February 18, 2020

The Honorable Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairwoman Maloney:

The Department received your February 14, 2020 letter to Secretary DeVos. She shared your letter with me, and I am pleased to respond on her behalf.


The Department’s NPRM makes clear that the Secretary is committed to strengthening Title IX by requiring institutions to address sexual harassment, assisting and protecting victims of sexual harassment, and ensuring due process protections are in place for individuals accused of sexual harassment. Students, parents, and schools can feel confident the Department is pursuing policies that achieve these aims. The Department’s historic decision to conduct formal rulemaking demonstrates the seriousness with which we view these issues.

Indeed, we are currently undergoing rulemaking procedures in accordance with 5 U.S.C. § 553 and Executive Order 12866 which we are required to complete before our Title IX rule can become final. Because we have already published a proposed rule and have not yet published a final rule, the controlling legal authorities do not permit the Department to comment on the substance of these final regulations or divulge them through the requested documents, as is the case for any rulemaking at this stage. *HBO v. FCC*, 567 F.2d 9, 57 (D.C. Cir. 1976). The Department has diligently complied with the Administrative Procedures Act and will continue to do so in connection with this rule.

The Department remains strongly committed to ensuring every student can learn in a safe and nurturing environment. As the Secretary has said, “...acts of sexual misconduct are reprehensible, disgusting, and unacceptable. They are acts of cowardice and personal weakness, often thinly disguised as strength and power. Such acts are atrocious, and I wish this subject didn’t need to be discussed at all. Every person on every campus across our nation should
conduct themselves with self-respect and respect for others. But the current reality is a different story. Since becoming Secretary, I’ve heard from many students whose lives were impacted by sexual misconduct: students who came to campus to gain knowledge, and who instead lost something sacred. We know this much to be true: one rape is one too many. One assault is one too many. One aggressive act of harassment is one too many. One person denied due process is one too many… We must continue to condemn the scourge of sexual misconduct on our campuses. We can do a better job of making sure the handling of complaints is fair and accurate. We can do a better job of preventing misconduct through education rather than reacting after lives have already been ruined. We can do a better job of helping institutions get it right.”

Every allegation of sexual violence must be taken seriously, and every student accused of sexual misconduct must know that his or her guilt has not been predetermined. To that end, the Department’s actions will help ensure Title IX proceedings become more transparent, consistent, and reliable in their processes and outcomes.

If you have any additional questions, please contact Jordan Harding, Office of Legislation and Congressional Affairs, at (202) 401-0020.

Sincerely,

Kenneth L. Marcus
Assistant Secretary
Office for Civil Rights