



students, families, and legal service providers such as NWLC will be kept in the dark about whether and how ED enforces Title IX's protections for student survivors of sexual harassment, including rape. Without their release, victims will not know whether they can trust their government to enforce civil rights laws and intervene on their behalf. Without their release, attorneys will be uncertain about how to counsel victims about whether and how to seek the administrative remedies ED is tasked with providing. As a result, it will be harder for victims to hold their schools accountable for their Title IX violations.

3. The purpose of FOIA is to promote government transparency and ensure citizens can hold their leaders accountable. The Department of Education has violated FOIA by failing to release any records in response to NWLC's request by the deadlines set by statute.

#### **JURISDICTION AND VENUE**

4. The court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331 and 1361.

5. Venue lies in the United States District Court for the District of Columbia pursuant to 28 U.S.C § 1391(b) because Defendant ED is a resident of the District of Columbia.

#### **PARTIES**

6. Plaintiff National Women's Law Center ("NWLC") is a 45-year-old nonpartisan, nonprofit organization that advocates for the rights of women and girls and is based in Washington, D.C. For decades, NWLC has worked to combat sex discrimination in schools, with a particular focus on sexual harassment. NWLC provides free legal services to students experiencing sexual harassment, including a legal helpline and representation in both federal courts and administrative proceedings with the Department of Education. NWLC also educates policymakers about the importance of civil rights protections for student victims and advocates for robust enforcement of those laws.

7. ED is the federal agency responsible for oversight of education. Among its responsibilities is the enforcement of civil rights laws, including Title IX, which prohibits sex discrimination in federally funded education programs. ED is an agency within the meaning of 5 U.S.C. § 552(f).

### **STATEMENT OF FACTS**

8. U.S. students face sexual harassment, which encompasses sexual assault, at alarmingly high rates. Research from the Association of American University Women indicates nearly half of all students, and more than half of all girls, experience sexual harassment in school. *See* Catherine Hill and Holly Kearl, American Association of University Women, *Crossing the Line: Sexual Harassment at School* 11 (2011), <http://www.aauw.org/files/2013/02/Crossing-the-Line-Sexual-Harassment-at-School.pdf>. A recent national survey by NWLC found that one in five girls ages 14-18 has been kissed or touched without her consent. *See* Kayla Patrick and Neena Chaudhry, National Women's Law Center, *Let Her Learn: Stopping School Pushout for Girls Who Have Suffered Harassment and Sexual Violence* 1 (2017), [https://nwlc.org/wp-content/uploads/2017/04/final\\_nwlc\\_Gates\\_HarassmentViolence.pdf](https://nwlc.org/wp-content/uploads/2017/04/final_nwlc_Gates_HarassmentViolence.pdf). Lesbian, gay, bisexual, and transgender girls report these forms of sexual assault at even higher rates, as do Latina, Black, and Native American girls. *Id.* at 3. When 27 top universities surveyed their student bodies, a fifth of women reported that they had been sexually victimized. *See* Nick Anderson and Susan Svrluga, *What a massive sexual assault survey found at 27 top universities*, The Washington Post (Sept. 21, 2015), [https://www.washingtonpost.com/news/grade-point/wp/2015/09/21/what-a-massive-sexual-assault-survey-showed-about-27-top-u-s-universities/?utm\\_term=.07c97b1f0c90](https://www.washingtonpost.com/news/grade-point/wp/2015/09/21/what-a-massive-sexual-assault-survey-showed-about-27-top-u-s-universities/?utm_term=.07c97b1f0c90).

9. Sexual harassment poses a threat to students' access to education. When schools fail to respond appropriately to reports of sexual harassment, victims often miss class, perform poorly, and even drop out of school. *See Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 634, (1999) (describing deleterious impact of school's failure to respond to sexual harassment on student victims' academic performance); Rebecca Marie Loya, *Economic Consequences of Sexual Violence for Survivors: Implications for Social Policy and Social Change* 96-100 (June 2012) (unpublished Ph.D. dissertation, Brandeis University), <https://static1.squarespace.com/static/551e0348e4b0c1bae0983f61/t/55b19581e4b01705b03e0b1c/1437701505305/Loya2012EconomicConsequencesRape.pdf>.

10. Some students incur significant financial costs as a result, such as lost scholarships or medical expenses. *See Dana Bolger, Gender Violence Costs: Schools' Financial Obligations Under Title IX*, 125 YALE L.J. 2106 (2016) (describing the financial impact of gender violence on student survivors); *Voluntary Resolution Agreement, No. 02-11-2025*, PRINCETON UNIV. (Oct. 12, 2014), <http://www2.ed.gov/documents/press-releases/princeton-agreement.pdf> (requiring university to compensate students for expenses derived from the university's failures to respond to sexual harassment). Under Title IX, schools that receive federal funding are required to address sexual harassment as a form of sex discrimination. *See* 34 C.F.R. § 106.8(b); *see also Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60 (1992). However, as research, news accounts, lawsuits, and federal investigations make clear, many schools – from preschools to graduate programs – do not comply with this legal requirement. *See, e.g.*, Compliance Resolution Letter from Office for Civil Rights, U.S. Dep't of Educ., to Tufts Univ. 19 (Apr. 28, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/01102089-a.html> (detailing

university's failures to respond appropriately to reports of sexual harassment); Catharine A. MacKinnon, *In Their Hands: Restoring Institutional Liability for Sexual Harassment in Education*, 125 Yale L.J. 2038, 2060-61 (2016) (summarizing media and legal accounts of schools' failures to address sexual harassment); Michelle J. Anderson, *The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault*, 84 B.U. L. Rev. 945 (2004) (describing onerous university requirements for rape victims reporting to their schools).

11. Despite the clear threat of sexual harassment to students' educational opportunities, the Department of Education under President Trump's administration has refused to commit to enforcing federal protections, as Congress charged it to do by statute. In her confirmation hearing, Education Secretary Betsy DeVos said it would be "premature" for her to commit to preserving guidance explaining Title IX's protections for sexual assault survivors. Tyler Kingkade, *Trump's Education Secretary Nominee Won't Commit to Keeping Campus Rape Rules*, BuzzFeed News (Jan. 17, 2017), [https://www.buzzfeed.com/tylerkingkade/betsy-devos-title-ix?utm\\_term=.dgm35E8P3#.ifMobd31o](https://www.buzzfeed.com/tylerkingkade/betsy-devos-title-ix?utm_term=.dgm35E8P3#.ifMobd31o). In February 2017, she told a reporter that she "can't think of any" current threats to students' civil rights that require federal intervention. Lauren Camera, *DeVos: I'd Be Fine Ditching the Education Department*, U.S. News & World Report (Feb. 17, 2017), <https://www.usnews.com/news/articles/2017-02-17/betsy-devos-id-be-fine-if-we-could-ditch-the-education-department>. In congressional testimony on May 24, 2017, Secretary DeVos indicated that the Department would not prevent "voucher" schools from receiving federal funding, even if they do not comply with civil rights law. Erica L. Green, *Betsy DeVos Refuses to Rule Out Giving Funds to Schools That Discriminate*, N.Y. Times (May 24, 2017), <https://www.nytimes.com/2017/05/24/us/politics/betsy-devos-refuses-to-rule-out-giving->

funds-to-schools-that-discriminate.html?\_r=0. She refused to answer a question on the same topic in testimony before the Senate Health, Education, Labor, and Pensions committee on June 6, 2017. Associated Press, *Betsy DeVos Non-Committal on Private School LGBTQ Discrimination*, NBC News (June 6, 2017), <http://www.nbcnews.com/feature/nbc-out/betsy-devos-non-committal-private-school-lgbtq-discrimination-n768971>.

12. Against this backdrop, the public interest in understanding ED's commitment to upholding the law and its own rules is beyond question. The grave impact of sexual harassment in schools, and ED's refusal to commit to enforcing federal civil rights laws that require schools to address harassment, render records reflecting the agency's sexual harassment-related enforcement of Title IX a matter of great interest and importance to students, their loved ones, and legal advocates like NWLC.

13. On January 26, 2017, NWLC submitted a FOIA request to the Department of Education via email and U.S. mail. A copy of that request is attached to this complaint as Exhibit A.

14. In its letter, NWLC requested: "1) All records, including but not limited to case indices, reflecting sexual harassment cases pending before the Office for Civil Rights. 2) All Compliance Reviews, Complaint Resolutions, Resolutions Between the Parties, Letters of Findings and Enforcement, and similar documents reflecting the resolution of investigations into schools for possible violations of Title IX . . . related to sexual harassment." Exhibit A.

15. On February 21, 2017, ED sent NWLC a letter, attached as Exhibit B. The letter noted that the agency had received the FOIA request on January 30, 2017. ED acknowledged that "FOIA requires that an agency make a determination on a FOIA request within 20 working days of receipt of the request in the appropriate office," but nonetheless explained it would be

unable to fulfill NWLC's request by that deadline "due to the backlog of requests and the competing demands for the time of staff that are working to respond to [NWLC's] request."

Exhibit B.

16. ED's February 21, 2017 letter did not provide any time frame in which ED would commit to comply with the law, nor did it acknowledge the agency's obligation to provide records within no more than ten additional working days under "unusual circumstances," as defined in 5 U.S.C. § 552(a)(6)(B)(iii). It also failed to "provide [NWLC] an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request," as is necessary for an agency that requires an extension of more than ten additional working days to supply records requested under FOIA. 5 U.S.C. § 552(a)(6)(B)(ii),

17. Months later, ED still has not provided any records to NWLC, in clear violation of the agency's obligation under FOIA.

18. This complete lack of response entitles NWLC to seek redress in this court in order to compel ED to comply with its statutory obligations. *See, e.g., Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003) ("A requester is considered to have constructively exhausted administrative remedies and may seek judicial review immediately if ... the agency fails to answer the request within twenty days.").

#### **CLAIM FOR RELIEF**

19. NWLC repeats and incorporates every allegation contained in paragraphs 1-18 as though set out in full.

20. ED's failure to release responsive records violates NWLC's right to those records under FOIA, 5 U.S.C. § 552(a)(3)(A).

**PRAYER FOR RELIEF**

Plaintiff NWLC respectfully requests that this Court:

- i) Order Defendant to disclose and release the requested records in their entireties and to make copies available to Plaintiff;
- ii) Provide for expeditious proceedings in this action;
- iii) Award Plaintiff costs and reasonable attorney's fees in this action as provided by 5 U.S.C. § 552(a)(1)-(2); and
- iv) Grant any other relief the Court deems appropriate.

Dated this 12th day of June, 2017.

/s/Neena Chaudhry

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