The beginning of this school year marks one year since Education Secretary Betsy DeVos and the Department of Education rescinded two documents released by the previous Administration that provided critical guidance with regards to handling cases of sexual misconduct on campus and Title IX policies. Secretary DeVos replaced the 2014 “Questions and Answers on Title IX and Sexual Violence” and the 2011 “Dear Colleague” letter with interim Title IX guidance last September and, according to a recent article published by The New York Times, is expected to release finalized guidance in the coming weeks.

The aforementioned Obama-era documents promoted trauma-informed best practices in guiding schools as they managed cases of sexual misconduct and assault. The interim guidance reverses much of the survivor-centric nature of those documents in four key ways outlined below, and according to several organizations currently bringing a lawsuit against Secretary DeVos, “essentially encourages schools to set up unfair systems that disadvantage survivors.”

These changes, which are mostly designed to favor perpetrators of sexual assault, are extremely concerning, especially given Georgetown University’s current lack of a full-time Title IX Coordinator. We, the undersigned, urge Georgetown University President John DeGioia and University administrators to recommit to their statement released last September in response to the interim guidance and clarify to the student body any specific steps the University will take in response to any new guidance. We hope the University will release an official comment to the Department of Education during the notice-and-comment period after the permanent guidance is released and will encourage members of the Georgetown community to do the same. Finally, the University must release a statement to the Georgetown community explaining their silence on the current lack of a full-time Title IX coordinator on campus and detailing exact steps they plan to take to rectify the situation.

The rest of this statement details specific ways in which DeVos’s new guidance could damage current Title IX best practices by actively harming survivors and underscores the importance of public, decisive statements by the University to preserve fair Title IX practices at Georgetown.

First, Secretary DeVos’s interim guidance gives universities the option of deciding the outcomes of Title IX investigations using a “clear and convincing” burden of proof rather than the previously used “preponderance of evidence” or “more likely than not” standard. This places a higher burden on survivors of assault to prove beyond a doubt they were assaulted; this increased burden on survivors in Title IX investigations may discourage survivors from reporting in the first place.
According to academic research, only around 2-8% of all reported sexual assaults are falsely reported and according to the 2016 Campus Climate Survey, 1 in 3 women, 1 in 9 men, and a little over 1 in 3 students who identify as trans, genderqueer, and/or gender-nonconforming (TGQN) have experienced some kind of non-consensual sexual contact as a result of “physical force or incapacitation” during their time at Georgetown. Under this new burden of proof, survivors who choose to pursue Title IX investigations are further subjected to the false assumption that the existence of consent, or lack thereof, is always “clear and convincing” in cases of sexual violence. In other words, the burden rests with the survivors to “definitively” prove they were assaulted, despite the fact that Title IX investigations under the previous guidance were set up to be thorough, fair, and equal to both parties. Thus, this additional burden on survivors to “prove” they were assaulted supports the damaging false assumption that survivors are lying and false reporting rates are high. This additional burden will only serve to further depress reporting rates, which are already low when compared to the actual rates of sexual assault and misconduct at Georgetown.

Second, the interim guidance removes the mandated 60-day restriction on investigations of sexual assault or misconduct, allowing universities to decide an appropriate investigation length. By removing time restrictions, the interim guidance allows investigations to extend indefinitely, subjecting survivors to the often emotionally exhausting process often for multiple semesters and increasing the likelihood that they drop out of school entirely.

Third, Secretary DeVos’s interim guidance gives schools the option of making the appeal process available only to “respondents” (alleged perpetrators) who are found guilty of sexual misconduct, which means that survivors would be unable to appeal university disciplinary rulings in their Title IX investigations. As of July 2018, the University of Kentucky appears to be the only school that has implemented this rule, and according to an article published in the Courier Journal on July 11th, affording the right to appeal only to alleged perpetrators may violate survivors’ legal rights under the Clery Act. Therefore, this recommendation is not only biased against survivors, but may violate the legal rights of students.

Finally, the interim guidance introduces mediation as an acceptable option to resolve instances of sexual misconduct “if it is appropriate and if all parties voluntarily agree,” despite the fact that both the Bush and Obama Administrations deemed mediation inappropriate for resolving cases of sexual misconduct. The idea that mediation is acceptable is based on the assumption that both parties have equal power to negotiate and listen to one another, which is almost never the case when one person has forced the other through a traumatic experience, and it does not take into account the potential threat to survivors’ safety or the potential for causing additional trauma in the mediation process. Additionally, according to Cari Simon, a lawyer who represents survivors of sexual assault in Washington, “Mediation allows schools to sweep sexual violence under the rug, treating it as a misunderstanding between students.”

We, the undersigned, believe that Georgetown students will be safer, healthier, and more likely to use University resources if the University continues to adhere to survivor-centric best practices as described in the 2011 “Dear Colleague” letter and the 2014 “Questions and
Answers on Title IX and Sexual Violence.” We hope that the University will continue to work in a trauma-informed direction and seek to protect the rights of survivors and combat rape culture on campus, regardless of any changes outlined in forthcoming guidance from the Department of Education.

If and when the Department of Education releases permanent guidance, we intend to release another statement and organize notice-and-comment events for Georgetown community members to submit comments to the Department with feedback on the finalized guidance. In the interim, we hope that University administrators will carefully consider this letter and widely publicize the University’s commitment to students and survivors of assault in the likely event that Secretary DeVos’s permanent guidance proves to be as damaging as her interim guidance.

Sincerely,

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