



National Women's Law Center
Final Report for Barbara McDowell Foundation – *Equal Rights Advocates v. DeVos, Victim Rights Law Center v. DeVos*
July 31, 2020

Since 2017, under the leadership of Secretary Betsy DeVos, the U.S. Department of Education has repeatedly sought to weaken Title IX protections against sexual violence and other forms of sexual harassment in schools. To ensure that students are not denied equal access to educational opportunities based on their sex, the Department has historically enforced Title IX policies that required schools to investigate and adjudicate sexual harassment complaints in ways that afforded appropriate substantive and procedural protections to all parties and allowed survivors to feel safe reporting harassment and seeking help. But in September 2017, the Department adopted a new Title IX “interim guidance,” requiring schools to implement harmful mandates that dissuade survivors from reporting incidents of sexual harassment. This interim guidance was followed with a Notice of Proposed Rulemaking in November 2018, which sought to codify many of the most harmful aspects of the interim guidance and added new damaging provisions, including requiring schools to dismiss many allegations of sexual harassment absent any investigation whatsoever. The final Title IX regulations incorporating these provisions were issued on May 6, 2020, with an effective date of August 14, 2020, and they threaten enormous harm to students who experience sexual assault or other forms of sexual harassment. They also purport to preempt any effort by states or localities to provide more robust protections against sexual harassment in schools. The Barbara McDowell Foundation has supported the National Women's Law Center in its efforts to block these unlawful actions.

First, the Barbara McDowell Foundation is supporting the National Women's Law Center's case *Equal Rights Advocates v. DeVos*; this litigation, brought with co-counsel from Democracy Forward and filed in the Northern District of California in 2018, challenged the interim guidance issued in 2017. (The case was formerly known as *SurvJustice v. DeVos*, but plaintiff SurvJustice has ceased operations for reasons unrelated to the lawsuit.) Second, the Foundation is supporting *Victim Rights Law Center v. DeVos*, which the National Women's Law Center filed in early June 2020 in the District of Massachusetts with co-counsel Morrison and Foerster and Diane Rosenfeld of Harvard Law School. *Victim Rights Law Center* challenges the Department's final Title IX regulations on sexual harassment, arguing that the regulations and the process by which they were issued violate the Administrative Procedures Act and discriminate on the basis of sex in violation of the Constitution. (In addition to the National Women's Law Center's lawsuit, three other lawsuits have thus far been filed challenging the lawfulness of the Title IX regulations—one by the Attorneys General of 18 states and D.C., one by the Attorney General of New York, and one by the ACLU.)

In November 2019, the district court granted summary judgment to the Department of Education in *Equal Right Advocates*, based on the district court's conclusion that the interim guidance did not constitute final agency action. We appealed this decision to the Ninth Circuit, and in May 2020, we filed a consent motion to stay the appellate proceedings in *Equal Rights Advocates v. DeVos* until August 28, 2020. The motion reasoned that if the Title IX regulations go into effect as scheduled and survive legal challenge, this will likely moot the appeal in *Equal Rights Advocates v. DeVos*, while if the regulations are

vacated in whole or in part, it may be appropriate to proceed with the appeal. This consent motion was granted by the Ninth Circuit and the parties will file a status update on or before August 28, 2020.

In *Victim Rights Law Center*, we recently filed an amended complaint adding seven student survivors of sexual harassment as plaintiffs, who face educational, psychological, and emotional harm if the new regulations go into effect. We have also moved for a preliminary injunction staying the effective date of the regulations, which will be argued shortly. We have also played a coordinating rule identifying *amici curiae* who filed amicus briefs in support of preliminary injunction in the cases brought by the state attorneys general.

Sample media coverage:

NWLC received significant media coverage of our response to the issuance of the final Title IX regulations (including multiple articles noting our plan to challenge the regulations in court) and the filing our lawsuit, including the following:

New York Times: [Lawsuits Aim to Block DeVos's New Sexual Misconduct Rules, DeVos's Rules Bolster Rights of Students Accused of Sexual Misconduct](#)

Newsweek: [Betsy DeVos Sued by Organizations Representing Student Victims of Sexual Violence](#)

Washington Post: [Betsy DeVos announces new rules on campus sexual assault, offering more rights to the accused](#)

Huff Post: [Betsy DeVos's Campaign To Roll Back Sexual Assault Survivor Rights Is Complete; 4th Title IX Challenge Filed](#)

CBS News: [New campus sexual assault rules give accused students more rights, Betsy DeVos says](#)

Chicago Tribune: [Students accused of sexual misconduct get stronger protections under new federal rules](#)

Forbes: [Trump Administration Unveils Final Campus Sexual Assault Rules Bolstering Rights Of Accused](#)

The Hill: [Victim advocacy groups, Democratic lawmakers slam new campus sexual assault policies](#)

Politico: [DeVos unveils rule that boosts rights for students accused of sexual misconduct](#)

CNN Politics: [DeVos finalizes regulations that give more rights to those accused of sexual assault on college campuses](#)

Associated Press: [Betsy DeVos unveils new campus sexual assault rules that bolster rights of the accused](#)

Los Angeles Times: [Students accused of sexual misconduct get stronger protections under new federal rules](#)

NBC News: [Betsy DeVos' new Title IX rules will shake up how K-12 schools handle sexual harassment](#)

New York Daily News: [New campus sexual assault rules bolster rights of accused](#)

Axios: [DeVos issues final rules overhauling campus sexual assault policies](#)

Vox: [Trump administration releases new campus sexual assault rules in the midst of the pandemic](#)

Atlanta Journal-Constitution: [Opinion: Rolling back Title IX threatens racial and gender justice](#)