



September 20, 2017

Betsy DeVos, Secretary of Education
Department of Education
400 Maryland Avenue SW, Room 6E231
Washington, D.C. 20202

Re: Proposed Rule on Repeal, Replacement, or Modification of Existing Federal Regulations and Guidance, FR Docket Number 2017-16876, Docket ID ED-2017-OS-0074

Dear Secretary DeVos:

Equal Rights Advocates (ERA) strongly opposes any repeal or modification of our current civil rights and education laws that would curtail the protections afforded to victims of sex discrimination, sexual violence, and/or other civil rights violations.

Founded in 1974, ERA is a national, non-profit, civil rights organization based in San Francisco, California, dedicated to protecting and expanding educational access and opportunities for women and girls. For the past 40 years, ERA's work has advocated for women and girls in education across the country through a unique combination of strategies including litigation and other legal enforcement actions, policy reform campaigns, and innovative collaborative projects designed for replication by partners across the country. We provide direct legal services and empower students and community organizations through a national, toll-free Advice and Counseling line, Know-Your-Rights workshops and presentations, and publication of reports, fact sheets, and other materials about sexual violence in schools and on campuses.

More than 45 years after the passage of Title IX of the Education Amendments of 1972, prohibiting sex discrimination in federal funded schools, sex discrimination, particularly sexual harassment and violence, is rampant in educational settings. A 2016 survey conducted by the U.S. Department of Justice found that 24% of transgender and gender nonconforming students, 23% of cisgender female students, and 6% of cisgender male students report experiencing sexual misconduct during their time in college.¹ A yearlong investigation by The Associated Press found roughly 17,000 official reports of sexual assaults by students in K-12 schools over a four-year period.

To combat these alarming statistics, the Department of Education's Office for Civil Rights ("OCR"), issued regulations and important guidance, including the "2011 Dear Colleague Letter,"

¹ National Women's Law Center, "Mythbusting: Title IX and Sexual Assault" (2017), *available at* <https://nwl.org/wp-content/uploads/2017/08/Mythbusting-Title-IX-and-Sexual-Assault.pdf>.



reminding schools that it is their responsibility under Title IX to guarantee an educational atmosphere free of gender-based violence and to take “immediate and effective” steps to respond to such violence when it occurs.

The 2011 Dear Colleague Letter advances education equity by providing necessary guidance to schools regarding effective policies to address sexual violence in schools and on campuses. It further outlines appropriate administrative procedures for the investigation and resolution of sexual harassment and/or sexual violence allegations, including the requirement to conduct a fair and impartial investigation. Through this guidance, OCR has made it clear that preventing and remedying sexual harassment in schools is not only necessary for compliance with Title IX, but it is also essential to creating an environment where all students feel safe to learn.

This guidance appropriately instructs colleges to use the preponderance of the evidence standard in determining whether discrimination, in the form of sexual assault, has occurred. In issuing this guidance, OCR affirmed a well-established application of the appropriate evidentiary standard that applies to civil rights cases in American law. To hold victims of campus sexual assault to a higher standard of proof, such as those standards applicable only in the criminal legal context in which the government is the prosecutor and liberties such as freedom are at stake – that is, a standard of proof *different* from the one to which we hold victims of all other types of discrimination - would itself be discriminatory. Existing guidelines assure survivors and students accused of sexual assault that the school will conduct a fair and impartial investigation. Any changes that weaken current guidance will undoubtedly produce uncertainty and result in disparate and discriminatory treatment of survivors and the accused alike.

The requirement that schools respond appropriately and effectively to sexual harassment and violence is not only required under the law, but is also provides an important avenue for survivors to take action. Adjudicating a sexual assault charge via criminal or civil litigation is expensive and can take years to resolve. On top of insidious race and class barriers to accessing the judicial system, stigma and bias around reporting sexual assault to law enforcement agencies results in underreporting of sexual violence. Because of these barriers, often times a survivor’s only safe and clear recourse is reporting to their school’s designated Title IX coordinator. Title IX investigations offer an essential, non-criminal mechanism by which students are able to vindicate their right to an education free from sex discrimination and harassment. This is just one example of the necessity of well-considered and diligently crafted regulations and guidance such as Title IX regulations and the guidance contained in the 2011 Dear Colleague Letter, in order to protect the civil rights of our students.

Equal Rights Advocates specifically supports DOE’s 2001, 2008, 2010, 2011, 2014, and 2016 guidance on sexual harassment, campus sexual assault, intercollegiate athletics, and transgender students. We oppose any changes that would diminish the civil rights laws, implementing regulations and/or guidance that is necessary to protect students. Women and girls have faced barriers to achieving equity in education for far too long. Now is not the time to weaken legal



protections and/or create unnecessary ambiguity for schools regarding how to comply with civil rights laws in order to protect their students and provide an equitable education for all.

Sincerely,

A handwritten signature in black ink that reads "Jennifer A. Reisch". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer Reisch
Legal Director, Equal Rights Advocates

Cc:

Hillary Malawer
U.S. Department of Education
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Washington, D.C. 20202