



January 10, 2018

Dear Senator:

On behalf of the over 170,000 bipartisan members and supporters of the American Association of University Women (AAUW), I write to urge you to oppose the nomination of Kenneth Marcus to be Assistant Secretary for Civil Rights at the U.S. Department of Education. Mr. Marcus' failure to support Title IX and other civil rights laws as well as his failure to adequately respond to key questions during his hearing in the Senate Health, Education, Labor, and Pensions (HELP) Committee demonstrate a lack of qualification necessary to uphold the mission of the Office of Civil Rights (OCR) and ensure all students have access to an education.

AAUW believes a full vetting of each subcabinet nominee must include close examination of threshold questions concerning qualifications and temperament. Each nominee should also be free from all current and potential conflicts of interest.

Basic to all of AAUW's public policy efforts is the understanding that true equity requires a balance between the rights of the individual and the needs of the community. AAUW opposes all forms of discrimination and supports constitutional protection for the civil rights of all individuals. AAUW believes that high-quality public education is the foundation of a democratic society and is critical to economic prosperity and gender equality. We advocate for equitable climates free of harassment, bullying, and sexual assault. We support academic freedom, civic education, protection from censorship, bias-free education, and responsible funding for all levels of education, including early childhood education and programs for students with disabilities. We advocate increased access to higher education, especially for women in poverty. We promote equitable efforts to close the persistent achievement gap that disproportionately affects low-income children and students from minority communities. The Assistant Secretary for Civil Rights at the Department of Education has the responsibility to uphold these promises to our students.

Mr. Marcus' record on these AAUW public policy priorities and his responses during the HELP Committee hearing make it clear that he is not the right person to lead the Office for Civil Rights.

Mr. Marcus did not agree to fully support and protect Title IX and other civil rights laws. In September 2017, the Department of Education announced its decision to withdraw the 2011 Dear Colleague letter on Sexual Violence as well as the 2014 Question and Answer on Title IX and Sexual Violence. AAUW is disappointed with the Department of Education's decision, these guidance documents played a critical role in providing direction to schools requesting clarity on their responsibilities under Title IX when responding to sexual violence.<sup>1</sup> During his hearing, Mr. Marcus refused to commit to supporting the 2011 or 2014 guidance regarding sexual harassment and violence. AAUW cannot support a nominee for Assistant Secretary, charged with ensuring equal access to education through rigorous enforcement of civil rights in our schools, who refuses to maintain and strengthen enforcement of Title IX, its regulations, and its guidance. Mr. Marcus also failed to demonstrate a willingness to protect the rights of all students, specifically immigrant and low-income students, to an education free from discrimination during his hearing. AAUW cannot support a nominee for Assistant Secretary who does not fully support upholding and enforcing civil rights protections for all our students.

During his hearing, Mr. Marcus also refused to commit to any level of transparency regarding investigations of Title IX violations at colleges or universities. The Department of Education is responsible for enforcing Title IX, its regulations and guidance. This includes investigating complaints about how schools handle instances of sex discrimination. Maintaining the publication of colleges and universities with open Title IX complaints regarding campus sexual assault will warrant greater transparency toward a prompt and equitable resolution as well as ensure the rights of survivors are heard. The Assistant Secretary must commit to robust technical assistance and enforcement. AAUW cannot support a nominee for Assistant Secretary who does fails to commit to baseline transparency regarding Department of Education investigations and offer clear, unequivocal support toward protecting the civil rights of students.

Mr. Marcus has a history of supporting sex segregation in public schools. During his previous tenure as Assistant Secretary for Civil Rights, Mr. Marcus promulgated problematic draft regulations seeking to expand sex segregation in public education. These actions ignore the overwhelming evidence confirming that single-sex education fails to improve educational outcomes. Research also continues to demonstrate that single-sex education reinforces gender stereotypes that typically supports teaching in separate classrooms, creating an environment that stifles learning for both boys and girls.<sup>2</sup> Any actions to implement single-sex education in classrooms without corresponding alternatives for the excluded sex is a misguided attempt to lure schools to violate the Equal Protection Clause. These actions by Mr. Marcus are troubling and reason for serious concern. AAUW cannot support a nominee for Assistant Secretary who does not support equitable classrooms free from sex discrimination and sex stereotyping.

Again, I urge you to oppose the nomination of Ken Marcus to be Assistant Secretary for Civil Rights at the Department of Education. Mr. Marcus' lack of support for Title IX, its regulations, and its guidance, his unwillingness to demonstrate support for protecting students' civil rights and their ability to access an education free from discrimination as well as his failure to adequately address key issues during his hearing in the Senate HELP Committee demonstrates that he lacks the qualifications necessary to serve as Assistant Secretary. Cosponsorship and votes associated with this nomination may be scored in the AAUW Action Fund *Congressional Voting Record for the 115th Congress*. Please do not hesitate to contact me at 202/785-7724, or Pam Yuen, senior government relations coordinator, at 202/785-7712 if you have any questions.

Sincerely,



Anne Hedgepeth  
Interim Vice President of Public Policy and Government Relations

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<sup>1</sup> AAUW. (September 2017). *Department of Education Rescinds Crucial Title IX Guidance*. <https://www.aauw.org/article/doe-rescinds-crucial-title-ix-guidance/>.

<sup>2</sup> National Coalition for Women and Girls in Education. (June 2017). *Title IX at 45: Advancing Opportunity Through Equity in Education*. <http://www.ncwge.org/TitleIX45/Single%20Sex%20Education.pdf>.