

BMore Indivisible

September 19, 2017

Secretary of Education
Office of the Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Submitted electronically through www.regulations.gov

Re: Docket No. 17-2017-OS-0074: Evaluation of Existing Regulations
https://www.regulations.gov/document?D=ED_FRDOC_0001-0785

Federal Regulations: https://www.ecfr.gov/cgi-bin/text-idx?SID=0717200349ac02b730b4600ba4a5ed05&mc=true&tpl=/ecfrbrowse/Title34/34tab_02.tpl

Dear Secretary DeVos:

BMore Indivisible is a group of more than 70 residents of Baltimore City, Maryland. BMore Indivisible seeks to ensure that the federal government acts in ways that benefit our community rather than harm it. Our members include scientists, environmentalists, business people, teachers, doctors, lawyers, and families with small children.

We strongly oppose any action by the U.S. Department of Education to weaken or delay its existing regulations that insure a quality education and social justice for all students. In addition, we urge the Department to use the notice and comment process if it does decide to modify or repeal any existing regulations.

Civil Rights Protection: At a time when hate crimes and discrimination are on the rise across the nation, the U.S. Department of Education must vigorously enforce and strengthen civil rights protections. Specifically, the Department should keep in their current form all current regulations and guidance that clarify our civil rights and education laws and ensure that all children receive the education they need. As residents of Baltimore City and the state of Maryland, we are particularly concerned that regulations that address disparities in school discipline, provide support for students with disabilities, protect access to English language programs, and provide protection for immigrants and religious minorities not be weakened or revised.

The U.S. Department of Education, through its Office for Civil Rights (OCR) is responsible for ensuring equal access to education for all students and for the

“vigorous enforcement of civil rights.”¹ To that end, the Department should instruct the Office for Civil Rights (OCR) to vigorously investigate civil rights discrimination complaints and to enforce laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, or age. The Department should also do all it can to ensure equal access for all students to high quality educational opportunities, including providing support for desegregating schools. We support the Civil Rights Data Collection (CRDC) that collects and reports data on civil rights in primary and secondary schools and making that data easily accessible and comprehensive.

While all of the Department’s civil rights protections are important, we urge the department to retain in their current form the following regulatory protections: the Department’s longstanding Title VI disparate impact regulations, the diversity priorities in the Department’s competitive grant programs, and the Magnet Schools Assistance Program regulations. It should also reinstate its guidance on civil rights protections and supports for transgender students.

The Title VI disparate impact regulations have been in place for more than 60 years and have provided the necessary tools to protect students from policies and practices that have a disproportionate adverse affect on members of a protected class. They are crucial to the Office for Civil Rights’ ability to enforce civil rights and should be preserved.

The Department should preserve the diversity priority in its competitive grants program. There is ample evidence that public school students are becoming increasingly isolated by both race and class.² There is also a vast body research showing the benefits of racially, culturally, and economically diverse schools for all students, and conversely, the negative and long-term effects of increasing segregation in our nation’s public schools. In light of these trends towards increasing segregation in our schools, the Department should maintain the current diversity priority for discretionary grant programs. The Department should also apply the diversity priority to all existing and forthcoming competitions related to school choice.

The Magnet Schools Assistance Program (MSAP) has been and continues to be an important mechanism for desegregating public schools and reducing and preventing the isolation of minority students in elementary and secondary schools. The current structure of the MSAP grant competition adheres to the program’s purpose and places an emphasis on projects that improve student diversity. It should be retained without any alterations.

¹ U.S. Department of Education, Office for Civil Rights.
<https://www2.ed.gov/about/offices/list/ocr/aboutocr.html>

² U.S. Government Accountability Office (April 2016). *K-12 Education: Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination*.
<http://www.gao.gov/assets/680/676745.pdf>

The Department should also reinstate its guidance on civil rights protections and supports for transgender students issued in 2016. States and districts across the country relied on this federal guidance until February 2017 when the Trump Administration rescinded it. Clearly, if the Department is committed to providing every student a high-quality education in a safe, supportive, inclusive and welcoming environment, then this guidance should be reinstated.

Addressing Campus Sexual Assault: The Department of Education's current guidance to schools, colleges, and universities on how to handle allegations of sexual harassment and assault should be kept in place. Under Title IX, colleges that receive federal funding are legally required to respond to and remedy hostile educational environments. The guidance, first issued in 2011 and later clarified in 2014, made clear that this protection extends to sexual harassment and sexual violence. Since then, it has been an important mechanism for pushing school, college, and university leaders to actively implement procedures for handling investigations and hearings.

These regulations should not be rolled back and prosecution of sexual harassment and/or assault should not be outsourced to private prosecutors.

We are particularly concerned about Secretary DeVos's reference to campus sexual misconduct hearings as "kangaroo courts" and her comments that the system put in place under these regulations is failing those accused of wrongdoing. There is ample evidence that sexual harassment and assault remains vastly underreported, but there is very little evidence to suggest that those accused of sexual assault have been denied due process in campus proceedings or been falsely accused. While 63% of sexual assaults on campus are not reported to police, false reporting is between just 2% and 10%.³

The current guidelines confirm the obligation of schools, colleges and universities to protect survivors of sexual assault and requires institutions to use a 'preponderance of the evidence' standard in investigating allegations of sexual harassment. By shifting the focus to those accused of sexual assault, Secretary DeVos sends precisely the wrong message than the one that the Department of Education should be sending to students and the country. We urge the Department to continue to implement and uphold these important civil rights protections.

Gainful Employment Rule & Borrower Defense Rule: BMore Indivisible strongly opposes any action to revise the gainful employment and borrower defense regulations. Numerous investigations by state and federal law enforcement agencies have uncovered widespread fraud among for-profit institutions of higher education. These for-profit institutions market aggressively to low-income students, women,

³ National Sexual Violence Resource Center (2015). *Statistics about sexual violence*. https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf

and students of color, promising them credentials that will lead to high-paying jobs. Instead, many students are left with crushing debt and worthless credentials. These rules represent the first step in a long-overdue process to protect defrauded borrowers, insert accountability for schools that participate in the federal student loan program, provide relief for students when institutions abruptly close, and protect students and taxpayers who in the end pick up the tab for fraudulent loans.

The gainful employment regulation was finalized in October 2014 and went into effect July 1, 2016; the borrower defense regulation was finalized in November 2016 and should have gone into effect July 1, 2017. Both these regulations protect students and taxpayers from for-profit colleges that do not provide the education they promised. These rules provide a measure of accountability that has been lacking for years.

There is ample evidence uncovering serious problems with the operation of the for-profit sector of higher education. The results of the Department of Education's own report on the gainful employment regulations found that of the over 800 programs that failed the accountability standards, 98 percent of those programs were offered by for-profit institutions. Numerous investigations conducted by the U.S. Department of Justice, the Securities and Exchange Commission and the Consumer Financial Protection Bureau among others, have found serious problems and misconduct among for-profit colleges. Because of concerns at the state level, a bipartisan group of state attorneys general are conducting investigations as well.

The Borrower Defense regulations were adopted following the abrupt closure of several for-profit higher education institutions, leaving both students and the Department holding large amounts of debt and leaving students without recourse to complete their education. The regulations provide student federal loan forgiveness if the institution they attended was involved in misleading activities or misconduct.

The Borrower Defense measures are designed to protect students from unscrupulous institutions and provide incentives for those institutions to improve their programs so they do not lose eligibility for federal loan programs. The rules were developed through an extensive process involving multiple stakeholders from across the education sector so there is no reason to delay or revise these rules now. Doing so only puts students and taxpayers at risk while irresponsible institutions continue to collect government money without accountability for providing quality educational services.

Online Schools: We support rules that require a school offering distance education programs (online schools) to get authorization in each state where it wants to market its programs to students. Current rules are important for protecting students from poor quality schools that do little more than burden them with debt. Requiring accreditation for all specific online programs would strengthen these rules and ensure that programs meet students' needs.