



## SENATOR KEVIN DE LEÓN

PRESIDENT PRO TEMPORE

October 10, 2017

Honorable Betsy DeVos, Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

**RE: Title IX Protections on College Campuses**

Dear Secretary DeVos:

I write to express my concerns regarding your grossly misleading statements and the U.S. Department of Education's recent action to rescind the Dear Colleague Letter on Sexual Violence dated April 4, 2011. The withdrawal of this key guidance undermines the progress that has been made in combatting sexual misconduct and assault on college campuses nationwide, and will make it more difficult to punish sexual predators by allowing post-secondary institutions to increase the burden of proof in sexual assault cases. With one in three women and one in six men in the United States experiencing some form of sexual violence during their lifetime, we cannot afford to go back to a time where victims are fearful to come forward because they know that the accused will not be punished. Increasing the standard of proof will move victims of sexual assault back into the shadows—something California will strongly resist.

The State of California has been on the forefront of protecting victims of sexual assault. In 2014, I authored Senate Bill 967 (Chapter 748, Statutes of 2014), which made California the first state in the nation to adopt an universal affirmative consent standard for the evaluation of complaints of sexual assault on college campuses. This legislation, specifically, requires that in order to receive state funds for student financial assistance, colleges must adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking involving a student, both on and off campus. This policy must include all of the following:

- An affirmative consent standard in the determination of whether consent was given by both parties to sexual activity.
- A provision that, in the evaluation of complaints in any disciplinary process, it is not a valid excuse to alleged lack of affirmative consent that the accused believed that the

complainant consented to the sexual activity under either of the following circumstances:

- The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.
  - The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.
- A provision that the standard used in determining whether the elements of the complaint against the accused have been demonstrated is the *preponderance of the evidence*.
  - A provision that, in the evaluation of complaints in the disciplinary process, it is not a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity under any of the following circumstances:
    - The complainant was asleep or unconscious.
    - The complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity.
    - The complainant was unable to communicate due to a mental or physical condition.

In addition to creating victim-centered sexual assault response policies and protocols, California's law requires college campuses to implement comprehensive prevention programs and requires them to partner with organizations to assist victims with obtaining much needed services.

Since the enactment of SB 967, the University of California and the California State University systems, as well as number of private, non-profit, post-secondary institutions, have made great strides in combatting sexual assault on their campuses. Each of our state universities now have a Title IX coordinator, as well as comprehensive policies to ensure that the accused is provided comprehensive due process and the victim is provided with the support needed throughout the process. Having a noticed and transparent system that is consistent inspires trust and provides for more welcoming conditions for survivors to report sexual assault.

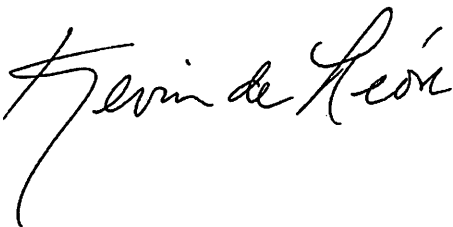
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The Department of Education's revocation of the Dear Colleague guidance is based on a false premise and gross misunderstanding of the ways in which the current processes protect the rights of *all* students involved in a sexual assault proceeding. Under the guise of making sexual assault policies "fair for all," the Department of Education's recent action strikes at the core of what has made California so successful in the battle against sexual assault on its campuses—the utilization of the preponderance of evidence standard. While fairness and impartiality are certainly paramount to any administrative proceeding, they can be achieved while continuing to employ this appropriate standard for the evaluation of student misconduct. The role of Title IX is to prevent and respond to sex discrimination in education, not recreate a criminal justice response. Our colleges and universities should not be required to replicate a criminal proceeding to enforce administrative and disciplinary rules. Doing so would render these standards virtually meaningless and make all students vulnerable as a result.

Sexual assault, violence, and harassment are a serious problem in our society and on college campuses throughout the nation. In addition to the statutes for our post-secondary institutions, California has implemented comprehensive policies to address these issues as early as possible, such as requiring middle school and high school curriculum to teach students about healthy relationships with each other and a dating partner. I recognize these issues are complex, but that will not deter California from taking a stand to protect the rights of students to be free of sexual violence and sexual harassment.

California will continue to implement and develop policies that respect the rights of all parties. We will not accept policies from the federal government that intentionally tip the scales of justice against the rights of victims. I urge you to restore the provisions of the Dear Colleague Letter on Sexual Violence dated April 4, 2011.

Sincerely,

A handwritten signature in black ink that reads "Kevin de León". The signature is written in a cursive style with a large, sweeping initial "K".

**KEVIN DE LEÓN**  
**President pro Tempore**  
**Twenty-Fourth Senate District**