

Sent via email to Betsy.DeVos@ed.gov, Kenneth.Marcus@ed.gov, TitleIXNPRM@ed.gov, and Brittany.Bull@ed.gov

January 23, 2019

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

Kenneth Marcus
Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Re: Second Request for Extension of Comment Period for Proposed Rule Regarding Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – Docket ID ED-2018-OCR-0064

Dear Secretary DeVos and Assistant Secretary Marcus,

The National Women's Law Center and the undersigned 136 organizations request that the Department of Education respond to the attached November 26, 2018 letter sent by the National Women's Law Center, and signed by 123 organizations, including many of the undersigned, and 231 individuals, requesting an extension of the comment period for the Notice of Proposed Rulemaking entitled *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* (Title IX rules).¹ We also reiterate the request in that letter to extend the comment period for at least 60 days beyond the currently scheduled public comment deadline.

The November 26 letter emphasized that the far-reaching and extensive nature of the Department's proposed changes to the Title IX rules require a longer comment period to allow interested parties adequate time to prepare thorough analysis and input. It also highlighted the inopportune timing of the comment period. The proposed Title IX rules were released in the midst of school exams and winter holidays, a time when students and school administrators—the parties whose rights and obligations will be most affected by these proposed changes—are unable to devote the time required to develop meaningful comments. In addition to the many organizations and individuals who signed that letter for these reasons, approximately 8,950 people have joined the National Women's Law Center's online petition asking the Department

¹ The letter is also available at <https://nwlc.org/resources/nwlc-requests-dept-of-education-to-extend-title-ix-nprm-comment-period/>.

for an extension. State officials, students, members of congress, and members of the public have also requested extensions to the comment period, with no response.²

The effects of the ongoing government shutdown provide yet another reason to extend the comment period. Since December 22, 2018, the partial government shutdown has impacted roughly a quarter of federal agencies. There has not been a definitive statement from administration officials as to whether public comments, or requests for agency action are being accepted and considered by agency officials during the shutdown. It has been unclear whether the main conduits for online public participation in rulemaking, regulations.gov and federalregister.gov, have been operating since that date due to a lapse in appropriations. When visiting federalregister.gov, visitors are confronted with a message stating that the site is not being “supported.” On January 16, 2019, regulations.gov was shut down completely³—with no notice or warning—leaving members of the public with no option to submit their comments electronically.⁴ While assurances were given that the website would become operational within 24 hours, members of the public continue to be left with the distinct impression that neither site is operational or being updated, and there remains significant confusion about whether both sites will remain available for accepting public comments throughout the government shutdown. Such widespread confusion will discourage the public from submitting comments.

The Department of Education’s recent decision to extend the deadline by two days because of regulation.gov’s inaccessibility is woefully inadequate and does not sufficiently respond to the many requests, including the November 26 letter, for a *meaningful* extension to the comment period. Further still, because the online comment portals are not being updated due to the shutdown, as of January 23rd the comment deadline is still listed as January 28th, which is most certainly causing public confusion and uncertainty about when the comment period actually ends. The Department’s proposed “fix” does nothing to alleviate public confusion and provide interested parties with the opportunity to participate in the rulemaking process.

To ensure that the public is not discouraged from commenting on the proposed Title IX Rules due to the confusion created by the partial government shutdown, and to give those most affected by the proposed changes the opportunity to engage, we reiterate our request that the Department extend the notice-and-comment period *by at least 60 days*. For questions, please contact Shiwali

²See Student Letter Requesting 60-day Extension, <https://static1.squarespace.com/static/51f82234e4b097de73d1a373/t/5bfda7a821c67c2cdd6f2b8a/1543350185541/%5BUntitled%5D.pdf>; Attorney General Letter Requesting 60-day Extension, <https://www.attorneygeneral.gov/wp-content/uploads/2018/12/2018-12-21-Title-IX-Extension-Request-Letter.pdf>; Senator Murray and Congresswoman DeLauro Letter Requesting 30-day Extension, <https://www.help.senate.gov/imo/media/doc/010919%20Murray-DeLauro%20Title%20IX1.pdf>; Change.org Petition Requesting 60-day Extension, <https://www.change.org/p/u-s-secretary-of-education-betsy-devos-extend-the-title-ix-regulatory-comment-period>.

³ For at least a day, regulations.gov’s landing page displayed a message stating that the site “is not operational due to a lapse in funding, and will remain unavailable for the duration of the government shutdown.”

⁴ The Title IX rules specify that the Department of Education will not accept comments by email or fax. As of now, the only options are to mail in comments or hand-deliver them. With only 7 days remaining in the current comment period, such a change will certainly discourage interested parties from submitting comments.

Patel (spatel@nwlc.org) or Margaret Hazuka (mhazuka@nwlc.org) at the National Women's Law Center at (202) 588-5180.

Sincerely,

National Women's Law Center, joined by:

Affordable Title IX and Educational Compliance
Alliance for Girls
American Association of People with Disabilities
American Association of University Women (AAUW)
American Federation of Teachers
Aniz Inc.
Antelope Valley Domestic Violence Council
Arab American Institute
Atlanta Women for Equality
Bay Area Women Against Rape (BAWAR)
Berkeley Law Survivor Advocacy Project
BHS Stop Harassing
Break the Cycle
Bright Future Foundation for Eagle County
California Coalition Against Sexual Assault
California Partnership to End Domestic Violence
Capital Area Missouri NOW
Center for Community Solutions
Chicago Alliance Against Sexual Exploitation
Clearinghouse on Women's Issues
Colorado Coalition Against Sexual Assault
CT Alliance to End Sexual Violence
Day One
Democrats for Education Reform
East Coast Asian American Student Union (ECAASU)
Education Law Center – PA
EMERJ-SafeNow
End Rape on Campus
Enough is Enough Voter Project
Equal Rights Advocates
Equality Now
Feminist Majority Foundation
Florida Council Against Sexual Violence
Futures Without Violence
Gender Equality Law Center
Girls Inc.
Girls Inc. of Bay County
Girls Inc. of Greater Madison
Girls Inc. of Greater Santa Barbara
Girls Inc. of Long Island
Girls Inc. of New York City

Girls Inc. of Omaha
Girls Inc. of the Pacific Northwest
Girls Inc. of Shelbyville & Shelby County
Girls Inc. of Wayne County
Girls Inc. of Winter Haven
Girl Inc. at the YWCA of Syracuse and Onondaga County Inc.
GLSEN
Harvard Law School Gender Violence Program
Haven Women's Center of Stanislaus
Healthy and Free Tennessee
Human Rights Campaign
Idaho Coalition Against Sexual & Domestic Violence
Illinois Coalition Against Sexual Assault
Illinois National Organization for Women
Iowa Coalition Against Sexual Assault
It's On Us
Jewish Women International
Legal Momentum, the Women's Legal Defense and Education Fund
Legal Voice
MALDEF
Maryland Coalition Against Sexual Assault
MCRCC
Men Stopping Violence
Minnesota Coalition Against Sexual Assault
Mississippi Black Women's Roundtable
Missouri NOW
Montana Coalition Against Domestic and Sexual Violence Monterey County Rape Crisis Center
NAACP
National Alliance for Partnerships in Equity (NAPE)
National Alliance to End Sexual Violence
National Association of Councils on Developmental Disabilities
National Center for Transgender Equality
National Center on Domestic and Sexual Violence
National Coalition of 100 Black Women
National Council of Jewish Women
National Disability Rights Network
National Down Syndrome Congress
National Education Association
National LGBTQ Task Force
National Organization for Women
National Organization for Women, Columbia Area
National Task Force to End Sexual and Domestic Violence
National Women's Political Caucus
Nebraska Coalition to End Sexual and Domestic Violence
Nevada Coalition to End Domestic and Sexual Violence
New Jersey Coalition Against Sexual Assault
New Moon Girls
New York City Alliance Against Sexual Assault
New York State Coalition Against Sexual Assault
NH Coalition Against Domestic and Sexual Violence

North American MenEngage Network
Northern Marianas Coalition Against Domestic & Sexual Violence
Ohio Alliance to End Sexual Violence
The Oregon Attorney General's Sexual Assault Task Force
Oregon Student Voice
People For the American Way
Planned Parenthood Federation of America
Project SafeGuard
Project Sister Family Services
Public Justice
Rape Counseling Services of Fresno
Riverside Area Rape Crisis Center
Rocky Mountain Victim Law Center
SafeBAE
San Francisco Women Against Rape
San Gabriel Valley-Whittier Nat'l. Org for Women
Sargent Shriver National Center on Poverty Law
Service Employees International Union
Sexual Harassment & Rape Prevention Program at UNH
Stop Sexual Assault in Schools
Surge Reproductive Justice
SurvJustice
Texas Association Against Sexual Assault
The Blue Bench
The Drake Group
The Inanna Project
The Leadership Conference on Civil and Human Rights
The Mustard Seed Foundation
UltraViolet
University of Denver Sturm College of Law, Law Students Against Sexual and Domestic
Violence
Victim Rights Law Center
Wisconsin Coalition Against Sexual Assault
Women Employed
Women's Center-High Desert, Inc.
Women's Law Project
Women's Sports Foundation
Young Feminists & Allies: National Organization for Women's (NOW) Inaugural Virtual
Chapter
YWCA USA
YWCA Bethlehem, Bethlehem, Pennsylvania
YWCA of the Greater Capital Region
YWCA of Greater Flint
YWCA of Greater Los Angeles
YWCA Greater Portland
YWCA Nashville & Middle Tennessee
YWCA Wheeling