

United States Senate

WASHINGTON, DC 20510

September 27, 2017

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Ave. S.W.
Washington, D.C. 20202

We are extremely disappointed that you have decided to rescind the 2011 and 2014 Department of Education (Department) guidance on sexual violence and sex-based discrimination protected by Title IX of the Education Amendments of 1972 (Title IX). Your action on Friday shows a clear lack of concern for the many requests of survivors of sexual assault and members of Congress who have asked you to leave the previous guidance in place. Your new guidance is already creating uncertainty and chaos for schools and we ask that you immediately reinstate the previous guidance.

Title IX states that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” Rolling back the guidance does not eliminate existing legal obligations that schools have to comply with Title IX or the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act that were enacted as a part of the Violence Against Women Reauthorization Act of 2013 (VAWA). However, the guidance you issued creates confusion regarding compliance with the law. The VAWA regulations require that an institution of higher education’s policy must include the timelines for a disciplinary hearing and a process for extending those timeframes for good cause.¹ Meanwhile, the Q&A document issued last week indicates that the Office for Civil Rights (OCR) will make a case-by-case determination as to a school’s good faith efforts for a “fair, impartial investigation”² suggesting OCR will not be enforcing the requirement for a consistent policy.

Additionally, the new guidance allows schools to stop using the preponderance of evidence standard and to deny a complainant the right to an appeal.³ It also limits schools’ ability to use interim measures to minimize the burden on the complainant.⁴ Finally, the Q&A includes a change in policy that mediation will now be an acceptable form of resolving a complaint of sexual assault. This change is in direct contradiction to the 2001 guidance⁵ even though the Dear

¹ 34 C.F.R. 668.46(k)(3)(i)(A)

² “Q & A on Campus Sexual Misconduct” United States Department of Education Office of Civil Rights September 2017.

³ Id.

⁴ Id.

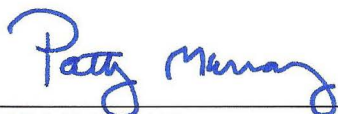
⁵ <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>

Colleague Letter says the Department will continue to rely on the 2001 guidance to assess whether a school is in compliance with Title IX.⁶

If your goal is to produce new regulations rather than utilize guidance to inform stakeholders of their rights and obligations, it is incomprehensible that you would issue new, conflicting guidance as a part of that process. A commitment to the full and transparent process of a real rulemaking process would dictate that you pursue that process rather than creating uncertainty for schools, survivors and all stakeholders by issuing new guidance that, in fact, provides less guidance than was previously available and without a public notice and comment period. Furthermore, the Department's actions creates a devastating lack of clarity for the ongoing investigations of 360 cases of sexual violence at 258 postsecondary schools.

We ask that you reinstate the previous guidance and make it clear that survivors' voices will be heard throughout any rulemaking process you decide to pursue. We thank you for your prompt attention to this important matter.

Sincerely,



PATTY MURRAY
United States Senator



ROBERT P. CASEY, Jr.
United States Senator



RICHARD BLUMENTHAL
United States Senator



KIRSTEN GILLIBRAND
United States Senator



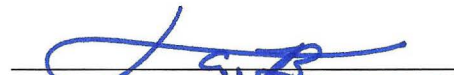
CLAIRE MCCASKILL
United States Senator




CHARLES E. SCHUMER
United States Senator

⁶ Supra note 2.


TAMMY BALDWIN
United States Senator


CORY A. BOOKER
United States Senator


SHERROD BROWN
United States Senator



BENJAMIN L. CARDIN
United States Senator


CATHERINE CORTEZ MASTO
United States Senator


DIANNE FEINSTEIN
United States Senator


AL FRANKEN
United States Senator


KAMALA D. HARRIS
United States Senator


MARGARET WOOD HASSAN
United States Senator


MAZIE K. HIRONO
United States Senator


TIM KAINE
United States Senator


PATRICK J. LEAHY
United States Senator


EDWARD J. MARKEY
United States Senator


CHRISTOPHER S. MURPHY
United States Senator


JACK REED
United States Senator



BERNARD SANDERS
United States Senator


BRIAN SCHATZ
United States Senator


JEANNE SHAHEEN
United States Senator


DEBBIE STABENOW
United States Senator


ELIZABETH WARREN
United States Senator



RON WYDEN
United States Senator


THOMAS R. CARPER
United States Senator


MARIA CANTWELL
United States Senator


CHRISTOPHER A. COONS
United States Senator


GARY C. PETERS
United States Senator


MICHAEL F. BENNET
United States Senator