

United States Senate

WASHINGTON, DC 20510

February 1, 2018

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

Dear Secretary DeVos:

We write to further highlight the Department of Education's ("Department") inadequate enforcement of Title IX of the Higher Education Act of 1972 ("Title IX"). In June 2017, the Department made the decision to roll back systemic investigations, which look broadly at Title IX policies and procedures at an institution. Your decision to disregard this longstanding practice is concerning, especially in the wake of the Larry Nassar case at Michigan State University (MSU). Although we support your decision to open an investigation into the Larry Nassar case at MSU, the facts of this case raise serious questions about Title IX compliance and enforcement. We urge the Department to reinstate systemic investigations and to pursue this type of investigation at MSU.

Last week, Dr. Larry Nassar was sentenced to between 40 to 175 years in prison for abusing women and girls in his care. His actions, and in particular those while he was acting as a doctor for MSU, raise serious concerns about whether MSU has the systems in place to prevent and respond to incidents of harassment and assault. While MSU conducted an internal review of potential Title IX violations by Dr. Nassar, then-President Simon said she never read the report.^[1] It appears that the Office for Civil Rights was investigating MSU about a separate matter at the same time, but it has been reported that MSU failed to turn over documents to investigators.^[2] Additional reporting shows that the issues are not limited to the handling of Nassar's case, and include incidents related to both student athletes and a former coach.^[3] The failure to turn over documents is particularly troubling as it appears investigations of complaints against student athletes were handled by the MSU athletic department rather than Title IX investigators, which would be a violation of federal guidance at the time.^[4]

Let it be clear, MSU is not the first or last institution that has failed to live up to its duty to fully enforce Title IX, which underscores the need for strong Title IX guidance from the Department. Last year, court documents in a case against Baylor University demonstrated a troubling pattern of a football coach covering up sexual assaults and other misconduct by players.^[5] While this case was settled out of court, the handling of the matter by the athletics department rather than through the Title IX process is another example of a school failing to take its Title IX obligations seriously, and putting its students at risk. Any allegation of sexual assault on campuses must be taken seriously, and any practice that allows some

^[1] <https://www.cnn.com/2018/01/22/us/msu-president-resignation-calls-nassar-case/index.html>

^[2] <https://www.si.com/olympics/2018/01/25/michigan-state-larry-nassar-sexual-assault-documents-title-ix-investigation>

^[3] http://www.espn.com/espn/story/_/id/22214566/pattern-denial-inaction-information-suppression-michigan-state-goes-larry-nassar-case-espn

^[4] <https://www.si.com/olympics/2018/01/25/michigan-state-larry-nassar-sexual-assault-documents-title-ix-investigation>

^[5] <https://www.insidehighered.com/news/2017/02/09/baylor-not-alone-shielding-athletes-accused-misconduct-punishment>

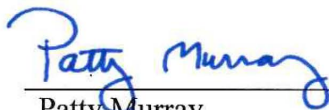
students or faculty preferential treatment as a part of investigating the allegation, is simply unacceptable and must be eliminated. Anyone who experiences sexual assault at their school must know that their complaint will be taken seriously and investigated properly.

Thirty-two Senators wrote to you on September 27 to express serious concerns with your decision to roll back the Department's 2011 and 2014 guidance to schools, which had made clear to schools their obligation to take complaints of campus sexual assault seriously, and had given survivors the confidence to come forward with those complaints. The revocation of the 2011 and 2014 guidance leaves the door open for schools to take Title IX requirements even less seriously, by suggesting that the Office for Civil Rights won't necessarily take a systemic approach to an individual complaint, eliminating the definition of a "prompt" investigation, and allowing schools to deny the right to an appeal to the complainant.^[4] Combined with efforts to reduce the staff in the Office for Civil Rights, this clear rollback of guidance raises concern that an investigation may not be as robust or complete as the situation demands that it must be.

Finally, we strongly urge the Department to review whether all colleges and universities are taking their obligations under long-standing civil rights laws seriously enough. Schools must take their obligations under federal civil rights laws seriously, and it is up to you to take proactive steps to ensure they are doing so. We would like an update from you as soon as practicable detailing any actions the Department is taking to ensure that schools are protecting their student athletes—and all students.

Thank you for your attention to this very important matter. Please contact Carly Rush or Laurel Sakai at 202-224-0767 with any questions, or to schedule the requested briefing.

Sincerely,



Patty Murray
United States Senator



Debbie Stabenow
United States Senator

Gary C. Peters
United States Senator