

Congress of the United States
Washington, DC 20515

July 20, 2022

The Honorable Miguel Cardona
Secretary of Education
U.S. Department of Education
Washington, DC 20202

Dear Secretary Cardona:

We write to express our significant concerns about the Supreme Court's recent decision in *Dobbs v. Jackson Women's Health Organization*, in which a majority of the justices held that the Constitution does not confer a right to an abortion. As a result, reproductive freedom is now stripped from millions of women – including pregnant students – across the United States.

This decision will diminish the ability of pregnant students to access safe and legal reproductive care and place a heavier burden on institutions of higher education (IHEs), many of which are woefully underprepared to handle a sharp increase in pregnant and parenting students.¹ Creating additional barriers for students to access reproductive care and, in effect forcing many students to carry pregnancies to term, would likely prevent students from feeling safe on campus, hinder their ability to access equitable educational opportunities, and even interfere with their completion and graduation plans. Data from the National Center for Education Statistics show that parenting students are 10 times less likely to graduate from college on time than their peers without children,² resulting in, among other adverse outcomes, reduced lifetime earnings.³ Together, a lack of comprehensive support for pregnant and parenting students and a nationwide assault on reproductive rights significantly threaten the health and well-being of students.

Encouragingly, the Department of Education (Department)'s recently announced Title IX Notice of Proposed Rulemaking (NPRM) includes improved protections for pregnant and parenting students and employees in schools and IHEs nationwide. We recognize that these proposals are still subject to a public review process and have yet to be finalized. As such, we ask that you promptly exercise the Department's existing authority to make sure that pregnant students have equal access to educational programs and activities. As you know, Title IX has long protected against discrimination on the basis of pregnancy and termination of pregnancy by prohibiting

¹ Quilantan, B. (2022, June 24). Colleges aren't prepared for Roe's Fall. POLITICO. Retrieved July 11, 2022, from <https://www.politico.com/news/2022/06/24/roe-decision-colleges-pregnant-students-00042246>

² United States Department of Education . (n.d.). Beginning postsecondary students longitudinal study (BPS) - overview. National Center for Education Statistics (NCES). Retrieved July 11, 2022, from <https://nces.ed.gov/surveys/bps/>

³ Opening Doors for Young Parents. The Annie E. Casey Foundation. (2018, September 25). Retrieved July 11, 2022, from <https://www.aecf.org/resources/opening-doors-for-young-parents>

IHEs from taking retaliatory action against students and excluding them from educational programs and activities for their reproductive decisions.⁴ By striking down nearly 50 years of precedent and paving the way for state laws that criminalize the termination of a pregnancy and have already stripped reproductive freedom from millions of women, the Supreme Court has taken a step toward denying the educational and privacy rights of students nationwide.

Because of the urgency of this moment for pregnant students around the country – particularly those who attend IHEs in states that have already denied or plan to deny women the opportunity to make their own reproductive decisions and chart their own futures – we urge the Department to take the following steps to protect students using the authority granted by Title IX.

1. **Reiterate the scope of Title IX’s protections for pregnant and parenting students and issue guidance to campuses on their roles and responsibilities under Title IX.** In the context of the *Dobbs* decision and greater uncertainty and fear among women nationwide, the Department can and must play a role in reminding women of the protections they will continue to have in the classroom and at their workplace. The Know Your Rights document for pregnant or parenting students, which is published on the Department’s website, explicitly states that schools and IHEs must excuse absences and provide opportunities for making up missed work for excused absences related to pregnancy and childbirth.⁵ We ask that the Department publish updated guidance for students and IHEs clarifying that conditions related to pregnancy, including recovery time from the termination of a pregnancy, are also protected under Title IX. Within this guidance, we ask that you remind IHEs that the right to receive an education free from sex-based harassment continues to apply for students who choose to terminate their pregnancy. We also urge the Department to widely disseminate the updated guidance in an easily-accessible, multilingual format.
2. **Prohibit IHEs from suspending, expelling, and referring to law enforcement students who terminate a pregnancy.** Interfering with the ability of students to learn and remain on campus because of pregnancy and any related conditions, including termination of a pregnancy, constitutes a denial of students’ rights to equal educational programs and activities under Title IX. In instances where an IHE subjects a student to suspension or expulsion proceedings or refers that student to local authorities because the student may potentially violate state law by terminating their pregnancy, we urge the Department to make the IHE aware that taking either action may place the IHE in violation of Title IX and, if this is the case, jeopardize the IHE’s eligibility to receive federal funding.
3. **Increase outreach to students and oversight and investigations of IHEs in violation of Title IX.** We request the Department’s Office for Civil Rights (OCR) to increase its

⁴ Title IX Legal Manual - Discriminatory Conduct. Justia. (2022, June 23). Retrieved July 11, 2022, from <https://www.justia.com/education/docs/title-ix-legal-manual/discriminatory-conduct/>, United States Department of Education. (2020, January 16). Pregnancy or parental status. Office for Civil Rights (OCR). Retrieved July 11, 2022, from <https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/sex-issue03.html>

⁵ United States Department of Education. (2020, January 10). Know Your Rights: Pregnant or Parenting? Title IX Protects You From Discrimination At School. Office for Civil Rights (OCR). Retrieved July 11, 2022, from <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201306-title-ix.html>

outreach to Title IX coordinators and students to inform them of their ability to file a complaint with OCR for a perceived violation of their Title IX rights. Although we recognize that the Department may not have comprehensive data on pregnant and parenting students and students who have terminated their pregnancy, we are confident that expanding direct outreach to all students will boost the Department's ability to effectively conduct oversight and investigate perceived Title IX violations against students who are pregnant or have terminated their pregnancy. Additionally, we urge the Department to conduct oversight and investigations through OCR to identify and take enforcement actions against IHEs that neglect, willfully or otherwise, to provide adequate protection and care to pregnant and parenting students on campus in accordance with Title IX. We specifically ask that OCR target in its investigatory and enforcement activities IHEs in states with restrictive reproductive laws that suspend, expel, or refer to law enforcement students who terminate their pregnancy, visit an in-state or out-of-state healthcare provider for an abortion consultation, or seek contraceptive care.

4. **Request assurances from IHEs, including those claiming a religious exemption to Title IX, about how they will protect students who are pregnant and how they will address disparate enforcement of Title IX.** We urge that you ask all IHEs, including those that routinely claim a religious exemption from specific provision(s) within Title IX, for details about how they plan to comply with Title IX related to pregnancy, related conditions, and termination of pregnancy. We also urge you to provide guidance to IHEs, including those claiming and receiving a religious exemption to provision(s) in Title IX, about how these institutions can better provide accommodations for students who might be pregnant. The inequitable, discriminatory nature of IHEs claiming religious exemptions and the series of recent lawsuits against the Department for issuing these exemptions to Title IX's broad federal antidiscrimination mandate⁶ raise concerns about the ability and willingness of these same institutions to provide care and support to their pregnant students and students who might choose to terminate their pregnancy. Similarly, we are also concerned about the potential for disparate enforcement by IHEs, including those that claim a religious exemption, in cases where they choose to subject a pregnant student to disciplinary action. Specifically, the burdens and consequences associated with pregnancy and childbirth, or termination of a pregnancy, are often disproportionately felt by the people who are pregnant rather than by the people who impregnated them. Disciplinary proceedings targeting only pregnant students can result in disparate outcomes for those students and a subsequent Title IX violation from the IHE for failing to uphold gender equity in access to educational opportunities. As such, we urge the Department to ask IHEs about how they plan to investigate or consider disparate treatment between people of different sexes and genders in the application of Title IX and its underlying code of conduct in cases relating to pregnancy and the termination of a pregnancy.

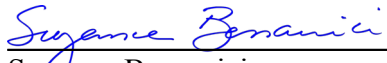
⁶ Redden, E. (2021, April 6). Religious Freedom vs. Freedom From Discrimination. Inside Higher Ed. Retrieved July 11, 2022, from <https://www.insidehighered.com/news/2021/04/06/lgbt-students-sue-education-department-over-title-ix-religious-exemption>


5. **Clarify how *Dobbs* interacts with other privacy laws affecting students.** As you know, college students' educational and health records, respectively, are protected and made private by the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA). Given the complex interaction between Title IX, FERPA, and *Dobbs*, as well as between Title IX and state laws, we seek clarification on which laws will continue protecting students' rights to privacy and, ultimately, equal educational opportunities – particularly in states with restrictive reproductive laws. We encourage the Department to coordinate and align with the Department of Health and Human Services in clarifying and interpreting the legal intersections between *Dobbs*, Title IX, and HIPAA. We are encouraged by the impending guidance from HHS to address how the HIPAA Privacy Rule guarantees the privacy of individuals' protected health information and decisions, as outlined in President Biden's recent Executive Order protecting reproductive rights.⁷ We seek further information on whether these protections will continue to apply for students at on-campus health facilities. For example, if a student visits an on-campus health center to access reproductive care, including contraceptives or a referral to an abortion provider, we seek clarification about whether that student's conversation with their campus health care provider remains confidential and subject to HIPAA, or whether certain states would be able to access the information to use in disciplinary or legal proceedings against the student. Additionally, if a student terminates their pregnancy and informs an academic counselor or mental health care provider employed by the IHE of their decision, we seek clarification on whether that student's conversation with the employee will be protected by FERPA.

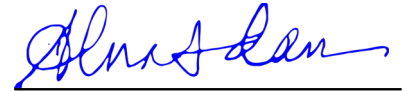
The Supreme Court's disregard for reproductive freedom jeopardizes equal access to opportunity, bodily autonomy, and academic and professional flexibility for millions of women across our nation. With the legal ambiguity surrounding the effects of *Dobbs* in many states and the critical role of the Department in upholding civil rights in education, we urge immediate and deliberate action. We appreciate your timely response to these questions and look forward to our continued work together to protect students and uphold justice.


Sincerely,


⁷ Fact sheet: President Biden to sign executive order protecting access to Reproductive Health Care Services. The White House. (2022, July 8). Retrieved July 11, 2022, from <https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/08/fact-sheet-president-biden-to-sign-executive-order-protecting-access-to-reproductive-health-care-services/>



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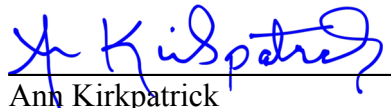

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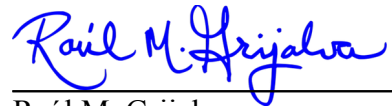
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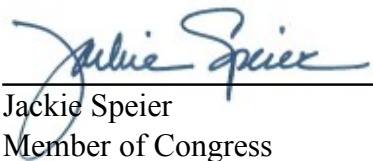
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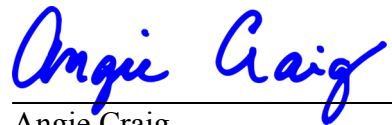
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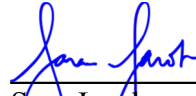
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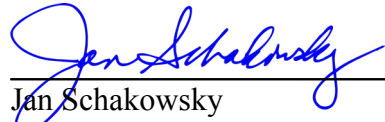
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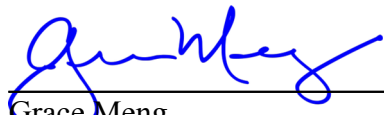
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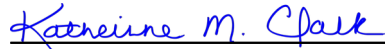
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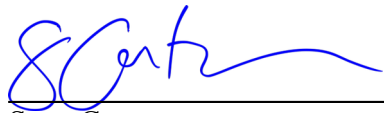
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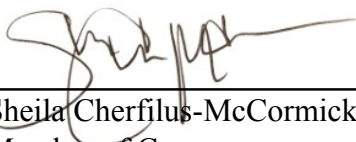
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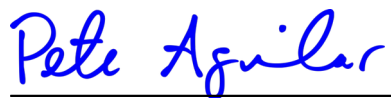
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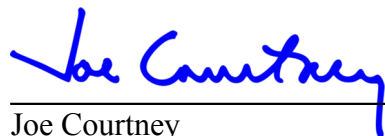
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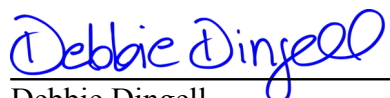
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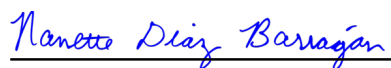
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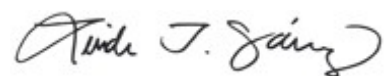
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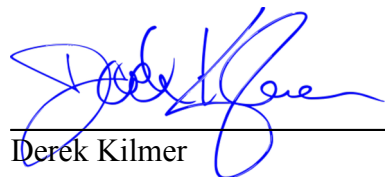
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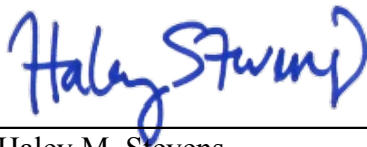
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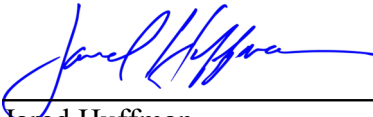
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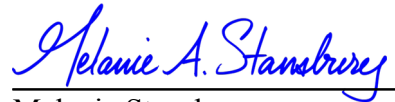
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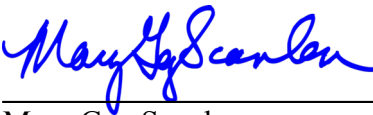
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