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United States Senate

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July 12, 2017

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

Dear Secretary DeVos,

I am extremely troubled that you may be preparing to change the U.S. Department of Education (ED) guidance¹ on compliance with Title IX of the Education Amendments of 1972 (“Title IX”) in a way that will undermine the rights of sexual assault survivors. While I understand that you will meet with a small group of survivor organizations this week, I am concerned that you may have already prejudged the issue and decided to rescind current protections. Every student deserves to learn in a safe and supportive environment, and ED’s choices to date, and approach going forward, could have a deeply negative impact on survivors of sexual assault.

For more than 40 years, Title IX has improved access to educational programs and benefits by prohibiting schools from discriminating against individuals on the basis of sex. As a part of complying with this landmark civil rights law, schools must respond promptly and effectively to sexual assault and sexual harassment. If a school fails to respond, it can lead to a hostile environment that neglects to fulfill a school’s obligations under Title IX.

During your confirmation hearing you did not commit to upholding the Office for Civil Rights (OCR) guidance that clarifies how schools should work to prevent and respond to sexual harassment and violence and the appropriateness of the preponderance of evidence standard. Furthermore, Acting Assistant Secretary for Civil Rights, Candice Jackson’s, indication that OCR is actively considering whether to change the standard of proof described in the 2011 Dear Colleague letter is extremely concerning. Any change to this standard has the potential to do serious harm to the ability of survivors to obtain a prompt and equitable resolution after an assault.²

Furthermore, Democrats recently wrote to you expressing strong concerns about an ED field memo sent to OCR’s Regional Directors indicating that you will scale back systemic

¹ U.S. Department of Education, Office for Civil Rights, *Dear Colleague Letter on Student-on-Student Sexual Harassment and Sexual Violence* (April 4, 2011).

² Doug Lederman, *A New Day at OCR*, (June 28, 2017), available at <https://www.insidehighered.com/news/2017/06/28/trump-administration-civil-rights-officials-promise-colleges-fairer-regulatory>.

investigations when an individual case is filed. Systemic reviews have been a vital element of OCR's work to combat the epidemic of sexual assault on college campuses, raising questions about how seriously OCR will work to protect the rights of students, faculty, and others under the Trump Administration. Additionally, the proposed budget for ED for fiscal year 2018 would lead to a reduction of 53 staff at OCR, which would significantly reduce OCR's ability to investigate cases and provide sexual assault survivors the justice they need. Reducing the scope of civil rights investigations under the guise of resolving investigations more quickly—while you simultaneously propose eliminating staff capacity at OCR—is outright neglecting ED's civil rights responsibilities.

Acting Assistant Secretary Jackson's recent *New York Times* quote is a stark example of damaging misinformation about sexual violence, especially in light of her role and responsibilities at ED:

*"Rather, the accusations — 90 percent of them — fall into the category of 'we were both drunk,' 'we broke up, and six months later I found myself under a Title IX investigation because she just decided that our last sleeping together was not quite right,'"*³

I am deeply disturbed by this message coming from the person you have selected to lead OCR. At the least, this suggests a fundamental misunderstanding of campus sexual assault and suggests that OCR is not prepared to take accounts from survivors seriously.

Additionally, Acting Assistant Secretary Jackson recently described the public reporting of schools under Title IX investigation as a "list of shame." I am concerned that her statement shows a clear lack of understanding about the importance of transparency in the Federal government. A recent survey found that 23.1 percent of female undergraduates at 27 universities experienced sexual assault or misconduct through physical force, demonstrating a continued need for oversight and enforcement of Title IX protections.⁴ I strongly urge you to continue to publicly report schools under Title IX investigation so students, families, and schools can work together to make progress toward addressing sexual violence on campus.

I oppose any actions that rob survivors of an equitable and prompt resolution to discrimination on the basis of sex under Title IX, including a change to the standard of proof that would make it more difficult for survivors to achieve relief from the harassment they have endured. If ED is considering any changes to this standard or any other aspect of the guidance pertaining to Title IX, I urge you to meet with a broad range of sexual assault survivors to understand the challenges of reporting sexual assault, the importance of achieving relief from harassment, the reason that a standard of proof was adopted in the first place, and how the current standard under Title IX is consistent with those from other civil rights laws.

Upholding civil rights, working to ensure students' safety, and responding to reports of campus sexual violence are critical parts of your role as Secretary of Education. I expect you to take that responsibility seriously—and that requires ensuring survivors have a voice and a seat at the table.

³ Erica L. Green and Sheryl Gay Stolberg, "Campus Rape Policies Get a New Look as the Accused Get DeVos's Ear," *New York Times* (July 12, 2017).

⁴ *AAU Climate Survey on Sexual Assault and Sexual Misconduct* (September 3, 2015).

To date, ED has taken a deeply concerning approach to the epidemic of sexual assault on campus. Without appropriate enforcement and robust transparency, schools will once again be able to sweep sexual assault under the rug.

Sincerely,

A handwritten signature in blue ink that reads "Patty Murray". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Patty Murray
Ranking Member
Senate Committee on Health, Education,
Labor, and Pensions