



**Concerns about the Enforcement of Title IX by the  
U.S. Department of Education's Office for Civil Rights (OCR)  
Under the Biden-Harris Administration**

**Washington D.C.** (April 21, 2023) - We are a group of Title IX attorneys and advocates from across the country deeply concerned about issues arising around Title IX enforcement by the U.S. Department of Education's Office for Civil Rights (OCR). These issues arise at a time when students are experiencing unusually high rates of sexual assault and dating violence, <sup>[1]</sup> schools have used the COVID-19 pandemic as an additional excuse to worsen already inequitable athletics programs while there are increasing issues around equity for name/use/likeness, pregnant students need increasing support in this post-*Roe*-era, and when private enforcement of Title IX is being weakened after 50 years of holding educational institutions accountable for sex-based discrimination.<sup>[2]</sup>

According to the Centers for Disease Control and Prevention's (CDC) 2021 Youth Risk Behavior Survey, around 18% of female high school students reported experiencing sexual violence (such as unwanted kissing, touching, or sexual intercourse) in the past year.<sup>[3]</sup> Nearly 15% of teenage girls reported someone raping them, which represents a **horrific 27% increase in the last two years**.<sup>[4]</sup> LGBTQ students are also experiencing higher rates of violence, with 22% reporting sexual violence and 20% reporting rape specifically.<sup>[5]</sup> The increased reports of gender violence are accompanied by higher rates of reported depression, feelings of hopelessness, and suicidal thoughts by the victims, with nearly one in three teenage girls contemplating suicide.<sup>[6]</sup>

In addition to the increased rates of sexual violence, post-*Cummings*, several district courts across the country have ruled against the availability of emotional distress damages to Title IX plaintiffs. *This will curtail contingency-based civil rights representation for Title IX cases in the United States, significantly reducing available legal services for survivors, especially low-income survivors.* As such, OCR's effective enforcement of Title IX is more important than ever. OCR needs to double its budget and increase the hiring of qualified civil rights attorneys to meet demand among the other reforms noted below.

1. **Multiple-Year Delays:** Several OCR complaints filed during the Obama administration remain pending without resolution or any meaningful update for over a half-decade, such as Title IX Complaint No. 02-14-2438 against Hamilton College and Title IX Complaint No. 05-15-2508 against Notre Dame, among others. OCR should set a goal of resolving all Title IX complaints within three (3) years' time while providing regular quarterly



updates to complainants on its progress to ensure transparency and updates about an anticipated completion date. Internally, OCR should add resources to complaints lasting over three years to avoid any complaint pending more than five years without a resolution. Justice delayed is truly justice denied, and this lack of transparency by OCR during the Biden administration, knowing the President's longstanding commitment to addressing gender-based violence, is unacceptable.

2. **Narrow Complaint Filing Window:** OCR must eliminate Trump-era timeliness and waiver requirements from its Case Processing Manual (CPM) and instead restore Obama-era standards that allow complainants to timely file civil rights complaints within 180 days after the last act of discrimination consistent with the continuing violation theory honored within civil case law. *See, e.g., Nat'l R. R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002); *see also O'Connor v. City of Newark*, 440 F.3d 125, 128 (3d Cir. 2006) (referring to hostile environment discrimination claims "based on the cumulative effect of a thousand cuts, rather than on any particular [single] action taken by the defendant," such that "the filing clock cannot begin running with the first act, because at that point the plaintiff has no claim; nor can a claim expire as to that first act because the full course of conduct is the actionable infringement"). By keeping standards meant to curtail Title IX enforcement, OCR has appeared deeply callous at a time of trauma for many students rather than considering the impact of COVID-19.

Due to the impact of COVID-19, many campus-level proceedings have lasted over one school year, such as Title IX Complaint No. 03-23-2030 against Neumann College, Title IX Complaint No. 03-21-2107 against the University of Maryland College Park, and Title IX Complaint No. 11-22-2008 against Virginia Tech's Corp of Cadets, among many others. These campus delays both create extensively long and complex fact patterns and also exhaust survivors and their families, delaying their ability to obtain an attorney who can promptly get up to speed and timely file with OCR. Currently, OCR allows only 60 days after an internal grievance process has ended to file a timely Title IX complaint, which is simply insufficient time for many student-survivors to find and retain counsel, let alone ensure counsel has sufficient time to collect and review relevant documentation to draft and file the complaint. To remedy this situation, OCR should issue a new CPM allowing survivors to file complaints within 180 days of the last act of discrimination or completion of a recipient's grievance process. It should also open a 180-day window for survivors denied remedies by OCR for claims arising between March 2020 and March 2023 to refile their Title IX complaints in light of OCR's failure to consider hardships impeding their



access to remedies at a time when numerous courts around the country were tolling statutes of limitations.

3. **Non-Existent Mediation:** Despite OCR’s CPM offering mediation to complainants, it is non-existent in practice. This is disheartening after the Trump administration’s helpful concerted efforts to encourage mediation to resolve several pending Title IX complaints held over from the Obama-era, which represents a good policy to avoid backlogs. Several survivors, advocates, and attorneys believe mediation is an effective tool for promptly resolving Title IX complaints without draining limited federal resources. Such OCR-facilitated resolutions ensured quicker and more positive outcomes for complainants, often including financial compensation and policy changes, while also allowing campuses to focus more on improving policies, procedures, and training rather than prioritizing defense efforts during a federal investigation. Although the Biden administration has thankfully lifted its pause on mediations, endless delays in scheduling mediations remain a significant barrier. OCR should find creative solutions, such as partnering with JAMS, to ensure prompt mediations to facilitate backlogged cases free of charge.

---

[1] See CDC, *Youth Risk Behavior Survey* 53–56 (2021) (hereinafter “CDC Survey”).

[2] See *Cummings v. Premier Rehab Keller, PLLC*, 142 S. Ct. 1562 (2022), *rehearing denied* 142 S. Ct. 2853 (2022).

[3] See CDC Survey at 55.

[4] See *id.* at 53; Donna St. George, *Teen Girls ‘Engulfed’ in Violence and Trauma, CDC Finds*, Wash. Post (Feb. 13, 2023, 6:32 pm),

<https://www.washingtonpost.com/education/2023/02/13/teen-girls-violence-trauma-pandemic-cdc/>; see also Glenn Kessler, CDC News Release Magnified Spike in Sexual Violence Against Girls, Wash. Post (Mar. 14, 2023, 6:00 am) (noting rounding had been used to increase numbers), [https://www.washingtonpost.com/politics/2023/03/14/cdc-news-release-magnified-spike-sexual-violence-against-girls/?utm\\_campaign=wp\\_post\\_most&utm\\_medium=email&utm\\_source=newsletter&wpisrc=nl\\_most&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F396ebd3%2F641499ede7f5585f19d14bc3%2F63fcb4dca2ddf36a685e0907%2F29%2F72%2F641499ede7f5585f19d14bc3&wp\\_cu=7eece4321657a0fd131c150b59f0bd81%7C6bec4147-0476-419e-be1e-6584494e5ea5](https://www.washingtonpost.com/politics/2023/03/14/cdc-news-release-magnified-spike-sexual-violence-against-girls/?utm_campaign=wp_post_most&utm_medium=email&utm_source=newsletter&wpisrc=nl_most&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F396ebd3%2F641499ede7f5585f19d14bc3%2F63fcb4dca2ddf36a685e0907%2F29%2F72%2F641499ede7f5585f19d14bc3&wp_cu=7eece4321657a0fd131c150b59f0bd81%7C6bec4147-0476-419e-be1e-6584494e5ea5).

[5] See *id.*; see also CDC Survey at 53, 55.

[6] See *id.*

L.L. Dunn Consulting, LLC  
745 Fifth Avenue, Suite 900  
New York, NY 10151  
[www.lauraldunn.com](http://www.lauraldunn.com)  
646-898-2006



L.L. Dunn Law Firm, PLLC  
1717 K Street NW, Suite 900  
Washington, DC 20006  
[www.ildunnlaw.com](http://www.ildunnlaw.com)  
202-822-5023

**SIGNED BY:**

1. Laura Dunn, L.L. Dunn Law Firm, PLLC
2. Amily McCool, Scharff Law Firm
3. Amos L. Barton, The Carlson Law Firm
4. Andrew Janet, Janet Janet & Suggs, LLC
5. Ashley Leavitt, Koller Trial Law, PLLC
6. Betsy Tsai, Sanctuary for Families
7. Carrie Goldberg, C.A. Goldberg, PLLC
8. Cory Hernandez, Family Violence Appellate Project
9. Elizabeth Abdnour, Elizabeth Abdnour Law, PLLC
10. Emily Tofte Nestaval, Rocky Mountain Victim Law Center
11. Heather Lynn Long, Heather Long Law PC
12. Jennifer Becker, Legal Momentum, the Women's Legal Defense and Education Fund
13. Jennifer Eyl, Project Safeguard
14. Jennifer Lipinski, Lipinski Law
15. Jessica Glynn, YWCA Kalamazoo
16. Jimena Vasquez, Los Angeles Center for Law and Justice
17. Joshua Gillispie, Green & Gillispie
18. Karen Truszkowski, Temperance Legal Group
19. Katie M. Shipp, Marsh Law Firm PLLC
20. Kenyora Parham, End Rape On Campus
21. Laura Mangini, Alekman DiTusa, LLC
22. Lisa Haba, The Haba Law Firm, PA
23. Katie M. Shipp, Lori Watson, Watson Law Firm
24. Kristin Eliason & Megan Challenger, Network for Victim Recovery of DC (NVRDC)
25. Maha Ibrahim, Equal Rights Advocates
26. Meg Garvin, National Crime Victim Law Institute
27. Micha Star Liberty, Liberty Law Inc.
28. Michele Waddell, Esq., Rubenstein Law, P.A.
29. Nancy S. Erickson, Law Offices of Nancy S. Erickson, Esq.
30. Fatima Gross Graves, National Women's Law Center
31. Rebecca J. Roe, Schroeter Goldmark & Bender
32. Renee Williams, National Crime Victim Bar Association
33. S. Daniel Carter, SAFE Campuses, LLC
34. Susan Daria Landino, Allies Reaching for Equality
35. Terri Poore, National Alliance to End Sexual Violence

L.L. Dunn Consulting, LLC  
745 Fifth Avenue, Suite 900  
New York, NY 10151  
[www.lauraldunn.com](http://www.lauraldunn.com)  
646-898-2006



L.L. Dunn Law Firm, PLLC  
1717 K Street NW, Suite 900  
Washington, DC 20006  
[www.lldunnlaw.com](http://www.lldunnlaw.com)  
202-822-5023

- 36. Terry L Fromson, Women's Law Project
- 37. Monica Beck, The Fierberg National Law Group
- 38. Tyler D. Bailey, Bailey Law Firm, LLC