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September 19, 2017

Betsy DeVos
U.S. Secretary of Education

The Wyoming Coalition Against Domestic Violence and Sexual Assault (WCADVSA) submits these comments in strong support of the 2011 Dear Colleague letter clarifying Title IX's intended purpose of protecting ALL students from sexual violence and harassment, as well as strong support to re-instate the 2016 Dear Colleague letter on transgender students that was withdrawn in February 2017.

WCADVSA represents member programs across the State who serve victims and survivors of sexual assault, domestic violence and stalking. Through a collective voice, WCADVSA is committed to provide leadership, education and systems advocacy to advance social change and end violence. Because these crimes impact young people during their college years, responding to Campus Sexual Assault is a priority in Wyoming, from the University of Wyoming to all the community colleges, several of which are under investigation at this moment for violating Title IX and the Clery Act.

WCADVSA echoes the statement attached from National Alliance to End Sexual Violence (NAESV), the national voice for state and local programs working to support survivors and end sexual violence. Sexual assault is widespread and devastating to survivors on campus and in K-12 education settings. Victim/survivors can experience serious, discriminatory harms, and the issuance of the Office of Civil Rights (OCR) 2011 Dear Colleague letter was compelled by the acute needs of students. The letter's clarifications of OCR's previous regulatory guidance and enforcement actions are fully consistent with the civil rights approach to discriminatory harassment and the rules in the vast majority of other civil proceedings. Indeed, if OCR had adopted a different approach, it would have engaged in a dangerous kind of exceptionalism for only sexual violence and its victim/survivors, the majority of whom are women and girls. WCADVSA supports the correct clarification that the evidentiary standard in campus disciplinary hearings is preponderance of the evidence.

Title IX protects the entire campus community across gender identities and ensures that schools are equipped to both prevent and remedy gender-based discrimination. The withdrawn OCR 2016 guidance clarifies and reinforces this message, requiring schools to treat students in ways that are consistent with their gender identities. Any harassment of a student based on their gender identity or denial of educational programming or activities based on that gender identity is discriminatory and harmful and must be remedied. WCADVSA supports the 2016 guidance and the rights of transgender students to have access to a safe, nondiscriminatory environment where they learn, live, socialize, and compete as athletes. It is well-known that transgender students are at greater risk for being sexually victimized and

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harassed than their cisgender counterparts whether in a restroom or walking to class. All students have the right to an education free from sexual harassment and violence.

On behalf of survivors and local programs serving survivors and providing prevention education in their communities, WCADVSA urges the U.S. Department of Education to:

- 1) keep the 2011 Dear Colleague Letter in place as extraordinarily helpful and clarifying guidance articulating necessary, legally correct, and historically-followed standards that help both students and schools; and
- 2) reinstate the 2016 Dear Colleague Letter on Transgender Students to remedy this dangerous step backwards as a nation, leaving students who identify as transgender at risk for violence, interrupted education, and a myriad of potential harmful consequences.

Have additional questions? Please contact the following:

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National Alliance to
End Sexual Violence

Responding to Campus Sexual Assault

Key Issues

May, 2017

Several studies of campus sexual assault have confirmed that the incidence is high with significant consequences for survivors including high rates of PTSD, depression, and drug or alcohol abuse, which can hamper both their ability to succeed in school and future employment. At the same time, only a small percentage of these cases are reported, sanctioned by campus judicial boards, or prosecuted, allowing offenders, who will often have multiple victims, to go without punishment as well as creating an unsafe environment for students. **Responses to campus sexual assault must support survivors, uphold current available protections, and improve prevention with the following priorities in mind:**

- Oppose any efforts to undermine the Department of Education 2011 Dear Colleague Letter and support efforts to enforce Title IX;
- Support partnerships between schools and community-based rape crisis centers;
- Support survivors' access to confidential advocacy and accommodations;
- Maintain and improve campus processes with standards befitting a non-criminal, internal proceeding to respond to sexual misconduct. Reject mandatory reporting policies and conflating the criminal justice system and campus response; and
- Expand the availability of comprehensive prevention; training; and climate surveys.

Partnerships: Institutions have a prime opportunity to make significant and lasting change by integrating comprehensive sexual assault services and prevention through all aspects of campus life. State sexual assault coalitions and community-based rape crisis centers are experts in sexual violence with decades of experience conducting sexual assault training and prevention education as well as building an evidence base founded in practice and the real experiences of communities. Only community-based rape crisis center staff can ensure confidential communication with victims and have no conflict of interest since they are not university employees. They stand ready to work with colleges and universities to implement services, prevention and training programming. **We strongly urge institutions to enter into a Memorandum of Understanding (MOU) with a local, community-based rape crisis center or other program serving survivors and/or the state sexual assault coalition. MOUs could include, but should not be limited to:**

- An agreement, including fee structure, for the rape crisis center to provide confidential victim services;
- An agreement and fee structure for the rape crisis center or state sexual assault coalition to provide case consultation and training to confidential advisors;
- Consultation and provision of prevention education programs; consultation and provision of staff training;

- Development of training and/or prevention curricula;
- Office space for a rape crisis center advocate to meet with victims;
- Review of policies and procedures related to sexual assault; and
- Participation in a campus sexual assault task force and/or SART team.

Advocacy & Confidentiality: The cornerstone of rape crisis advocacy is empowering survivors to regain control by making their own decisions following sexual assault. Campuses are tasked with preventing these crimes, supporting survivors, creating a safe learning environment and holding offenders accountable. In doing this, we must keep the needs of survivors central to this process by granting advocates confidentiality when supporting survivors on campuses.

Mandatory reporting policies requiring campuses to report sexual assaults to local law enforcement are unacceptable, even with an opt-out provision. Survivors must be apprised of the avenues and procedures for reporting as well as advocacy assistance in making and following through with reports. However, the decision to report must be the survivor's decision. NAESV and Know Your IX conducted an internet survey in March 2015. Almost 90% of survivors responded "yes," they should retain the choice whether and to whom to report. When asked their concerns if reporting to police were mandatory, 79% said, "this could have a chilling effect on reporting," while 72% were concerned that "survivors would be forced to participate in the criminal justice system/go to trial."

At the same time, it is essential for campuses to rigorously investigate reported sexual assaults and proactively look for patterns of perpetration. Campuses must be clear which employees have a duty to report as a responsible employee and which employees can guard confidentiality, by providing statistics for Clery Act reporting that are de-identified and ensure a method of sharing information about specific crimes without identifying the victim, when authorized to do so by a victim who has been fully and accurately informed about what procedures shall occur if the information is shared, in order to protect the safety and wellbeing of the victim and to better protect overall campus safety.

Training: Adequate training for staff to help ensure trauma-informed services and response systems is imperative to support survivors and to change a culture that tolerates sexual violence. Institutions should provide new campus security and police officers with training on sexual assault investigations, and annual policy reviews for quality assurance. Title IX officers should be required to attend annual trainings and partner with community-based rape crisis centers and/or state sexual assault coalitions. Additionally, campuses should include local rape crisis centers and/or state sexual assault coalitions in identifying plans for resolution agreements and compliance reviews between higher education institutions and the Department of Education. Campuses need training on sex offending behaviors and effective sanctions, and this training can be provided by state coalitions, local rape crisis centers, and/or their professional allies.

Prevention: Primary prevention strategies are focused on stopping the violence before it happens. Institutions must assess their readiness for prevention and measure the effectiveness of programs. State sexual assault coalitions and community-based agencies, often funded by the Rape Prevention Education (RPE) Program, are essential partners to help provide training and technical assistance about evidence-based and evidence-informed strategies to prevent sexual violence.

Climate Surveys: NAESV supports a requirement that universities conduct climate surveys to better ascertain the extent and nature of sexual violence on individual campuses. It will be essential that climate survey questions are developed using the strongest scientific data available and with the help of experts, informed by experience conducting surveys of sexual violence victimization, as well as experienced advocates from rape crisis

centers. Climate surveys must be developed in a spirit of mutual collaboration and teamwork, and just as survey development will require collaboration, so too will the process of interpreting results and developing action steps. Sexual violence is an endemic social problem with complex causes. There is little to be gained from simplistic finger-pointing. Recently, the United States Department of Justice Bureau of Justice Statistics released the *Campus Climate Validation Study Final Technical Report* which is an important resource for campuses contemplating a climate survey. The Administrator Researcher Campus Climate Consortium (ARC3) is also an important non-profit campus climate survey resources.

Title IX and the Clery Act: The Department of Education's Title IX sexual assault guidance and the Clery Act with Campus SaVE amendments are critically important tools for addressing campus sexual harassment and assault. Recognizing that individual survivors find themselves in unique circumstances with varying and changing needs, Title IX requirements have developed to expand options and methods of support for survivors on campus. For many survivors, that includes a criminal justice response, and for many others it does not. In the same spirit of survivor trust and empowerment, the recent Campus SaVE amendments to the Clery Act require schools to inform survivors of their option to report to police, or not to report, and provide assistance and access to interim measures in either case. Title IX and the Clery Act are effective tools to support survivors, increase institutional transparency, hold individual offenders accountable and improve community safety. **NAESV would oppose any legislative efforts to undermine protections in the Title IX Guidance or Clery Act.**

Campus Disciplinary Proceedings: Recently, much has been made of schools' authority to sanction students up to expulsion for sexual misconduct violations, based on a preponderance of the evidence presented in internal administrative hearings. Some critics have argued that, to ensure due process, students accused of criminal conduct should only be adjudicated in criminal courts. However, we encourage all institutions of higher education to maintain campus processes with standards befitting a non-criminal, internal proceeding to respond to sexual misconduct and to keep these processes separate from any criminal justice process. Campus disciplinary proceedings should use a standard of evidence no higher than preponderance of the evidence.

Long before Title IX, colleges and universities exercised authority to sanction their students for policy violations, regardless of whether the conduct also constitutes a crime. There is also ample legal precedent in non-educational settings. Under Title VII, employers must conduct their own investigations of sexual harassment complaints and take remedial actions, often including terminating an employee found responsible for harassment. This is not to say schools' procedures are adequate at present. Survivors continually describe inadequately trained investigators and adjudicators, many schools provide for no independent review of sexual misconduct determinations, and some have actively covered up assaults or discouraged survivors from reporting to the police. This is plainly unacceptable, and we must continue to hold schools accountable for their shortcomings. Ultimately, transparent procedures and equitable policies also protect survivors as counter-complaints and defamation lawsuits by accused students are becoming too common in many states.

Have additional questions? Contact Terri Poore, Policy Director, at terri@endsexualviolence.org