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September 20, 2017

Ms. Hilary Malawer  
Assistant General Counsel  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

*Submitted via regulations.gov*

Re: Docket ID: ED-2017-OS-0074-0001  
Evaluation of Existing Regulations

Dear Ms. Malawer:

On behalf of our three million members, the National Education Association (NEA) submits these comments in response to the Department of Education's (ED) public notice, "Evaluation of Existing Regulations," at 82 Fed. Reg. 28431 (June 22, 2017). ED's review of existing regulations is a product of President Donald Trump's broader deregulation effort launched by the February 24, 2017 Executive Order 13777, "Enforcing the Regulatory Reform Agenda."

Our comments address three areas: general issues, higher education, and civil rights.

#### General Issues

We would urge ED to exercise caution in making changes to existing regulations and guidance implementing our nation's bipartisan education laws. The existing regulations have gone through extensive rulemaking processes that usually include stakeholder input and agency cost/benefit analysis. The regulations and guidance also provide a group of known expectations for states, districts, schools, and other education stakeholders. While no education stakeholder is likely to agree with every aspect of every existing regulation, the current regulations do provide a working regulatory infrastructure for our nation's schools and should not be dismissed lightly or without a careful analysis of the specific impacts on students.

Although we urge a general deference to the process that created current rules and guidance, we note that the passage of the Every Student Succeeds Act marks a major departure from No Child Left Behind, and that conforming changes to some regulations and guidance may still be needed to meet Congressional intent. We urge that any such changes be done in a public manner with

broad opportunities for stakeholder input and with the goal of increasing equal opportunity and closing achievement gaps for students.

### Higher Education

ED is the agency charged with protecting students and taxpayers from abuses committed by unscrupulous institutions of higher learning. For that reason, ED has adopted, over the last several years, a series of program integrity rules regarding the Title IV programs of the Higher Education Act. NEA supports these rules, and urges ED to maintain and/or reinstate them in order to ensure that our higher education institutions are providing academic programs of quality for students and value for the government investment in student aid programs. For more on our concerns about specific programs see our July 12, 2017, comments on the gainful employment and borrower defenses regulations.<sup>1</sup>

Another area of grave higher education concern is ED's recent signals in a statement by Secretary Betsy DeVos on September 7,<sup>2</sup> and earlier in statements by the acting director of the Office of Civil Rights Candice E. Jackson,<sup>3</sup> that the agency will likely undermine current Title IX protections for students who are victims of sexual assault. As NEA President Lily Eskelsen García said in a press statement in response:

Educators across the nation are appalled that the Department of Education has decided to weaken protections for students who survive campus sexual assault or harassment. This decision offends our collective conscience and conflicts with the basic values of equality, safety, and respect that we teach our students every day. Title IX is essential to protect each student's right to equal access to education and an educational experience free from violence. The 2011 U.S. Office of Civil Rights guidance says that both the survivor and the accused have the same rights and must be treated equally during all proceedings. Today's announcement is another example of a Trump-DeVos agenda that scorns respect for survivors, including Secretary DeVos's own recent meeting with radical anti-woman activists and the president's own recorded sexual assault confession during the campaign.<sup>4</sup>

We urge ED to reverse the course it has been signaling in this matter. Instead of weakening protections for survivors, the agency should aggressively enforce existing Title IX regulations and guidance both in higher education and K-12 settings.

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<sup>1</sup> NEA's comments can be found at: at <https://www.regulations.gov/contentStreamer?documentId=ED-2017-OPE-0076-1626&attachmentNumber=1&contentType=pdf>

<sup>2</sup> See statement of Secretary DeVos at <https://www.ed.gov/news/speeches/secretary-devos-prepared-remarks-title-ix-enforcement>.

<sup>3</sup>Ms. Jackson was quoted in the *New York Times* on July 12, 2017 stating the following about sexual assault complaints: "Rather, the accusations — 90 percent of them — fall into the category of 'we were both drunk,' 'we broke up, and six months later I found myself under a Title IX investigation because she just decided that our last sleeping together was not quite right.'"

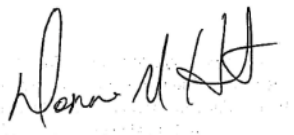
<sup>4</sup> See NEA press release at <http://www.nea.org/home/71638.htm>.

Civil Rights

ED's mission includes protecting civil rights under a range of statutes. We strongly urge ED to maintain the regulations and guidance under those statutes that are designed to protect students from discrimination and advance equal opportunity. These statutes include: Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, the Individuals with Disabilities Education Act (IDEA), the Elementary and Secondary Education Act (ESEA), the Carl D. Perkins Career and Technical Education Act, and the Higher Education Act (HEA). It would be tragic for ED to undo the progress toward equality and opportunity that is embedded in these statutes and their associated regulations and guidance aimed at protecting civil rights.

NEA respectfully submits these comments. If we can provide any additional information or answer any questions, please do not hesitate to contact NEA senior policy analysts Matthew Finucane at [mfinucane@nea.org](mailto:mfinucane@nea.org) or Mark Smith at [marksmith@nea.org](mailto:marksmith@nea.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Donna M. Harris-Aikens". The signature is fluid and cursive, with the first name "Donna" being the most prominent.

Donna M. Harris-Aikens, Director  
Education Policy and Practice Department