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(Original Signature of Member)

115TH CONGRESS
1ST SESSION

H. R. _____

To amend the Department of Education Organization Act to codify into law the “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties”, issued January 19, 2001, by the Office for Civil Rights of the Department of Education, as in effect on January 1, 2017; the Dear Colleague letter issued April 4, 2011, by the Office for Civil Rights of the Department of Education, as in effect on January 1, 2017; and the “Questions and Answers on Title IX and Sexual Violence” issued April 29, 2014, by the Office for Civil Rights of the Department of Education, as in effect on January 1, 2017.

IN THE HOUSE OF REPRESENTATIVES

Ms. SPEIER (for herself and [see ATTACHED LIST of cosponsors]) introduced the following bill; which was referred to the Committee on

A BILL

To amend the Department of Education Organization Act to codify into law the “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties”, issued January 19, 2001, by the Office for Civil Rights of the Department of Education, as in effect on January 1, 2017; the Dear Colleague letter issued April 4, 2011, by the Office for Civil Rights of the Department of Education, as in effect

on January 1, 2017; and the “Questions and Answers on Title IX and Sexual Violence” issued April 29, 2014, by the Office for Civil Rights of the Department of Education, as in effect on January 1, 2017.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Title IX Protection
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Education has long been recognized as the
9 great equalizer in America.

10 (2) The Congress believes that providing all
11 students with an educational environment free from
12 discrimination is extremely important. The sexual
13 harassment of students, including sexual violence,
14 creates a hostile environment, interferes with the
15 right of students to receive an education free from
16 discrimination, and is a form of discrimination pro-
17 hibited by title IX of the Education Amendments of
18 1972.

19 (3) Each school has a responsibility to prompt-
20 ly, thoroughly, and fairly investigate when sexual
21 harassment is reported or observed by school em-
22 ployees.

1 (4) Sexual harassment of students, including
2 acts of sexual violence, is a form of sex discrimina-
3 tion prohibited by title IX of the Education Amend-
4 ments of 1972.

5 (5) In order to assist school districts, colleges,
6 and universities (hereinafter “schools”) in meeting
7 these obligations, the Department of Education and
8 its Office for Civil Rights (OCR) issued a Dear Col-
9 league letter on April 4, 2011 (2011 DCL), remind-
10 ing schools that the requirements of title IX per-
11 taining to sexual harassment also cover sexual vio-
12 lence, and that laid out the specific steps schools
13 shall take when responding to sexual violence.

14 (6) The 2011 DCL supplemented the “Revised
15 Sexual Harassment Guidance: Harassment of Stu-
16 dents by School Employees, Other Students, or
17 Third Parties”, issued January 19, 2001 (2001
18 Guidance), by the OCR under the William Jefferson
19 Clinton Administration, and then reissued January
20 25, 2006, by the OCR under the George W. Bush
21 Administration, by providing additional guidance
22 and practical examples regarding the title IX re-
23 quirements as they relate to sexual violence.

24 (7) In responding to requests for technical as-
25 sistance, OCR determined that schools would benefit

1 from additional guidance concerning their obliga-
2 tions under title IX to address sexual violence as a
3 form of sexual harassment, and issued the “Ques-
4 tions and Answers on Title IX and Sexual Violence”
5 on April 29, 2014 (2014 Q&A), to further clarify the
6 legal requirements and guidance articulated in the
7 2011 DCL and the 2001 Guidance. The 2014 Q&A
8 included examples of proactive efforts schools can
9 take to prevent sexual violence and remedies schools
10 may use to end such conduct, prevent its recurrence,
11 and address its effects.

12 (8) On September 7, 2017, Secretary of Edu-
13 cation Betsy DeVos announced that OCR would be
14 opening up a formal notice and comment period to
15 replace the 2011 DCL.

16 (9) On September 22, 2017, OCR rescinded
17 both the 2011 DCL and the 2014 Q&A, and re-
18 leased a new interim Q&A (2017 Interim Guidance)
19 for schools on how to investigate and adjudicate alle-
20 gations of campus sexual misconduct under Federal
21 law.

22 (10) Although it is Congress’s view that title IX
23 already requires the elements laid out in the amend-
24 ment made by this Act, OCR’s recent actions allow
25 schools to discriminate against survivors of sexual

1 harassment and violence, contradicts the long-
2 standing 2001 Guidance, and has already caused
3 confusion for schools and students.

4 (11) Therefore Congress has decided to reit-
5 erate and codify portions of the 2001 Guidance, the
6 2011 DCL, and the 2014 Q&A to provide clarity for
7 schools and students regarding what is required
8 under title IX with regard to sexual harassment, in-
9 cluding sexual violence.

10 **SEC. 3. DEFINITIONS.**

11 For purposes of this Act:

12 (1) The term “2001 Guidance” means the “Re-
13 vised Sexual Harassment Guidance: Harassment of
14 Students by School Employees, Other Students, or
15 Third Parties”, issued January 19, 2001, by the Of-
16 fice for Civil Rights of the Department of Edu-
17 cation, as in effect on January 1, 2017.

18 (2) The term “2011 DCL” means the Dear
19 Colleague letter issued April 4, 2011, by the Office
20 for Civil Rights of the Department of Education, as
21 in effect on January 1, 2017.

22 (3) The term “2014 Q&A” means the “Ques-
23 tions and Answers on Title IX and Sexual Violence”
24 issued April 29, 2014, by the Office for Civil Rights

1 of the Department of Education, as in effect on Jan-
2 uary 1, 2017.

3 (4) The term “sexual harassment” means un-
4 wanted conduct of a sexual nature, including sexual
5 violence and gender-based violence, and includes the
6 meaning given to the term “sexual harassment” in
7 the 2001 Guidance, which includes unwelcome sex-
8 ual advances, requests for sexual favors, and other
9 verbal, nonverbal, or physical conduct of a sexual
10 nature.

11 (5) The term “sexual violence” means rape,
12 sexual assault, sexual battery, and sexual coercion,
13 and refers to the definition in the 2011 DCL.

14 **SEC. 4. CODIFICATION AMENDMENT.**

15 Section 203 of the Department of Education Organi-
16 zation Act (20 U.S.C. 3413) is amended by adding at the
17 end the following:

18 “(d) Recipients of Federal financial assistance shall
19 comply with the following procedural requirements to re-
20 spond to sexual harassment, including sexual violence, in
21 order to prevent and effectively respond to sex discrimina-
22 tion in alignment with title IX of the Education Amend-
23 ments of 1972. Specifically, a recipient shall do all of the
24 following:

1 “(1) Disseminate a notice of nondiscrimination
2 on the basis of sex.

3 “(2) Designate at least one employee to coordi-
4 nate its efforts to comply with and carry out its re-
5 sponsibilities under title IX. The school shall notify
6 all students and employees of the name, office ad-
7 dress, telephone number, and email address of all
8 such designated employees.

9 “(3) Adopt and publish grievance procedures
10 providing for prompt and equitable resolution of stu-
11 dent and employee sex discrimination complaints.
12 Grievance procedures may include voluntary infor-
13 mal mechanisms (e.g., mediation) for resolving some
14 types of sexual harassment complaints, however, a
15 student who complains of harassment shall not be
16 required to work out the problem directly with the
17 alleged perpetrator via mediation, especially without
18 appropriate involvement by the school (e.g., partici-
19 pation by a trained counselor, a trained mediator,
20 or, if appropriate, a teacher or administrator).

21 “(4) Notify the complainant of the right to end
22 the informal process at any time and begin the for-
23 mal stage of the complaint process. Mediation and
24 informal resolution are options for resolving some
25 types of sexual harassment complaints, so long as

1 the school completes its investigative requirements if
2 one of these options is employed. Mediation shall not
3 be used to resolve complaints involving allegations of
4 sexual violence.

5 “(5) Require a school to address sexual harass-
6 ment, including sexual violence, about which a re-
7 sponsible school employee knew or should have
8 known. A responsible employee includes any em-
9 ployee who has the authority to take action to re-
10 dress sexual harassment, who has been given the
11 duty of reporting incidents of sexual harassment or
12 any other misconduct to the title IX coordinator or
13 other appropriate school designee, or whom a stu-
14 dent could reasonably believe has the authority or
15 duty.

16 “(6) Require that if a school knows or reason-
17 ably should know about sexual harassment that cre-
18 ates a hostile environment, the school shall take im-
19 mediate action to eliminate the harassment, prevent
20 its recurrence, and address its effects. Sexual har-
21 assment creates a hostile environment if the conduct
22 is sufficiently serious that it interferes with or limits
23 a student’s ability to participate in or benefit from
24 the school’s program. The more severe the conduct,
25 the less need there is to show a repetitive series of

1 incidents to prove a hostile environment, particularly
2 if the harassment is physical. A single or isolated in-
3 cident of sexual harassment may create a hostile en-
4 vironment if the incident is sufficiently severe. For
5 instance, a single instance of rape is sufficiently se-
6 vere to create a hostile environment.

7 “(7) Require a school to process all complaints
8 of sexual violence, regardless of where the conduct
9 occurred, to determine whether the conduct occurred
10 in the context of an education program or activity
11 or had continuing effects on campus or in an off-
12 campus education program or activity. A school’s
13 title IX investigation is different from any law en-
14 forcement investigation, and a law enforcement in-
15 vestigation does not relieve the school of its inde-
16 pendent title IX obligation to investigate the con-
17 duct. A school shall take steps to ensure the inves-
18 tigation is impartial. Any real or perceived conflict
19 of interest between the investigator and the parties
20 involved shall be disclosed.

21 “(8) Require a school to use a preponderance of
22 the evidence standard (i.e., it is more likely than not
23 that sexual harassment or violence occurred) in its
24 grievance procedures to be consistent with title IX
25 standards.

1 “(9) Require that throughout the investigation,
2 the parties shall have an equal opportunity to
3 present relevant witnesses and other evidence.

4 “(10) Require that the complainant and re-
5 spondent be afforded similar and timely access to
6 any information that will be used at the hearing.

7 “(11) Require that if the school allows one
8 party to be present for the entirety of a hearing, it
9 shall do so equally for both parties. When requested,
10 a school shall make arrangements so that the com-
11 plainant and the alleged perpetrator do not have to
12 be present in the same room at the same time (e.g.,
13 using closed-circuit television). If a hearing is part
14 of the school’s title IX investigation process, the
15 school shall not require a complainant to be present
16 at the hearing as a prerequisite to proceed with the
17 hearing.

18 “(12) Require that all persons involved in im-
19 plementing a school’s grievance procedures (e.g.,
20 title IX coordinators, investigators, and adjudica-
21 tors) have training or experience in handling com-
22 plaints of sexual harassment and sexual violence and
23 in the school’s grievance procedures.

1 “(13) Require that if an appeal of findings or
2 remedy is provided by a school, it shall be provided
3 to both parties.

4 “(14) Require schools to maintain documenta-
5 tion of all proceedings, which may include written
6 findings of facts, transcripts, or audio recordings.

7 “(15) Not require schools to permit parties to
8 have lawyers at any stage of the grievance pro-
9 ceedings, but if a school chooses to allow the parties
10 to have their lawyers participate in the proceedings,
11 it shall do so equally for both parties. Any school-
12 imposed restrictions on the ability of lawyers to
13 speak or otherwise participate in the proceedings
14 shall apply equally to both parties.

15 “(16) Require schools not to allow the parties
16 to personally question or cross-examine each other
17 during the hearing as allowing an alleged perpe-
18 trator to question an alleged victim directly may be
19 traumatic or intimidating, thereby possibly esca-
20 lating or perpetuating a hostile environment. A
21 school may choose, instead, to allow the parties to
22 submit questions to a trained third party (e.g. the
23 hearing panel) to ask the questions it deems appro-
24 priate and relevant on their behalf, except that ques-
25 tioning about the complainant’s sexual history, with

1 anyone other than the respondent, shall not be per-
2 mitted. A school should recognize that the mere fact
3 of a current or previous consensual dating or sexual
4 relationship between the two parties does not itself
5 imply consent or preclude a finding of sexual vio-
6 lence.

7 “(17) Advise that a school may provide advisors
8 for both the complainant and the respondent. If a
9 school provides an advisor, it shall do so for both
10 parties, with the same information available both ad-
11 visors.

12 “(18) Require schools to inform and obtain con-
13 sent from the complainant (or the complainant’s
14 parents if the complainant is under 18 and does not
15 attend a postsecondary institution) before beginning
16 an investigation.

17 “(19) Require that if the complainant requests
18 confidentiality, or asks that the complaint not be
19 pursued, the school shall take all reasonable steps to
20 investigate and respond to the complaint consistent
21 with the request for confidentiality or request not to
22 pursue an investigation. If a complainant insists
23 that the complainant’s name or other identifiable in-
24 formation not be disclosed to the alleged perpetrator,
25 the school shall inform the complainant that its abil-

1 ity to respond may be limited. Even if the school
2 cannot take disciplinary action against the alleged
3 harasser because the complainant insists on con-
4 fidentiality, it shall pursue other steps to limit the
5 effects of the alleged harassment and prevent its re-
6 currence. Schools shall refer to the 2001 Guidance
7 for additional information on confidentiality and the
8 alleged perpetrator's due process rights. If the com-
9 plainant continues to ask that the complainant's
10 name or other identifiable information not be re-
11 vealed, the school shall evaluate that request in the
12 context of its responsibility to provide a safe and
13 nondiscriminatory environment for all students. Spe-
14 cifically, the school may weigh the request for con-
15 fidentiality against all of the following factors:

16 “(A) The seriousness of the alleged harass-
17 ment.

18 “(B) The complainant's age.

19 “(C) Whether there have been other har-
20 assment complaints about the same individual.

21 “(D) The alleged harasser's rights to re-
22 ceive information about the allegations if the in-
23 formation is maintained by the school as an
24 education record under the Family Educational

1 Rights and Privacy Act (FERPA) 20 U.S.C.
2 1232g).

3 “(20) Require that if the alleged harasser may
4 have a right under FERPA to inspect and review
5 portions of the complaint that directly relate to the
6 complainant, the school shall redact the complain-
7 ant’s name and other identifying information before
8 allowing the alleged harasser to inspect and review
9 the sections of the complaint that relate to the com-
10 plainant. In some cases, such as those where the
11 school is required to report the incident to local law
12 enforcement or other officials, the school may not be
13 able to maintain the complainant’s confidentiality.

14 “(21) Require that the school shall inform the
15 complainant if it cannot ensure confidentiality prior
16 to disclosing the complainant’s identity.

17 “(22) Require that grievance procedures specify
18 the timeframe within which—

19 “(A) the school will conduct a full inves-
20 tigation of the complaint;

21 “(B) both parties receive a response re-
22 garding the outcome of the complaint; and

23 “(C) both parties may file an appeal, if ap-
24 plicable.

1 “(23) Advise that an investigation should con-
2 clude approximately in the 60-calendar-day time-
3 frame for investigations following receipt of the com-
4 plaint, depending on the complexity of the investiga-
5 tion and the severity and extent of the harassment,
6 except in cases—

7 “(A) involving multiple incidents with mul-
8 tiple complainants; or

9 “(B) where there is a parallel criminal in-
10 vestigation.

11 Although a school may need to delay temporarily the
12 fact-finding portion of a title IX investigation while
13 the police are gathering evidence, it shall promptly
14 resume and complete its fact-finding for the title IX
15 investigation once it learns that the police depart-
16 ment has completed its evidence-gathering stage of
17 the criminal investigation. The school should not
18 delay its investigation until the ultimate outcome of
19 the criminal investigation or the filing of any
20 charges. Where a school may need to stop an inves-
21 tigation during school breaks or between school
22 years, a school shall make every effort to try to con-
23 duct an investigation during these breaks unless so
24 doing would sacrifice witness availability or other-
25 wise compromise the process.

1 “(24) Both parties shall be given periodic sta-
2 tus updates during throughout the grievance proc-
3 ess.

4 “(25) Require that schools notify both parties,
5 in writing, about the outcome of both the complaint
6 and any appeal. A school shall provide written notice
7 of the outcome to the complainant and the respond-
8 ent concurrently. A school shall inform the complain-
9 ant as to whether or not it found that the alleged
10 conduct occurred, any individual remedies offered or
11 provided to the complainant, or any sanctions im-
12 posed on the perpetrator that directly relate to the
13 complainant, and other steps the school has taken to
14 eliminate the hostile environment, if the school finds
15 one to exist, and prevent recurrence. Sanctions that
16 directly relate to the complainant include, but are
17 not limited to, requiring that the perpetrator stay
18 away from the complainant until both parties grad-
19 uate, prohibiting the perpetrator from attending
20 school for a period of time, or transferring the per-
21 petrator to another residence hall, other classes, or
22 another school. The perpetrator shall not be notified
23 of the individual remedies offered or provided to the
24 complainant.

1 “(26) In addition, the Clery Act requires, and
2 FERPA permits, postsecondary institutions to in-
3 form the complainant of the institution’s final deter-
4 mination and any disciplinary sanctions imposed on
5 the perpetrator in sexual violence cases, not just
6 those sanctions that directly relate to the complain-
7 ant.

8 “(27) Require that if a school determines that
9 sexual harassment that creates a hostile environment
10 has occurred, it shall take immediate action to elimi-
11 nate the hostile environment, prevent its recurrence,
12 and address its effects. When a school knows or rea-
13 sonably should know of possible retaliation by other
14 students or third parties, it shall take immediate
15 and appropriate steps to investigate or otherwise de-
16 termine what occurred. A school shall also take steps
17 to protect the complainant as necessary, including
18 taking interim steps before the final outcome of the
19 investigation. The school shall undertake these steps
20 promptly once it has notice of a sexual harassment
21 or violence allegation. The school shall notify the
22 complainant of the complainant’s options to avoid
23 contact with the alleged perpetrator and allow stu-
24 dents to change academic or living situations as ap-
25 propriate.

1 “(28) When taking steps to separate the com-
2 plainant and alleged perpetrator, a school shall mini-
3 mize the burden on the complainant, and thus shall
4 not, as a matter of course, remove complainants
5 from classes or housing while allowing alleged per-
6 petrators to remain.

7 “(29) In addition, schools shall ensure that
8 complainants are aware of their title IX rights and
9 any available resources, such as counseling, health,
10 and mental health services, and their right to file a
11 complaint with local law enforcement.

12 “(30) If a school determines that it needs to
13 offer counseling to the complainant as part of its
14 title IX obligation to take steps to protect the com-
15 plainant while the investigation is ongoing, it shall
16 not require the complainant to pay for this service.

17 “(e) For purposes of this section:

18 “(1) The term ‘2001 Guidance’ means the ‘Re-
19 vised Sexual Harassment Guidance: Harassment of
20 Students by School Employees, Other Students, or
21 Third Parties’, issued January 19, 2001, by the Of-
22 fice for Civil Rights of the Department of Edu-
23 cation, as in effect on January 1, 2017.

24 “(2) The term ‘2011 DCL’ means the Dear
25 Colleague letter issued April 4, 2011, by the Office

1 for Civil Rights of the Department of Education, as
2 in effect on January 1, 2017.

3 “(3) The term ‘2014 Q&A’ means the ‘Ques-
4 tions and Answers on Title IX and Sexual Violence’
5 issued April 29, 2014, by the Office for Civil Rights
6 of the Department of Education, as in effect on Jan-
7 uary 1, 2017.

8 “(4) The term ‘sexual harassment’ means un-
9 wanted conduct of a sexual nature, including sexual
10 violence and gender-based violence, and includes the
11 meaning given to the term ‘sexual harassment’ in
12 the 2001 Guidance, which includes unwelcome sex-
13 ual advances, requests for sexual favors, and other
14 verbal, nonverbal, or physical conduct of a sexual
15 nature.

16 “(5) The term ‘sexual violence’ means rape,
17 sexual assault, sexual battery, and sexual coercion,
18 and refers to the definition in the 2011 DCL.

19 “(6) The term ‘60-calendar-day timeframe for
20 investigations’ has the meaning given such term in
21 the 2014 Q&A and includes the entire investigation
22 process, which includes conducting the fact-finding
23 investigation, holding a hearing or engaging in an-
24 other decisionmaking process to determine whether
25 the alleged sexual violence occurred and created a

1 hostile environment, and determining what actions
2 the school will take to eliminate the hostile environ-
3 ment and prevent its recurrence, including imposing
4 sanctions against the perpetrator and providing rem-
5 edies for the complainant and school community, as
6 appropriate. Such term does not include appeals, but
7 an unduly long appeals process may impact whether
8 the school's response was prompt and equitable as
9 required by title IX.

10 “(7) The term ‘advisor’ has the meaning given
11 such term in section 304(5)(iv)(II) of the Violence
12 Against Women Reauthorization Act of 2013 (Public
13 Law 113–4).”.