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July 13, 2017

The Honorable Betsy DeVos

Secretary

U.S. Department of Education

400 Maryland Avenue, SW

Washington, D.C. 20202

Dear Secretary DeVos,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 40 undersigned organizations, we write in support of existing U.S. Department of Education policy guidance clarifying schools' responsibility to prevent and address sex discrimination under Title IX of the Education Amendments Act of 1972. The 2010 Dear Colleague Letter on Bullying and Harassment,ⁱ the 2011 Dear Colleague Letter on Sexual Violenceⁱⁱ and accompanying 2014 Questions and Answers on Title IX and Sexual Violenceⁱⁱⁱ provide much needed clarity for schools, students, and families regarding the law's protections and obligations. These guidance documents and enforcement of Title IX by the Department of Education's Office for Civil Rights have spurred schools to address cultures that for far too long have contributed to hostile environments that deprive many students of equal educational opportunities.

Your unwillingness to commit to retaining the 2011 Dear Colleague Letter on Sexual Violence during your confirmation hearing^{iv} has caused considerable concern among our communities. It is incumbent upon you to state clearly your intention to enforce civil rights law and to preserve clarifying guidance. Ambiguity and uncertainty will only serve to reinforce hostile and discriminatory school environments that deprive students of their right to an education.

We are aware that the Department is facing unwarranted criticism for having done its job. Some advocacy organizations, law professors, and legislators claim that the grievance procedures outlined in the 2011 sexual violence guidance violate due process rights of students accused of sexual assault. This argument is without merit.

Since the Title IX regulations were issued in 1975, educational programs have been required to create "grievance procedures providing for prompt and *equitable* resolution" of complaints (emphasis added).^v The 2011 guidance further clarified what constitutes an *equitable* grievance procedure. Specifically, the Department reminded schools that both the complainant and the respondent should have the same rights in any grievance procedure—e.g., the same right to review documents, the same right to counsel, the same right to present witnesses and evidence, and the same right to an appeal.

Moreover, the Department clarified that an equitable grievance procedure means that both the complainant and respondent bear the same burden of proof—i.e. that schools should use the preponderance of the evidence standard. This standard is used in cases alleging discrimination under other civil rights laws,^{vi} in civil lawsuits between two private parties (including suits related to possibly criminal conduct such as tort actions for battery or murder/wrongful death), and in 80 percent of schools, according to a 2002 report issued well before the 2011 guidance.^{vii} In fact, by demanding equitable treatment of both the respondent and complainant, the Department's interpretation of Title IX provides students accused of sexual assault with procedural protections beyond those the Supreme Court has said are guaranteed under the U.S. Constitution.^{viii}

The Department's Title IX guidance letters and enforcement have been vital in the effort to ensure that students do not face discrimination in school, based on sex. Yet, as advocates for civil rights, including women's rights, racial justice, disability rights, LGBTQ rights, and immigrants' rights, we know that such discrimination continues to deny students equal access to education at all levels. We urge the Department to continue helping schools understand their legal obligations—for example, by reiterating its continued support for existing guidance letters.

Students deserve, and the law requires, a Department of Education that is working to protect all students from discrimination. These guidance documents and continued enforcement of the law are critical to making students' rights real. If you have any questions, please contact Leadership Conference Director of Education Policy Liz King at king@civilrights.org or 202.466.0087 or Neena Chaudhry, National Women's Law Center Senior Counsel and Director of Education at nchaudhry@nwlc.org or 202.588.5180.

Sincerely,

The Leadership Conference on Civil and Human Rights
National Women's Law Center
American-Arab Anti-Discrimination Committee
American Association of University Women (AAUW)
American Federation of Teachers
Anti-Defamation League
The Arc of the United States
Association of University Centers on Disabilities (AUCD)
Augustus F. Hawkins Foundation
Disability Rights Education & Defense Fund
Education Law Center-PA
Feminist Majority Foundation
Girls Inc.
GLSEN
Human Rights Campaign
Judge David L. Bazelon Center for Mental Health Law
Lambda Legal
Lawyers' Committee for Civil Rights Under Law
League of United Latin American Citizens
MALDEF

NAACP

NAACP Legal Defense and Educational Fund, Inc.

National Alliance for Partnerships in Equity (NAPE)

National Bar Association

National Center for Learning Disabilities

National Center for Lesbian Rights

National Center for Transgender Equality

National Center for Youth Law

National Council of Jewish Women

National Disability Rights Network

National Down Syndrome Congress

National Education Association

National Urban League

OCA - Asian Pacific American Advocates

Society of Women Engineers

Southeast Asia Resource Action Center

Southern Poverty Law Center

TASH

UnidosUS, previously known as NCLR

YWCA USA

ⁱ See: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

ⁱⁱ See: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

ⁱⁱⁱ See: <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

^{iv} See: https://www.washingtonpost.com/news/grade-point/wp/2017/01/18/under-devos-education-department-likely-to-make-significant-shift-on-sexual-assault/?utm_term=.159fa8aa3759

^v 34 C.F.R. §106.8(b).

^{vi} See, e.g., *Elston v. Talladega Cnty. Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993); *Lynch v. Belden & Co.*, 882 F.2d 262, 267, 269 (7th Cir. 1989); 42 U.S.C. § 20001 (2006).

^{vii} Heather Karjane, et al., CAMPUS SEXUAL ASSAULT: HOW AMERICA'S INSTITUTIONS OF HIGHER EDUCATION RESPOND 122 (Nat'l Criminal Justice Reference Serv., Oct. 2002), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/196676.pdf>.

^{viii} See *Goss v. Lopez*, 419 U.S. 565, 579 & 583 (1975) (“[S]tudents facing suspension [in public educational institutions] must be given some kind of notice and afforded some kind of hearing. . . . We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student 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.”).