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March 27, 2020

The Honorable Elisabeth DeVos
Secretary
United States Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

The Honorable Russell T. Vought
Acting Director
The Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

The Honorable Kenneth L. Marcus
Assistant Secretary for Civil Rights
Office for Civil Rights
United States Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

The Honorable Paul Ray
Administrator, Office of Information and
Regulatory Affairs
The Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Dear Secretary DeVos, Acting Director Vought, Assistant Secretary Marcus, and Administrator Ray:

On behalf of Pennsylvania, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai'i, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Rhode Island, Vermont, and Virginia, we urge the Department of Education (the Department) and the Office of Management and Budget (OMB) to suspend the rulemaking process for the proposed regulations implementing Title IX of the Education Amendments of 1972 (Title IX) entitled *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* (RIN 1870-AA14). We ask that this rulemaking remain suspended while our nation's educational institutions respond to the national emergency caused by the novel coronavirus (COVID-19)¹ and until both K-12 schools and institutions of higher education resume normal operations. Doing so would be consistent

¹ *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

with the Acting Director Vought's recent directive requiring agencies to "prioritize all resources to slow the transmission of COVID-19."²

The COVID-19 pandemic has dramatically disrupted most aspects of daily American life. The United States has the most confirmed coronavirus cases of any other country, surpassing Italy and China, and is currently considered the epicenter of COVID-19.³ To minimize the spread of the virus, individuals must avoid contact with others and remain at home as much as possible. The Centers for Disease Control and Prevention and the White House have discouraged gatherings of more than ten people and urged everyone who can to work or engage in schooling from home.⁴ The White House has encouraged states and localities to close schools in affected areas to limit community transmission because school operations "can accelerate the spread of the coronavirus."⁵

Some states have taken additional steps to protect their citizens by requiring all non-essential workers to remain at home. For example, Pennsylvania has ordered the closure of all non-life sustaining businesses.⁶ California's Governor has ordered all individuals to stay at home or at their place of residence, except as needed to maintain continuity of operations of the federal

² Memorandum for the Heads of Departments and Agencies from Russell T. Vought, Acting Director, OMB, *Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19* (Mar. 17, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf>.

³ L.A. Times, Newsletter, *The Epicenter is Now the U.S.* (Mar. 27, 2020), <https://www.latimes.com/world-nation/newsletter/2020-03-27/coronavirus-cases-united-states-newsletter-todays-headlines>.

⁴ *The President's Coronavirus Guidelines for America* (Mar. 16, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf; Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19), How to Protect Yourself* (Mar. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

⁵ *The President's Coronavirus Guidelines for America* (Mar. 16, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

⁶ *Gov. Wolf, Secretary Levine Provide Updated Guidance, Stress Need for Compliance as Cases Rise* (Mar. 20, 2020), <https://www.governor.pa.gov/newsroom/gov-wolf-secretary-levine-provide-updated-guidance-stress-need-for-compliance-as-cases-rise/>

critical infrastructure sectors.⁷ In total, twenty-two states and many localities have issued stay-at-home orders.⁸

In response to this extraordinary national public health emergency, schools across the country have taken drastic measures to protect their students, faculty, and staff. Forty-seven states and many localities have decided to shut down all of their K-12 schools at least temporarily, with most states extending closures into April.⁹ As a result, at least 124,000 public and private schools—representing over 93% of all K-12 institutions—are closed or will be closing, affecting 55.1 million students.¹⁰ While some of these closures are currently temporary, it is likely that many schools will remain closed indefinitely.¹¹ Several states have ordered their K-12 schools to close and end in-person instruction through the end of the school year,¹² and other states may soon follow suit.¹³

In addition, more than 1,140 colleges and universities are temporarily closed and transitioning to remote learning, affecting more than 14.5 million students.¹⁴ Many of these

⁷ Executive Order, N-33-20 (Mar. 19, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf>.

⁸ Sarah Mervosh, Denise Lu & Vanessa Swales, *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. Times (updated Mar. 27, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>.

⁹ Educ. Week, *Map: Coronavirus and School Closures* (updated Mar. 26, 2020), <https://www.edweek.org/ew/section/multimedia/map-coronavirus-and-school-closures.html>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*; see, e.g., KSHB, *Kansas City, Kansas Governor Orders Schools to Close for Rest of Academic Year due to COVID-19* (Mar. 17, 2020), <https://www.kshb.com/news/coronavirus/kansas-governor-orders-schools-to-close-for-rest-of-academic-year-due-to-covid-19>; Wavy, *Coronavirus Monday Updates: Va. Schools Closed Through End of Academic Year, NC Schools Closed Through May 15* (Mar. 23, 2020), <https://www.wavy.com/news/virginia/coronavirus-monday-updates-virginia-now-has-254-cases-6-deaths-reported/>.

¹³ E.g., David Nagel, *Updated List of Statewide School Closures with Closure Dates*, The Journal (updated Mar. 26, 2020), <https://thejournal.com/articles/2020/03/17/list-of-states-shutting-down-all-their-schools-grows-to-36.aspx>; Caitlin Okane, *Some Schools will Remain Closed for the Rest of the School Year. Here's what to Expect if it Happens in Your District*, CBS News (Mar. 18, 2020), <https://www.cbsnews.com/news/coronavirus-schools-closed-remainder-of-year-childcare-work-from-home-emergency-kids-covid-19-outbreak/>.

¹⁴ Entangled Solutions, *COVID-19: Higher Education Resource Center* (updated Mar. 26, 2020), <https://www.entangled.solutions/coronavirus-he/>.

higher education institutions have also required students to vacate on-campus housing,¹⁵ while faculty and staff in many states are now encouraged or required to practice social distancing by working and teaching from home.¹⁶

This unprecedented pandemic—and the necessary steps our country is taking to mitigate and minimize its harms—has placed a significant strain on our schools and our students. With school resources already stretched thin, now is not the time to require school administrators, faculty, and staff to review new, complex Title IX regulations, revise their schools’ policies in response, and communicate these changes to students and parents. The changes outlined in the proposed rule would take a great deal of an institution’s time, resources, and effort in the best of circumstances. But in the midst of a national health emergency, the burden placed on schools would be untenable and ultimately counterproductive to student safety. Instead, educational resources should be preserved at this time to focus on providing education and other critical services for our students.

Finalizing the proposed rule now would also cause significant confusion about ongoing Title IX complaints and investigations, which have already been disrupted by the sudden closures and social distancing requirements. During this crisis, schools will need the flexibility to fashion and revise investigation, resolution, and grievance procedures on an ongoing basis, in order to carry out Title IX’s mandate in the manner that best addresses the impact of the pandemic and the needs of their school populations and communities. And if the regulations are finalized as proposed, then some new legal obligations—such as the proposed requirement for all higher education institutions to hold live hearings with all parties and witnesses present—would be both impossible and unsafe.

¹⁵ Abigail Hess, *How coronavirus dramatically changed college for over 14 million students*, CNBC (Mar. 26, 2020), <https://www.cnbc.com/2020/03/26/how-coronavirus-changed-college-for-over-14-million-students.html>.

¹⁶ Inside Higher Ed, *Will Shift to Remote Teaching Be Boon or Bane for Online Learning?* (Mar. 18, 2020), <https://www.insidehighered.com/digital-learning/article/2020/03/18/most-teaching-going-remote-will-help-or-hurt-online-learning>.

With everything our schools and students are facing right now, we strongly urge you not to impose further substantial regulatory burdens. To ensure that our schools can focus on serving our communities, we ask the Department and OMB to announce that they are suspending the rulemaking process for the proposed Title IX regulations until the national emergency has ended and our schools have resumed their regular operations.

Sincerely,



JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania



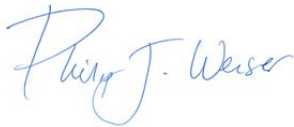
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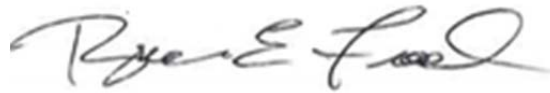
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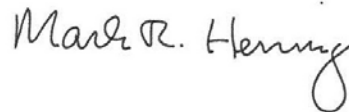
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