

June 10, 2020

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

We represent presidents and chancellors of the nation's two- and four-year, public and private colleges and universities and we are writing to you regarding Executive Order 13924, "Regulatory Relief to Support Economic Recovery," signed by the President on May 19, 2020. Consistent with the goals of the Executive Order, we request a delay of the August 14 effective date of the Department of Education's recently published Title IX final rule, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance." This regulatory relief is crucial to colleges' and universities' efforts to reopen their campuses quickly and safely and to our larger national economic recovery efforts.

In light of the COVID-19 pandemic's impact on our economy, Executive Order 13924 directs all agency heads to identify regulations that "may inhibit economic recovery" and to take appropriate steps "to temporarily or permanently rescind, modify, waive or exempt" these requirements for the purposes of promoting job creation and economic growth.

Colleges and universities are critical to the economic health of our country. In many states and Indian reservations, colleges and universities are one of the largest—if not the largest—employer. They are economic engines for their communities, including the many small businesses that serve campus populations.

Since the start of the pandemic, colleges and universities have experienced financial losses in the tens of billions of dollars, and these losses will only accelerate over the coming academic year. Against this backdrop, campus officials are devoting enormous time and resources to the planning and modifications required to safely and effectively reopen their campuses. This is an all-hands-on-deck effort, touching every campus administrative function and department.

Now is not the time to add to these burdens by requiring campuses to implement the most complex and challenging regulations issued in the Department's history. Implementation of these regulations will require a wholesale redesign of campus disciplinary processes and HR functions—diverting time and resources away from the reopening efforts that are of such paramount importance to our economy.

We appreciate the regulatory flexibility provided by the Department to allow campuses to rapidly move to online learning this spring. Given the directives of the President's Executive Order, we urge you to expand upon this prior relief by providing a delay in the effective date of the Title IX final rule. Extending the effective date to at least December 21 would enable institutions to use the fall semester to more sensibly and effectively incorporate the requirements of the final rule into the many policies and procedures affecting students, faculty and staff on their campuses. Although the Title IX final rule is not subject to the master

calendar provisions of the Higher Education Act, our request would provide institutions with roughly the same eight-month period required under those provisions and routinely provided for far less complex regulatory packages.

Providing an extension also could eliminate an immediate issue facing the federal courts in the District of Columbia and New York in lawsuits filed on June 4, 2020, by 19 states against the Department regarding these regulations: whether the August 14 effective date should be postponed pending judicial review. The Department affirmatively taking this step now can permit the court, the Department, and the attorneys general to focus exclusively on the merits of the cases and move them more expeditiously to a conclusion, which will, in turn, inure to the benefit of America's colleges and universities, and their community members. Title 5 U.S. Code Section 705 unambiguously grants the Department the authority to take this action without waiting for a court to order it to do so. ("When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review.")

As the President's order notes, "[j]ust as we continue to battle COVID-19 itself, so too must we now join together to overcome the effects the virus has had on our economy." We hope you will support colleges and universities in their reopening efforts by delaying the effective date of the Title IX final rule.

We thank you for your consideration of this request.

Sincerely,



Ted Mitchell
President
American Council on Education



Walter G. Bumphus, Ph.D.
President & CEO
American Association of Community Colleges



Mildred García, Ed.D.
President
American Association of State Colleges
and Universities



Carrie L. Billy
President & CEO
American Indian Higher Education Consortium



Mary Sue Coleman, PhD
President
Association of American Universities



Rev. Dennis Holtschneider, CM
President
Association of Catholic Colleges and Universities



Henry Stoeber
President & CEO
Association of Governing Boards of
Universities and Colleges



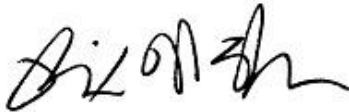
Rev. Michael J. Sheeran, S.J.
President
Association of Jesuit Colleges and Universities



Peter McPherson
President
Association of Public and Land-grant
Universities



Shirley V. Hoogstra
President
Council for Christian Colleges & Universities



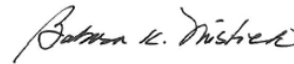
Richard Ekman
President
Council of Independent Colleges



Antonio R. Flores
President and CEO
Hispanic Association of Colleges and
Universities



Lezli Baskerville
President & CEO
National Association for Equal
Opportunity in Higher Education
(NAFEO)



Barbara K. Mistick
President
National Association of Independent Colleges
and Universities



Michael L. Lomax, Ph.D
President and CEO
UNCF (United Negro College Fund, Inc.)