

Tim Kaine  
United States Senator  
Commonwealth of Virginia  

James P. McGovern  
United States Representative  
Massachusetts 2nd District  

Edward J. Markey  
United States Senator  
Commonwealth of Massachusetts  

Luis V. Gutiérrez  
United States Representative  
Illinois 4th District  

Tammy Duckworth  
United States Senator  
Illinois
Joseph Crowley  
United States Representative  
New York 14th District

Zoe Lofgren  
United States Representative  
California 19th District  
Ranking Member, Subcommittee on Immigration and Border Security

Joseph P. Kennedy III  
United States Representative  
Massachusetts 4th District

Jared Polis  
United States Representative  
Colorado 2nd District

Colleen Hanabusa  
United States Representative  
Hawaii 1st District

Mark Pocan  
United States Representative  
Wisconsin 2nd District

Susan A. Davis  
United States Representative  
California 53rd District

Kirsten Gillibrand  
United States Senator  
New York

Dianne Feinstein  
United States Senator  
California  
Ranking Member, Committee on the Judiciary

Elizabeth Warren  
United States Senator  
Commonwealth of Massachusetts

Michael F. Bennet  
United States Senator  
Colorado

Mazie K. Hirono  
United States Senator  
Hawaii

Tammy Baldwin  
United States Senator  
Wisconsin

Kamala D. Harris  
United States Senator  
California
Peter Welch
United States Representative
Vermont At-large

Suzanne Bonamici
United States Representative
Oregon 1st District

Pramila Jayapal
United States Representative
Washington 7th District

Ron Wyden
United States Senator
Oregon

Sheila Jackson Lee
United States Representative
Texas 18th District

Hakeem Jeffries
United States Representative
New York 8th District

Bill Foster
United States Representative
Illinois 11th District

Henry C. "Hank" Johnson, Jr.
United States Representative
Georgia 4th District

Filemón Vela
United States Representative
Texas 34th District

Nanette Diaz Barragán
United States Representative
California 44th District

Mark DeSaulnier
United States Representative
California 11th District

Mark Takano
United States Representative
California 41st District

Bonnie Watson Coleman
United States Representative
New Jersey 12th District
John A. Yarmuth  
United States Representative  
Kentucky 3rd District

Keith Ellison  
United States Representative  
Minnesota 5th District

Barbara Lee  
United States Representative  
California 13th District

Jim Langevin  
United States Representative  
Rhode Island 2nd District

Jimmy Gomez  
United States Representative  
California 34th District

Mike Quigley  
United States Representative  
Illinois 5th District

Ruben J. Kihuen  
United States Representative  
Nevada 4th District

André Carson  
United States Representative  
Indiana 7th District

Alma Adams, Ph.D.  
United States Representative  
North Carolina 12th District

Carolyn B. Maloney  
United States Representative  
New York 12th District

Debbie Wasserman Schultz  
United States Representative  
Florida 23rd District

Gregory W. Meeks  
United States Representative  
New York 5th District

Eleanor Holmes Norton  
United States Representative  
District of Columbia

Ruben Gallego  
United States Representative  
Arizona 7th District
Kathy Castor
United States Representative
Florida 14th District

Darren Soto
United States Representative
Florida 9th District

Grace F. Napolitano
United States Representative
California 32nd District

Earl Blumenauer
United States Representative
Oregon 3rd District

Linda T. Sánchez
United States Representative
California 38th District

Ro Khanna
United States Representative
California 17th District

Tulsi Gabbard
United States Representative
Hawaii 2nd District

John Lewis
United States Representative
Georgia 5th District

Val Demings
United States Representative
Florida 10th District

Danny K. Davis
United States Representative
Illinois 7th District

Dina Titus
United States Representative
Nevada 1st District

Michael E. Capuano
United States Representative
Massachusetts 7th District

Bill Pascrell, Jr.
United States Representative
New Jersey 9th District

Lisa Blunt Rochester
United States Representative
Delaware At-large
Gregorio Kilili Camacho Sablan  
United States Representative  
Northern Mariana Islands

Gene Green  
United States Representative  
Texas 29th District

Eliot L. Engel  
United States Representative  
New York 16th District

Adam Smith  
United States Representative  
Washington 9th District

Joaquin Castro  
United States Representative  
Texas 20th District

Frank Pallone, Jr.  
United States Representative  
New Jersey 6th District

Marcia Fudge  
United States Representative  
Ohio 11th District

Donald S. Beyer Jr.  
United States Representative  
Virginia 8th District

Ted Deutch  
United States Representative  
Florida 22nd District

Peter DeFazio  
United States Representative  
Oregon 4th District

Albio Sires  
United States Representative  
New Jersey 8th District

Lloyd Doggett  
United States Representative  
Texas 35th District

Jim Costa  
United States Representative  
California 16th District

Jackie Speier  
United States Representative  
California 14th District
Alcee L. Hastings
United States Representative
Florida 20th District

Lucille Roybal-Allard
United States Representative
California 40th District

Yvette D. Clarke
United States Representative
New York 9th District

Salud O. Carbajal
United States Representative
California 24th District

Diana DeGette
United States Representative
Colorado 1st District

Dwight Evans
United States Representative
Pennsylvania 2nd District

Tim Ryan
United States Representative
Ohio 13th District

Thomas R. Suozzi
United States Representative
New York 3rd District

Tony Cardenas
United States Representative
California 29th District

Steve Cohen
United States Representative
Tennessee 9th District