BMore Indivisible

September 18, 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*](http://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:

My name is Jill Leukhardt. I live in Baltimore, Maryland.

Based on my experiences as a scholarship student, a Trustee of the Johns Hopkins University, and an officer and member of its Alumni Council, I clearly recognize the vital importance and essential value of educational equity in America.

As such, the continued enforcement of existing Department of Education (DoE) regulations is necessary to insure a quality education and social justice for students at all levels in Baltimore. Thus, I strongly oppose any action by the DoE to weaken or delay its existing regulations. In addition, I urge DoE to use the notice and comment process if it decides 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 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, I am 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]](#footnote-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. I 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 the Department’s civil rights protections are important, I 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. DoE 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. Ample evidence demonstrates that public school students are becoming increasingly isolated by both race and class.[[2]](#footnote-2) A vast body research shows the benefits of racially, culturally, and economically diverse schools for all students, and conversely, the negative and long-term effects of increasing segregation in America’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.

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, because the Department is committed to providing *every* student a high-quality education in a safe, supportive, inclusive and welcoming environment, 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.

I am 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]](#footnote-3)

My alma mater, the Johns Hopkins University, undertook a university wide evaluation of sexual harassment, sexual assault, and sexual violation policies in all divisions, consulting all stakeholders, carefully weighing the rights of those reporting sexual violence and harassment and those accused. It documented and published its policies and procedures, and provides ongoing training for students, faculty, administrators, and staff. Further, the university has apprised alumni of its policy. Recently, the University’s provost’s office noted that Johns Hopkins’ policy is based on an array of federal and state laws and that it will be unaffected by the DoE decision to undo the “Dear Colleague” letter guidance. Nationwide since 2014, institutions of higher education have responded with diligent consideration of DoE guidance, as well as other legal requirements.

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 to students and the country. I urge the Department to continue to implement and uphold these important civil rights protections.

**Gainful Employment Rule & Borrower Defense Rule:** I strongly oppose 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, 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 98% of the over 800 programs that failed the accountability standards 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. 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:** I 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.

**SUMMARY:** Equitable access to an excellent education at every level for all Americans is a key precept of our nation. Providing such access without barriers due to race, color, national origin, gender, disability, age, religion, or sexual orientation is essential so that all may take advantage of the country’s education resources. This allows our people to benefit most from our education resources and our country to thrive due to its well−educated citizenry. I urge the Department of Education to view continued enforcement of these regulations as a service to all Americans, consistent with the mission of the Department of Education.

As such, the continued enforcement of existing Department of Education regulations is necessary to insure a quality education and social justice for students at all levels in Baltimore. I strongly oppose any action by the DoE to weaken or delay its existing regulations. In addition, I urge DoE to use the notice and comment process should it decides to modify or repeal any existing regulations.

1. U. S. Department of Education, Office for Civil Rights. <https://www2.ed.gov/about/offices/list/ocr/aboutocr.html> [↑](#footnote-ref-1)
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> [↑](#footnote-ref-2)
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> [↑](#footnote-ref-3)