



**Comments of the Regulatory Action Center**

RE: Mandatory Civil Rights Data Collection

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The Regulatory Action Center at FreedomWorks Foundation is dedicated to educating Americans about the impact of government regulations on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rule-making process of government agencies to which they are entitled to contribute.

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On behalf of the below-signed individuals and our activists nationwide, FreedomWorks Foundation appreciates the opportunity to offer these comments regarding whether the Department of Education (the Department) should continue to require school districts to report on several different questions regarding school staff on student rape, attempted rape, and sexual assault (other than rape).

FreedomWorks Foundation writes in strong opposition to the proposed rule that would no longer require school districts to report to the Department allegations against school staff of student rape, attempted rape, and sexual assault with respect to staff who resigned or retired prior to final discipline or termination, were responsible for the offense, were not responsible for the offense, had a determination that remained pending, or were followed by a duty reassignment prior to final discipline or termination. The Department's attempt to shield this important data from parents and students is shameful and wrong.

Instead, the Department will ask school districts to report only the number of documented incidents of offenses committed by a school staff member that occurred at the school for offenses of rape, attempted rape, and sexual assault. This new rule does not ask for all allegations, only documented incidents. Moreover, the rule does not require school districts to report on any of the incidents in the previous paragraph. As a result, parents and students will know significantly less about the safety of their school. This rule benefits one group and one group only—the teachers' unions.

Since assuming office, President Biden has done everything in his power to aid the teachers' unions at the expense of our nation's kids. While Joe Biden campaigned on reopening schools in

his first 100 days, when the time came to re-open, he sided with the teachers' unions that wanted to remain closed. This happened even though in many states, teachers went to the front of the line for the vaccine. Moreover, this was despite the fact that in some states like Florida, students were in school for in-person learning for the entire 2020 through 2021 school year.

After parents spent months with their kids over zoom, learning their kids were being indoctrinated with critical race theory, they stood up to voice their concerns at local school board meetings. In response, the National School Board Association (NSBA) wrote to President Biden accusing parents who were exercising their First Amendment rights of being "equivalent to a form of domestic terrorism..." Instead of exercising caution or allowing local law enforcement to handle true threats of violence, Attorney General Merrick Garland issued a memorandum calling on the Federal Bureau of Investigation to meet with local law enforcement to discuss ways to respond to the NSBA letter. The purpose of AG Garland's memo was to intimidate parents and scare them away from school board meetings. Again, the Biden Administration sided with the teachers' union over our nation's kids.

Unfortunately, cases of sexual assault in schools across the United States have been on the rise. In the 2015 through 2016 school year, there were roughly 9,600 incidents of sexual violence in schools. However, in the 2017 through 2018 school year, there were nearly 15,000 reported incidents. In response to this over 50 percent increase, Secretary DeVos took the commonsense step of asking school districts to report different kinds of information with respect to school staff on student rape, attempted rape, and sexual assault. Secretary DeVos also asked schools to bifurcate data between allegations of these incidents between students vs. incidents between students and school staff.

The Department's proposed rule is wrong for many reasons. First, there is an important difference between allegations and documented incidents. Many students might be afraid to go on record against their teachers, and instead seek refuge with the guidance counselor or other trusted school staff. These incidents will now go unreported.

In addition, the Department will no longer collect data on allegations of rape, alleged rape, or sexual assault when school staff resigned, retired, or were reassigned prior to final discipline or termination. However, this data provides an important piece of information. Parents and students should know if school staff is evading discipline by resigning or retiring before an investigation is complete. It helps parents make an informed choice as to what school or school district they should send their child to. The data is also important for school boards and state legislatures to craft legislation to respond to school staff that resigns or retires to short-circuit an investigation into their own wrongdoing. States might also pass legislation that prevents school staff from being reassigned until an investigation into their own wrongdoing is complete.

Lastly, the Department will no longer collect data on allegations of rape, alleged rape, or sexual

assault when school staff were not responsible for the offense, or the investigation is still pending. After 15,000 reported incidents of sexual violence in the 2017 through 2018 school year, this data is crucially important. Not only for the reasons stated above, but also because parents need to feel confident that their school or school district is handling these allegations in a serious way. For example, no parent would honestly believe that every allegation made against school staff that was thoroughly investigated was disproved. Nor would any parent believe a school thoroughly investigated a series of incidents in less than a week's time frame. Yet, if the Department has its way, parents will no longer be able to access this data at all. As a result, parents will not be able to make an informed choice as to what school they should send their child to.

The sole beneficiary of this proposed rule is obvious: the teachers' unions. These unions that helped President Biden get elected are now seeking to shield school staff from allegations of rape, alleged rape, or sexual assault. Unfortunately, like his entire first term in office, President Biden is complying with their wishes.

Rather than codify this rule, the Department should reverse course. The Department should ask whether this rule truly serves the best interests of students and parents across the country. The answer is obvious: it does not. Without this crucially important data, parents will struggle to make an informed choice as to whether to keep their children in the school they are in or move them to another. Moreover, parents will not have confidence that their school district is handling allegations of rape, alleged rape, or sexual assault in a thorough and evenhanded way.

The Department should terminate this proposed rule and continue to collect the same data that Secretary DeVos carefully ensured that it would.

Sincerely,

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