

Congress of the United States
Washington, DC 20515

January 30, 2019

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

We share your commitment to doing everything possible to prevent sexual assault and hold perpetrators accountable. To that end, we appreciate the proposed regulations released by the U.S. Department of Education (Department) on November 29, 2018. The proposed rules outline schools' responsibilities to address sexual harassment, including sexual assault, under Title IX of the *Education Amendments of 1972* (Title IX). Title IX prohibits any education program or activity receiving federal financial assistance from discriminating on the basis of sex. Because the text of Title IX does not speak specifically to "sexual harassment" as a particular type of sex discrimination prohibited under the law, these proposed regulations would bring much needed clarity to schools' responsibilities.

Unfortunately, the Obama administration chose not to pursue formal rulemaking in this area, instead relying on guidance letters that were not subject to public review and comment. The resulting adjudication processes that schools adopted have been widely criticized by courts¹ and experts from across the political spectrum.² In contrast, these proposed rules reflect a thoughtful and transparent approach toward creating reliable and fair procedures for addressing sexual assault and other forms of sexual harassment.

These proposed regulations achieve three broad objectives. First, the rules would replace the subjective definition of sexual harassment in previous Department guidance with objective definitions grounded in Supreme Court case law and existing regulations. Second, the regulations define the conditions that must be met to trigger a school's responsibility. As before, the conditions defined by the proposed rules would be based on objective standards grounded where appropriate in case law and statutory text.

Finally, the regulations outline expectations for school responses to sexual harassment allegations. In general, the regulations follow the standard created by the Supreme Court in *Davis v. Monroe County Board of Education* that liability under Title IX is triggered when a school's response to a sexual harassment allegation is "clearly unreasonable in light of the known circumstances."³ In

¹ E.G., *Doe v. Baum*, Sixth Circuit Court of Appeals.

² *Rethink Harvard's Sexual Assault Policy*, Boston Globe, October 15, 2014.

³ *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999) at 643-44.

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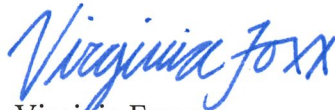
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addition, the regulations require all allegations of sexual harassment to be treated seriously, whether a formal complaint is filed or not. In cases where a formal complaint is not filed, schools must offer supportive measures to the complainant. In addition, where a formal complaint is filed, the regulations outline the due process protections schools must provide. These protections will ensure fair and equitable adjudication of complaints for both complainants and the accused.


Overall, we applaud the Department's thoughtful proposal that puts the safety of sexual assault survivors first while creating objective and fair standards for the adjudication of complaints. We also applaud the Department for addressing these issues through a formal regulatory process with public notice and comment. We encourage the Department to thoughtfully consider the comments received and ensure the final regulations provide the clarity schools need to provide safe learning environments for all students.

If you have any questions, please contact our staff, Brad Thomas at brad.thomas@mail.house.gov, Alex Ricci at alex.ricci@mail.house.gov, or Mandy Schaumburg at mandy.schaumburg@mail.house.gov.

Sincerely,



Virginia Foxx
Ranking Member



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Subcommittee on Civil Rights and
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Rick Allen
Ranking Member
Subcommittee on Early Childhood, Elementary,
and Secondary Education



Lloyd Smucker
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