

July 27, 2017

Mr. Peter Oppenheim
Nominee for Assistant Secretary for Legislation and Congressional Affairs
U.S. Department of Education
400 Maryland Avenue S.W.
Washington, D.C. 20202

Dear Mr. Oppenheim:

Congratulations on your nomination by President Trump to serve as Assistant Secretary for Legislation and Congressional Affairs at the Department of Education (“the Department”).

As you know from your time working in the Senate, the Office of Legislation and Congressional Affairs at the Department of Education serves a critical function at the Department, operating as the primary liaison between Congress and the Secretary of Education—as well as the entire Department of Education. This office requires a leader who will take seriously the vital responsibility of responding to Congressional requests and maintaining a healthy working relationship between Congress and the Department. I write to ascertain the degree to which you, if confirmed, would faithfully execute that important responsibility, and to request specific commitments from you as I consider your pending nomination before the United States Senate.

The Department of Education is responsible for enforcing critical laws and protections for PreK-12 and college students, overseeing a trillion-dollar student loan program, and implementing programs meant to help improve educational opportunities for all kids. As a member of the Senate Committee on Health, Education, Labor, and Pensions, the committee of jurisdiction over the Department of Education, it is my constitutional and legal responsibility to conduct aggressive oversight of the Department’s action.

Strong oversight is needed now more than ever. Under Secretary DeVos, this Department has demonstrated time and time again that it is more interested in serving the interests of predatory for-profit colleges, the student loan industry, and private K-12 operators than it is in serving the interests of all students. For example, in recent months, the Department has needlessly rolled back critically important rules meant to protect students and taxpayers from fraud and shady colleges that leave students drowning in debt for useless degrees.

In the midst of these troubling practices, the Trump Administration's Department of Education under Secretary DeVos has been negligent in its duty to respond substantively, completely, and thoroughly to Members of Congress. This Department has been either totally unresponsive to our oversight letters, or it has responded with paltry rhetoric and talking points that plainly ignore urgent document and information requests or do not completely answer our questions. This is unacceptable.

Of the letters I have personally led to Secretary DeVos with requests for information, the Department has not fully responded to any with answers to all questions and with all requested information. Notably, the letters I have led to Secretary DeVos have not been any longer, more detailed, or tougher than the oversight letters I sent to previous Education Secretaries. In fact, I led roughly the same number of oversight letters to former Education Secretary John King by this point in 2016. This is not partisan. I take oversight seriously, because, no matter which party controls the Department, students, families, and taxpayers deserve a Department of Education that will put students first.

If confirmed, you would be responsible for correcting this failure and ensuring that the Department is responsive to the oversight of *all* Members of Congress—no matter the party. In order to understand your willingness to fulfill this responsibility, I ask that you respond to the following questions by August 2:


1. If confirmed, will you commit to doing everything within your power to obtain substantive and complete responses to all letters and other information requests from Congressional Democrats in a timely manner, including completely fulfilling all document requests and obtaining complete answers to all questions?
2. If confirmed, will you commit to securing meetings between Congressional Democrats or our staffs and officials at the Department of Education upon request, including with nominees for positions and in forums such as briefings, conference calls, and in-person meetings?
3. If confirmed, will you commit to responding to all other requests for technical assistance, constituent casework matters, data analyses, and other reasonable requests from Congressional Democrats?
4. If confirmed, will you commit to securing all responses in a timely manner, notifying our offices if the Department is unable to meet our deadlines, and, if not the deadline, supplying a reasonable date by which we can expect a response to our requests?
5. A May 1, 2017 opinion by the Department of Justice's Office of Legal Counsel erroneously stated that individual Members of Congress are not constitutionally authorized to conduct oversight and raised questions about the responsibility of the executive branch to respond to oversight requests from individual Members of Congress.

However, the opinion also concluded that “the Executive Branch ... may respond [to oversight requests from individual members] at its discretion.”¹

- a. Do you agree that each Member of Congress, whether or not a chairman of a committee, is a constitutional officer entitled to the respect and best efforts of the executive branch to respond to his or her requests for information to the extent permitted by law?
- b. Do you agree that, in the spirit of comity, the executive branch should seek to satisfy the legislative needs of Members of Congress, including providing, at a minimum, information about executive branch programs available to requestors under the Freedom of Information Act (FOIA)?
- c. Do you agree that, since the executive branch does not treat individual requests from Members of Congress as requests under the Freedom of Information Act, the executive branch may provide more information about executive branch programs than it provides to FOIA requestors, who are entitled to receive only documents?
- d. In the past, the precedent of Education Department has been to provide prompt responses to requests for information from individual Members of Congress. Will you commit to abiding by this past precedent and providing responses to requests for information from me and any other Member of Congress?

America's students and their families deserve a Department of Education that does everything it can to build opportunities for America's students. I plan to continue holding the Department accountable for delivering on this responsibility. The next Assistant Secretary for Legislation and Congressional Affairs must work diligently and earnestly with Congress when we conduct oversight. I look forward to hearing from you and receiving your answers to my questions in a timely manner.

Sincerely,



Elizabeth Warren
United States Senator

¹ Gannon, C. E. “Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch.” Office of Legal Counsel. *U.S. Department of Justice* (May 1, 2017). Online at: <https://www.justice.gov/olc/file/966326/download>.