



March 9, 2017

United States Senate  
Committee on the Judiciary  
Washington, DC 20510

Dear Senator:

On behalf of the three million members of the National Education Association and the 50 million students they serve, we wish to express our strong opposition to the nomination of Judge Neil Gorsuch to the United States Supreme Court. In the overwhelming majority of cases, he has ruled against disabled students and expressed personal reservations about their constitutional rights. His record as a whole shows a lack of regard for the struggles and rights of students with disabilities. If the Supreme Court were to adopt Judge Gorsuch's views on disability and education, the Individuals with Disabilities Education Act (IDEA), along with complementary civil rights laws and protections, could be hollowed out.

Of specific concern:

- First, Judge Gorsuch has erected technical legal barriers against the legal claims of students with disabilities — barriers of the type that the Supreme Court has subsequently rejected unanimously. For example, in *A.F. v. Española Public Schools*, he would not allow a student to assert her rights under the Americans with Disabilities Act because she had previously reached a settlement under IDEA.
- Second, Judge Gorsuch has repeatedly ruled that students with disabilities are owed only a bare minimum of education — for example, his opinion in *Thompson R2-J School District v. Luke P.*, asserts that IDEA requires educational progress that is “merely ... more than *de minimis*.” This finding has been rejected by other courts and is now being reviewed by the Supreme Court in *Andrew F. v. Douglas County School District*.
- Third, Judge Gorsuch has joined deeply troubling opinions that hold the constitutional rights of students with disabilities are not violated even when they are segregated and subjected to abusive confinement — for example, in *Muskraat v. Deer Creek Public Schools* and *Couture v. Board of Education*.
- Fourth, Judge Gorsuch appears to favor dismantling the power of administrative agencies to enforce regulatory protections, including those for students with disabilities. Under the *Chevron* doctrine enunciated in 1984, the Supreme Court defers to agencies' interpretation of ambiguous statutory language. In *Gutierrez-Brizuela v. Lynch*, Judge Gorsuch calls the *Chevron* doctrine a “behemoth” that “swallow[s] huge amounts of core

judicial and legislative power” and in *Caring Hearts Personal Home Services, Inc. v. Burwell*, he mocks federal agencies as so-called “experts.”

In addition to deeply troubling rulings in numerous cases involving students with disabilities — fully detailed in NEA’s report, “Judge Neil Gorsuch’s Record on Students with Disabilities” (available at <http://bit.ly/2nb1hFo>) — he has consistently sided with big business at the expense of working people. Judge Gorsuch has embraced extreme views that could endanger workers’ rights on issues like employment discrimination, worker safety, and wages.

The next Supreme Court justice could cast the deciding vote in cases involving students with disabilities, as well as other critical issues: public education funding, educators’ ability to negotiate collectively for wages and benefits, and much more. An independent Supreme Court is a check on abuse of executive power, which is more important now than ever. It is essential for the next Supreme Court justice to be fair and impartial — not influenced by politics, parties or the president.

NEA supports the rights of students with disabilities to receive a high quality education, to live free from discrimination, and to be vindicated by the courts when those rights are violated. Providing students with disabilities the opportunity to succeed academically is a moral and professional responsibility of the educator community and the nation as a whole. As you prepare for a hearing and a vote, we strongly urge you to oppose the nomination of Judge Neil Gorsuch to the Supreme Court.

Sincerely,

A handwritten signature in black ink that reads "Marc Egan". The signature is written in a cursive, flowing style.

Marc Egan  
Director of Government Relations  
National Education Association