

September 20, 2017

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Ave., SW
Washington, D.C. 20002

RE: Docket ID: ED-2017-OS-0074

Dear Secretary DeVos:

Today we write to you in response to the notice posted in the Federal Register on June 22, 2017. The notice is in accordance with Executive Order 13777 “Enforcing the Regulatory Reform Agenda” and the request for input on regulations that may be appropriate for repeal, replacement, or modification. Legal Momentum is the oldest non-profit legal organization dedicated to advancing the rights of women and girls and has long advocated for equity in educational opportunities. Title IX of the Education Amendments of 1972 very simply states that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” This applies to nearly every K-12 and higher ed institution in the country. Without regulation and guidance educational institutions throughout the country are left with the unfair task of figuring out for themselves how to ensure every aspect of their programming complies with this federal legislation.

Without regulation and guidance there will be wide variance in how institutions understand and comply with the mandates of Title IX – in direct opposition to the goal of Title IX and other similar civil rights laws, which seek to ensure every student receives equal access to education. In particular, the 2001 and 2011 guidance on sexual assault are necessary and effective at helping schools craft policies to respond appropriately to sexual violence on campus. This guidance promotes policies which provide for prompt and equitable resolutions to sexual violence complaints, respecting institutions’ duties to both complainant and respondent students.

Of critical importance is maintaining the guidance’s inclusion of the “preponderance of the evidence” standard of proof. It is a standard easily understood and implemented by those with no legal training—precisely what school disciplinary proceedings are—which leads to more consistent, fair processes. In fact, it is the most commonly used standard among schools for responding to other forms of discrimination, including race discrimination, and other disciplinary infractions such as plagiarism. “Preponderance of the evidence” is the standard of proof used in

proceedings in the civil justice system. Certainly, it is illogical to require an administrative, disciplinary proceeding to require more proof than that required by our civil justice system.

The problems currently being seen in schools' responses to sexual violence is not the product of the Title IX regulations or the 2011 guidance. If schools have failed to properly implement the regulations and guidance, the answer is prompt and consistent Title IX enforcement, not withdrawing the regulations and guidance that serve as a roadmap for schools interested in providing fair processes to all students.

Additionally, Title IX regulations prohibit discrimination on the basis of a student's "actual or potential" parental, family, or marital status or "pregnancy, childbirth, termination of pregnancy, or recovery therefrom." The 2013 guidance from OCR on this topic simply reiterates this protection and shows educational institutions how they can best comply through straightforward examples. Barriers to education lead many pregnant and parenting students to leave school, derailing their career prospects and making it more difficult for them to provide for their families. This is true for young fathers as well as young mothers. Studies show that only 51% of women who had been teen mothers earn their high school diplomas by age 22;¹ and according to a nationwide survey, parenthood was a factor in leaving school for one-third of male students who dropped out.²

Because discrimination against pregnant and parenting students is still widespread—and education institutions benefit from the clear, explanatory guidance issued by OCR in 2013—Legal Momentum urges the Department of Education to protect and enforce the provisions of the implementing regulations aimed at preventing discrimination against pregnant and parenting students and to maintain the 2013 guidance that helps educational institutions do so.

An important aspect of the Department of Education's work is enabling school districts and institutions of higher education to create safe and supportive educational spaces that are equal to all students. The Title IX mandate which requires all school districts and institutions of higher education that receive federal funding to have a Title IX Coordinator—tasked with ensuring compliance with Title IX—is essential to schools staying in compliance. The 2015 Dear Colleague Letter and Resource Guide is an important tool providing a clear explanation for school administrators and Title IX Coordinators on the scope of this role. Legal Momentum urges the Department of Education to protect this provision and guidance which so effectively assists schools in complying with the mandates of Title IX.

¹ U.S. Bureau of Labor Statistics, National Longitudinal Survey of Youth, 1997 cohort. See <http://www.bls.gov/nls/nlsy97.htm/>.

² Bill & Melinda Gates Foundation, *The Silent Epidemic: Perspectives of High School Dropouts* (2006). d. Ibid.

LEGALMOMENTUM

The Women's Legal Defense and Education Fund

In the 45 years that Title IX has been law, we have seen the educational playing field begin to level. Because of Title IX, its regulations, and OCR guidance, schools have created safer, more equitable educational environments. However, the field is not yet truly level and continued enforcement is needed. Rolling back the protections that Title IX affords is not an option if we are to create and maintain equitable learning spaces.

As a member of the National Coalition for Women and Girls in Education (NCWGE) we also endorse the public comment submitted by NCWGE.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Hecht Schafran", written in a cursive style.

Lynn Hecht Schafran
Senior Vice President and Legal Director
Legal Momentum