Congress of the United States
Washington, DC 20515

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. Doe*[1] (*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. Alabama*[2] (*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)

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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,[3] 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[4] and VI[5] 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 of 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[6]. 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.

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[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)

[6] Gonzalez v. City of Albuquerque New Mexico, No. CV - 05-580 JB/WPL (D. N.M. Nov. 9, 2006) available at http://www.maldef.org/immigration/litigation/gonzalez_v_albuquerque/index.html.

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
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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
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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

Kirsten Gillibrand
United States Senator
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Zoe Lofgren
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Ranking Member, Subcommittee on Immigration and Border Security

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

Joseph P. Kennedy III
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Elizabeth Warren
United States Senator
Commonwealth of Massachusetts

Jared Polis
United States Representative
Colorado 2nd District

Michael F. Bennet
United States Senator
Colorado

Colleen Hanabusa
United States Representative
Hawaii 1st District

Mazie K. Hirono
United States Senator
Hawaii

Mark Pocan
United States Representative
Wisconsin 2nd District

Tammy Baldwin
United States Senator
Wisconsin

Susan A. Davis
United States Representative
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Kamala D. Harris
United States Senator
California

Peter Welch
United States Representative
Vermont At-large

Bernard Sanders
United States Senator
Vermont

Suzanne Bonamici
United States Representative
Oregon 1st District

Ron Wyden
United States Senator
Oregon

Pramila Jayapal
United States Representative
Washington 7th District

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

Mike Thompson
United States Representative
California 5th District

Mike Doyle
United States Representative
Pennsylvania 14th District

Norma J. Torres
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California 35th District

Raja Krishnamoorthi
United States Representative
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Frederica S. Wilson
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Illinois 9th District

Carol Shea-Porter
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New Hampshire 1st District

Ben Ray Luján
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New Mexico 3rd District

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Barbara Lee
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Jimmy Gomez
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Nevada 4th District

André Carson
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United States Representative
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New York 5th District

Eleanor Holmes Norton
United States Representative
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Kathy Castor
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Florida 14th District

Darren Soto
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Florida 9th District

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California 38th District

Ro Khanna
United States Representative
California 17th District

Tulsi Gabbard
United States Representative
Hawaii 2nd District

John Lewis
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Georgia 5th District

Val Demings
United States Representative
Florida 10th District

Danny K. Davis
United States Representative
Illinois 7th District

Dina Titus
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Michael E. Capuano
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Massachusetts 7th District

Bill Pascrell, Jr.
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New Jersey 9th District

Lisa Blunt Rochester
United States Representative
Delaware At-large

Gregorio Kilili Camacho Sablan
United States Representative
Northern Mariana Islands

Donald S. Beyer Jr.
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Virginia 8th District

Gene Green
United States Representative
Texas 29th District

Ted Deutch
United States Representative
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Eliot L. Engel
United States Representative
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Peter DeFazio
United States Representative
Oregon 4th District

Adam Smith
United States Representative
Washington 9th District

Albio Sires
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Joaquin Castro
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Texas 20th District

Lloyd Doggett
United States Representative
Texas 35th District

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

Jim Costa
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California 16th District

Marcia L. Fudge
United States Representative
Ohio 11th District

Jackie Speier
United States Representative
California 14th District

Alcee L. Hastings
United States Representative
Florida 20th District

Dwight Evans
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