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September 7, 2021

The Honorable Miguel Cardona
Secretary
Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Suzanne B. Goldberg
Acting Assistant Secretary for Civil Rights
Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Secretary Cardona and Acting Assistant Secretary Goldberg:

The undersigned 116 survivor advocate organizations, civil rights organizations, and education associations write to urge the Department of Education to take **swift, meaningful action** to protect students from sexual harassment, sexual assault, dating violence, domestic violence, and sex-based stalking.

We applaud the steps the Department has taken so far this year towards restoring civil rights protections for students, including by conducting a review of all existing Title IX policies,¹ holding a week-long Title IX public hearing to solicit input from student survivors and other stakeholders,² issuing a Q&A document regarding the Trump Title IX rule,³ and ceasing enforcement of the Trump rule's prohibition against statements not subject to cross-examination.⁴

However, we are deeply concerned by the Department's plan to issue a proposed Title IX rule months later, in May 2022.⁵ We recall that the Trump Title IX final rule took nearly 21 months to go into effect from the time that changes to the Title IX rule were first proposed.⁶ If the Department follows a similar timeline with the forthcoming Title IX rule, we fear that students will continue to be harmed by the Trump rule until February 2024—more than two school years from now and more than three years into the current administration.

¹ Exec. Order No. 14021, 86 Fed. Reg. 13803 (Mar. 8, 2021), <http://federalregister.gov/d/2021-05200>.

² Dep't of Educ., Office for Civil Rights, *Title IX Public Hearing* (June 7-11, 2021), <https://web.cvent.com/event/ba5eef74-8f35-4a4e-b0a7-1f047fe033bc/summary>.

³ Dep't of Educ., Office for Civil Rights, *Questions and Answers on the Title IX Regulations on Sexual Harassment* (July 20, 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>.

⁴ Dep't of Educ., Office for Civil Rights, *Dear Students, Educators, and Other Stakeholders Letter re Victim Rights Law Center et al. v. Cardona* (Aug. 24, 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf>.

⁵ Off. of Mgmt. & Budget, Office of Info. & Reg. Aff., *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* (Spring 2021), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1870-AA16>.

⁶ Dep't of Educ., Office for Civil Rights, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30026, 30031 (May 19, 2020), <https://www.federalregister.gov/d/2020-10512>.

Student survivors cannot wait any longer for the Department to restore and strengthen their Title IX rights. Over the past year, the Trump rule has already caused incalculable harm, chilling numerous student survivors from coming forward and subjecting many who have sought help from their schools to unfair and retraumatizing investigation procedures, denial of urgently needed supportive measures, and outright dismissal of their complaints. By further sweeping sexual harassment under the rug, the Trump rule outright encourages, rather than mitigates, sex discrimination in schools.

As the new school year starts, we brace for an unprecedented increase in the number of students experiencing sexual assault and other sex-based harassment. It is well known that more than 50% of campus sexual assaults occur during the “Red Zone” – the period between the day that first-year college students arrive on campus and the day they depart for Thanksgiving break.⁷ As many schools shift back to in-person classes for the first time since the COVID-19 pandemic began, and second-year students join new first-year students on campus for the first time, we are preparing for a Double Red Zone this fall.

The time to act is now. To protect student survivors, we strongly urge the Department of Education take the following steps:

1. **Issue proposed changes to the Title IX rule by October 1, 2021 to start the process for undoing Trump’s changes to the Title IX rule.** Survivors do not have the luxury of waiting for the government to take their safety and rights seriously while they are denied the most basic protections because they were not assaulted or harassed at the right place, by the right person, or at the right time.⁸ Every day that passes only increases the numbers of survivors who will be forced to suffer because of the Trump Title IX rule and their school’s failure to protect their safety and educational access. The Department of Education must act swiftly to ensure that no survivor is pushed out of school because of sexual assault and other sex-based harassment.
2. **Issue a Nonenforcement Directive on portions of the Trump Title IX rule so that:**
 - Schools are allowed to follow state or local laws addressing sex-based harassment in education that provide greater protections for student survivors, even if they conflict with the Trump Title IX rule (34 C.F.R. § 106.6(h));
 - Survivors are not forced into unfair and hostile investigations and hearings, which only apply to victims of sexual violence but no other form of campus misconduct (34 C.F.R. § 106.45(b)); and
 - Schools are not required to dismiss Title IX complaints based on the location of the harassment, because the complainant has not suffered enough, or because the complainant was already pushed out by the harassment (34 C.F.R. §§ 106.30(a) (definition of “formal complaint”), 106.45(b)(3)).
3. **Ensure that survivors can file complaints when their rights are violated by updating the Case Processing Manual.** In 2018, the Trump administration’s Department of Education altered the Case Processing Manual to limit the number of students who could seek help from the Office for Civil Rights.⁹ Currently, students have only 180 days from the *first* instance of alleged

⁷ ‘me, too.’, *The Red Zone: Sexual Violence on College Campuses* (May 2020), https://metoomvmt.org/wp-content/uploads/2020/05/1.5.11_The-Red-Zone-Sexual-Violence-on-College-Campuses_INFOSHEET_V2.pdf.

⁸ National Women’s Law Center, *DeVos’s New Title IX Sexual Harassment Rule, Explained*, <https://nwlc.org/resources/devos-new-title-ix-sexual-harassment-rule-explained>.

⁹ Dep’t of Educ., Office for Civil Rights, *Case Processing Manual* (effective Mar. 5, 2018), <https://web.archive.org/web/20180306152421/https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

discrimination to file a complaint.¹⁰ Given that the Trump Title IX rule allows for significant delays, this means that in order to get relief, many survivors must file a complaint with OCR before their school has even concluded its investigation. Instead, consistent with other areas of nondiscrimination law, complainants should be allowed to file within 180 days from the *most recent instance of discrimination* instead of from the first instance.

Thank you for your consideration of our recommendations. If you have any questions, please contact Emily Martin (emartin@nwlc.org), Shiwali Patel (spatel@nwlc.org) and Elizabeth Tang (etang@nwlc.org). We look forward to working with you to ensure that sexual harassment does not impede any student's equal access to education.

National Women's Law Center, joined by:

9to5 Georgia
Abuse and Rape Crisis Center, Bradford County, PA
ACT-UAW Local 7902
Advocate Safehouse Project
Advocates of Routt County
Alianza Latina en contra la Agresión Sexual (ALAS)
American Association of University Women (AAUW)
American Atheists
Ar. Coalition Against Sexual Assault
Arte Sana
Atlanta Women for Equality
Augustus F. Hawkins Foundation
BHS Stop Harassing
Blackburn Center
California Women's Law Center
Campus Advocacy and Prevention Professionals Association (CAPPA)
CAPSEA, Inc.
Champion Women
Chicago Alliance Against Sexual Exploitation (CAASE)
Clearinghouse on Women's Issues
Coalition of Labor Union Women
Colorado Coalition Against Sexual Assault
Columbia Postdoctoral Workers - UAW Local 4100, Executive Board
Connecticut Alliance to End Sexual Violence
Council of Parent Attorneys and Advocates
Day One
Deaf Overcoming Violence through Empowerment (DOVE)
Disability Rights Education & Defense Fund
enCourage Advocacy Center
End K-12 Violence
End Rape on Campus
Enough is Enough Voter Project
Equal Rights Advocates
Faculty Against Rape

¹⁰ Dep't of Educ., Office for Civil Rights, *Case Processing Manual* (effective Aug. 26, 2020), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

Family Violence Appellate Project (CA)
Family Violence Law Center
Feminist Majority Foundation
Girls Inc.
Hollaback!
Idaho Coalition Against Sexual & Domestic Violence
Illinois Coalition Against Sexual Assault
Iowa Coalition Against Sexual Assault
It's On Us
Jakara Movement
Japanese American Citizens League
Justice for Migrant Women
Kansas Coalition Against Sexual and Domestic Violence
Know Your IX
KWH Law Center for Social Justice and Change
L.L. Dunn Law Firm, PLLC
Legal Momentum
Legal Voice
Maine Coalition Against Sexual Assault
Maryland Coalition Against Sexual Assault
Maryland Women's Heritage Center
Michigan Coalition to End Domestic & Sexual Violence
Michigan Organization on Adolescent Sexual Health (MOASH)
National Alliance for Partnerships in Equity (NAPE)
National Alliance to End Sexual Violence
National Association of Councils on Developmental Disabilities
National Association of Secondary School Principals
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)
National Center for Transgender Equality
National Center for Youth Law
National Coalition Against Domestic Violence
National Council for Occupational Safety and Health
National Council of Jewish Women
National Organization for Women
National Resource Center on Domestic Violence
National Urban League
National Women's Political Caucus
NC Coalition Against Sexual Assault
NC Stop Human Trafficking
Nebraska Coalition to End Sexual and Domestic Violence
New Hampshire Coalition Against Domestic and Sexual Violence
New York State Coalition Against Sexual Assault
Not Without Black Women
Ohio Alliance to End Sexual Violence
OutNebraska
Parent-Child Center
PASSAGES, Inc.
Pennsylvania Coalition Against Rape
Pittsburgh Action Against Rape

Prevention. Action. Change.
Project Hope of Gunnison Valley
Rocky Mountain Victim Law Center
SafeBAE
Sandhills Crisis Intervention Program
Southeast Asian Resource Action Center
Southwest Women's Law Center
SPAN Parent Advocacy Network
Stop Sexual Assault in Schools (SSAIS.org)
Survivor-Strong, Inc.
Texas Association Against Sexual Assault
The Arc of the United States
The Blue Bench
The Every Voice Coalition
The International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW)
Tu Casa, Inc.
UAW 2865
UAW 4121
UAW Local 4123
UAW Local 5810
VA NOW, Inc.
Victim Rights Law Center
Washington Coalition of Sexual Assault Programs
Wellesley Centers for Women
Wisconsin Coalition Against Sexual Assault
Women Employed
Women's Media Center
Women's Fund of Omaha
Women's Law Project
Workplace Fairness
Wyoming Coalition Against Domestic Violence and Sexual Assault
YWCA USA