

Congress of the United States
Washington, DC 20515

May 22, 2020

Elisabeth DeVos
Secretary
Department of Education
400 Maryland Ave SW
Washington, DC 20202

Kenneth L. Marcus
Assistant Secretary for Civil Rights
Department of Education
400 Maryland Ave SW
Washington, DC 20202

Dear Secretary DeVos and Assistant Secretary Marcus:

We are alarmed and disturbed by your decision to issue a new Title IX rule—in the middle of a global pandemic and national emergency—that will gut protections for student survivors of sexual assault, place a tremendous strain on already-overburdened schools, and effectively turn Title IX on its head. We urgently call on you to rescind this dangerous new rule before it takes effect on August 14, 2020.

As an initial matter, it is indefensible to choose this unprecedented moment of crisis to enact new regulations that jeopardize the civil rights of students. School closures have affected over 70 million students nationwide,¹ and school districts² and institutions of higher education³ alike are preparing for the possibility of remaining closed until 2021. As schools continue struggling to help students and families overcome the many extraordinary challenges arising from COVID-19, there is simply no justification for the Department to force schools to divert their already-strained resources to implement needlessly complex and burdensome policies. Moreover, it will be virtually impossible for schools to come into compliance with more than 2,000 pages of responses to comments on the proposed rules and regulation—which took the Department nearly three years to develop—in the required three-month window, and when schools are closed.⁴

Your dangerous and ill-timed decision to issue the final Title IX rule during the COVID-19 pandemic not only flouts the White House’s own directive to federal agencies to prioritize all resources against COVID-19⁵ but also ignores countless stakeholders’ requests for the Department to suspend Title IX rulemaking during the COVID-19 crisis, including requests from approximately 200 survivor advocate and civil rights organizations,⁶ 33 higher education associations,⁷ 53 members of Congress,⁸ and 18 state attorneys general.⁹

We are also deeply disturbed by the substance of the final Title IX rule, which relies on and reinforces the false and toxic stereotype that survivors, particularly women and girls, tend to lie about sexual assault. It is simply unjustifiable for the Department to require schools to dismiss many complaints of sexual harassment and mandate uniquely inequitable procedures for sexual misconduct that are not required for other types of staff or student misconduct.¹⁰

It flies in the face of common decency to require survivors to endure live hearings with live cross-examination by the perpetrator’s advisor of choice, who could be anyone from an angry parent or fraternity brother to a criminal defense lawyer. And it gives colleges a free pass if sexual misconduct occurs outside of a school program or activity, including most off-campus

sexual violence and online harassment. There is also the injustice of allowing schools to ignore sexual violence in higher education that is not reported to a small set of high-ranking school employees. Under your rule, many of the victims of Larry Nassar would not have fallen under the narrow guidelines that require an institution of higher education, such as Michigan State University, to investigate a report of sexual assault. Specifically, many of the victims reported his abuse to athletic trainers and coaches, or the wrong people.

Not only will this new rule make it harder for victims to come forward and receive help to stay in school, but it will also unduly hinder many schools from responding effectively to many incidents of sexual violence. As such, it is unsurprising that the American public overwhelmingly opposes this rule. When the Department first announced its proposed rule in November 2018, students, school officials, civil rights advocates, and government officials submitted nearly 125,000 comments in response, the vast majority of which strongly opposed the proposal. Still, the Department chose to flout the will of the people and move forward with its plans.

In light of all these reasons, we call on you to rescind the Title IX rule before it takes effect. It is not too late to reverse course and protect rather than undermine students' civil rights.

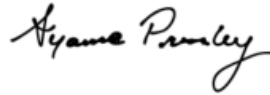
Sincerely,



Jackie Speier
Member of Congress



Elissa Slotkin
Member of Congress



Ayanna Pressley
Member of Congress



Ann McLane Kuster
Member of Congress

A. Donald McEachin

Adam Smith

Adriano Espaillat

Al Green

Alan Lowenthal

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Thomas R. Suozzi
Tim Ryan
Tom Malinowski
Tony Cárdenas
Veronica Escobar
William R. Keating
Yvette D. Clarke

¹ E.g., Education Week, *Map: Coronavirus and School Closures* (last updated May 6, 2020), <https://www.edweek.org/ew/section/multimedia/map-coronavirus-and-school-closures.html>; Entangled Solutions, *COVID-19: Higher Education Resource Center – Immediate Impact* (last updated May 5, 2020), <https://www.entangled.solutions/coronavirus-he>.

² E.g., *LAUSD Plans to Start the New School Year in Mid-August, But Details Are Still Taking Shape*, NBC (last updated May 5, 2020), <https://www.nbclosangeles.com/news/local/lausd-to-start-the-new-school-year-in-mid-august/2356544>; Aliyya Swaby, "Between 0 and 100%": Texas schools weigh the odds of students returning this fall, *TEXAS TRIBUNE* (May 4, 2020), <https://www.texastribune.org/2020/05/04/texas-schools-reopening-coronavirus>; Nicole Brady, *Will Colorado schools reopen in the fall or will remote learning continue?*, *DENVER CHANNEL* (Apr. 17, 2020), <https://www.thedenverchannel.com/news/coronavirus/will-colorado-schools-reopen-in-the-fall-or-will-remote-learning-continue>.

³ E.g., Jessica Dickler, *College enrollment likely to drop as schools consider staying closed until 2021*, *CNBC* (Apr. 27, 2020), <https://www.cnn.com/2020/04/27/college-enrollment-may-drop-as-schools-weigh-staying-closed-until-2021.html>; Brian Ries & Meg Wagner, *Universities begin considering the possibility of canceling in-person classes until 2021*, *CNN* (last updated Apr. 15, 2020), <https://www.cnn.com/2020/04/14/us/university-may-cancel-classes-fall-2021-trnd/index.html>.

⁴ American Council on Education, *Statement by ACE President Ted Mitchell on Final Title IX Regulations* (May 6, 2020), <https://www.acenet.edu/News-Room/Pages/Statement-by-ACE-President-Ted-Mitchell-on-Final-Title-IX-Regulations.aspx>.

⁵ Memorandum for the Heads of Dep'ts & Agencies from Russell T. Vought, Acting Director, Office of Mgmt. & Budget, *Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19* (Mar. 17, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf>.

⁶ National Women's Law Center, *NWLC and 200+ Organizations and Schools Call on White House and Department of Education to Suspend Title IX Rulemaking During COVID-19 Crisis* (Mar. 25, 2020), <https://nwlc.org/resources/nwlc-200-organizations-schools-call-on-white-house-department-education-suspend-title-ix-rulemaking-during-covid-19-crisis>.

⁷ Letter from American Council on Education to Dep't of Education (Mar. 24, 2020), <https://www.acenet.edu/Documents/Letter-ED-delay-T9-Sec117-032420.pdf>.

⁸ *Speier, Kuster, Pressley and Slotkin Lead 46 Members to Demand Sec DeVos Halt Plans to Gut Title IX Protections Amid Coronavirus Crisis* (Apr. 2, 2020), <https://speier.house.gov/2020/4/speier-kuster-pressley-and-slotkin-lead-46-members-to-demand-sec-devos-halt-plans-to-gut-title-ix-protections-amid-coronavirus-crisis>; *Murray, Warren, Gillibrand Urge Secretary DeVos to Halt Title IX Rule; Focus on Helping Schools During the COVID-19 Crisis* (Mar. 31, 2020), <https://www.help.senate.gov/ranking/newsroom/press/murray-warren-gillibrand-urge-secretary-devos-to-halt-title-ix-rule-focus-on-helping-schools-during-the-covid-19-crisis>.

⁹ Letter from 18 State Attorneys General to Dep't of Education & Office of Mgmt. & Budget (Mar. 27, 2020), https://oag.ca.gov/system/files/attachments/press-docs/MultistateLetter_Title%20IX_COVID-19_03272020.pdf.

¹⁰ Elizabeth Tang, *The New Title IX Rule Is Dangerous for All Students. That's Why We're Suing Betsy DeVos (Again)*, NATIONAL WOMEN'S LAW CENTER (May 7, 2020), <https://nwlc.org/blog/the-new-title-ix-rule-is-dangerous-for-all-students-thats-why-were-suing-betsy-devos-again>.