September 20, 2017

The Honorable Betsy DeVos

Secretary of Education

U.S. Department of Education

400 Maryland Avenue SW

Washington, DC 20202

Dear Secretary DeVos:

I am writing with respect to your recent announcement that the U.S. Department of Education intends to revoke or rescind the current guidance addressing enforcement of Title IX of the Education Amendments of 1972 (“Title IX”) related to sexual assaults and sexual violence. For the following reasons, I would strongly urge you to retain the policies outlined in the 2011 Dear Colleague letter.

You expressed concern that the current policies undermine due process protections for the accused. To the contrary, the Dear Colleague letter specifically requires that protections such as notice and due process must be provided to all parties involved in sexual assaults on campus. It expressly states “the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing.” Moreover, the letter specifically recommends that schools provide an appellate process.

Indeed, as it presently stands, students accused of sexual assault actually are entitled to stronger protections than students accused of non-sexual offenses. Moreover, if an institution falls short of its legal obligations to those accused, then the Education Department can intervene under Title IX to enforce compliance.

Under the Violence Against Women’s Act Amendments to the Clery Act, both the victim and the accused are entitled to an advisor of his or her choice, and educational institutions must allow lawyers to serve as advisors. Schools must provide “a prompt, fair and impartial investigation and resolution.” In its 2014 “Questions and Answers to Title IX and Sexual Violence,” the department’s office for civil rights provided, “in all cases, a school’s Title IX investigation must be adequate, reliable, impartial, and prompt, and include the opportunity for both parties to present witnesses and other evidence.”

As the elected District Attorney of Denver, Colorado, I am proud to say that my office is deeply committed to working with our educational institutions and law enforcement partners to ensure that we provide a fair and just investigation to all parties involved in any campus sexual assault. I am also proud to say that our community has had a Title IX Working Group since 2014 which consists of representatives of local higher education institutions, the Denver Public Schools, the Denver Police Department, the Denver District Attorney’s Office, and the local rape crisis center. This group came together recognizing the need to ensure that we all can work together to improve the response to sexual assault – particularly when there may be co-occurring Title IX and law enforcement investigations.

Title IX mandates that our education institutions provide victims of sexual assault with academic and safety accommodations. This does not mean that schools are punishing those accused before an investigation has been finished. Creating safety by providing accommodations and protections to victims who have experienced trauma does not exclude protecting the rights of students who have been accused. In the criminal justice system, victims are automatically granted a mandatory protection order against the individuals who are suspected of harming them until it is determined such protections are no longer necessary. While such measures may be somewhat inconvenient for the accused, the Dear Colleague letter also requires that schools work with respondents to ensure access to their education is not interrupted long-term.

The information presented at your press conference seemed to suggest that individuals are being wrongly accused of sexual assault on campuses at the same rate as victims are experiencing sexual assault. This perception is false. The reality is that 1 in 5 women and 1 in 16 men experience sexual assault while in college.[[1]](#endnote-1) At the same time, research shows 92-98% of all reports of sexual assaults are made in good faith.[[2]](#endnote-2) These numbers plainly show the need to maintain the strong protections Title IX and its current guidance holds for victims of sexual assault.

Since implementing the guidance in 2011 and further clarifying the guidance in 2014, the response to sexual assault and sexual misconduct on campuses has improved greatly. It is not necessary to repeal, replace, or modify Title IX, the Dear Colleague Letter, or the Questions and Answers document. Rather, it is vital to continue to support schools in implementing the guidance that has been created. Implementation takes time and Title IX is a fair and effective process that should be built upon and not destroyed.

Sincerely,

Beth McCann

Denver District Attorney

1. http://www.washingtonpost.com/sf/local/2015/06/12/1-in-5-women-say-they-were-violated/?tid=a\_inl&utm\_term=.8d3dd6386569 [↑](#endnote-ref-1)
2. http://journals.sagepub.com/doi/pdf/10.1177/1077801210387747 [↑](#endnote-ref-2)