IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

State of Tennessee; Commonwealth of Kentucky; State of Ohio; State of Indiana; Commonwealth of Virginia; and State of West Virginia,
Plaintiffs,

and

Christian Educators Association International; A.C., by her next friend and mother, Abigail Cross,
Intervenor-Plaintiffs,

v.

Miguel Cardona, in his official capacity as Secretary of Education; and United States Department of Education,
Defendants,

A Better Balance,
[Proposed] Intervenor-Defendant,

and

Victim Rights Law Center and Jane Doe,
[Proposed] Intervenor-Defendants

2:24-cv-00072-DCR-CJS
Judge Danny C. Reeves

PROPOSED INTERVENOR-DEFENDANTS VICTIM RIGHTS LAW CENTER AND JANE DOE'S MOTION TO INTERVENE

Pursuant to Federal Rule of Civil Procedure 24, proposed Intervenor-Defendants, the Victim Rights Law Center (VRLC), a nonprofit advocacy organization that provides legal assistance to student survivors of sex-based harassment, and Jane Doe, a student who was sexually assaulted in fall 2024, move to intervene. They seek to intervene to appeal vacatur of the 2024 Title IX Rule's provisions that pertain to sex-based harassment, including the longstanding definition of hostile-environment sex-based harassment that the U.S. Department of Education had enforced for decades before the 2020 Title IX Rule.[1] They also intend to defend numerous protections for survivors in the 2024 Title IX Rule that Plaintiffs and Intervenor-Plaintiffs did not specifically challenge. Motions to extend the time to notice an appeal, to expedite the briefing schedule, and to permit Jane Doe to proceed pseudonymously are filed herewith.

In support of this motion, VRLC and Jane Doe rely on the memorandum of law filed herewith and state:

1. The vacatur of the 2024 Rule and resulting reversion to the 2020 Rule are inflicting direct and ongoing injuries on VRLC and Jane Doe.

[1] *See* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474 (Apr. 29, 2024) (the "2024 Rule"); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026 (May 19, 2020) (the "2020 Rule").

2. VRLC and Jane Doe are entitled to intervene as of right to defend their interests in this matter, which are likely now unrepresented by the U.S. Department of Education. Fed. R. Civ. P. 24(a).

3. VRLC and Jane Doe also satisfy the requirements for permissive intervention. Fed. R. Civ. P. 24(b).

For these reasons and those set forth in the accompanying memorandum of law, VRLC and Jane Doe respectfully ask this Court to grant their motion to intervene.

February 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

s/ Jack Gatlin
Jack S. Gatlin (KBA 88899)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

State of Tennessee; Commonwealth of Kentucky; State of Ohio; State of Indiana; Commonwealth of Virginia; and State of West Virginia, *Plaintiffs*, *and* **Christian Educators Association International; A.C., by her next friend and mother, Abigail Cross**, *Intervenor-Plaintiffs*, v. **Miguel Cardona, in his official capacity as Secretary of Education; and United States Department of Education,** *Defendants,* **A Better Balance,** *[Proposed] Intervenor-Defendant,* *and* **Victim Rights Law Center and Jane Doe,** *[Proposed] Intervenor-Defendants*	2:24-cv-00072-DCR-CJS Judge Danny C. Reeves

[PROPOSED] INTERVENOR-DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

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INTRODUCTION

The 2024 Title IX rule, which this Court vacated in its entirety, was desperately needed for student survivors of sex-based harassment, including sexual assault, dating violence, domestic violence, and stalking. *See* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474 (Apr. 29, 2024) (the "2024 Rule"). The 2024 Rule rolled back numerous harmful provisions of the previous rule issued in 2020, which had required schools to ignore many incidents of sex-based harassment and to use unfair and burdensome investigation procedures for sex-based harassment complaints that are not required for other investigations. *See* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026 (May 19, 2020) (the "2020 Rule"). The 2024 Rule—in line with decades of prior U.S. Department of Education ("Department") policy—returned to vigorously enforcing Title IX's promise of education free of sex-based harassment.

Plaintiffs brought this challenge focused on three specific provisions of the 2024 Rule. The first challenged provision stated that for purposes of Title IX, discrimination on the basis of sex included discrimination on the basis of gender identity. 34 C.F.R. § 106.10; *see* 89 Fed. Reg. 33476. The second said that generally, where Title IX "permits different treatment or separation on the basis of

sex," a school could not "carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm." 34 C.F.R. § 106.31(a)(2); 89 Fed. Reg. 33814-26. The third reinstated almost verbatim a definition of hostile-environment sex-based harassment that the Department had enforced for decades before the 2020 Rule. *See* 34 C.F.R. § 106.2; 89 Fed. Reg. 33498. The Court held that those three challenged provisions were unlawful and "fatally taint the entire rule," and so vacated the entire 2024 Rule nationwide. Mem. Op. and Order, ECF No. 143 at 12 (Jan. 9, 2025).

Relying on this Court's vacatur ruling, the Department issued a guidance document announcing that it is again enforcing the 2020 Rule. *See* U.S. Dep't of Educ., Office for Civil Rights, *Dear Colleague Letter on Title IX Enforcement* (issued Jan. 31, 2025; amended Feb. 4, 2025) [hereinafter 2025 Guidance].[1] Reversion to the 2020 Rule once again removes protections against sex-based harassment and imposes disproportionate burdens on survivors. It reduces schools' responsibility to respond to sex-based harassment—in some cases requiring schools not to respond at all.

[1] https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf.

This change is already harming student survivors, and it will harm more. The 2020 Rule allows—and in many cases, requires—schools to dismiss many complaints of sex-based harassment and to use uniquely unfair, hostile, and retraumatizing procedures against student survivors in Title IX proceedings that are not required in other student or staff misconduct proceedings. *See* Exhibit A, Decl. of Stacy Malone ¶¶ 16-19, 23-36; Exhibit B, Decl. of Jane Doe ¶¶ 14-21. The return to the 2020 Rule is causing lower rates of reporting of sex-based harassment incidents, fewer investigations, more unfair and inaccurate investigation outcomes, more inadequate and harmful responses by schools, and fewer administrative complaints filed with the Department when students have experienced harassment. *See* Malone Decl. ¶¶ 10-12.

Proposed Intervenor-Defendants are Victim Rights Law Center (VRLC), a nonprofit advocacy organization that provides legal assistance to student survivors of sex-based harassment, and Jane Doe, a student who was raped and strangled by a classmate in fall 2024. VRLC and Jane Doe move to intervene to appeal the vacatur of the 2024 Rule's provisions that pertain to sex-based harassment, including the longstanding definition of hostile-environment sex-based harassment that the Department had enforced for decades before the 2020 Rule. They also intend to defend numerous protections for survivors in the 2024 Rule that Plaintiffs

and Intervenor-Plaintiffs did not specifically challenge.[2] *See* Malone Decl. ¶¶ 9-41; Doe Decl. ¶¶ 14-21.

ARGUMENT

The vacatur of the 2024 Rule and consequent reversion to the 2020 Rule are directly harming VRLC because these changes frustrate VRLC's mission to redress and prevent sex-based harassment. They also require VRLC to divert significant resources from its education and advocacy programs to its legal assistance program. *See* Malone Decl. ¶¶ 9-14. They are harming Jane Doe, whose pending Title IX complaint was initiated under the 2024 Rule, because she is now required to submit to adversarial cross-examination in her upcoming Title IX hearing, which she reasonably fears will be a distressing and retraumatizing ordeal.[3] *See* Doe Decl. ¶¶ 4, 12-21.

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[2] VRLC and Jane Doe do not, on this record, have standing to defend the provision of the 2024 Rule stating that discrimination on the basis of sex included discrimination on the basis of gender identity, 34 C.F.R. § 106.10, or the de minimis harm provision, § 106.31(a)(2). They also do not, on this record, have standing to defend § 106.40 ("Parental, family or marital status; pregnancy or related conditions"), which they understand Proposed Intervenor-Defendant A Better Balance seeks to defend. *See* Proposed Intervenor-Defendant A Better Balance's Motion to Intervene, ECF No. 152 (Feb. 26, 2025).

[3] In deciding a motion to intervene, "the court will accept as true all well-pleaded, nonconclusory allegations in the motion to intervene, in the proposed complaint or answer in intervention, and in declarations supporting the motion." *Martin v. Corr. Corp. of Am.*, 231 F.R.D. 532, 536 (W.D. Tenn. 2005) (quoting 6 James Wm. Moore, Moore's Federal Practice, § 24.03[1][a] (3d ed. 2005)).

VRLC and Jane Doe meet the standards for intervention by right and by permission. As this Court has correctly held, Rule 24 is construed "broadly . . . in favor of potential intervenors" by right or by permission. Order, ECF No. 50 at 1 (May 8, 2024) (quoting *Purnell v. Akron*, 925 F.2d 941, 950 (6th Cir. 1991)). VRLC and Jane Doe are entitled to intervene as of right because they are moving to intervene just weeks after this Court vacated the Rule, and because it appears Defendants will not appeal the Court's decision and therefore will not represent VRLC and Jane Doe's legal interests. Those interests are being harmed, and will continue to be harmed, absent intervention.

Alternatively, this Court should permit VRLC and Jane Doe to intervene because they are timely moving to intervene to protect their rights and they will not expand the scope of the issues before the Court. The questions they intend to argue on appeal are some of the same questions Defendants raised before this Court, including whether vacatur of the entire 2024 Rule was warranted, and whether severance would have been appropriate.

I. The vacatur of the 2024 Rule and reversion to the 2020 Rule are directly harming VRLC and Jane Doe.

The vacatur of the 2024 Rule and reversion to the 2020 Rule are inflicting direct and ongoing injuries on VRLC and Jane Doe. As a result, VRLC and Jane

Doe have Article III standing in this matter.[4] *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (standing requires injury in fact, traceability, and redressability). Among the numerous harms they are causing, vacatur of the 2024 Rule and reversion to the 2020 Rule are frustrating VRLC's mission by chilling students from requesting its services and from filing complaints and by requiring VRLC to spend more time and resources to assist students. *See* Malone Decl. ¶¶ 9-41. Likewise, Jane Doe is being harmed because the 2020 Rule, unlike the 2024 Rule, now requires her to submit to adversarial cross-examination in a live hearing, causing her tremendous fear and anxiety about whether to continue participating in her school's Title IX investigation. *See* Doe Decl. ¶¶ 14-21.

a. Vacatur of the 2024 Rule and reversion to the 2020 Rule are harming VRLC to such an extent as to give rise to Article III standing.

An organization like VRLC has standing where it can show "that the conduct challenged in the suit interfered with [its] 'core business activities.'" *Fair Hous. Ctr. of Metro. Detroit v. Singh Senior Living, LLC*, 124 F.4th 990, 993 (6th Cir. 2025) (quoting *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024)). Specifically, an organization has standing where the challenged conduct

[4] Of course, Article III standing is not a prerequisite for intervention. *See Cherry Hill Vineyards, LLC v. Lilly*, 553 F.3d 423, 428 (6th Cir. 2008). It is, however, necessary to appeal where no original party is doing so. *See id*. As explained further below, VRLC and Jane Doe would thus be entitled to appeal as intervenor-defendants even if the original parties do not. *See id*.

"perceptibly impaired [its] ability to provide counseling and referral services" and created a "consequent drain on the organization's resources." *Id*. at 992 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). VRLC can show both impairment to its services and a drain on its resources.

First, the 2024 Rule's vacatur and resulting reinstatement of the 2020 Rule are impairing VRLC's ability to provide legal assistance to student survivors—as, in fact, another court already held when the 2020 Rule was previously in effect. *See Victim Rts. L. Ctr. v. Cardona*, 552 F. Supp. 3d 104, 126 (D. Mass. 2021), *order clarified*, 2021 WL 3516475 (D. Mass. Aug. 10, 2021). As that court held, VRLC "has experienced unwillingness and hesitancy from student victims to continue their Title IX complaints because of the [2020] Rule's cross-examination provisions," which "qualifies as a frustration of purpose" and a "direct impairment" because "[VRLC], an organization focused on assisting victims through the Title IX process, has experienced a reduction in requests for its services." *Id*.; *see also SurvJustice Inc. v. DeVos*, No. 18-CV-00535-JSC, 2018 WL 4770741, at *6 (N.D. Cal. Oct. 1, 2018), *order amended*, 2019 WL 1434144 (Mar. 29, 2019) (holding VRLC had standing to challenge the Department's 2017 Title IX guidance because it discouraged survivors from filing complaints, making it more difficult for VRLC to fulfill its mission).

Here, once again, VRLC can readily show that the 2024 Rule's vacatur and the Department's reversion to the 2020 Rule are impairing its mission to redress and prevent sex-based harassment because the change discourages students from requesting its services and filing Title IX complaints with schools. In just the first six weeks after this Court's decision, VRLC received 41% fewer requests for legal assistance compared to the first six weeks after the 2024 Rule became effective. Malone Decl. ¶¶ 11; *see also Victim Rts. L. Ctr. v. Cardona*, 552 F. Supp. 3d at 126; *SurvJustice*, 2018 WL 4770741, at *6.

VRLC's clients are now less willing to file or continue with a pending Title IX complaint of sex-based harassment for many reasons—not least because student survivors in higher education must now submit to adversarial, and often retraumatizing, cross-examination by their rapist or abuser's advisor in a live hearing. Malone Decl. ¶¶ 25-26. And during cross-examination, schools are now expressly prohibited from excluding unduly prejudicial or misleading questions or questions that assume facts not in evidence, which may include invasive and humiliating questions about a survivor's medical or family history. *Id.* ¶ 26. Furthermore, under the 2020 Rule, schools may now make broader use of the higher "clear and convincing evidence" standard in Title IX sex-based harassment investigations. *Id.* ¶ 31. This means student survivors who nevertheless choose to file or continue with a pending complaint are now less likely to achieve fair and

accurate outcomes in their investigations, making it less likely that named harassers will face consequences.

The 2024 Rule's vacatur and 2020 Rule's reinstatement further frustrate VRLC's mission of representing student survivors in school Title IX proceedings for several reasons. For example, schools are now required to dismiss Title IX complaints that: do not meet a narrow and stringent definition of "sexual harassment"; allege incidents occurring outside of a school program or activity or within a study abroad program, even when perpetrated against a student by a student or school employee; or are filed after the survivor has transferred, graduated, or been forced to drop out due to the harassment. *Id*. ¶ 16, 18. In addition, VRLC can no longer help clients file administrative complaints with the Department when an institution of higher education ignores sex-based harassment simply because it was reported to a lower-ranking school official, or when a school responds unreasonably, rather than with deliberate indifference, to a report of sex-based harassment. *Id.* ¶ 20, 23.

These are but a few of the many ways in which the reinstated 2020 Rule frustrates VRLC's mission to redress and prevent sex-based harassment. *See also id.* ¶ 16, 18, 20-23, 26, 28-40. Unless the vacatur is reversed, VRLC's clients will continue to receive more dismissals of Title IX complaints, obtain fewer fair and accurate investigation outcomes, file fewer administrative complaints with the

Department, and suffer decreased deterrence of sex-based harassment—just as VRLC saw when the 2020 Rule was previously in effect. *Id.* ¶ 10-12.

Second, as it did before in two previous cases, VRLC can show that its resources are being drained. *Victim Rts. L. Ctr.*, 552 F. Supp. 3d at 126 (holding "[VRLC] demonstrates that it has diverted resources" as a result of the 2020 Rule "in the form of reassignments, creating new material for clients, and spending more time advising clients"); *SurvJustice*, 2018 WL 4770741, at *6 (holding VRLC established diversion of resources because 2017 Title IX guidance required it "to spend additional staff time and resources that it has not had to spend in the past attempting to get school officials to respond [to its clients' complaints]"); *see also* Malone Decl. ¶ 14. For example, under the reinstated 2020 Rule, VRLC must now spend at least four times as long as it did before representing student survivors in higher education in grievance proceedings. This is because a hearing with cross-examination can take five to ten hours or even two days (requiring twelve to twenty-five hours of preparation), whereas a hearing without cross-examination can be completed in as little as an hour (requiring two to three hours of preparation). Malone Decl. ¶ 13, 27.

In addition, VRLC must now expend significantly more time and resources to provide legal assistance to its clients at all levels of education, including by: appealing wrongful dismissals of complaints, advocating for clients' rights to

supportive measures, petitioning school officials not to pursue an investigation or use confidential or impermissible evidence without a survivor's consent, preparing survivors in higher education for hostile and prejudicial cross-examination, appealing inaccurate investigation outcomes, educating Title IX officials about their Title IX obligations, protecting clients from an increased risk of retaliation, asserting clients' rights under other federal and state laws, and filing administrative complaints with state or local agencies instead of the Department. Malone Decl. ¶ 17, 19-22, 24, 27-31, 33-40.

Unless the vacatur is narrowed in scope, VRLC will be forced to continue diverting its resources toward its legal assistance program to meet its clients' increased needs. This will in turn reduce VRLC's ability to operate other programs—such as its education program, which trains survivor advocates and school administrators across the country, and its advocacy program, which promotes stronger state-level legislative protections for survivors. *Id.* ¶ 13; *see also Mote v. City of Chelsea*, 284 F. Supp. 3d 863, 887 (E.D. Mich. 2018) (holding plaintiff established diversion of resources by showing reduced capacity to provide other organizational services, including "education, counseling, and advocacy").

b. Vacatur of the 2024 Rule and reversion to the 2020 Rule are harming Jane Doe greatly enough to give rise to Article III standing.

The reinstated 2020 Rule harms Jane Doe because it now requires her to be cross-examined by her rapist's advisor as a part of her Title IX investigation,

which she fears will be a retraumatizing experience that blames her for her own rape. *See* Doe Decl. ¶¶ 14-21. As a court held in a challenge to the 2020 Rule, a student has standing where she has an ongoing Title IX investigation, her university is applying the Rule, and the Rule is injuring her by, for example, requiring her to submit to adversarial cross-examination. *Victim Rts. L. Ctr.*, 552 F. Supp. 3d at 118, 123. Vacatur of the 2024 Rule and reversion to the 2020 Rule are similarly inflicting harms on Jane Doe that do more than enough to establish standing.

On October 14, 2024, while the 2024 Rule was in effect, Doe was raped and strangled by her classmate and neighbor in her on-campus residence. Doe Decl. ¶¶ 1-2. Days later, she reported the incident to her school's Title IX office, and her university initially launched a Title IX investigation under the 2024 Rule. *Id.* ¶¶ 4, 12-15. At that time, per the 2024 Rule, the university could choose to question her through one of two methods, neither of which would require her to be directly cross-examined by her rapist's advisor. *Id.* ¶¶ 14-15. After this Court's vacatur of the 2024 Rule, the university notified Doe that it would now address her complaint under the 2020 Rule, which requires her to submit to cross-examination by her rapist's advisor at an upcoming hearing in April 2025. *Id.* ¶¶ 16-17. And Doe will not just be subject to the kind of cross-examination she would face in court. The 2020 Rule requires schools to allow cross-examination questions that are unduly

prejudicial, misleading, and assume facts not in evidence. *See* 85 Fed. Reg. at 30248, 30361; Malone Decl. ¶¶ 26-27.

Doe is scared, anxious, and overwhelmed by the prospect of being cross-examined in a Title IX hearing. Doe Decl. ¶ 18. She worries that her rapist's advisor will use cross-examination to suggest that it was her fault that she was raped and strangled or that she deserved it. *Id*. This is hardly an idle concern, given that misleading and unduly prejudicial questions will be allowed. She feels that it is cruel to force her to go through a painful cross-examination after suffering the assault itself and summoning the courage to report. *See id*. Had she known the 2024 Rule would be vacated and the 2020 Rule would require her to be cross-examined, she would not have reported the incident at all. *Id.* ¶ 19. Faced with the current situation, she is now considering not participating in her upcoming Title IX hearing to avoid being retraumatized by cross-examination. *Id.* ¶ 20. This does not spare her from injury, however, as declining to be cross-examined will likely make her look less credible to the Title IX decision-maker, which in turn reduces her chances of holding her rapist accountable. *Id.* If this Court's vacatur is not limited, Doe will be forced to make a terrible choice between options that both produce harms she would not have to incur were the 2024 Rule still in place.

II. VRLC and Jane Doe are entitled to intervene as of right to defend their interests in this matter, which are likely now unrepresented.

A "court **must** permit anyone to intervene who" timely moves and "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a) (emphasis added). The Sixth Circuit enumerates four factors for intervention as of right: (1) timeliness; (2) the intervenors' "substantial legal interest"; (3) impairment of that interest absent intervention; and (4) existing parties' ability to adequately represent that interest. ECF No. 50 at 1 (quoting *Grutter v. Bollinger*, 188 F.3d 394, 397-98 (6th Cir. 1999)). As this Court has observed, Rule 24(a)'s "general theme" is that the "burden is minimal" to intervene as of right. *Id*. at 1-2 (quoting *Wineries of the Old Mission Peninsula Ass'n v. Twp. of Peninsula*, 41 F.4th 767, 774 (6th Cir. 2022)). VRLC and Jane Doe easily meet that "minimal" burden. *Id*.

a. VRLC and Jane Doe's motion to intervene is timely because they are filing it within the timeframe to appeal.

Timeliness is "evaluated in the context of all relevant circumstances." *Jansen v. City of Cincinnati*, 904 F.2d 336, 340 (6th Cir. 1990) (reversing district court and holding intervention was timely where intervenors moved weeks after learning defendants' summary judgment motion failed to raise important defenses

and would not adequately represent them). Whether a motion to intervene is timely depends on (1) the "point to which the suit has progressed"; (2) the "purpose for which intervention is sought"; (3) the "length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case"; (4) any "prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case"; and (5) any "unusual circumstances militating against or in favor of intervention." *Id*.

First, the point to which the suit has progressed does not cut against intervention. "[C]ourts often permit intervention even after final judgment, for the limited purpose of appeal." *United States v. City of Detroit*, 712 F.3d 925, 932 (6th Cir. 2013). An intervention motion can be timely where filed in the appeal period after final judgment, even many years into litigation, if filed soon after the intervenor learned the existing parties would not appeal. *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 390 (1977). In fact, intervention can be timely after trial, final judgment, and a decision on appeal, if the existing parties decline to petition for rehearing en banc or a writ of certiorari. *Cameron v. EMW Women's Surgical Ctr., P.S.C.,* 595 U.S. 267, 280 (2022). Intervention can even be timely after the court has issued a conditional dismissal order, where the intervenors acted promptly after learning the parties likely no longer adequately represented their

interests. *Midwest Realty Mgmt. Co. v. City of Beavercreek*, 93 F. App'x 782, 786 (6th Cir. 2004). In sum, the point to which this suit has progressed poses no bar to intervention.

Second, the limited purpose for which intervention is sought—to appeal the vacatur of the 2024 Rule's protections for victims of sex-based harassment and to ensure that any remedy is appropriately tailored—strongly supports intervention. Vacatur of the 2024 Rule is directly harming VRLC and Jane Doe, who acted quickly after the grant of vacatur to intervene to appeal to alleviate those harms. *See* Malone Decl. ¶¶ 9-41; Doe Decl. ¶¶ 16-21; *In re Auto. Parts Antitrust Litig., End-Payor Actions*, 33 F.4th 894, 902 (6th Cir. 2022) (holding purposes-of-intervention prong may look at legitimacy of intervenors' interests and whether they acted "promptly in light of their stated purpose"). Intervention is "particularly appropriate" in a case like this that "implicates the public interest" and where the intervenor does not seek to expand the scope of issues before the court. *City of Detroit*, 712 F.3d at 932.

Third, the length of time preceding the application during which VRLC and Jane Doe knew of their interest in the case also strongly favors intervention. This prong addresses not how long the litigation has existed but whether the intervenor "sought to intervene as soon as it became clear that [its] interests would no longer be protected by the parties in the case." *Cameron*, 595 U.S. at 279-80; *see also*

Midwest Realty, 93 F. App'x at 787-88 (holding intervention was timely in final stage of case where intervenors "knew that this litigation could affect their legal interests from the beginning" but "it was not until there was reason to believe their interests were not being adequately represented by the City that they would have been alerted to the need to seek intervention").

VRLC and Jane Doe moved quickly after learning that this case affected their rights and that the Department would likely no longer protect their interests. VRLC did not know that the 2024 Rule would be fully vacated nationwide until January 9, 2025. Jane Doe did not learn of the vacatur and reversion to the 2020 Rule until her university's Title IX coordinator told her on January 27 and 29. *See* Doe Decl. ¶¶ 16-17. Following that, it remained uncertain whether the Department would defend the 2024 Rule. *See* 2025 Guidance (announcing resumed enforcement of 2020 Rule but noting the "Department of Justice is responsible for determining whether to appeal" this Court's vacatur order). Indeed, as recently as February 17, 2025, Defendants submitted a joint status report in another challenge to the 2024 Rule asserting that challenge was not moot because they had until March 10, 2025, to appeal this Court's judgment vacating the Rule. *See* Exhibit C, *Carroll Indep. School Dist. v. U.S. Dep't of Educ., et al*., 4:24-cv-00461-O, ECF No. 85 at 1-2 (N.D. Tex. Feb. 17, 2025) [hereinafter *Carroll* Report].

In other words, VRLC and Jane Doe are moving to intervene just weeks after learning that this case would affect their rights, *even before* receiving confirmation that the Department will not appeal and so will not represent their interests. This is more than timely. *Midwest Realty Mgmt*., 93 F. App'x at 787-88 (holding motion to intervene timely where filed "even before [intervenors'] suspicions of inadequate representation were confirmed"); *see also Benalcazar v. Genoa Twp*., No. 2:18-CV-01805, 2020 WL 1853212, at *3 (S.D. Ohio Apr. 13, 2020) (motion to intervene timely where filed "within weeks" of learning, through publication of proposed consent decree, that defendant would not adequately represent intervenors' interests).

Fourth, a motion to intervene to timely appeal issues already raised in a case causes no prejudice to the original parties. *See McDonald*, 432 U.S. at 394-95 (holding existing party could "hardly contend that its ability to litigate the issue was unfairly prejudiced simply because [of] an appeal"). In *Cameron*, the Supreme Court held that the existing parties were not prejudiced by a motion to intervene to file petitions for rehearing en banc and certiorari, where the intervenor raised an issue that the defendant could have but failed to raise. 595 U.S. at 281-82. The Supreme Court faulted the lower court for failing to heed *McDonald*'s teaching that no prejudice flows from having to litigate an appeal that an existing party

could have taken but chose not to. *See id*. This motion to intervene for purposes of appealing, like the one in *Cameron*, causes no prejudice to the existing parties.

Finally, unusual circumstances militate in favor of intervention. This Court's vacatur of the 2024 Rule has adversely affected VRLC and Jane Doe's rights. *See supra* Section I. Because the Court vacated the entire 2024 Rule and did not limit the relief granted to the parties, it effectively adjudicated the rights and interests of victims of sex-based harassment and the organizations that advocate for them, like Jane Doe and VRLC. The Court did this without hearing from any such victims or considering whether that harm was necessary to remedy Plaintiffs' and Intervenor-Plaintiffs' alleged injuries. These unusual circumstances support allowing VRLC and Jane Doe to defend the protections that the 2024 Rule provided them.

b. VRLC and Jane Doe have substantial and legally protectable interests that this litigation is impairing.

VRLC and Jane Doe each have a "substantial legal interest" that is being impaired "in the absence of intervention." *Grutter*, 188 F.3d at 398. The burden to meet this element is "minimal," as the Sixth Circuit endorses a "rather expansive notion of the interest sufficient" to intervene that sweeps beyond interests sufficient to establish standing. *Grutter*, 188 F.3d at 398-99 (quotations omitted). For example, students may intervene as of right to protect a "substantial legal interest in educational opportunity," *id*. at 398, and in receiving protection from a university's non-discrimination policy, *see Meriwether v. Trs. of Shawnee State*

Univ., No. 1:18-CV-753, 2019 WL 2052110, at *9 (S.D. Ohio May 9, 2019). Even more broadly, "the possibility of adverse stare decisis effects" that would bind intervenors in other actions "provides intervenors with sufficient interest to join an action." *Jansen*, 904 F.2d at 342. As they meet the requirements for standing, *see supra* Section I, VRLC and Jane Doe have more than a sufficient interest in intervening to eliminate adverse stare decisis effects from this Court's vacatur of the 2024 Rule and to ensure Jane Doe and VRLC's clients' educational opportunity and non-discrimination protections under Title IX.

Disposition of this matter will impair VRLC and Jane Doe's ability to protect their rights. Fed. R. Civ. P. 24(a)(2). The "burden is minimal" to show impairment. *Wineries*, 41 F.4th at 774 (quotation omitted). The loss of Title IX protections for student survivors of sex-based harassment, including assault, is already impairing their access to educational opportunity. *See Grutter*, 188 F.3d at 399-400 (holding educational-opportunity interests of students, and organizations that advocated for them, would be diminished if plaintiffs prevailed in action challenging affirmative action, which was "more than sufficient to meet the minimal requirements of the impairment element"); *Doe No. 1 v. Bethel Loc. Sch. Dist. Bd. of Educ.*, No. 3:22-CV-337, 2023 WL 348272, at *2 (S.D. Ohio Jan. 20, 2023) (student entitled to intervene as of right to defend school policy, where absent policy, she alleged she would suffer humiliation and harassment). And the

"potential stare decisis effects" of this Court's decision, which put both VRLC and Jane Doe at a "practical disadvantage in protecting [their] interest," also satisfy the impairment prong. *Wineries*, 41 F.4th at 774.

c. VRLC and Jane Doe's interests are likely no longer protected.

It appears Defendants will likely not appeal, as the Department recently stated that "the binding regulatory framework for Title IX enforcement . . . excludes the vacated 2024 Title IX Rule," and that this is "consistent with" a recent executive order. 2025 Guidance. Therefore, it appears no existing party to this action protects VRLC and Jane Doe's interests. As the Supreme Court and Sixth Circuit have made clear, the burden of showing inadequate representation for purposes of intervention is "minimal"; the intervenor need only show that its interests "may be" inadequately represented. *Wineries*, 41 F.4th at 774 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)). And a "decision not to appeal by an original party to the action can constitute inadequate representation of another party's interest." *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1248 (6th Cir. 1997). Because VRLC and Jane Doe's rights will be impaired absent an appeal, and it appears no existing party will appeal, their interests are likely no longer represented *at all*. "An interest that is not represented at all is surely not 'adequately represented,' and intervention in that case must be allowed." *Grubbs v. Norris*, 870 F.2d 343, 347 (6th Cir. 1989).

III. VRLC and Jane Doe satisfy the requirements to intervene by permission.

VRLC and Jane Doe also satisfy the even more lenient requirements for permissive intervention. A "court may permit anyone to intervene who" timely moves to intervene and "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). The court also considers "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." *Id*. at 24(b)(3).

VRLC and Jane Doe's motion is timely because, as explained *supra*, Section II.a, they moved to intervene just weeks after this Court vacated the 2024 Rule, impairing their interests, and shortly after it became apparent Defendants would likely not appeal and so would no longer represent their interests.

VRLC and Jane Doe have a defense that shares a common question of law with the main action. They seek to protect their rights under Title IX by defending the 2024 Rule's harassment provisions. Plaintiffs and Intervenor-Plaintiffs sought to vacate the entire 2024 Rule, undermining the protections it guaranteed to Jane Doe and VRLC's clients. "There can be only one winner in this clash" over whether the entire 2024 Rule should be vacated, so VRLC and Jane Doe "have presented a common question of law." *Buck v. Gordon*, 959 F.3d 219, 223 (6th Cir. 2020).

Intervention will not unduly delay or prejudice the existing parties' rights. In evaluating this prong, the Court must "weigh the benefits of resolving the common question of law presented by [Intervenors] against the risk of undue delay or prejudice to the original parties." *Id.* at 224. The benefits of allowing VRLC and Jane Doe to challenge the vacatur are significant—narrowing the relief granted in this matter would revive protections for student survivors of sex-based harassment, including sexual assault, domestic violence, dating violence, and stalking, nationwide. There is no undue delay or prejudice to the original parties, where VRLC and Jane Doe merely intend to notice an appeal that Defendants are entitled to take and will not expand the scope of the issues before the Court.

And "even if some prejudice may result, any complication of the case must be weighed against the value of resolving all competing legal positions within a single decisive lawsuit setting out the prevailing law for all parties to follow," which "weighs particularly heavily in favor of allowing intervention where, as here," there are "multiple lawsuits in various courts . . . raising essentially identical claims." *Pub. Int. Legal Found., Inc. v. Winfrey*, 463 F. Supp. 3d 795, 801-02 (E.D. Mich. 2020). Given that there are numerous similar lawsuits concerning the 2024 Rule, *see* ECF No. 126 at 9, all of which have the potential to adversely affect VRLC's clients' and Jane Doe's rights under Title IX, the "[s]trong interest in judicial economy and desire to avoid multiplicity of litigation wherever and

whenever possible . . . supports permissive intervention" to take an appeal to resolve the question of whether the 2024 Rule may be properly vacated in its entirety nationwide. *Buck*, 959 F.3d at 225.

CONCLUSION

For the foregoing reasons, VRLC and Jane Doe respectfully ask this Court to grant their motion to intervene.

Dated: February 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

s/ Jack Gatlin
Jack S. Gatlin (KBA 88899)

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

State of Tennessee; Commonwealth of Kentucky; State of Ohio; State of Indiana; Commonwealth of Virginia; and State of West Virginia, *Plaintiffs*, *and* **Christian Educators Association International; A.C., by her next friend and mother, Abigail Cross**, *Intervenor-Plaintiffs*, v. **Miguel Cardona, in his official capacity as Secretary of Education; and United States Department of Education,** *Defendants,* **A Better Balance,** *[Proposed] Intervenor-Defendant,* *and* **Victim Rights Law Center and Jane Doe,** *[Proposed] Intervenor-Defendant[s]*	2:24-cv-00072-DCR-CJS Judge Danny C. Reeves

DECLARATION OF STACY MALONE (VICTIM RIGHTS LAW CENTER)

I, Stacy Malone, Executive Director, declare as follows:

1. I submit this declaration in support of the motion to intervene filed by Victim Rights Law Center ("VRLC") and Jane Doe in the above-captioned case for the purposes of appealing this Court's vacatur of the Title IX rule issued in 2024 entitled

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Funding Assistance, 89 Fed. Reg. 33,474 (Apr. 29, 2024) ("2024 Rule"). Mem. Op. & Order (Jan. 9, 2025), ECF No. 143, *as amended* Order, ECF No. 145 (Jan. 10, 2025); *see also* J., ECF No. 144 (Jan. 9, 2025), *as amended* Am. J., ECF No. 146 (Jan. 10, 2025).

2. As a result of this Court's vacatur of the 2024 Rule, the U.S. Department of Education ("Department") issued a guidance document clarifying that it has returned to enforcing the Title IX rule issued in 2020 entitled *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Funding Assistance*, 85 Fed. Reg. 30,026 (May 19, 2020) ("2020 Rule"), which had previously been rescinded by the 2024 Rule. U.S. Dep't of Educ., Office for Civil Rights, Dear Colleague Letter (issued Jan. 31, 2025; revised Feb. 4, 2025), https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf.

3. The vacated 2024 Rule strengthened and clarified protections for student survivors of sex-based harassment, among others. In contrast, the reinstated 2020 Rule weakens protections for student survivors of sex-based harassment, including sexual assault, dating violence, domestic violence, and stalking. VRLC moves to intervene specifically to appeal the vacatur of the 2024 Rule's provisions that pertain to sex-based harassment.

4. I have compiled the information in the statements set forth below through personal knowledge. I have also familiarized myself with the 2024 Rule and 2020 Rule in order to understand the immediate impact of the vacatur of the 2024 Rule and resultant reinstatement of the 2020 Rule on VRLC. If I am called as a witness in these proceedings, I could and would testify competently to these facts.

5. I have been employed as VRLC's Executive Director since October 2010. In that position, I manage the strategic direction, operations, and development for VRLC's national programs and direct services. I also oversee the organization's management team, finance, fundraising and development, media relations, human resources, and project development. Consequently, I am familiar with and have participated in the organization's Title IX work as an attorney, mentor, and supervisor. I oversee VRLC's seven attorneys who manage the majority of its Title IX related cases in K-12 and higher education settings.
6. Founded in 2003, VRLC is a nonprofit organization headquartered in Massachusetts dedicated solely to serving the legal needs of victims of sex-based harassment, including survivors of sexual assault, dating violence, and stalking. VRLC's mission is to provide legal representation to such victims to help rebuild their lives and to promote a national movement committed to seeking justice for every victim.
7. VRLC provides legal services to help restore victims' lives after experiencing sex-based harassment. VRLC's services ensure that survivors can stay in school; protect their physical safety and academic needs; protect their privileged and confidential mental health, medical and education records; preserve their employment and/or scholarships; maintain their safe housing; secure their immigration status; and swiftly access victim compensation and other benefits.
8. As part of its work, VRLC provides legal services and/or facilitates the provision of legal services to students who have experienced sex-based harassment. Because almost half of VRLC's clients are under the age of 24, a substantial portion of its practice is providing education-related legal consultation and representation. VRLC attorneys represent

victims to communicate effectively with school administrators, acquire supportive measures to restore and preserve their education, prepare for and attend grievance proceedings, file appeals, and if necessary, file complaints against their schools with the Department.

Overview of injuries to VRLC: vacatur of 2024 Rule §§ 106.2, 106.8, 106.11, 106.44, 106.45, and 106.46

9. VRLC moves to intervene on its own behalf because it has been, and will continue to be, harmed by the vacatur of the 2024 Rule's provisions pertaining to sex-based harassment and resultant reinstatement of the 2020 Rule.

10. These changes concretely frustrate VRLC's mission of providing legal assistance to student survivors in their schools' Title IX proceedings. For example, as detailed further below, these changes chill many student survivors from reporting sex-based harassment to their schools, and, for many who do report, either foreclose investigation of their Title IX complaints entirely or decrease the likelihood of fair and accurate investigation outcomes for those that survive dismissal. The changes also reduce deterrence of sex-based harassment and bar many of VRLC's clients from filing administrative complaints against their schools with the Department. In addition, the increased time and resources necessary to advise each client also means VRLC is able to help significantly fewer students, which in turn further exacerbates underreporting of sex-based harassment.

11. These injuries are not speculative. Because the reinstated 2020 Rule imposes procedures that are unfair and hostile to student survivors, VRLC clients are already more hesitant to continue their pending Title IX complaints that were initiated under the 2024 Rule or to file new Title IX complaints based on incidents of harassment that occurred while the

2024 Rule was in effect (August 1, 2024, to January 8, 2025). In the first six weeks following the 2024 Rule's vacatur, VRLC received 41% fewer requests for legal assistance than in the first six weeks following the implementation of the 2024 Rule.

12. These injuries are also consistent with VRLC's previous experiences when the 2020 Rule was in effect from August 1, 2020, to July 31, 2024. At that time, there was an immediate decline in the number of victims willing to make a report, file a formal complaint, or continue a pending investigation. Consequently, VRLC received fewer requests from students for legal assistance with their school's Title IX proceedings or to file an administrative complaint against their school with the Department. Furthermore, due to unfair and unclear provisions in the 2020 Rule, VRLC spent more time and resources to assist each client, while also achieving fewer beneficial outcomes for them.

13. The 2024 Rule's vacatur and resultant reinstatement of the 2020 Rule have also diverted VRLC's resources. For example, VRLC now spends more time opposing dismissals of new complaints or pending complaints initiated under the 2024 Rule and spends at least four times as much time as before to prepare for a college or graduate student client's grievance process, reducing the overall number of survivors VRLC can represent. In addition, VRLC has been forced to devote fewer resources to its other programs and services; these include a nationwide education program providing training and support to legal advocates, attorneys, sexual assault nurse examiners, campus administrators, and other stakeholders about legal issues impacting survivors, as well as an advocacy program to educate policymakers on the best ways to protect student survivors beyond the federal Title IX requirements. *See*, *e.g.*, Mass. Gen. Laws Ann. ch. 6, §§ 168D, 168E (West).

14. Again, VRLC also experienced these injuries after the Department first issued the 2020 Rule. For example, in 2020, VRLC was forced to partially reassign an attorney from its education program to also take clients and supervise other staff attorneys in its direct client services program, as preparing for each Title IX proceeding required significantly more supervision, skill, and resources than before. As another example, one institution of higher education assured a VRLC client that her complaint was within the scope of the 2020 Rule, but after conducting an exhausting investigation, the institution suddenly announced that the complaint actually fell outside the scope of the 2020 Rule and summarily dismissed it—causing VRLC to expend more than a year of time and resources with no result for the victim.

15. The following are more specific examples of how the vacatur of the 2024 Rule and resultant reinstatement of the 2020 Rule frustrate VRLC's mission and divert its resources.

Mandatory dismissal of complaints: vacatur of 2024 Rule's §§ 106.2, 106.11, 106.44(a), and 106.45(a)

16. The reinstated 2020 Rule's narrow definition of "sexual harassment" and narrow scope of Title IX's jurisdiction require schools to dismiss a Title IX complaint of sex-based harassment if: (i) the incident is so "severe" *or* "pervasive" as to limit a student's access to education but not so "severe" *and* "pervasive" as to "deny" a student's access to education; or (ii) the harassment causes a *hostile environment* within an educational "program or activity" inside the United States, but the *underlying incident* occurs outside of an educational "program or activity" or outside the United States. These changes frustrate VRLC's mission of representing student survivors, as many incidents of sex-

based harassment its clients experience are no longer recognized under the Title IX rules. This is especially harmful because there are over 300 school districts and 130 higher education campuses in Massachusetts, and many of VRLC's student survivors experience sexual assault or dating violence at off-campus parties and apartments; while socializing with students from other local area schools; or going on vacations, spring break, or school-sponsored study abroad trips that are not within the scope of the 2020 Rule. Additionally, many schools may choose to stop providing supportive measures to those complainants whose complaints must now be dismissed—just as they did when the 2020 Rule was previously in effect—leaving VRLC clients with fewer safety, academic, housing, and other critical options to meet their education needs post-assault.

17. These changes in the Title IX rules also divert VRLC's resources from other mission-critical work in order to appeal schools' wrongful dismissals of student survivors' complaints under the reinstated 2020 Rule, including complaints that may have been pending for many months or even more than a year and are close to obtaining a final decision from the school. As they did when the 2020 Rule was previously in effect, VRLC staff must once again spend more time advocating for clients' rights to supportive measures when their complaints are mandatorily dismissed, including by asserting students' rights under other federal laws besides Title IX, which can often require more burdensome and invasive documentation.

Inequitable dismissal of complaints involving unaffiliated parties: vacatur of 2024 Rule's §§ 106.2, 106.45(d)

18. These changes frustrate VRLC's mission, as they did when the 2020 Rule was previously in effect, by: (i) requiring dismissals of complaints filed by student survivors who wait to

file until after they graduate or transfer to another school due to the retaliatory risks associated with, for example, filing a complaint against an athletics coach or faculty advisor; (ii) encouraging schools to mistakenly believe that they must dismiss a complaint whenever a survivor transfers to another school mid-investigation, even if the survivor had been enrolled in the school at the time they filed the complaint; and (iii) encouraging schools to mistakenly attempt to end supportive measures to a student survivor when their complaint is dismissed because the respondent has graduated, resigned, retired, or transferred to another school mid-investigation. These changes chill survivors from reporting; put survivors at risk of being deprived of counseling, tutoring, and other critical supportive measures; ensure no accountability for many incidents of sex-based harassment; and reduce deterrence by creating a loophole for respondents to escape accountability under Title IX.

19. They also divert VRLC's resources from other critical work by forcing VRLC to spend extra time arguing for a student survivor's right to access supportive measures or to continue their Title IX proceeding instead of being erroneously dismissed, rather than spending that valuable time advocating for the survivor's rights during their Title IX proceeding—just as they did when the 2020 Rule was first issued. For example, VRLC must spend more time educating school officials about ways to prevent future harassment, even after a respondent has withdrawn from a school, by issuing no-trespass directives, banning the respondent from future on-campus or alumni activities, or establishing a policy that the school will restart an investigation if a respondent later re-enrolls.

Reduced responsibilities for schools and employees: vacatur of 2024 Rule's §§ 106.2, 106.44(a), 106.44(b), 106.44(c), 106.44(d), 106.44(e), and 106.44(f)

20. First, under the 2020 Rule, employees at institutions of higher education are no longer required to either (i) report possible sex-based harassment to the Title IX coordinator or (ii) tell the disclosing student survivor how to notify the Title IX coordinator. And institutions of higher education are not required to address sexual harassment at all unless the Title IX coordinator or a high-ranking employee has "actual knowledge" of the harassment. These changes frustrate VRLC's mission because VRLC can no longer help student survivors in higher education file administrative complaints with the Department when their institutions do not respond adequately to sex-based harassment simply because it was reported to the "wrong" school official, such as a trusted coach, faculty member, or resident advisor. Just as they did when the 2020 Rule was previously in effect, these changes also divert VRLC's resources from other mission-critical work by requiring staff attorneys to spend additional time filing administrative complaints with state or local agencies under state or local laws that require institutions of higher education to address both known and suspected sex-based harassment and to address sex-based harassment reported to a larger set of school employees.

21. Second, the reinstated 2020 Rule does not include the 2024 Rule's provision allowing schools to designate certain employees as "confidential employees" to whom students could disclose sex-based harassment and from whom they could receive advice without triggering a report or complaint to the Title IX coordinator. This change frustrates VRLC's mission to protect survivors' privacy and autonomy because due to the confusing timing of the 2024 Rule's vacatur, clients may now inadvertently disclose

sexual assault or dating violence to an employee who was previously designated as a confidential employee while the 2024 Rule was in effect (August 1, 2024 to January 8, 2025), and subsequently have the incident reported to the Title IX coordinator without their consent. These changes will also divert VRLC's resources by requiring staff attorneys to spend more time petitioning Title IX coordinators not to pursue formal complaints that are initiated against the wishes of a client as a result of such inadvertent disclosures.

22. Third, the vacatur of the 2024 Rule frustrates VRLC's mission to prevent sex-based harassment and protect survivors' privacy and autonomy because Title IX coordinators are no longer required to: (i) monitor for and address barriers to reporting sex-based harassment, even though VRLC frequently informs schools of specific barriers to reporting based on clients' experiences at those schools; (ii) use information learned at public awareness events about sex-based harassment at an institution of higher education (*e.g.*, Take Back the Night) to inform the institution's prevention efforts; or (iii) consider a set of enumerated factors, including a survivor's reasonable safety concerns, to determine whether to initiate or continue a Title IX complaint against the survivor's wishes, which had provided a safeguard for survivors who reported sex-based harassment but were unsure if they wanted to trigger a formal investigation. Indeed, since the 2024 Rule's vacatur, VRLC has already had multiple clients' requests to withdraw their complaints be denied because the 2020 Rule does not articulate a set of enumerated factors for Title IX coordinators when considering complainants' withdrawal requests. These changes also divert VRLC's resources by requiring staff attorneys to spend more

time petitioning Title IX coordinators not to pursue complaints that are initiated against the wishes of a client.

Unreasonable standard of care: vacatur of 2024 Rule's §§ 106.44(a), 106.44(f), 106.44(k), 106.45(d), and 106.45(h)

23. These changes frustrate VRLC's mission to provide survivors with legal assistance because student survivors can no longer file administrative complaints with the Department when their schools respond *unreasonably* to sex-based harassment or fail to respond "promptly and effectively" but must now wait until their schools' responses rise to the level of "*clearly unreasonable*" or "deliberate indifference." This significant shift forces survivors to accept weaker or ineffective responses from their schools, which may include denial of important supportive measures, unnecessary delays, burdensome investigation procedures, and perhaps even punitive measures because schools are now permitted to take "unreasonable" actions toward survivors. For example, when the 2020 Rule was previously in effect, one VRLC client suffered five months of mistreatment, including repeated victim-blaming and retraumatizing questions during her investigation and denial of her request to withdraw her formal complaint. But it was only after her institution prevented her advisor from conducting cross-examination at her live hearing and failed to inform her of the investigation outcome that she had grounds to submit an administrative complaint under the reinstated 2020 Rule's "deliberate indifference" standard.

24. These changes also divert VRLC's resources by requiring staff attorneys to identify alternative state or local laws that require schools to respond "reasonably" to sex-based harassment and to file administrative complaints with state or local agencies instead of

with the Department. For example, just as it did when the 2020 Rule was previously in effect, VRLC expects to file many more complaints on behalf of K-12 student survivors through Massachusetts' Department of Elementary and Secondary Education's Problem Resolution System, even though the state agency is unfortunately less adept at addressing complaints of sex-based harassment as it has historically relied on the Department to address them.

Required retraumatization of survivors through live cross-examination: vacatur of 2024 Rule's §§ 106.45(g) and 106.46(f)

25. While the 2024 Rule was in effect and the 2020 Rule was not in effect, VRLC's higher education clients in Massachusetts were not required to be cross-examined in a live hearing by their respondent's advisor of choice in Title IX proceedings.

26. The reinstated 2020 Rule's requirement of live hearings and adversarial cross-examination in institutions of higher education frustrates VRLC's mission to deter and redress sex-based harassment by chilling reporting by student survivors who will no longer file complaints or continue their pending Title IX proceedings because: (i) they fear being retraumatized by hostile cross-examination by their respondent's advisor, who is often an attorney, angry parent or fraternity brother, or an athletics coach or professor with whom the complainant may have a class or future affiliation; (ii) Title IX respondents' attorneys frequently use cross-examination during a school's Title IX live hearing as a way to gather impeachment evidence for use against the survivor in a concurrent criminal proceeding; and (iii) the reinstated 2020 Rule expressly prohibits schools from excluding unduly prejudicial or misleading questions or questions that assume facts not in evidence, which may include invasive and humiliating questions

about a survivor's medical or family history. Indeed, both when the 2020 Rule was previously in effect and now after the vacatur of the 2024 Rule, many VRLC clients were and are afraid of being subjected to hostile cross-examination by their respondent's advisor and of having their Title IX cross-examination answers weaponized against them in their concurrent criminal proceeding. Furthermore, students who forgo or withdraw from an investigation for any of these reasons are no longer able to file an administrative complaint with the Department.

27. These changes also divert VRLC's resources because it now takes at least four times the amount of time to prepare adversarial cross-examination of each opposing party and all witnesses, thus reducing the overall number of survivors VRLC can represent. This is because a hearing without cross-examination can be completed in as quickly as one hour (and typically requires two to three hours of preparation), but a hearing with adversarial cross-examination can take five to ten hours or even last two days (and can require twelve to twenty-five hours of preparation). In fact, VRLC must now spend more time preparing a client for a Title IX live hearing than preparing a client for testimony in a court proceeding, such as a hearing for a civil protection order (CPO) (Mass. Gen. Laws ch. 209A or ch. 258E two-party hearing), as these court hearings comply with the rules of civil procedure and do not require VRLC attorneys to prepare a student survivor on how to respond to misleading or unduly prejudicial cross-examination questions.

Unfair, delayed, and inaccurate investigations: vacatur of 2024 Rule's §§ 106.45(b) and 106.45(h)

28. First, the reinstated 2020 Rule's requirement that two different people as investigator and decisionmaker in each Title IX proceeding frustrates VRLC's mission to provide fair,

timely, and accurate outcomes for its clients because: (i) decision-makers are often drawn from a wider pool of school employees than investigators and, therefore, tend to be less highly trained and skilled at conducting trauma-informed questioning; (ii) decision-makers often ask duplicative questions that were already asked by the investigator (and often answered by a party or witness with greater accuracy while their memories were fresher), which also forces survivors to unnecessarily relive painful memories without any evidentiary benefit to the school; and (iii) decision-making panels are often comprised of three people, so scheduling a live hearing now requires coordinating the schedules of at least eight people (including the investigator and/or Title IX coordinator, the two parties, their advisors, and any additional witnesses), which means hearings can take place months after an investigation ends, eroding the accuracy of all parties' and witnesses' statements and making a timely decision all but impossible. These changes also divert VRLC's resources because staff attorneys must now dedicate more time preparing clients to answer decision-makers' duplicative questions, supplementing decision-makers' knowledge of previous fact-finding already done by investigators, and assisting previous clients with re-opened investigations.

29. Second, schools are no longer prohibited from using a survivor's communications with a confidential employee or a witness's medical or mental health records without their consent, frustrating VRLC's mission of protecting survivors and their supporting witnesses from unnecessary and potentially traumatizing invasions of privacy that can dissuade them from participating in an investigation or seeking medical help or counseling. This change also diverts VRLC's resources, as staff attorneys must now

spend more time opposing schools' attempts to use or disclose confidential communications and sensitive medical and mental health records.

30. Third, VRLC's mission to obtain accurate outcomes for its clients is frustrated, as it was when the 2020 Rule was previously in effect, because schools are no longer instructed that a survivor's prior consensual sexual relationship with the respondent does not by itself imply consent to the alleged sexual assault or dating violence. VRLC must also now divert its resources to appeal erroneous decisions made based on a decision-maker's improper belief that prior consent to sexual activity implies or establishes consent to all future sexual activity.

31. Fourth, schools in some cases must now use the more burdensome clear and convincing evidence standard to resolve Title IX complaints against student respondents even if it uses the equitably burdensome preponderance of the evidence standard to resolve complaints of physical assault or race harassment against students. These changes frustrate VRLC's mission because: (i) it tilts the scales against survivors and in favor of accused rapists and abusers, making it harder for survivors to secure a favorable decision; and (ii) chills survivors from reporting in the first place, leading to fewer complaints and reduced deterrence of sex-based harassment. These changes also divert VRLC's resources, because staff attorneys must spend more time obtaining additional evidence and preparing more supporting witnesses in order to meet the higher threshold demanded by the clear and convincing evidence standard.

32. Furthermore, all of the above changes frustrate VRLC's mission to enforce students' Title IX rights as they are no longer able to seek an administrative remedy from the

Department for unfair, untimely, and inaccurate investigation procedures that are now permitted under the reinstated 2020 Rule.

Required harmful actions and prohibited beneficial actions: vacatur of 2024 Rule's §§ 106.2, 106.44(h), 106.44(i), 106.44(k), 106.45(k), and 106.46(j)

33. First, the reinstated requirement that complaints be written frustrates VRLC's mission to redress sex-based harassment, just as it did when the 2020 Rule was previously in effect, because K-12 students and their parents frequently make oral requests for a Title IX investigation that will again go ignored. This causes valuable time to be wasted before students and their parents realize that no investigation will take place, during which the student may have fallen considerably behind in school. This change also diverts VRLC's resources because staff attorneys who are brought in at that later stage must expend significant resources to address the compounded harm caused by the delayed investigation. For example, safety or academic concerns that may have been addressed by sanctions resulting from a prompt investigation may now require special education services, disability accommodations, or civil protection orders.

34. Second, VRLC's mission to protect student survivors is frustrated because schools: (i) can no longer remove a respondent on an emergency basis to prevent foreseeable harm to a survivor until the harm is merely moments away ("immediate"); and (ii) must disregard even an immediate threat that a harasser, rapist, abuser, or stalker may pose to a survivor's psychological health (the 2020 Rule requires harm to be "physical"). For example, when the 2020 Rule was previously in effect, one institution refused to remove a Title IX respondent from campus on an emergency basis even after he was incarcerated for raping VRLC's client because the institution did not consider the threat he posed to be

sufficiently "immediate," causing the survivor to suffer significant harm, including socially and academically and generally feeling unsafe on campus. With the 2020 Rule reinstated, VRLC must again divert its resources from other critical work to petition school officials for supportive measures that may be less effective than an emergency removal, such as a mutual no-contact order or a housing transfer, in order to protect its clients from imminent and serious physical harms or immediate psychological harms.

35. Third, VRLC's mission to prevent sex-based harassment is frustrated because the Title IX rules no longer explicitly instruct schools that student-employee respondents can be placed on administrative leave during their investigation, causing institutions to mistakenly believe that student-employee respondents with pending investigations must be allowed to continue serving as a resident advisor, teaching assistant, or other position that enables their further harassment of the survivor—as well as other students. For example, when the 2020 Rule was previously in effect, one of VRLC's clients had a resident advisor who used his master key to enter a survivor's dorm room during their pending investigation, but the institution still refused to place him on administrative leave. VRLC must again divert its resources to (i) educate school officials about their ability to put student-employee respondents on paid administrative leave; or (ii) failing that, petition school officials for supportive measures that may be less effective than administrative leave in order to protect its clients from further harassment by student-employee respondents.

36. Fourth, student survivors in higher education can no longer choose to resolve complaints against an employee harasser through an informal resolution, such as a mediation or restorative process. Furthermore, survivors at all levels of education can no longer initiate

an informal resolution without filing a written complaint. These changes frustrate VRLC's mission to redress and prevent sex-based harassment because: (i) employees' protections—especially tenured faculty's protections—in formal disciplinary proceedings are so extensive and rigorous that most college and graduate students are highly unwilling to report an employee harasser at all unless they have the option of choosing an informal resolution; (ii) reduced reporting of faculty and staff harassers enables more serial assailants and abusers to escape accountability and continue their predation of students; and (iii) many survivors do not want to submit a written complaint against a well-connected, wealthy, or famous respondent due to concerns about defamation liability, privacy, or detrimental impacts on a concurrent criminal proceeding, but they do want to address the harm through an informal resolution. These changes also divert VRLC's resources by requiring staff attorneys to spend more time in employee-on-student cases: (i) seeking additional supportive measures to ensure the survivor can complete their education, as informal resolution is no longer permitted and investigation is not a realistic option; and (ii) protecting from retaliation students who choose, despite the tremendous risks and costs to their academic and professional careers, to endure an investigation against their faculty harasser—who may be their dissertation advisor or department chair—in order to protect their classmates from future abuse.

Inadequate employee training: vacatur of 2024 Rule's § 106.8(d)

37. First, because of the vacatur of the 2024 Rule, school employees who are not Title IX personnel are no longer required to be trained on Title IX compliance at all. This change frustrates VRLC's mission to prevent sex-based harassment because school employees are now not only less likely to be able to recognize sex-based harassment when they

witness it (*e.g.*, in the classroom, on the playground, during a school trip), but they also will be less likely to report such incidents to the Title IX coordinator, including when they learn of it from a student. This means more harassment and violence will persist and proliferate in schools without proper intervention. This change also diverts VRLC's resources, as it did when the 2020 Rule was previously in effect, because it forces staff attorneys to expend significant resources, particularly when representing survivors in K-12 schools, to: (i) educate school administrators of their Title IX obligations and prevent and correct procedural missteps; (ii) correct misinformation about Title IX shared by schools to students and families; and (iii) conduct extensive searches for schools' Title IX policies and procedures because they are not available online and/or there are no well-trained staff who can answer Title IX-related questions.

38. Second, Title IX investigators and decision-makers are no longer required to be trained on which types of evidence are impermissible in an investigation (*i.e.*, privileged, treatment records, and sexual history evidence). This change frustrates VRLC's mission to provide student survivors with legal assistance because Title IX investigators and decision-makers are now more likely to traumatize and harm VRLC's clients with invasive and inappropriate questioning and to make inaccurate final decisions in Title IX proceedings. It also diverts VRLC's resources because staff attorneys must now spend more time opposing investigators' and decision-makers' requests for impermissible evidence and preparing clients and their supporting witnesses to refuse to answer questions seeking impermissible evidence.

39. Third, employees who help implement Title IX grievance procedures or who have the authority to modify or terminate supportive measures but are not coordinators,

investigators, or decision-makers are no longer required to be trained on Title IX compliance at all. This frustrates VRLC's mission to provide student survivors with legal assistance because these employees are now more likely make mistakes when implementing investigation procedures or making decisions regarding supportive measures, resulting in more unfair, delayed, inaccurate, and harmful outcomes for VRLC's clients. These changes also divert VRLC's resources by requiring staff attorneys to spend more time informing these employees about how they have violated the Title IX rules and petitioning them to remedy their errors in a timely fashion.

40. Finally, Title IX coordinators are no longer required to be trained on their own responsibilities as coordinators. These changes frustrate VRLC's mission because Title IX coordinators who lack training on critical aspects of their job are more likely to violate complainants' privacy and autonomy when overriding their consent to investigate, more likely to produce mishandled investigations and supportive measures, and more likely to botch their recordkeeping duties, which can also make it more difficult for VRLC to later file an administrative complaint against the school with the Department. These changes also divert VRLC's resources because staff attorneys will need to spend more time explaining and opposing Title IX coordinators' actions that violate the Title IX rules.

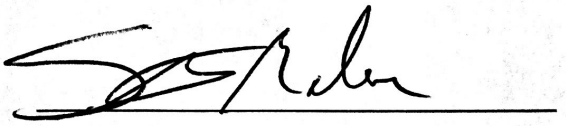
Conclusion

41. As a whole, the vacatur of the 2024 Rule and resultant reinstatement of the 2020 Rule are injuring VRLC by making it more difficult and resource-intensive—and sometimes impossible—for VRLC to ensure survivors can stay in school; protect their safety and academic needs; protect their privileged and confidential mental health, medical and education records; preserve their employment and/or scholarships; and maintain their safe

housing. By chilling reporting of sex-based harassment, reducing the number of investigations that schools are permitted to conduct, allowing schools to respond unreasonably to sex-based harassment, and mandating inequitable grievance procedures that are skewed in favor of respondents, there is and will be less justice for victims and less deterrence of sex-based harassment. The drain on VRLC's resources is already stretching and will continue to stretch its ability to provide legal services for victims beyond current funding parameters. In VRLC's 21 years of experience providing services to survivors of sex-based harassment, including in Title IX proceedings, the provisions of the 2020 Rule are the most voluminous, drastic, and harmful Title IX provisions that VRLC has seen. These drastic changes to Title IX have harmed and will continue to harm victims of sex-based harassment, including sexual assault, dating violence, domestic violence, and stalking, across the country.

42. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 28, 2025.



Stacy Malone, Esq.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

State of Tennessee; Commonwealth of Kentucky; State of Ohio; State of Indiana; Commonwealth of Virginia; and State of West Virginia,
Plaintiffs,

and

Christian Educators Association International; A.C., by her next friend and mother, Abigail Cross,
Intervenor-Plaintiffs,

v.

Miguel Cardona, in his official capacity as Secretary of Education; and United States Department of Education,
Defendants,

A Better Balance,
[Proposed] Intervenor-Defendant,

and

Victim Rights Law Center and Jane Doe,
[Proposed] Intervenor-Defendants

2:24-cv-00072-DCR-CJS
Judge Danny C. Reeves

DECLARATION OF JANE DOE

I, Jane Doe, declare that I am over the age of 18 and competent to testify to the following facts:

The Sexual Assault

1. I was an undergraduate student at a state university ("the University") in Massachusetts from January 2024 to November 2024. During my sophomore year, I was 19 and lived in an on-campus apartment owned by the University.

2. On October 14, 2024, my friend brought another classmate ("Respondent") to visit my apartment. This was the first time I had met Respondent in person. That same day, Respondent returned to my on-campus apartment and raped and strangled me.
3. On October 17, my roommate accompanied me to a local hospital to be examined by a sexual assault nurse examiner (SANE). The SANE collected a rape kit from me within the recommended 72-hour window.
4. On October 18, I reported the rape and strangulation to the University's Title IX office.

Complete Loss of Education

5. After this incident, I hit rock bottom. I had no motivation to do anything, and I couldn't see any way out of my despair. There were many days when I didn't eat anything at all.
6. I did not feel safe leaving my apartment and stopped going to class starting on October 15, the day after Respondent raped and strangled me. My friends dropped off food for me from campus dining to ensure that I could continue to eat. The only times I left my room were to go with my roommates somewhere off campus, where I felt less afraid of running into Respondent and his friends.
7. Shortly after the incident, I discovered that Respondent had been living with his friends in my on-campus apartment building at the time of the incident. Our two apartments were the only two apartments on our floor.
8. On October 21, my University issued a mutual no-contact order to Respondent and me. However, the University's no-contact order did not prohibit Respondent's friends from harassing me.
9. Respondent's friends would frequently stare at me menacingly when I left my apartment. They would also yell at me and my roommates and flip us off when they saw us leaving

campus. One night, a group of men walked by my apartment window and mocked me for being raped. They yelled loudly so I could hear: "Help me! I'm being raped!"

10. Although the Title IX coordinator asked my professors if they could give me academic supportive measures, such as allowing me to attend class on Zoom or adjusting some assignment deadlines, none of them agreed to do so.

11. Without the option of attending class online to avoid Respondent and his friends, I did not go to class again after October 14. Eventually, when I realized that I was going to fail all of my classes by the end of the semester, I made the difficult decision to withdraw from the University on November 22.

Effect of 2024 Title IX Rule's Vacatur on My University's Title IX Investigation

12. On October 23, 2024, the University emailed Respondent and me a letter about our upcoming Title IX investigation.

13. On November 21, a Title IX investigator interviewed me.

14. On December 20, I met with a Title IX coordinator and Title IX investigator to discuss the next steps in my Title IX proceeding. The Title IX coordinator explained that there were two options as next steps in my investigation.

15. According to the University's Title IX policy at the time, the first option was "shuttle questioning," where Respondent and I could propose questions and follow-up questions for each other, and a decision-maker would ask those questions in one-on-one meetings with each of us. The second option was a live hearing, where Respondent and I would answer questions asked by a decision-maker and could participate virtually from separate physical locations. The Title IX office would decide which option to use.

16. But on January 27, 2025, the Title IX coordinator emailed me to say that I would now have to participate in a live hearing with cross-examination. I was told to hold April 3, April 4, and April 11 as potential dates for my hearing.
17. On January 29, I met with the Title IX coordinator to discuss these changes in person. She explained that the 2024 Title IX Rule is no longer in effect, and the 2020 Title IX Rule is in effect again. Therefore, I will have to submit to cross-examination in a live hearing. According to the University's new Title IX policy, I will be cross-examined by Respondent's advisor.
18. I am scared, anxious, and overwhelmed by the prospect of being cross-examined in a Title IX hearing. I worry that Respondent's advisor will use cross-examination to ask me questions that try to poke holes in my story to make it sound like it was my fault I was raped or that I deserved to be raped. This feels so different from the University's previous process. I think it's cruel to force me to go through cross-examination after everything I've already gone through and having the courage to report.
19. If I had known that I would have to be cross-examined, I never would have reported to the University's Title IX office in the first place.
20. I am considering choosing not to participate in my upcoming Title IX hearing to avoid being cross-examined. But I worry that this could make me look less credible to the Title IX decision-maker, which reduces my chances of holding Respondent accountable.
21. I hope to intervene in this case in order to appeal this Court's vacatur of the 2024 Rule, so that I do not have to choose between being subjected to a distressing cross-examination or not being cross-examined and therefore reducing my chances of holding Respondent accountable under the 2020 Rule.

22. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 28, 2025.

Jane Doe

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CARROLL INDEPENDENT SCHOOL DISTRICT, *Plaintiff*, v. **UNITED STATES DEPARTMENT OF EDUCATION**; **DENISE CARTER**, in her official capacity as Acting Secretary of the United States Department of Education; **ASSISTANT SECRETARY FOR CIVIL RIGHTS AT THE UNITED STATES DEPARTMENT OF EDUCATION**, in her official capacity; **UNITED STATES DEPARTMENT OF JUSTICE**; **PAM BONDI**, in her official capacity as Attorney General of the United States; and **ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE**, in her official capacity, *Defendants*.	**Case No.: 4:24-cv-00461-O**

JOINT STATUS REPORT

Pursuant to this Court's February 11 order, ECF No. 84, the parties submit this joint status report. The parties agree that this case is not moot.

This lawsuit challenges a Department of Education rule entitled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 89 Fed. Reg. 33,474 (Apr. 29, 2024) ("2024 Title IX Rule"). On January 9, the United States District Court for the Eastern District of Kentucky entered judgment vacating the Rule. *See Tennessee v. Cardona*, No. 2:24-072-DCR, ECF No. 143, 2025 WL 63795, at *7 (E.D. Ky. Jan. 9, 2025), *judgment*

corrected, ECF No. 146 (Jan. 10, 2025). The deadline for Defendants to appeal that judgment is March 10, 2025. Fed. R. App. P. 4(a)(1)(B).

Accordingly, the parties agree that this case remains a live controversy until either (1) the *Tennessee* judgment is affirmed on appeal and no further appellate review is available, or (2) the deadline to appeal passes without Defendants noticing an appeal.

Respectfully submitted this 17th day of February, 2025.

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/s/ *Elizabeth Tulis*
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Counsel for Plaintiff Carroll ISD

**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I certify that on February 17, 2025, this document was served on all counsel of record via the Court's CM/ECF system.

/s/ Mathew W. Hoffmann
Mathew W. Hoffmann
Counsel for Plaintiff Carroll ISD