

**Congress of the United States**  
Washington, DC 20515

December 8, 2020

The Honorable Joseph R. Biden, Jr.  
Office of the President-Elect  
1401 Constitution Avenue, NW  
Washington, DC 20230

Dear President-Elect Biden,

As your incoming administration considers initiatives to combat campus sexual violence and reforms to the Trump Administration's Title IX rule published May 19, 2020 (34 CFR 106), we wish to call to your attention how that rule creates conflicts and discrepancies with full and proper enforcement of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). We urge you to ensure these issues are rectified in any reforms your Administration proposes to Title IX.

As outlined in the Clery Center's Position Statement on this matter, although the Clery Act is a consumer protection law and Title IX is a civil rights law, both laws share a common purpose of creating safe campuses and equal access to education. The National Association of Clery Compliance Officers and Professionals (NACCOP) asserts a similar viewpoint and emphasizes that the diversity of colleges and universities and the challenges these proscriptive regulations place upon them to safeguard their students' safety while maintaining compliance.

The goals of the Clery Act and Title IX can only be achieved when accusations of violence are adjudicated in a fair and transparent way, and when data concerning the prevalence of these incidents is reported and made accessible to the school community. Unfortunately, the Trump Administration's rule sets up several conflicts between these laws that will ultimately require correction in order for schools to successfully meet their obligations to protect students.

The 2013 Violence Against Women Act reauthorization amended the Clery Act to allow both the accuser and the accused in Title IX cases involving dating violence, domestic violence, sexual assault, and stalking to select an "advisor of choice" who can provide support, guidance, or advice. The law prevented educational institutions from limiting the choice of who this advisor could be. Yet the Trump Administration's rule requires these advisors to conduct cross-examinations of the opposite party during live hearings, which are themselves newly mandated by the Trump rule in collegiate level Title IX cases. Due to their elevated role in the formal discipline process, some institutions may deem advisors subject to the annual training requirement under the Clery Act for all officials involved in these types of disciplinary proceedings, effectively limiting the pool from which survivors could choose an advisor. This is problematic, as this interpretation would be a violation of the codified language of the Clery Act, as would any limits on an individual's choice of an advisor. Some individuals may also be unwilling or unable to serve as an advisor because of the cross-examination responsibility. By limiting advisor options for students, the rule undermines a critical support mechanism for both parties involved in a report of violence and violates the spirit of existing law.

The rule also limits schools to activating their Title IX response only if the report involves students within the United States and on campus. This policy ignores the approximately 10% of American college students who participate in study abroad programs and establishes inconsistencies wherein a school may be permitted to adjudicate some types of off-campus misconduct, but not under the auspices of Title IX. Additionally, it contradicts geographical categories established in the Clery Act, which covers off-campus and international properties owned or controlled by student organizations officially recognized by the educational institution. The waters are muddied further if a complaint involves multiple incidents at different locations, some of which may be applicable to Title IX within the rule's standard while others are not. The rule sets up inherent confusion that risks undermining an institution's ability to fairly arbitrate complaints of sexual violence and undermines trust amongst the institution's community of students and staff.

Lastly, while both Title IX and the Clery Act mandate separate reporting obligations for pertinent school employees, the rule contains problematic language that frees institutions of their Title IX obligations unless the complainant reports an incident to an "official with authority to institute corrective measures." Yet the rule does not offer institutions much guidance as to what roles would fall under this definition. In some cases, campus security authorities (CSAs), those designated to comply with Clery Act requirements, may not be considered such authorities for the purpose of Title IX and therefore would not trigger the institution's Title IX obligations nor coordinate with the Title IX coordinator. This presents the risk of isolating Title IX coordinators and campus security authorities, who should instead be encouraged to connect and collaborate to ensure public safety on campus.

We believe it is essential to align Title IX rules and procedures with the Clery Act in order to foster safe, equitable campuses across our nation. The Clery Act is rooted in a strong bipartisan consensus and benefitted from close coordination with subject matter experts in the field. We believe the standards set by the Clery Act can be an important guide to your Administration as you take steps to improve and strengthen Title IX. One in five women and one in sixteen men experience sexual violence during their college years, but it remains the most underreported crime on our campuses. We appreciate your attention to this matter as you prepare to assume the presidency, and we stand ready to work with your administration to address these challenges.

Sincerely,



Ann McLane Kuster  
Member of Congress



Gwen Moore  
Member of Congress

Eddie Bernice Johnson  
Member of Congress

Carolyn B. Maloney  
Member of Congress

Peter Welch  
Member of Congress

André D. Carson  
Member of Congress

Katie Porter  
Member of Congress

Jahana Hayes  
Member of Congress

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Lois Frankel  
Member of Congress

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Member of Congress

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Member of Congress

Sylvia R. Garcia  
Member of Congress

Steve Cohen  
Member of Congress

Lucille Roybal-Allard  
Member of Congress