

National Organization for Women



Sept. 15, 2017

Ms. Hilary Malawer
Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Ave., SW
Washington, D.C. 20202
Dear Assistant General Counsel Hilary Malawer,

I am writing out of concern about recent reports of a proposed review of the Department of Education's April 2011 Dear Colleague letter--which provides guidance to educational institutions for the adjudication of sexual misconduct reports. From comments made by Secretary DeVos, it appears that there may be an intention to withdraw that guidance and replace it with a set of legally-enforceable requirements, possibly drawing from procedures developed by criminal prosecutors. Further, there may be an intention to narrow the definition of what constitutes sexual misconduct and to change the current standard of "preponderance of evidence" to a stricter standard. Any of these possible changes will make it far more difficult for survivors of sexual assault to prevail in their claim and to receive protections currently made available under Title IX of the Education Amendments of 1972, an important civil rights law protecting both female and male students from sex-based discrimination.

Current federal regulations and guidance help all students—regardless of sex, race, color, sexual orientation, gender identity, national origin, or disability status—receive the benefit of our civil rights laws. That is why I am urging the Department of Education not to repeal, replace, or modify current civil rights regulations. The Department should also preserve all current significant guidance documents, such as the guidance on: sexual harassment (including the April 2011 Dear Colleague Letter containing guidance on sexual violence) ; racial and disability-based harassment; access to athletic opportunities; gender equity in career and technical education; equal access to educational resources; nondiscriminatory school discipline; racial diversity programs; the rights of students with disabilities in charter schools; restraint and seclusion of students with disabilities; and the rights of English language learners.

To be effective, however, the federal government must enforce the law, provide oversight, and proactively work to ensure that students' rights are realized. Current regulations and guidance help make students' rights a reality and must be maintained.

Sincerely,

Toni Van Pelt, President
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