

October 3, 2017

Mr. Carlos Muñiz
Nominee for General Counsel
U.S. Department of Education
400 Maryland Avenue S.W.
Washington, D.C. 20202

Dear Mr. Muñiz:

I write to express my disappointment and concern with your failure to answer my questions for the record following your September 19 hearing before the Senate Health, Education, Labor and Pensions Committee. While you provided rote, obfuscatory responses to my questions, you failed to provide any substantive answers.

If confirmed as the U.S. Department of Education's ("the Department") General Counsel, you would serve as the principal legal adviser to Secretary DeVos on all matters affecting Departmental programs and activities. Understanding your legal perspective and interpretation of the law is critical for Members of Congress and the public to evaluate your fitness for the position and gauge any conflicts of interest you may bring to the position. I write to ask that you fully respond to the questions I provided.

Although you mentioned in your written responses that you will base your activity "following the rule of law," when questions specifically asked for views on current laws and policies central to the Department of Education's jurisdiction, you were unable to demonstrate any understanding of these legal issues. You also suggested that you lacked "the specific facts and circumstances" needed to comment on issues that are well documented in the public record. Moreover, many questions provided real or hypothetical examples that included sufficient information for you to substantively respond, or specifically requested your legal interpretation of established laws. Your inability or unwillingness to provide basic answers raises questions about your understanding of the role of the General Counsel and the laws governing the Department's actions.

If confirmed as General Counsel, you will also be responsible for managing the Department's ethics programs and clearance of its regulatory documents. Several of my questions focused on your interpretation of what constitutes ethical practices or your legal interpretation of laws connected to ethics. In response to these questions, you repeatedly stated

only that you will follow federal ethics laws following the “guidance provided by the Department’s Designated Agency Ethics Official.” But, if you are confirmed, the Department’s agency ethics official will report to you, which is precisely why we must understand *your* understanding and interpretation of ethical practices, including your legal view on “the appearance of impropriety.”

Your inadequate responses to questions at your confirmation hearing make your failure to respond to the written questions even more troublesome. At your hearing, you appeared to be unaware of major legal cases involving the Department of Education, its contractors, and Title IV colleges, including for-profit colleges.¹

Secretary DeVos has shown little regard of the legal and regulatory framework in which the Department operates. She has, again and again, taken actions that benefit student loan companies and for-profit colleges at the expense of students. As such, it is critical that the Department has an independent General Counsel willing to challenge the Secretary, support students, and uphold the law. Regrettably, with your repetitive and often meaningless stock answers to over half of my written questions, you have failed to provide any insight into your legal views, nor have you convinced me that you are prepared to ensure that the Department of Education fully follows and enforces the law.

I therefore request that you fully answer all of my questions in writing prior to any scheduled floor vote. Please respond by October 10th, 2017.

Sincerely,



Elizabeth Warren
United States Senator

¹ “Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans.” *The United States Department of Justice* (May 13, 2014). Online at: <https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging>.

Hayashi, Y. “CFPB sues Navient over student loan-servicing practices.” *The Wall Street Journal* (January 18, 2017). Online at: <https://www.wsj.com/articles/cfpb-sues-navient-over-student-loan-servicing-practices-1484765340>.