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WOMEN'S  
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## EDUCATION

# DeVos's New Title IX Sexual Harassment Rule, Explained

In May 2020, Betsy DeVos's Department of Education announced a [final Title IX rule](#) weakening protections against sexual harassment in schools, including protections against sexual assault.<sup>1</sup> If it goes into effect, this rule will make schools more dangerous for all students. This is why it was opposed not only by survivors' advocates and women's rights organizations, but also by colleges and universities, superintendents, principals, mental health professionals, and many other stakeholders. The new rule, which is scheduled to take effect on August 14, 2020, explicitly seeks "a reduction in the number of Title IX investigations" schools undertake by making it harder for sexual harassment victims to come forward, requiring schools to ignore victims in many instances when they do ask for help, and denying victims fair treatment when they try to use the system that is supposed to protect them. That's why the National Women's Law Center will be fighting in court to ensure the new rule never takes effect.

The below step-by-step walkthrough sets out what the new rule means and how it departs from the Department's previous policy.

## IGNORING VICTIMS

Schools will be allowed—and in many cases, forced—to ignore sexual harassment victims if: (i) they were sexually harassed in the wrong place; (ii) they asked the wrong person for help; (iii) they haven't suffered enough by DeVos's standard; (iv) they are no longer participating or trying to participate in the school's program or activity; (v) their respondent is no longer at their school; or (vi) they don't submit a written complaint.<sup>2</sup>

- **HARASSED IN THE WRONG PLACE:** Previously, Department of Education policy required schools to investigate all student complaints of sexual harassment, regardless of where the harassment occurred, to determine if the harassment had affected the student's ability to participate in classes and other school activities.<sup>3</sup> Under the new rule, schools will be required to dismiss all complaints of sexual harassment that occurs during study abroad programs or that occurs outside of a school program or activity. According to the Department, the only incidents that occur within a school program or activity (and therefore cannot be dismissed) are those where (i) the incident occurs "under the operations" of the school, (ii) the school has "substantial control" over both the respondent and the context of the

incident, or (iii) the incident occurs in a building owned or controlled by a student organization that is officially recognized by a college or university.<sup>4</sup>

This rule will be devastating for students who are sexually assaulted while studying abroad, at a fraternity that isn't officially recognized by their university, or in off-campus housing, or who are harassed or stalked online outside of a school-sponsored program, and then forced to continue attending class with their rapist or abuser—or even a class *taught* by their rapist or abuser. This is why [student body presidents](#)<sup>5</sup> and [fraternity](#)<sup>6</sup> and [sorority](#)<sup>7</sup> members expressed “deep concern” about this provision, citing the fact that nearly 9 in 10 college students live off campus and many social gatherings occur off campus. Similarly, in their comments on this proposal, school administrators were “[shocked](#)”<sup>8</sup> by this “[serious mistake](#),”<sup>9</sup> which inhibits their ability to provide a safe environment for their students. Campus police officers agreed, noting that under the proposed rule, “[s]exual assault would be the only crime response restricted in this manner,” as schools would not be restricted from disciplining students for off-campus behavior such as robberies, hate crimes, auto theft, or murder.<sup>10</sup>

- **ASKED THE WRONG PERSON FOR HELP:** Previously, schools were required to address: (i) any *employee-on-student* or *student-on-student* sexual harassment if a “responsible employee” knew or should have known about it, and (ii) all *employee-on-student* sexual harassment that occurred “in the context of” the employee’s job duties, regardless of whether a “responsible employee” knew or should have known about it.<sup>11</sup> A “responsible employee” was defined broadly as anyone whom “a student could reasonably believe” had the authority to redress sexual harassment or had the duty to report student misconduct to appropriate school officials.<sup>12</sup> Under the new rule, institutions of higher education will be allowed to ignore all incidents of sexual harassment unless the Title IX coordinator or a school official with “the authority to institute corrective measures” has “actual knowledge” of the incident.<sup>13</sup>

This means under the new rule, colleges and universities can ignore all sexual harassment by a student or school employee unless one of a small subset of high-ranking school employees actually knows about the harassment. Colleges and universities won't have any obligation to respond when a student tells a residential advisor, teaching assistant, or professor that they are experiencing

sexually harassment. They will not even be obligated to address sexual abuse of a college student by a professor—even if the abuse occurs “in the context of” the professor’s job duties—*unless* the student reports it to the Title IX coordinator or an undefined official with “authority to institute corrective measures.”

As survivors from [Michigan State University](#), [University of Southern California](#), and [Ohio State University](#) have pointed out, had the proposed rule previously been in place, their schools would have had no responsibility to stop serial predators like Larry Nassar, George Tyndall, or Richard Strauss—just because the victims reported the abuse to coaches and trainers instead of the “right” employees—even though Nassar, Tyndall, and Strauss sexually abused countless students in the context of their jobs as medical doctors.<sup>14</sup> Again, it’s no surprise that in their comments opposing this proposal, school officials in higher education were alarmed by the “[terrible consequences](#)”<sup>15</sup> of this requirement.

- **HASN'T SUFFERED ENOUGH:** Previously, schools were required to investigate all complaints of sexual harassment, which was defined as “unwelcome conduct of a sexual nature.”<sup>16</sup> Under the new rule, schools will be required to dismiss all complaints that do not meet one of DeVos’s three stringent definitions of “sexual harassment”: (i) unwelcome “quid pro quo” sexual harassment by a school employee (e.g., “I’ll give you an A if you have sex with me”); (ii) an incident that meets the definition of “sexual assault,” “dating violence,” “domestic violence,” or “stalking” under the Clery Act; or (iii) “unwelcome conduct” on the basis of sex that is “determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access” to a school program or activity.<sup>17</sup>

This means under the new rule, schools will arguably be required to ignore complaints of sexual harassment unless the victim can show that the harassment has been so severe and pervasive that it is affecting their ability to concentrate, do their schoolwork, or attend classes. This means many victims will be forced to endure repeated and escalating levels of abuse before their complaint can be investigated. Rather than allowing schools to respond to all complaints of sexual harassment, the rule will require victims to first claim that their access to education has suffered as a result of the harassment before their school can investigate.

It's not surprising that school officials commenting on the proposed rule thought this provision made "[little sense](#)"<sup>18</sup> and pushed schools in the "[opposite direction](#)"<sup>19</sup> from student safety. Title IX exists to ensure that sex discrimination, including sexual harassment, is never the end of anyone's education, and accordingly, schools should respond to sexual harassment complaints long before students are "effectively denied" equal access to education.

- **VICTIM NO LONGER PARTICIPATING OR TRYING TO PARTICIPATE IN THE SCHOOL'S PROGRAM OR ACTIVITY:** Under this new rule, for the first time, students will only be able to file a sexual harassment complaint with a school where they are still "participating in or attempting to participate in the education program or activity" when they file the complaint.<sup>20</sup> This means that schools will not be allowed to investigate a complaint of sexual harassment—even if the respondent is still enrolled or teaching at the school—if the victim has already graduated, transferred, or even dropped out because of the harassment and doesn't want to re-enroll or stay involved in alumni programs. Similarly, if a visiting high school student is sexually assaulted by a college student or a professor during an admit weekend, the survivor will not be able to file a complaint with that college unless they are still planning to enroll there. This will tie the hands of schools that want to respond to known sexual harassment, particularly by individuals who are still affiliated with the school and who could be a serial rapist or abuser. Unfortunately, students and other stakeholder weren't given a chance to comment on the harms of this rule, as it wasn't included in the Department's proposal.
- **RESPONDENT NO LONGER AT THE SCHOOL:** Under the new rule, for the first time, schools will be allowed to dismiss complaints—even during a pending investigation or hearing—because the respondent is no longer enrolled in or employed by their school.<sup>21</sup> This means if a student graduates or transfers to another school after sexually assaulting another student, the school will no longer have to investigate or provide supportive measures to help the survivor continue their education. Similarly, if a teacher retires or resigns after his sexual abuse of many students over several years comes to light, the school will no longer have to investigate to determine the scope of the abuse, the impact of the abuse on students, and whether other employees knew about the abuse but ignored it.

Without such an investigation, the school will no longer be required to remedy the hostile environment for the survivors and possibly the broader school community, or take steps to prevent such abuse from happening again. Unfortunately, students and other stakeholder weren't able to comment on the dangers of this rule, as it wasn't included in the Department's proposal.

- **NO FORMAL WRITTEN COMPLAINT:** Under the new rule, for the first time a school will not be required to investigate any report of sexual harassment unless it receives a "formal complaint" filed by the victim (or their parent or guardian) or signed by the Title IX coordinator, requesting an investigation.<sup>22</sup> This requirement is especially harmful for young children, whose complaints of sexual assault or other harassment are typically made verbally, and students with disabilities that inhibit their ability to read, write, or sign a complaint. This also means that third parties will not be able to file a complaint to initiate an investigation or hearing.

## MISTREATING VICTIMS:

Previously, when alerted to possible sexual harassment, schools were required to respond "reasonably" to sexual harassment by investigating, providing remedies, and preventing the harassment from occurring again.<sup>23</sup> Under the new rule, schools' responses are deemed acceptable as long as they are not "*clearly unreasonable*" or "*deliberately indifferent*"<sup>24</sup>—regardless of whether the victim is able to feel safe again in school.

Educators in K-12 and higher education alike objected to the parts of this rule that were proposed, because, along with the other proposed changes, it will "[perversely](#)"<sup>25</sup> give students in school—including children—"[less protection](#)"<sup>26</sup> from sexual harassment than adults in the workplace. They also criticized this rule for creating "[confusion and absurdity](#)" for individuals who are protected from sexual harassment under both Title IX and Title VII—such as college and graduate students who are employed by their schools<sup>27</sup> and school employees in both K-12 and higher education—but who would receive different and conflicting levels of civil rights protection if the proposed Title IX rule were to be finalized.

## UNFAIR INVESTIGATION AND HEARING PROCEDURES

When a sexual harassment victim is able to get an investigation, schools will still be allowed—and in many

cases, forced—to use unfair and re-traumatizing procedures that aren't required in any other investigations of student or staff misconduct—including: (i) creating unnecessary delays, (ii) presuming the harassment never occurred, (iii) re-traumatizing the survivor through direct, live cross-examination, and (iv) using an unfair standard of proof that tilts the investigation in favor of named harassers.

- **UNNECESSARY DELAYS:** Previously, the Department of Education recommended that schools finish investigations within 60 days.<sup>28</sup> If there was an ongoing criminal investigation, schools were required to “promptly resume” the school’s investigation as soon as the police had finished gathering evidence—not wait for the ultimate outcome of the criminal investigation (which can take a very long time).<sup>29</sup>

The new rule not only replaces the *maximum* 60-day recommendation with a *minimum* 20-day requirement<sup>30</sup> but also allows schools to delay their own Title IX investigations for an unspecified period if there is an ongoing criminal investigation<sup>31</sup>—despite the fact that such investigations can be very lengthy. The new rule ignores the fact that Title IX is a civil rights law, not a criminal law, and that schools are required to conduct their own investigations *independent of the police*. The rule will make it particularly difficult for K-12 students who suffer sexual abuse to have a timely Title IX investigation, since most K-12 employees are required by state law to report child sexual abuse to the police,<sup>32</sup> which will trigger a criminal investigation. Student survivors have noted that many school investigations already take [more than 180 days or even up to 519 days](#) to resolve.<sup>33</sup> State attorneys general commenting on the proposed rule pointed out that creating additional grounds for delay will only further “re-victimize” survivors “as the process drags on without resolution or relief.”<sup>34</sup>

- **PRESUMPTION OF NO SEXUAL HARASSMENT:** Under the new rule, for the first time, schools will be required to start all sexual harassment investigations with the presumption that no sexual harassment occurred<sup>35</sup>—even though no such presumption is required for other school investigations of student or employee misconduct, like physical assault or religious harassment. In other words, schools will be effectively forced to presume that all students who report sexual harassment are lying. This presumption, which improperly imports a criminal law standard into a non-criminal investigation, perpetuates the sexist myth that women and girls frequently lie about

sexual assault and other forms of sexual harassment. As the state attorneys general and campus police officers pointed out when opposing the proposed rule, this requirement not only “[improperly tilts the process](#)” in favor of named sexual harassers<sup>36</sup> but also wrongly imports a criminal law presumption into non-criminal investigations.<sup>37</sup>

- **RETRAUMATIZING LIVE CROSS-EXAMINATION:** Previously, schools were “strongly” encouraged to have students submit their investigation or hearing questions to a “trained third party,” who would ask the questions on their behalf.<sup>38</sup> Under the new rule, in higher education, survivors and witnesses in sexual harassment investigations will be forced to submit to cross-examination “directly, orally, and in real time” by the respondent’s “advisor of choice” if they want *any of their statements* to be considered as evidence by the school.<sup>39</sup> The respondent’s advisor could be an angry parent or fraternity brother of the respondent, a faculty member who oversees the survivor’s academic work, or an “attack dog” criminal defense lawyer—even if the survivor cannot afford an attorney.

Moreover, the rule prohibits schools from providing the evidentiary rules and protections that make cross-examination work in courtroom proceedings. For example, if a survivor refuses or is unable to answer even a *single* cross-examination question—perhaps because it is too traumatizing—then the school will be required to disregard *all* of the survivor’s statements in the formal complaint, at the live hearing, and in all other written or oral evidence—even statements in a video of the incident clearly indicating that the survivor said “no.”<sup>40</sup> Similarly, if a police officer, nurse, or other witness is unavailable for cross-examination, even if that is for a very good reason, then *none* of their previous written or oral statements in a police report, medical record, or text or email message can be considered as evidence by the school.<sup>41</sup> In fact, even if a respondent admits to the sexual harassment in a guilty plea before a judge or in a text or email message to the complainant or a witness, the school will nonetheless be required to ignore that confession if the respondent refuses to be cross-examined at the school’s live hearing.<sup>42</sup> Schools will also be prohibited from excluding any cross-examination question or evidence that is overly prejudicial or misleading or that relates to the survivor’s *dating or romantic* history with other people, as long as it does not explicitly refer to their *sexual* history with other people.<sup>43</sup>

In sum, the rule ensures that many student survivors will be retraumatized or deterred from coming forward at all, and that many witnesses will refuse to participate in investigatory processes. All colleges and universities will be *required* to use this process—even if the victim is a K-12 student enrolled in a community college course or college summer camp, or a small child enrolled at a university-operated daycare center—and K-12 schools will have the *option* of forcing students to undergo this process,<sup>44</sup> despite evidence showing that hostile cross-examination makes it especially difficult for children to provide accurate testimony.

A requirement that schools conduct live, quasi-criminal trials with live cross-examination only in sexual misconduct investigations—and not in investigations of other types of student or staff misconduct—communicates the toxic and false message that allegations of sexual harassment are uniquely unreliable. The Supreme Court has never required this type of live adversarial cross-examination in school investigations.<sup>45</sup> Student survivors who have been subjected to live cross-examination by their rapist’s advisor have reported tremendous stress and trauma as a result.<sup>46</sup> Furthermore, as many attorneys and educators pointed out when criticizing the proposed rule, it is [“nonsensical”](#)<sup>47</sup> to require school administrators to make “on-the-spot” or [“real-time evidentiary decisions”](#)<sup>48</sup> during cross-examination when even judges in courtrooms are not required to do so. Ultimately, this rule will only [“inhibit the Department’s stated goals of discovering the truth.”](#)<sup>49</sup>

- **TILTED STANDARD OF PROOF:** Previously, schools were required to use a “preponderance of the evidence” standard (i.e., “more likely than not”) in all sexual harassment investigations.<sup>50</sup> This is the same standard that is used by courts in [all civil rights cases](#)<sup>51</sup> and is [the only standard of proof](#)<sup>52</sup> that treats both sides equally. Under the new rule, schools will be able to choose between using the preponderance standard or the much higher standard of “clear and convincing evidence” (i.e., “highly and substantially more likely than not”) to determine responsibility for sexual harassment, as long as they use the same standard against student and staff respondents.<sup>53</sup> Because some school employees’ collective bargaining agreements require use of the “clear and convincing evidence” standard for all employee misconduct investigations, some schools will thus be required to use the “clear and convincing evidence” standard in student sexual harassment investigations,

even if they continue to use the preponderance standard for all other investigations of student misconduct, like a fist fight or religious harassment.

Allowing schools to use a “clear and convincing evidence” standard that tilts the scales in favor of respondents and to apply this standard only in sexual harassment investigations is inequitable and discriminatory. This rule again appears to be based on the harmful rape myth that students who report sexual harassment are inherently less credible than students who report other types of misconduct.

## HARMFUL RESPONSES

Schools will be allowed to use mediation to resolve student-on-student sexual assault complaints and will be permitted to fail to provide survivors with meaningful support. Both of these changes threaten significant harm to students who experience sexual assault or other forms of sexual harassment.

- **MEDIATING STUDENT-ON-STUDENT SEXUAL ASSAULT:** Previously, schools were prohibited from using mediation to resolve sexual assault complaints,<sup>54</sup> because mediation assumes both parties share responsibility for the assault, because mediation can allow assailants to pressure survivors into inappropriate resolutions, and because mediation often requires direct interaction between the assailant and survivor, which can be retraumatizing. Under the new rule, schools will be allowed to use mediation to resolve any complaint of student-on-student sexual harassment, including sexual assault, domestic violence, dating violence, and stalking.<sup>55</sup>

Students, survivors, and advocates alike opposed this rule when it was proposed because mediation can [“foster coercion,”](#) allows abusers to manipulate victims,<sup>56</sup> and allows students to be [“pressured by administrators”](#) into entering mediation.<sup>57</sup>

- **LACK OF MEANINGFUL SUPPORT FOR VICTIMS:** Supportive measures (or “interim measures”) are reasonable steps that schools are required to take—before, during, or without an investigation—to ensure that sexual harassment does not interfere with a student’s education. Supportive measures can include changes to class schedules or housing assignments to separate the students, counseling services, tutoring services, excused absences, or changes in assignments and tests.<sup>58</sup> Previously, schools were instructed to minimize

the burden of these measures on the complainant.<sup>59</sup> For example, schools were permitted to issue a *one-way* no-contact order prohibiting the named harasser from contacting the complainant (instead of a *mutual* no-contact order prohibiting both parties from contacting each other).<sup>60</sup>

Under the new rule, schools will be required to provide supportive measures to complainants whose complaints are not dismissed but will be prohibited from providing supportive measures that are “disciplinary,” “punitive,” or that “unreasonably burden” the other party.<sup>61</sup> This may lead some schools to impose *mutual* no-contact orders, which puts victims at risk of discipline, given that [abusers often manipulate victims](#) into violating mutual no-contact orders.<sup>62</sup> This could also mean that some schools will [force victims to change their own classes and dorms](#) to avoid their rapist or abuser, because they mistakenly believe that any changes to the respondent’s schedule will be seen as unreasonably burdensome.<sup>63</sup>

## NO NOTICE OF RELIGIOUS EXEMPTIONS

Schools that believe they have a religious exemption from Title IX that allows them to discriminate based on sex won’t have to inform the Department of Education or students and families in advance that they are claiming this exemption, which can especially harm women and girls, LGBTQ students, pregnant or parenting students, and students who access or attempt to access birth control or abortion.

- Under the new rule, the Department of Education is assuring schools that they will not be required to claim a religious exemption from Title IX exemption from the Department, or give students or their families any notice that they are claiming a religious exemption, *before* they engage in sex discrimination.<sup>64</sup> Schools can simply claim a religious exemption *after* they are already under investigation for violating Title IX.<sup>65</sup>
- On top of this, in a separate Title IX rule,<sup>66</sup> DeVos has proposed expanding the religious exemption to allow many more schools to [discriminate based on sex in the name of religion](#).<sup>67</sup> This new proposed rule would allow schools that have only a tangential relationship—or even no relationship—to religion to claim a right to discriminate simply because they subscribe to “moral beliefs or practices.”<sup>68</sup> This means that in DeVos’s view, a school could discriminate based on not only moral principles that often have religious undertones like “modesty” or “purity,”

but also common secular principles like “fairness,” “honesty,” or “intellectual freedom.”<sup>69</sup>

- These two Title IX rules, separately and together, will be especially dangerous for women and girls, LGBTQ students, pregnant or parenting students, and students who access or attempt to access birth control or abortion.

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For all these reasons, the rule was strongly opposed by a wide array of stakeholders when it was proposed:

- **Students**, including [student survivors](#),<sup>70</sup> [fraternity and sorority members](#),<sup>71</sup> and [student body presidents at 76 colleges and universities in 32 states](#);<sup>72</sup>
- **Educators**, including [American Federation of Teachers](#),<sup>73</sup> [American Council on Education](#),<sup>74</sup> [Association for Student Conduct Administration](#),<sup>75</sup> [Association of American Universities](#),<sup>76</sup> [Association of Title IX Administrators](#),<sup>77</sup> [International Association of Campus Law Enforcement Administrators](#),<sup>78</sup> [National Education Association](#),<sup>79</sup> [The School Superintendents Association](#),<sup>80</sup> and [73 law professors from 26 states](#);<sup>81</sup>
- **Civil rights advocates**, including [Consortium for Citizens with Disabilities](#),<sup>82</sup> [Human Rights Campaign](#),<sup>83</sup> [Leadership Conference on Civil and Human Rights](#),<sup>84</sup> [MALDEF](#),<sup>85</sup> [NAACP](#),<sup>86</sup> [National Center for Transgender Equality](#),<sup>87</sup> [National Employment Lawyers Association](#),<sup>88</sup> [Southeast Asia Resource Action Center](#),<sup>89</sup> and [Southern Poverty Law Center](#);<sup>90</sup>
- **Medical experts**, including [American Psychological Association](#)<sup>91</sup> and [900+ mental health professionals](#);<sup>92</sup> and
- **Government officials**, including [145 state legislators from 41 states](#),<sup>93</sup> [36 United States senators](#),<sup>94</sup> and [19 state attorneys general](#).<sup>95</sup>

- 1 Dep't of Educ., *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30026 (May 19, 2020), <https://www.federalregister.gov/d/2020-10512>.
- 2 While the Department has stated that schools can choose to address dismissed sexual harassment complaints under "another provision" of the school's code of conduct, it has not provided any details on how that "non-Title IX policy" would work. *E.g.*, 85 Fed. Reg. at 30154, 30289.
- 3 Dep't of Educ., Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, at 5 (Jan. 2001) [hereinafter 2001 Guidance], <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf> (schools are responsible for addressing sexual harassment if it is "sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program," regardless of where it occurs). See also Dep't of Educ., Office for Civil Rights, *Questions and Answers on Campus Sexual Misconduct*, 1 n.3 (Sept. 22, 2017) [hereinafter 2017 Guidance], <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf> ("Schools are responsible for redressing a hostile environment that occurs on campus even if it relates to off-campus activities"); Dep't of Educ., Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence*, 29 (Apr. 29, 2014) [hereinafter 2014 Guidance], <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> ("a school must process all complaints of sexual violence, regardless of where the conduct occurred"); Dep't of Educ., Office of Civil Rights, *Dear Colleague Letter: Sexual Violence*, 4 (Apr. 4, 2011) [hereinafter 2011 Guidance], <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> ("If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures.").
- 4 34 C.F.R. §§ 106.44(a), 106.45(b)(3)(i); 85 Fed. Reg. at 30105, 30199.
- 5 Letter from 76 College and University Student Body Presidents to Betsy DeVos, Sec'y, Dep't of Educ., at 1 (Jan. 30, 2019) [hereinafter Letter from 76 College and University Student Body Presidents], [https://assu.stanford.edu/sites/g/files/sbiybj6236/f/student\\_body\\_presidents\\_comment\\_on\\_title\\_ix\\_proposal\\_1.pdf](https://assu.stanford.edu/sites/g/files/sbiybj6236/f/student_body_presidents_comment_on_title_ix_proposal_1.pdf).
- 6 *E.g.*, Letter from Asa Jungreis, President, Alpha Epsilon Pi Fraternity, University of California, Davis to Dep't of Educ. (Jan. 28, 2019) [hereinafter Letter from A UC Davis Fraternity President], <https://www.regulations.gov/document?D=ED-2018-OCR-0064-11081>.
- 7 *E.g.*, Letter from A Sorority at the University of California Davis to Dep't of Educ. (Jan. 29, 2019) [hereinafter Letter from A UC Davis Sorority], <https://www.regulations.gov/document?D=ED-2018-OCR-0064-11790>.
- 8 Letter from The School Superintendents Association to Betsy DeVos, Sec'y, Dep't of Educ., at 5 (Jan. 22, 2019) [hereinafter Letter from The School Superintendents Association], [https://aasa.org/uploads/Files/AASA\\_Blog\(1\)/AASA%20Title%20IX%20Comments%20Final.pdf](https://aasa.org/uploads/Files/AASA_Blog(1)/AASA%20Title%20IX%20Comments%20Final.pdf).
- 9 Letter from American Council on Education on behalf of 61 Higher Education Associations to Betsy DeVos, Sec'y, Dept. of Educ., at 16 (Jan. 30, 2019) [hereinafter Letter from 61 Higher Education Associations], <https://www.acenet.edu/Documents/Comments-to-Education-Department-on-Proposed-Rule-Amending-Title-IX-Regulations.pdf>.
- 10 Letter from International Association of Campus Law Enforcement Administrators to Betsy DeVos, Sec'y, Dep't of Educ., at 4 (Jan. 28, 2019) [hereinafter Letter from Campus Law Enforcement Administrators], <https://www.regulations.gov/document?D=ED-2018-OCR-0064-10515>.
- 11 2001 Guidance, *supra* note 3, at 10, 12, 13.
- 12 *Id.* at 13.
- 13 34 C.F.R. § 106.30(a) (defining "actual knowledge"); see also § 106.44(a).
- 14 Letter from 21 Ohio State University Survivors to Betsy DeVos, Sec'y, Dep't of Educ., and Kenneth L. Marcus, Ass't Sec'y for Civil Rights, Dep't of Educ., at 3 (Jan. 30, 2019), <https://www.publicjustice.net/wp-content/uploads/2019/01/Comments-of-Ohio-State-Survivors-on-Title-IX-NPRM.pdf>; Letter from 82 Student Survivors of Larry Nassar at Michigan State University, George Tyndall at University of Southern California, and Richard Strauss at Ohio State University to Betsy DeVos, Sec'y, Dep't of Educ., and Kenneth L. Marcus, Ass't Sec'y for Civil Rights, Dep't of Educ., at 2 (Nov. 1, 2018), <https://www.publicjustice.net/wp-content/uploads/2018/11/November-1-Survivor-Letter-to-ED.pdf>.
- 15 Letter from 5 Student Affairs Associations to Kenneth L. Marcus, Ass't Sec'y for Civil Rights, Dep't of Educ., at 7 (Jan. 29, 2019) [hereinafter Letter from 5 Student Affairs Associations], <https://www.regulations.gov/document?D=ED-2018-OCR-0064-11689>.
- 16 2001 Guidance, *supra* note 3, at 2.
- 17 34 C.F.R. § 106.30(a) (defining "sexual harassment"); see also § 106.45(b)(3)(i). Note: The new rule does not create new Title IX protections against domestic violence, dating violence, and stalking. Title IX prohibits all forms of sex-based harassment, which includes non-sexual conduct associated with domestic violence, dating violence, and stalking.
- 18 Letter from Pepper Hamilton LLP on behalf of 24 Private Liberal Arts Colleges and Universities to Betsy DeVos, Sec'y, Dep't of Educ., at 16 (Jan. 30, 2019) [Letter from Letter from 24 Private Liberal Arts Colleges and Universities], <https://www.wesleyan.edu/inclusion/dc/PH%20Comment%20Letter%20to%20Department%20of%20Education.pdf>.
- 19 Letter from The School Superintendents Association, *supra* note 8, at 4.
- 20 34 C.F.R. § 106.30(a) (defining "formal complaint").
- 21 § 106.45(b)(3)(ii).
- 22 34 C.F.R. § 106.30(a) (defining "formal complaint"); see also §§ 106.44(b), 106.45.
- 23 2001 Guidance, *supra* note 3, at 15-16.
- 24 34 C.F.R. § 106.44(a); see also § 106.44(b)(2).
- 25 Letter from The School Superintendents Association, *supra* note 8, at 4.
- 26 Letter from National Education Association to Brittany Bull, Dep't of Educ., at 9 (Jan. 30, 2019) [hereinafter Letter from National Education Association], <http://www.nea.org/assets/docs/NEA%20Comment%20Letter%20RE%20ED-2018-OCR-0064.pdf>.
- 27 *Id.* at 9.
- 28 2014 Guidance, *supra* note 3, at 31-32; 2011 Guidance, *supra* note 3, at 12.
- 29 2014 Guidance, *supra* note 3, at 28; 2011 Guidance, *supra* note 3, at 10. See also 2001 Guidance, *supra* note 3, at 21 ("because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively").
- 30 34 C.F.R. § 106.45(b)(5)(vi)-(vii).
- 31 34 C.F.R. § 106.45(b)(1)(v).
- 32 See Dep't of Health & Human Servs., Admin. for Children & Families, Child Welfare Info. Gateway, *Mandatory Reporters of Child Abuse and Neglect* (2019), <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/manda>.
- 33 Letter from Know Your IX to Kenneth L. Marcus, Ass't Sec'y for Civil Rights, Dep't of Educ., at 42-46 (Jan. 30, 2019) [hereinafter Letter from Know Your IX], [https://actionnetwork.org/user\\_files/user\\_files/000/029/219/original/Know\\_Your\\_IX\\_Comment\\_on\\_Proposed\\_Title\\_IX\\_Rule\\_\(1\).pdf](https://actionnetwork.org/user_files/user_files/000/029/219/original/Know_Your_IX_Comment_on_Proposed_Title_IX_Rule_(1).pdf).
- 34 Letter from 19 State Attorneys General to Betsy DeVos, Sec'y, Dep't of Educ., at 36 (Jan. 30, 2019) [hereinafter Letter from 19 State Attorneys General], [https://www.nj.gov/oag/newsreleases19/Title-IX\\_Comments.pdf](https://www.nj.gov/oag/newsreleases19/Title-IX_Comments.pdf).

- 35 34 C.F.R. § 106.45(b)(1)(iv).
- 36 Letter from 19 State Attorneys General, *supra* note 34, at 35.
- 37 Letter from Campus Law Enforcement Administrators, *supra* note 10, at 6.
- 38 2014 Guidance, *supra* note 3, at 31; 2011 Guidance, *supra* note 3, at 12.
- 39 34 C.F.R. § 106.45(b)(6)(i).
- 40 85 Fed. Reg. at 30346, 30347, 30349.
- 41 *Id.* at 30349.
- 42 *Id.* at 30344, 30345.
- 43 *Id.* at 30248, 30351, 30358.
- 44 34 C.F.R. § 106.45(b)(6)(ii); 85 Fed. Reg. at 30488, 30493.
- 45 *Goss v. Lopez*, 419 U.S. 565, 566, 579 (1975) (holding that students in public schools facing short-term suspensions require only “some kind of” “oral or written notice” and “some kind of hearing”); see also *id.* at 583 (holding that a 10-day suspension does not require “the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident”).
- 46 *E.g.*, Letter from Know Your IX, *supra* note 33, at 34.
- 47 Letter from 61 Higher Education Associations, *supra* note 9, at 10.
- 48 Letter from 24 Private Liberal Arts Colleges and Universities, *supra* note 18, at 13.
- 49 Letter from 19 State Attorneys General, *supra* note 34, at 40-41.
- 50 2014 Guidance, *supra* note 3, at 13, 26; 2011 Guidance, *supra* note 3, at 10-11.
- 51 Letter from Leadership Conference on Civil and Human Rights to Kenneth L. Marcus, Ass’t Sec’y for Civil Rights, Dep’t of Educ., at 7 (Jan. 30, 2019) [hereinafter Letter from Leadership Conference on Civil and Human Rights], <http://civilrightsdocs.info/pdf/policy/letters/2019/Joint-Comment-Title-IX-NPRM-01302019-Final.pdf>.
- 52 Letter from National Women’s Law Center to Kenneth L. Marcus, Ass’t Sec’y for Civil Rights, Dep’t of Educ., at 33 (Jan. 30, 2019) [hereinafter Letter from National Women’s Law Center], <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/02/NWLC-Title-IX-NPRM-Comment.pdf>.
- 53 34 C.F.R. § 106.45(b)(1)(vii).
- 54 2011 Guidance, *supra* note 3, at 8; 2001 Guidance, *supra* note 3, at 21.
- 55 34 C.F.R. § 106.45(b)(9).
- 56 *E.g.*, Letter from Know Your IX, *supra* note 33, at 39.
- 57 Letter from 76 College and University Student Body Presidents, *supra* note 5, at 2.
- 58 2014 Guidance, *supra* note 3, at 32-33; 2011 Guidance, *supra* note 3, at 16-17; 2001 Guidance, *supra* note 3, at 16.
- 59 2014 Guidance, *supra* note 3, at 33; 2011 Guidance, *supra* note 3, at 15-16.
- 60 2011 Guidance, *supra* note 3 (“the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school’s investigation”).
- 61 34 C.F.R. § 106.30(a) (defining “supportive measures”).
- 62 Letter from National Women’s Law Center, *supra* note 52, at 22.
- 63 Letter from 36 U.S. Senators to Betsy DeVos, Sec’y, Dep’t of Educ., at 6-7 (Jan. 30, 2019) [hereinafter Letter from 36 U.S. Senators], <https://www.help.senate.gov/imo/media/doc/013019%20Proposed%20Title%20IX%20reg%20caucus%20letter.pdf>.
- 64 34 C.F.R. § 106.12(b).
- 65 *Id.*
- 66 85 Fed. Reg. 3190.
- 67 National Women’s Law Center, NWLC Submits Comment Opposing Betsy DeVos’s Title IX Proposal to Enable Sex Discrimination in the Name of Religion (Feb. 18, 2020), <https://nwlc.org/resources/nwlc-submits-comment-opposing-betsy-devoss-title-ix-proposal-to-enable-sex-discrimination-in-the-name-of-religion>.
- 68 *Id.* at 15, 21.
- 69 *Id.* at 21.
- 70 *E.g.*, Letter from Know Your IX, *supra* note 33; Letter from End Rape on Campus to Kenneth L. Marcus, Ass’t Sec’y for Civil Rights, Dep’t of Educ. (Jan. 30, 2019), <https://static1.squarespace.com/static/51f82234e4b097de73d1a373/t/5c526bce21c67c217bba88a5/1548905423597/End+Rape+on+Campus+Comment.pdf>.
- 71 *E.g.*, Letter from a UC Davis Fraternity President, *supra* note 6; Letter from a UC Davis Sorority, *supra* note 7.
- 72 Letter from 76 College and University Student Body Presidents, *supra* note 5.
- 73 Letter from American Federation of Teachers to Brittany Bull, Dep’t of Educ. (Jan. 30, 2019), <https://www.regulations.gov/document?D=ED-2018-OCR-0064-9123>.
- 74 Letter from 61 Higher Education Associations, *supra* note 9.
- 75 Letter from 5 Student Affairs Associations, *supra* note 15.
- 76 Letter from Association of American Universities to Brittany Bull, Dep’t of Educ. (Jan. 24, 2019), <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Higher-Education-Regulation/AAU-Title-IX-Comments-1-24-19.pdf>.
- 77 Letter from Association of Title IX Administrators to Betsy DeVos, Sec’y, Dep’t of Educ. (Jan. 28, 2019), [https://cdn.atixa.org/website-media/o\\_atixa/wp-content/uploads/2012/01/18120231/ATIXA-NPRM-Comments-Final.pdf](https://cdn.atixa.org/website-media/o_atixa/wp-content/uploads/2012/01/18120231/ATIXA-NPRM-Comments-Final.pdf).
- 78 Letter from Campus Law Enforcement Administrators, *supra* note 10.
- 79 Letter from National Education Association, *supra* note 26.
- 80 Letter from The School Superintendents Association, *supra* note 8.
- 81 Letter from 73 Law Professors to Dep’t of Educ. (Jan. 30, 2019), <https://www.regulations.gov/document?D=ED-2018-OCR-0064-11900>.
- 82 Letter from Consortium for Citizens with Disabilities to Dep’t of Educ. (Jan. 30, 2019), <https://nacdd.org/wp-content/uploads/2019/01/Final-CCD-Title-IX-comments-1.30.19.pdf>.



- 83** Letter from Human Rights Campaign to Kenneth L. Marcus, Ass't Sec'y for Civil Rights, Dep't of Educ. (Jan. 30, 2019), <https://www.regulations.gov/document?D=ED-2018-OCR-0064-11375>.
- 84** Letter from Leadership Conference on Civil and Human Rights, *supra* note 51.
- 85** Letter from MALDEF to Brittany Bull, Dep't of Educ. (Jan. 30, 2019), <https://www.maldef.org/wp-content/uploads/2019/01/MALDEF-Title-IX-Comment.pdf>.
- 86** Letter from Leadership Conference on Civil and Human Rights, *supra* note 51, at 11.
- 87** Letter from National Center for Transgender Equality to Kenneth L. Marcus, Ass't Sec'y for Civil Rights, Dep't of Educ. (Jan. 29, 2019), <https://www.regulations.gov/document?D=ED-2018-OCR-0064-11557>.
- 88** Letter from National Employment Lawyers Association to Betsy DeVos, Sec'y, Dep't of Educ. (Jan. 30, 2019), <https://www.nela.org/index.cfm?pg=83FedReg61483>.
- 89** Letter from Leadership Conference on Civil and Human Rights, *supra* note 51, at 11.
- 90** *Id.*
- 91** Letter from American Psychological Association to Brittany Bull, Dep't of Educ. (Jan. 30, 2019), <https://www.apa.org/advocacy/interpersonal-violence/titleix-comments.pdf>.
- 92** Letter from 902 Mental Health Professionals and Trauma Specialists to Kenneth L. Marcus, Ass't Sec'y for Civil Rights, Dep't of Educ. (Jan. 30, 2019), <https://www.regulations.gov/document?D=ED-2018-OCR-0064-104088>.
- 93** Letter from 145 State Legislators in 41 States to Kenneth L. Marcus, Ass't Sec'y for Civil Rights, Dep't of Educ. (Jan. 25, 2019), <https://www.regulations.gov/document?D=ED-2018-OCR-0064-8535>.
- 94** Letter from 36 U.S. Senators, *supra* note 63.
- 95** Letter from 19 State Attorneys General, *supra* note 34.