

Congress of the United States

Washington, DC 20515

January 2, 2023

The Honorable Miguel Cardona, Ed.D.
Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, District of Columbia 20202

Catherine E. Lhamon
Assistant Secretary, Office of Civil Rights
United States Department of Education
400 Maryland Avenue, SW
Washington, District of Columbia 20202

Dear Secretary Cardona and Assistant Secretary Lhamon,

We understand you received significant comment from a variety of stakeholders in the Notice of Proposed Rulemaking for Title IX amendments. As you consider these proposed changes, we encourage you to pay particular attention to how *other* confidential and supportive resources fall under the definition of confidential employees.

As you know, providing support to both victims/survivors *and* respondents engaged in a Title IX issue is not limited to the Title IX office or processes. Support is instead provided by a host of formal *and informal* resources, each focused on assistance to those who are in the middle of a Title IX issue¹. Your suggestion to better define non-reporting confidential employees furthers this understanding and the NOPR specifically recognizes this important interest:

“The Department also notes that making confidential employees available may also result in more individuals feeling comfortable to seek the support they need to address the immediate effects of sex-based harassment or other sex discrimination and ultimately find the confidence to make the recipient aware of incidents that may otherwise have gone unreported.”²

However, as proposed, the definition of confidential employee could mistakenly be limited and should be clarified. We understand the International Ombuds Association has filed non-partisan, technical comments that address clarifications around the definition and encourages the Department not to restrict the number of employees that can be deemed as confidential--particularly those such as ombuds that already serve effectively on many campuses. These clarifications ensure confidential resources and mandated reporters alike are clearly and effectively identified as “survivor/complainant-supporting” and “respondent-supporting.”

We encourage the Department to take a comprehensive view of the various confidential resources available and agree in principle with the bi-partisan concepts and goals shared by the International Ombuds Association.

We look forward to supporting your efforts to do so.

Sincerely,

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¹ This includes the support provided by a university, student, faculty and/or staff organizational ombuds, ombudsperson or ombudsman.

² Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, ED-2021-OCR-0166-0001 (proposed July 12, 2022) at 191

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Ann McLane Kuster
Member of Congress

Handwritten signature of Brian Fitzpatrick in blue ink, written over a horizontal line.

Brian Fitzpatrick
Member of Congress