

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND REFORM

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MINORITY (202) 225-5074  
<http://oversight.house.gov>

June 22, 2020

The Honorable Betsy DeVos  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Secretary DeVos:

On February 14, 2020, every Democratic Member of the Committee on Oversight and Reform wrote to you requesting information and documents regarding the Department of Education's proposed Title IX rule, which would result in schools pursuing fewer complaints of sexual assault and other forms of harassment under Title IX and deprive survivors of equal access to education under the law.<sup>1</sup> As Members of the Committee and leaders of the Democratic Women's Caucus, we are troubled by the Department's decision to finalize this harmful rule while stonewalling appropriate oversight of the rulemaking process.

The Department's decision to finalize the Title IX rule as we continue to grapple with the coronavirus outbreak is alarming and irresponsible. Across the country, students and educational institutions are struggling to re-define education in the wake of a global pandemic. It is egregious that the Department is insisting on pushing forward a rule that endangers the civil rights of survivors and imposes new and onerous burdens on our schools. Organizations representing student survivors of sexual assault, as well as Attorneys General in 18 states and the District of Columbia, are seeking to block the Department from implementing the rule, which is set to go into effect on August 14, 2020.<sup>2</sup>

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<sup>1</sup> Letter from Chairwoman Carolyn B. Maloney et al., Committee on Oversight and Reform, to Secretary Betsy DeVos, Department of Education (Feb. 14, 2020) (online at [oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-02-14.COR%20to%20DeVos-DoED%20re%20Title%20IX.pdf](http://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-02-14.COR%20to%20DeVos-DoED%20re%20Title%20IX.pdf)).

<sup>2</sup> *Betsy DeVos Sued by Organizations Representing Student Victims of Sexual Violence*, Newsweek (Jun. 11, 2020) (online at [www.newsweek.com/betsy-devos-lawsuit-title-ix-rule-changes-sexual-harassment-1510147](http://www.newsweek.com/betsy-devos-lawsuit-title-ix-rule-changes-sexual-harassment-1510147)); ACLU, *Press Release: ACLU Sues Betsy DeVos for Allowing Schools to Ignore Sexual Harassment and Assault* (May 14, 2020) (online at [www.aclu.org/press-releases/aclu-sues-betsy-devos-allowing-schools-ignore-sexual-harassment-and-assault](http://www.aclu.org/press-releases/aclu-sues-betsy-devos-allowing-schools-ignore-sexual-harassment-and-assault)); National Women's Law Center, *Press Release: NWLC Files Lawsuit Against Betsy DeVos, Trump Administration's Sexual Harassment Rules* (June 10, 2020) (online at [nwlc.org/press-releases/nwlc-files-lawsuit-against-betsy-devos-trump-administrations-sexual-harassment-rules/](http://nwlc.org/press-releases/nwlc-files-lawsuit-against-betsy-devos-trump-administrations-sexual-harassment-rules/)); New York State Office of the Attorney General, *Press Release: Attorney General James Acts to Protect Students from Sexual Harassment* (June 5, 2020) (online at [ag.ny.gov/press-release/2020/attorney-general-james-acts-protect-students-sexual-harassment](http://ag.ny.gov/press-release/2020/attorney-general-james-acts-protect-students-sexual-harassment)); State of California Office of the Attorney General, *Press Release: Attorney General Becerra Leads Multistate*

Our February 14 letter raised specific concerns about the proposed rule's harmful impacts, including narrowing the definition of sexual harassment and weakening schools' responsibility to pursue allegations of sexual misconduct. We also raised concerns about the flawed cost-benefit analysis underlying the rule and the Department's lack of transparency in the rulemaking process.

Without providing any of the documents or information requested in our letter, the Department published the final rule on May 19, 2020.<sup>3</sup> The Department tried to argue that it could not produce the requested documents while it was considering the proposed rule,<sup>4</sup> but this claim was without merit.<sup>5</sup> Nevertheless, the Department has now finalized the Title IX rule, so these documents must be produced immediately.

The Committee remains concerned that the Department has failed to address the rule's harmful impacts or cure deficiencies in its rulemaking process. For example:

- The final rule will curtail investigations of sexual misconduct at educational institutions by narrowing the definition of sexual harassment to limited forms of harassment and assault.
- Institutions of higher education are required to investigate incidents of sexual harassment only if school officials with "the authority to institute corrective measures" have "actual knowledge" of the incidents, meaning there is no obligation to respond when student inform a professor or coach without this authority that they are experiencing sexual harassment.

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*Lawsuit Challenging Erosion of Title IX Protections for Survivors of Sexual Violence and Harassment* (June 4, 2020) (online at [oag.ca.gov/news/press-releases/attorney-general-becerra-leads-multistate-lawsuit-challenging-erosion-title-ix](https://oag.ca.gov/news/press-releases/attorney-general-becerra-leads-multistate-lawsuit-challenging-erosion-title-ix)).

<sup>3</sup> Department of Education, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30026 (May 19, 2020) (final rule) (online at [www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf](https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf)).

<sup>4</sup> Letter from Kenneth Marcus, Assistant Secretary, Office for Civil Rights, Department of Education, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Feb. 18, 2020) (online at [oversight.house.gov/sites/democrats.oversight.house.gov/files/2.18.20%20Marcus%20Response%20to%20Chairwoman%20Maloney.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2.18.20%20Marcus%20Response%20to%20Chairwoman%20Maloney.pdf)).

<sup>5</sup> Congress is not subject to the Administrative Procedure Act's restrictions on disclosing information during the rulemaking process. See Jeffrey S. Lubbers, *A Guide to Federal Agency Rulemaking*, Fifth Edition (2014) ("the APA places no restrictions on *ex parte* communications made informal rulemaking," and "courts have not found congressional contacts in informal rulemaking to be improper"). In addition, the Committee has obtained documents from other agencies during rulemaking. See, e.g., Letter from Deputy Assistant Administrator Kenneth J. Kopocis, Environmental Protection Agency, to Chairman Jason Chaffetz, Committee on Oversight and Reform (Apr. 3, 2015) (online at [oversight.house.gov/sites/democrats.oversight.house.gov/files/04-03-15%20Response%20to%20Chairman%20Chaffetz.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/04-03-15%20Response%20to%20Chairman%20Chaffetz.pdf)); Letter from Associate Administrator Laura Vaught, Environmental Protection Agency, to Chairman James Lankford, Subcommittee on Energy Policy, Health Care and Entitlements, Committee on Oversight and Reform (Apr. 4, 2014) (online at [oversight.house.gov/sites/democrats.oversight.house.gov/files/EPA.090414.Response%20to%20Lankford%20re%20EPA%20Communications%20%28003%29.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/EPA.090414.Response%20to%20Lankford%20re%20EPA%20Communications%20%28003%29.pdf)).

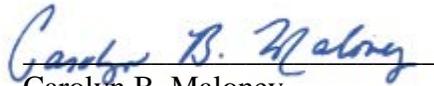
- Although the Department acknowledged the enormous costs borne by survivors of sexual assault and has now designated the rule as “economically significant,” it declined to incorporate this information into its cost-benefit analysis, as required by Executive Order 12866.
- In addressing concerns that it failed to disclose the underlying technical studies and data relied upon in promulgating the rule, the Department argued that “members of the public did not need access to the specific reports we reviewed to ascertain the quality of this assumption”—a claim that raises serious questions about why the Department is concealing this information.<sup>6</sup>

For all these reasons, we now request that the Department produce by July 3, 2020, all of the documents and information requested in our February 14, 2020, letter for the time period from September 22, 2017, to the present.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee’s request.

If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

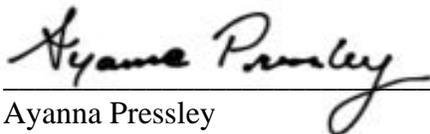
Sincerely,



Carolyn B. Maloney  
Chairwoman  
Committee on Oversight and Reform



Jackie Speier  
Member  
Committee on Oversight and Reform



Ayanna Pressley  
Member  
Committee on Oversight and Reform  
Enclosure



Brenda Lawrence  
Member  
Committee on Oversight and Reform

cc: The Honorable Jim Jordan, Ranking Member

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<sup>6</sup> Department of Education, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30026 (May 19, 2020) (final rule) (online at [www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf](http://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf)).

## Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
  - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - b. Document numbers in the load file should match document Bates numbers and TIF file names.
  - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.