

Sent via email to [Betsy.DeVos@ed.gov](mailto:Betsy.DeVos@ed.gov), [Kenneth.Marcus@ed.gov](mailto:Kenneth.Marcus@ed.gov), [TitleIXNPRM@ed.gov](mailto:TitleIXNPRM@ed.gov), and [Brittany.Bull@ed.gov](mailto: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).<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

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 completely<sup>3</sup>—with no notice or warning—leaving members of the public with no option to submit their comments electronically.<sup>4</sup> 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 23<sup>rd</sup> the comment deadline is still listed as January 28<sup>th</sup>, 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

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<sup>2</sup>See 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>.

<sup>3</sup> 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.”

<sup>4</sup> 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](mailto:spatel@nwlc.org)) or Margaret Hazuka ([mhazuka@nwlc.org](mailto: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