

June 23, 2023

The Honorable Joseph Biden, Jr.  
President of the United States  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

Dear President Biden:

On this 51<sup>st</sup> anniversary of Title IX of the Education Amendments of 1972, the undersigned 75 gender justice, survivor advocacy, and civil rights organizations write to express our deep disappointment in your administration's recent announcement that release of the Department of Education's Title IX final rule is delayed from May 2023 to October 2023.

While we appreciate the significant work your administration has done to undo the Trump administration's attack on students' civil rights and to restore the promise of our civil rights laws, it devastates us to maintain that, on this year's anniversary of Title IX, students are **still** without adequate civil rights protections against sexual assault, sex-based harassment, and other forms of sex discrimination, in education. For us and the students we represent and serve, any celebration of Title IX feels insincere when schools are still being incentivized to sweep survivors' victimization under the rug; when LGBTQI+ students are afraid to go to school as themselves or even use the bathroom because of the horrific discrimination they risk; and when pregnant and parenting students still don't have the support they need to remain in school and succeed. While your administration has proposed Title IX rule changes to address these urgent needs, until these proposed changes are finalized, students will continue to be subjected to the harmful, sexist Trump rule—a rule that was developed with the help of male supremacists.<sup>1</sup> **We urge your administration to finalize these much-needed changes before the 2023-2024 school year—or at the very least, ensure a new rule is in effect by January 2024—so that students are not denied equal access to education for yet another school year.**

Once finalized, the rule will likely take at least 60 days to come into effect,<sup>2</sup> leaving the Trump rule as law until the effective date. This means students could be without adequate civil rights protections for months into the school year. Also, October, when the rule is currently scheduled to be finalized, falls squarely in the middle of the “red zone”—the period between the start of the fall semester and November during which college students, especially first-year students, are statistically most at risk for experiencing sexual assault.<sup>3</sup> This means that the droves of students seeking support or filing a Title IX complaint for assault they experienced during that period will have to suffer the added trauma of being denied the support they need to continue their education or of having their complaints dismissed for not being “severe” enough – yet another generation of incoming freshman whose entire college experience will have been initiated with regulatorily-mandated “institutional betrayal.”<sup>4</sup>

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<sup>1</sup> Hélène Barthélemy, *How Men's Rights Groups Helped Rewrite Regulations on Campus Rape*, THE NATION (Aug. 14, 2020), <https://www.thenation.com/article/politics/betsy-devos-title-ix-mens-rights>.

<sup>2</sup> The Office of the Federal Register provides that “significant” or “major” regulations must go into effect “at least 60 days” after being finalized. Office of Federal Register, *A Guide to the Rulemaking Process* (Jan. 2011), [https://www.federalregister.gov/uploads/2011/01/the\\_rulemaking\\_process.pdf](https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf). For reference, the Trump rule was finalized on May 19, 2020, and did not go into effect until almost 90 days later on August 14, 2020. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026 (finalized May 6, 2020, effective Aug. 14, 2020), <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

<sup>3</sup> Joan Raymond, *What You Need to Know About the 'Red Zone,' When Campus Sexual Assaults Spike*, NBC NEWS (Sept. 17, 2016), <https://www.nbcnews.com/feature/college-game-plan/what-you-need-know-about-red-zone-when-campus-sexual-n649686>; Alyse Campbell, *The “Red Zone” of sexual assault*, JOHNS HOPKINS UNIV. (Sept. 2, 2022), <https://wellbeing.jhu.edu/blog/2022/09/02/the-red-zone-of-sexual-assault>.

<sup>4</sup> Rachel E. Goldsmith, Jennifer J. Freyd, & Anne P. DePrince, *Betrayal Trauma: Associations with Psychological and Physical Symptoms in Young Adults*, *Journal of Interpersonal Violence* 27, 547, 547-67 (2012). See also Jennifer J. Freyd, *Institutional*

Currently, students are without adequate civil rights protections. This is not merely a “right now” issue. Since the Trump rule has been in effect for three complete school years, there are students who have gone ***almost all of their secondary school or college experience under the Trump Title IX rule.*** This has had disastrous repercussions for student survivors, who are still being forced to weather the emotionally and academically devastating consequences of having their complaints dismissed after mustering the courage to speak up because their victimization isn’t deemed “serious enough;” of having to submit to burdensome and deeply traumatizing grievance procedures, including direct, live cross-examination; and of being denied the supportive measures they need to continue their education in the wake of their victimization. Further, LGBTQI+ students are still without the explicit affirmation of their legal rights as they face a crisis of almost 500 state bills introduced *this year alone* aimed at depriving them of their rights to learn in safety.<sup>5</sup> Without a strong final rule indicating that anti-LGBTQI+ discrimination is fundamentally inconsistent with Title IX’s mandate, hostile legislators will only be emboldened in their quest to censor and terrorize LGBTQI+ students. Finally, pregnant and parenting students are still without the support they need to combat the immense pressure they face to drop classes or withdraw from school entirely from unsupportive educators;<sup>6</sup> this support is even more urgent in the wake of reproductive health restrictions around the country following the Supreme Court’s evisceration of the constitutional right to abortion.<sup>7</sup> Students need a strong final Title IX rule to combat the significant barriers they face to succeeding in and completing their education.

After over 50 years of Title IX, we still have not actualized Title IX’s full potential. As tired as we are of repeating this, students are even more exhausted. Students are speaking up about the absolutely demoralizing experience of losing out on their education because the federal government has not yet made good on its promise to protect them from sex discrimination at school. Below are real-life examples of the harm created by the Trump Title IX rule on student survivors:

- One college student survivor dropped out of school in direct response to how re-traumatizing her Title IX process and hearing was. First, she was directed to report her sexual assault to the school’s defense attorney. Then, she was not notified until the day before her hearing that it was scheduled for the day before classes started. Upon requesting accommodations to be able to participate virtually due to the last-minute notice, the school’s only response was “it would be more impactful if you show up in person.” During the nine-hour hearing, the cross-examination from her abuser’s lawyer included numerous victim-blaming and traumatizing questions intended to intimidate her. At the end of the hearing, the school’s decisionmakers immediately dismissed her report based on victim-blaming “character evidence” against her. Due to her school’s failure to offer support and resources for her throughout the process and the deeply re-traumatizing cross-examination required by the Trump Title IX rule, she dropped out of school the next day.
- A college student survivor who reported sexual harassment and assault was ignored by her school until she emailed the Title IX office to report that she was concerned for her physical safety. Without replying to her email, the school proceeded to contact her emergency contact without her consent to inform them of a threat to her physical safety; in addition, campus public safety entered the survivor’s dorm room in the middle of the night with no warning to take her to a safe house. She was ultimately sent away from college altogether per the recommendation of the Title IX office and missed classes while waiting at home for the school to remove her abuser from campus. After forcibly removing her from campus, the school did not investigate the harassment

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*Betrayal and Institutional Courage*, <https://dynamic.uoregon.edu/jjf/institutionalbetrayal> (last visited on June 15, 2023). “Institutional Betrayal” stems from the theory of “trauma betrayal,” which occurs when a new and separate trauma is perpetuated by someone with whom the trauma victim is close and is associated with a number of physical and psychological health outcomes. *See id.*

<sup>5</sup> *Mapping Attacks on LGBTQ+ Rights in U.S. State Legislatures*, ACLU (last updated June 2, 2023), <https://www.aclu.org/legislative-attacks-on-lgbtq-rights>.

<sup>6</sup> Nat’l Women’s Law Ctr., *Let Her Learn: Stopping School Pushout for Girls Who are Pregnant or Parenting*, 4-6 (2017), [https://nwl.org/wp-content/uploads/2017/04/Final\\_nwlc\\_Gates\\_PregParenting.pdf](https://nwl.org/wp-content/uploads/2017/04/Final_nwlc_Gates_PregParenting.pdf).

<sup>7</sup> *Dobbs v. Jackson Women’s Health Organization*, 142 S.Ct. 2228 (2022).

or help her catch up on the coursework she missed. Due to her school's prioritization of her abuser's rights over hers in an attempt to comply with the Trump rule, she had her education further interrupted and had to delay her graduation date.

- One university recently received six complaints in the same semester alleging sexual assault and sexual harassment by the same respondent, but the university's Title IX office forced the student survivors to file separate complaints, which, seemingly intentionally, obscured the fact that the respondent was a serial abuser. The Title IX office then dismissed all six complaints without engaging in any investigation. In its correspondence to one survivor regarding the dismissed complaint, the university's Title IX office asserted that consent given under threat of physical force in fact fell under the university's definition of "affirmative consent," a definition and investigatory requirement procedure that was altered by the university in recent years to comply with the Trump rule.
- A Title IX office refused a survivor's request for informal resolution due to the "seriousness of the allegations." Threatened with a retaliatory Title IX case against her, which was spurious on its face, the survivor was forced to go through with a formal Title IX investigation. She was so traumatized that she broke down crying several times during the initial interview, and the Title IX officer almost had to reschedule it. However, when the survivor's abusive former partner requested an informal resolution for his retaliatory complaint against her, the University's Title IX office pressured the survivor to drop her complaint against him by telling her that she had to choose between receiving her diploma and "getting justice." Equating a retaliatory cross-complaint with serious and egregious claims of domestic violence and sexual harm appeared to be part of the University's attempt to comply with the Trump rule's call to use Title IX as a tool to protect harmers from the claims of victims and to chill a victim's pursuit of Title IX processes on campus.
- A graduate school survivor's favorable outcome was overturned when the respondent's attorney intimidated the survivor with almost 300 questions during a five-hour hearing in an effort to exhaust her and forcefully create an opportunity to claim the survivor impeached herself. The respondent's attorney was able to do this by taking advantage of the rigorous and nearly unfettered live cross-examination required by the Trump rule without the attendant protections against examination-abuse. As a result of her assault, this harassing line of cross-examination in her Title IX process, and out of fear for her physical safety, she dropped out of her graduate school program.

As demonstrated by these students' experiences, waiting until October to finalize the Title IX rule comes with a terrible cost. Students need these changes **now**: any further delay will leave students without adequate civil rights protections for the 2023-2024 school year.

Sincerely,

Advocates for Youth  
End Rape On Campus  
Equal Rights Advocates  
It's On Us  
Know Your IX  
National Women's Law Center, **joined by**

A Better Balance  
American Association of University Women  
American Atheists  
American Humanist Association  
American Psychological Association Services  
Arkansas Coalition Against Sexual Assault

Athlete Ally  
AWAKE Tennessee  
Becca Schmill Foundation, Inc.  
California Women's Law Center  
Chicago Alliance Against Sexual Exploitation (CAASE)  
Clearinghouse on Women's Issues  
Colorado Coalition Against Sexual Assault  
Education Law Center Pennsylvania  
Enough Is Enough!  
Esperanza United (formerly Casa de Esperanza: National Latin@ Network)  
Family Violence Appellate Project  
Feminist Majority Foundation  
Florida Council Against Sexual Violence  
Gender Equality Law Center  
Girls Inc.  
GLSEN  
Harvard Law School Gender Violence Program  
Human Rights Campaign  
Illinois Coalition Against Sexual Assault  
Just Solutions  
KWH Law Center for Social Justice and Change  
L.L. Dunn Law Firm, PLLC  
Ladder Consulting  
LatinoJustice PRLDEF  
Legal Momentum, The Women's Legal Defense and Education Fund  
Louisiana Foundation Against Sexual Assault (LaFASA)  
Maine Women's Lobby  
Maryland Coalition Against Sexual Assault  
Maryland Network Against Domestic Violence  
Montana Coalition Against Domestic and Sexual Violence  
Multicultural Dimensions  
National Alliance for Partnerships in Equity  
National Alliance to End Sexual Violence  
National Association of Councils on Developmental Disabilities  
National Organization for Women  
National Organization for Women (NOW), Virginia Chapter  
National Women's Political Caucus  
Nebraska Coalition to End Sexual and Domestic Violence  
NYS Coalition Against Sexual Assault (NYSCASA)  
Ohio Alliance To End Sexual Violence  
Ohio Immigrant Alliance  
PFLAG National  
Planned Parenthood Generation Action  
Public Counsel  
Public Justice  
Rocky Mountain Victim Law Center  
Stop Educator Sexual Abuse, Misconduct & Exploitation (S.E.S.A.M.E.)  
Stop Sexual Assault in Schools  
Texas Association Against Sexual Assault (TAASA)  
The Army of Survivors  
The Education Trust  
The Every Voice Coalition

UAW  
UltraViolet Action  
Union for Reform Judaism  
VALOR  
Vermont Network Against Domestic and Sexual Violence  
Victim Rights Law Center  
Wisconsin Coalition Against Sexual Assault  
WLE: Women Leading in Education Across Continents  
Women of Reform Judaism  
Women's Law Project  
Women's Media Center