



COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

January 30, 2019

Submitted via www.regulations.gov

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

Re: Docket No. ED-2018-OCR-0064, RIN 1870-AA14, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Secretary DeVos:

We write in response to the Department of Education's Notice of Proposed Rulemaking ("NPRM" or "proposed rules") relating to sexual harassment as published in the Federal Register on November 29, 2018, as duly elected members of the Council of the District of Columbia, which serves as the state and local legislative body for the District of Columbia. We write to express our strong opposition to the proposed rules. The proposed rules would inappropriately limit the responsibility of schools to ensure student safety. As local elected officials, including the chairperson and all members of the Council's Committee on Education, we support a robust oversight role by the Department and we look to the Department to set the bar for ourselves and other jurisdictions in protecting our students. The proposed rules would restrict our ability to build upon the floor that federal laws and rules should allow, thereby undermining the goal of providing greater control over these decisions to local communities.

Sexual harassment and assault are never acceptable, and when they happen at school or among students, they seriously disrupt the ability of our young people to thrive. Over the past few years we have learned of numerous cases in the District of Columbia of sexual assault or harassment, and too often schools did not effectively respond. As a result, the Council has conducted oversight activities and in late 2018 passed new legislation aimed at strengthening the requirements for schools in addressing these incidents.

A number of provisions within the proposed rules would undermine these efforts. During the deliberations on the most recent legislation as well as a bill to reform school disciplinary practices approved by the Council in early 2018, we heard consistently from schools, students, parents, and experts about the need for schools to be empowered to respond to incidents of abuse or harassment that happen outside of school hours or off-campus. This could include online



harassment or an abuse near school that significantly disrupts students' ability to learn. The proposed rules would contradict this by requiring schools to dismiss a complaint if the alleged conduct "did not occur within the [school's] program or activity."

Similarly, the proposed rules include language forcing schools to ignore harassment until it becomes incredibly severe. Schools should have the discretion to hear and act on complaints about "unwelcome conduct on the basis of sex" before such behavior becomes "so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the [school's] education program or activity." Additionally, the proposed rules inappropriately weaken the obligation of a school to respond to cases of harassment, limiting the school personnel from whom a student survivor can seek help. The obligation to interrupt and prevent sexual harassment should not be restricted to cases where only specific employees at the school have "actual knowledge" of misconduct. Especially egregious is the idea that if a teacher at a PreK-12 school were told about harassment committed by a staff member there would be no obligation for action.

Further, the proposed rules seem to raise the bar on what can be considered "deliberate indifference." This change has the potential to further erode the requirements of schools to rigorously and appropriately investigate and address accusations of sexual harassment or discrimination. As long as schools complete certain procedural steps, the response could not be challenged, regardless of a failure to actually address the misconduct. Even if harassment or assault is substantiated, the proposed rules unduly limit the ways in which a school can support a survivor, by requiring that no supportive measure be "unreasonably burdening [to] the other party." The Council has heard from parents and students about instances where a survivor is told by schools that the harasser or assaulter will not be told to change classes or schools, which this proposed change would seem to validate.

There are a number of other concerning provisions within the proposed rules, such as allowing religious schools greater leeway in claiming a religious exemption to fulfilling Title IX obligations. Taken together, these proposed rules represent a serious misstep in the ongoing effort to address safety and stop discrimination in education. We ask that you withdraw the proposed rulemaking and reconsider the best way to ensure safety for students.

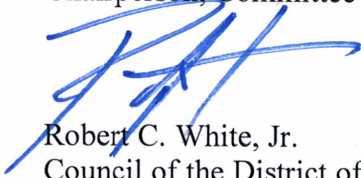
Sincerely,



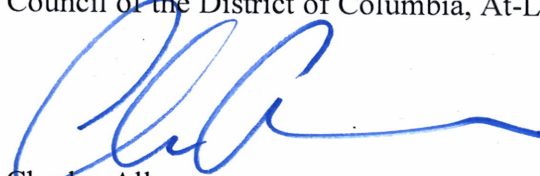
David Grosso
Council of the District of Columbia, At-Large
Chairperson, Committee on Education



Anita Bonds
Council of the District of Columbia, At-Large



Robert C. White, Jr.
Council of the District of Columbia, At-Large



Charles Allen
Council of the District of Columbia, Ward 6



Trayon White, Sr.
Council of the District of Columbia, Ward 8



Vincent C. Gray
Council of the District of Columbia, Ward 7



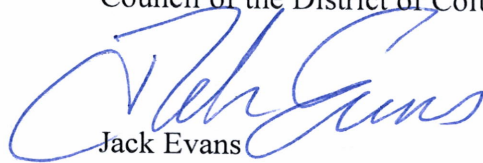
Brianne K. Nadeau
Council of the District of Columbia, Ward 1



Mary M. Cheh
Council of the District of Columbia, Ward 3



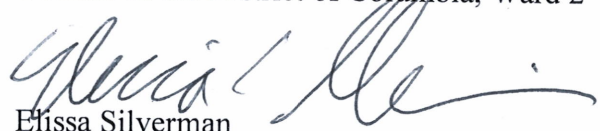
Brandon T. Todd
Council of the District of Columbia, Ward 4



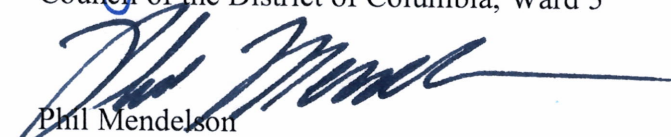
Jack Evans
Council of the District of Columbia, Ward 2



Kenyan R. McDuffie
Council of the District of Columbia, Ward 5



Elissa Silverman
Council of the District of Columbia, At-Large



Phil Mendelson
Council of the District of Columbia, Chairman