

EQUALITY CALIFORNIA



February 7, 2018

To the Honorable Members of the United States Senate
Washington, DC 20510

RE: Kenneth Marcus, Nominee for Assistant Secretary, Office of Civil Rights, Department of Education

Dear Senators:

On behalf of our 800,000 members and their families, Equality California, an LGBTQ civil rights organization, is writing to express our strong opposition to the nomination of Kenneth Marcus to head the Office of Civil Rights (OCR) in the Department of Education.

The core function of OCR is to protect civil rights in federally-assisted education programs and to prohibit discrimination on the bases of race, color, national origin, sex, sexual orientation, gender identity, disability or age.

Arguably most in need of such protections are LGBTQ students, especially those who do not conform to traditional gender norms. Bullied students fall behind in school, drop out, and attempt suicide at far higher rates than their non-LGBTQ peers which naturally leads to further isolation, poor job prospects and limited futures.

Kenneth Marcus's professional history and written opinions clearly demonstrate that he is unable to fulfill OCR's basic responsibility of protecting the most vulnerable students, ***much less*** the requirements to actively investigate systemic discrimination and to provide technical assistance to assist schools, districts and states in meeting their obligations under federal law.

That Mr. Marcus is indifferent – if not actually hostile – to LGBTQ students is particularly worrisome because Secretary DeVos, under whom he would serve, has herself shown little concern for LGBTQ students. In just the past year, Secretary DeVos has rescinded Department of Education guidance aimed at supporting transgender students, including access to school facilities and bathrooms consistent with their gender identity.

For decades, Mr. Marcus has demonstrated outright animus toward LGBTQ

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people. Speaking to the Traditional Values Coalition in 1998, he not only opposed anti-LGBTQ employment protections but also the inclusion of sexual orientation to hate crimes protections, opining that the word 'hate' was being misused to "describe people who simply disagree with a particular agenda, whether it be a general multicultural agenda, or agenda of a particular group like the homosexual community." The Hate Crimes Prevention Act, he said, was as an attack on First Amendment rights and a "slippery slope to controlling our thoughts and motivations."

He opposed adding sexual orientation to the list of protected classes because doing so would "elevate it to the same level as race and religion" and make "it easier for prosecutors to punish more harshly those who chose a gay victim because he's gay than a straight victim for some other reasons."

Mr. Marcus fought the Clinton Administration's national hate crimes prevention curriculum which had been jointly developed by the Departments of Justice and Education to spread awareness of hate crime and bigotry in participating public schools. This curriculum, he argued, indicated the government's "dangerous tendency to regulate speech and behavior which is simply politically incorrect...it is the tendency to tell some people that because of their moral, or religious, or political views, they will not be allowed to speak."

We are also concerned about his failure to protect other students who need support: As head of the US Commission on Civil Rights, he consistently opposed affirmative action and equal opportunity initiatives and fought university efforts to achieve diversity through "race-neutral alternatives." Mr. Marcus long pushed for sex segregated classrooms in public schools and exhibited indifference to the unique needs of immigrant children who speak other languages at home. Given that disability claims comprise about half of the complaints to OCR, Mr. Marcus has shown a shocking indifference to the needs of disabled students.

Twenty years have passed but Mr. Marcus's political views are clearly stuck in a bigoted past. During his recent Senate Judiciary Committee confirmation hearing, he refused to say whether he believes Title IX's protections against sex discrimination also apply to gender identity, nor would he affirmatively pledge to use Title IX protections to prevent and address sexual assault in K-12 and on college campuses.

Equality California believes that Mr. Marcus is clearly unable to fulfill the responsibilities of this critical position. The Office of Civil Rights in the Department of Education deserves a strong champion for America's most vulnerable students and Kenneth Marcus is clearly not up to the job.

We respectfully urge you to reject his nomination.

Sincerely,

Handwritten signature of Rick Zbur in blue ink.

Rick Zbur
Executive Director
Equality California

Handwritten signature of Valerie Ploumpis in black ink.

Valerie Ploumpis
National Policy Director
Equailty California

cc: Senator Diane Feinstein
cc: Senator Kamala Harris