



Commonwealth of Pennsylvania
Office of Attorney General
Harrisburg, PA 17120

Josh Shapiro
Attorney General

16th Floor
Strawberry Square
Harrisburg, PA
17120
(717) 787-3391

December 20, 2018

The Honorable Elisabeth DeVos
Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Request for Extension of Comment Period for Proposed Rule Regarding
Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving
Federal Financial Assistance (83 Fed. Reg. 61,462 (Nov. 29, 2018)) – Docket ID ED–
2018–OCR–0064

Dear Secretary DeVos:

We the undersigned Attorneys General of Pennsylvania, New Jersey, California, Connecticut, Delaware, the District of Columbia, Hawai‘i, Illinois, Iowa, Kentucky, Maine, Massachusetts, Minnesota, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington respectfully request that the U.S. Department of Education (the “Department”) extend the comment period for the Proposed Rule Regarding Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (the “proposed rules”) by at least 60 days, for a total of at least 120 days from the date of publication in the Federal Register. Although we are prepared to move forward on your timeline, it will deny students, faculty, staff, and other school community members a meaningful opportunity to comment and is inconsistent with past practice.

The proposed rules would effect a dramatic withdrawal from Title IX and its current implementing regulations and guidance, which are designed to guarantee the right of all students to be free from discrimination, assault, and harassment based on sex.¹ The significance of these proposed rules and the timing of the current comment window—over the traditional school winter break—warrant an extension to allow all interested members of the public, including students, faculty, and staff, to carefully review the proposal and prepare comments. We believe the proposed rules raise serious concerns and that the Department’s attempt to rush their

¹ 20 U.S.C. § 1681(a); *Franklin v. Gwinnet Cty. Pub. Schs.*, 503 U.S. 60 (1992).

adoption without meaningful time for interested parties to consider and comment upon them compounds this concern.

As we wrote to you over a year ago,² we see the devastating impact campus sexual assault has on survivors, educational institutions, and our communities. Incidents of sexual assault on campuses are widespread: the American Association of Universities (AAU) has found that 23 percent of female undergraduates experienced sexual assault or sexual misconduct due to physical force, threats of force, or incapacitation.³ Further, the federal government's own studies have reached similar conclusions: the U.S. Department of Justice's Bureau of Justice Statistics found that, on average, 20.5 percent of college women had experienced sexual assault since entering college,⁴ while the Centers for Disease Control and Prevention found that one in five women experienced sexual assault in her lifetime.⁵ Moreover, the vast majority of these incidents go unreported. In fact, the AAU study concluded that reporting rates for some types of assaults are as low as five percent, in part due to survivors' concerns about coming forward.

If implemented, these proposed rules will constitute the most significant change to the Title IX regulations in four decades. The current regulations date back to 1975, when the Department's predecessor, the Department of Health, Education, and Welfare (HEW), issued regulations implementing Title IX of the Education Amendments Act of 1972.⁶

As a result, the current regulations predate almost all federal court construction of Title IX, including the 1992 Supreme Court decision holding that sexual harassment is a form of sex discrimination.⁷ As the Department itself observes in the preamble, "[i]n the four decades since HEW issued the 1975 rule, no Title IX regulations have been promulgated to address sexual harassment as a form of sex discrimination." 83 Fed. Reg. at 61,463.

² Letter from Attorney General Josh Shapiro, et al., to the Honorable Elisabeth DeVos (July 19, 2017), <https://www.attorneygeneral.gov/wp-content/uploads/2018/01/AG-Letter-on-Title-IX.pdf>.

³ AAU Climate Survey on Sexual Assault and Sexual Misconduct (2015), <https://www.aau.edu/key-issues/aau-climate-survey-sexual-assault-and-sexual-misconduct-2015>.

⁴ Campus Climate Survey Validation Study, Final Technical Report, Appx. E, https://www.bjs.gov/content/pub/pdf/App_E_Sex-Assault-Rape-Battery.pdf.

⁵ National Intimate Partner and Sexual Violence Survey, https://www.cdc.gov/violence-prevention/pdf/nisvs_report2010-a.pdf.

⁶ *Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance*, 40 Fed. Reg. 24,128 (June 4, 1975).

⁷ *Franklin v. Gwinnet Cty. Pub. Schs.*, 503 U.S. 60 (1992).

The current regulations also predate the lived experiences of educational institutions seeking to fulfill their obligations under Title IX, and of students seeking fulfillment of their right to an education free of sex discrimination, sexual harassment, and sexual violence. As the Department itself notes in the preamble, the “decades since the passage of Title IX have revealed that how schools address sexual harassment and sexual assault . . . affects the educational access and opportunities of large numbers of students in elementary, secondary, and postsecondary schools across the nation.” 83 Fed. Reg. at 61,463.

The significance of the proposed changes underscores the need to extend the comment deadline. The proposed rules will require schools to develop new investigatory and grievance procedures that will affect the lives of millions of students across the country. There are many interested stakeholders—including educational institutions, teachers, school administrators, and students—who should have an opportunity to carefully review the Department’s proposal. The short comment period risks leaving out those voices that are most important to this discussion.

A 60-day extension is particularly appropriate because the comment window falls squarely during end-of-semester exams and the traditional school winter and holiday break. For example, the 14 universities in the Pennsylvania State System of Higher Education, which together educate more than 100,000 students,⁸ will hold final exams in mid-December and will not begin the spring semester until mid-to-late January 2019.⁹ Similarly, the University of California system includes more than 280,000 students¹⁰ and the California State University system includes more than 460,000 students¹¹ who will also be out of session from mid-December to mid-January.¹² The University of Pennsylvania educates some 25,000 students who will take exams mid-December and will not reopen until mid-January 2019.¹³ Rutgers, the State

⁸ Pa. State Sys. of Higher Educ., *About the System*, <http://www.passhe.edu/About/Pages/About.aspx>.

⁹ Pa. State Sys. of Higher Educ., *Academic Calendars by University 2018-2019*, <http://www.passhe.edu/inside/ASA/documents/AcademicCalendarbyUniversity2018-19.pdf>.

¹⁰ Univ. of Cal., *The UC System*, <https://www.universityofcalifornia.edu/uc-system>.

¹¹ Cal. State Univ., *Enrollment*, <https://www2.calstate.edu/csu-system/about-the-csu/facts-about-the-csu/enrollment/Pages/default.aspx> (showing increasing enrollment above 460,000 students from 2014 through 2017; 2018 enrollment figures are not currently available).

¹² Univ. of Cali., *University of California Term Dates 2018-2019 Academic Year*, <http://eap.ucop.edu/Documents/ReciprocalExchanges/AcCalendar18-19.pdf>; Cal. State Univ. Office of the Chancellor, *2018-2019 California State University Campus Calendar*, <https://www.calstate.edu/app/documents/2018-19-CSU-ACAL.pdf>.

¹³ Univ. of Pa., *Facts*, <https://www.upenn.edu/about/facts>; Univ. of Pa., *Penn Academic Calendar*, <https://almanac.upenn.edu/penn-academic-calendar>.

Request for Extension of Comment Period for Proposed Rule Regarding Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

University of New Jersey, includes more than 70,000 students who will take exams mid-December and not return until January 22, 2019.¹⁴ The Philadelphia School District will be closed for almost two weeks at the end of December.¹⁵ Similarly, much of the New Jersey state public school system, serving over 1.3 million students, will be closed for over a week during the public comment period.¹⁶ With the comment period currently ending on January 28, 2019, students, faculty, and staff will not have sufficient time to review the proposed rules and prepare comments.

When HEW first promulgated the current Title IX regulations in 1975, it gave the public 118 days to comment. 40 Fed. Reg. at 24,128. Although you first delivered a speech about revising Title IX regulations in September 2017, your Department took over a year to finalize the proposed rule. In promulgating the most significant changes to Title IX regulations since 1975, the Department should follow this model and likewise provide the public with sufficient time to comment on these important proposals.

We look forward to your prompt reply.

Sincerely,



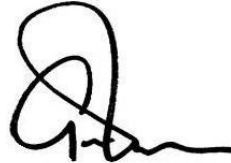
JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania



XAVIER BECERRA
Attorney General
State of California



GURBIR S. GREWAL
Attorney General
State of New Jersey



GEORGE JEPSEN
Attorney General
State of Connecticut

¹⁴ Rutgers, *Facts & Figures*, <https://www.rutgers.edu/about/facts-figures>; Rutgers, *Academic Calendar*, <https://scheduling.rutgers.edu/scheduling/academic-calendar>.

¹⁵ School Dist. of Phila., *Academic Calendar 2018-2019*, <https://www.philasd.org/calendar/>.

¹⁶ Newark, Bd. of Ed., *2018-2019 School Calendar*, <http://www.nps.k12.nj.us/info/school-calendar/>; Jersey City Public Schools, *Approved Calendar 2018-2019*, http://www.jcboe.org/boe2015/images/pdf/schools/2018-19cal/RevisedDistrictCalendar201819-6_11_18.pdf; Trenton Public Schools, *2018-2019 Calendar*, <http://www.trentonk12.org/Downloads/Calendar%202018%20-%202019.pdf>.

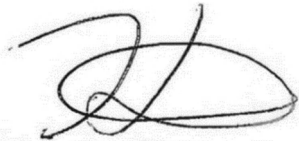
Request for Extension of Comment Period for Proposed Rule Regarding Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance



MATTHEW P. DENN
Attorney General
State of Delaware



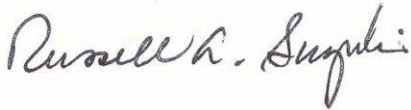
ANDY BESHEAR
Attorney General
Commonwealth of Kentucky



KARL A. RACINE
Attorney General
District of Columbia



JANET T. MILLS
Attorney General
State of Maine



RUSSELL SUZUKI
Attorney General
State of Hawai'i



MAURA HEALEY
Attorney General
Commonwealth of Massachusetts



LISA MADIGAN
Attorney General
State of Illinois



LORI SWANSON
Attorney General
State of Minnesota



THOMAS J. MILLER
Attorney General
State of Iowa



HECTOR BALDERAS
Attorney General
State of New Mexico

Request for Extension of Comment Period for Proposed Rule Regarding Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance



BARBARA UNDERWOOD
Attorney General
State of New York



BOB FERGUSON
Attorney General
State of Washington



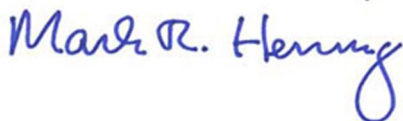
ELLEN F. ROSENBLUM
Attorney General
State of Oregon



PETER F. KILMARTIN
Attorney General
State of Rhode Island



T.J. DONOVAN
Attorney General
State of Vermont



MARK HERRING
Attorney General
Commonwealth of Virginia