



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

May 7, 2019

Honorable Elissa Slotkin
U.S. House of Representatives
Washington, DC 20515

Dear Representative Slotkin:

The U.S. Department of Education is committed to ensuring that all students have access to a learning environment free from sexual misconduct and discrimination, and that all institutions that fall short will be held accountable for violations of federal law. As Secretary of Education, I have made this issue one of my highest priorities. I have met with survivors of sexual assault and heard their shocking accounts of sexual misconduct and of schools woefully failing students and employees. Campus sexual misconduct must continue to be confronted head-on. Never again will these acts only be whispered about in closed-off counseling rooms or swept under the rug.

As you may know, on November 29, 2018, the Department published a Title IX Notice of Proposed Rulemaking (NPRM) in the Federal Register (83 FR 61462). The proposed regulations would clarify schools' obligations under Title IX for redressing sex discrimination, including complaints of sexual harassment, and spell out the procedures that schools must use as part of their efforts to stop sexual harassment. As part of the Office of Management and Budget's (OMB) review of the NPRM, representatives from OMB and the Department met with survivors, including victims of abuse by Larry Nassar, prior to the NPRM's publication in the Federal Register.¹ And members of the general public were given more than 60 days to comment on the NPRM. As part of the public comment process, the Department received more than approximately 112,000 public comments, including comments from survivors of Larry Nassar's abuse, each of which will be reviewed, posted, and considered. However, now that the public comment period has closed, it would be inappropriate to discuss the NPRM or its contents.

Additionally, on February 26, 2018, the Department announced that it was opening a directed investigation against Michigan State University (MSU) regarding systemic issues in MSU's handling of reports of sexual violence committed by former employee, Larry Nassar. This directed investigation supplements OCR's pre-existing monitoring of MSU's compliance with a 2015 resolution agreement with the Department's Office for Civil Rights (OCR). Separately, the Department's Federal Student Aid office has a pending investigation into MSU under the Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. As part of these investigations, Department staff have

¹ You can access the NPRM at the following address: www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal.

interviewed students and staff at MSU, and it would inappropriate to speak to survivors as part of a separate, collateral process.

As the Administrative Conference of the United States pointed out in a 2014 Final Report titled “Ex Parte Communications in Informal Rulemaking”:

[The Department] has an unwritten policy that encourages ex parte communications before publication of the NPRM and generally discourages them after the NPRM. Communications with public stakeholders prior to issuance of an NPRM provide useful information and input to inform development of a rulemaking. Even at the pre-NPRM stage, however, [Department] personnel are encouraged to not disclose agency policy preferences or the likely substance of a forthcoming proposal. Once an NPRM has been submitted to the Office of Information and Regulatory Affairs for review under Executive Order 12866, [the Department’s] policy is generally to not accept meetings with public stakeholders and instead defers to the process established in this executive order. . . . *Post-comment period, ex parte communications are discouraged to avoid the appearance of unfair access* and prioritize the use of agency resources for developing the next stage of rulemaking.²

Larry Nassar was convicted for unimaginable crimes. I have the utmost respect for the bravery displayed by the survivors of his despicable sexual assaults. Therefore, I want to thank you for your request that I meet with Michigan State University Title IX survivor-advocates to hear about their experiences and views on how to prevent sexual assault on college campuses. However, as you are no doubt aware, the law prevents me from doing so at this time.

Sincerely,

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Betsy DeVos

² See ACUS, “Ex Parte Communications in Informal Rulemaking” at 60 (May 1, 2014) (emphasis added) available at https://www.acus.gov/sites/default/files/documents/Final%20Ex%20Parte%20Communications%20in%20Informal%20Rulemaking%20%5B5-1-14%5D_0.pdf.