

Trump's secretary of education rolls back Obama-era regulations on campus sexual misconduct

By Nancy Hanover
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On September 22, US Secretary of Education Betsy DeVos announced that the Department of Education (DOE) had rescinded federal rules governing campus sexual misconduct imposed in 2011 under the Obama administration. These measures, known as the “Dear Colleague” guidelines, have been increasingly discredited as unconstitutional attacks on democratic rights.

DeVos released a “Q&A on Campus Sexual Misconduct,” which established interim policies. A notice-and-comment process leading to new federal oversight rules will follow.

The most significant change involves the standard of evidence to determine if an assault has occurred and if colleges are required to take action. The DeVos policy stipulates that the same standard must be used in all cases of student misconduct—whether they be of a sexual nature or other violations such as cheating or plagiarizing—but allows schools to choose between the Obama-mandated standard or the previously existing one. The Q&A also instructs schools to provide the same information, rights and opportunities to both the accused and the accuser in a sexual assault investigation.

These changes move in the direction of restoring certain significant democratic rights of the accused.

How can this be? More than anything else, it is a measure of the extreme right-wing trajectory of the Democratic Party, the so-called liberal sections of the ruling elite and the pseudo-left organizations specializing in the promotion of racial and gender politics, that DeVos and the entire Trump administration can, through rolling back the Obama measures, cheaply posture as defenders of elementary legal rights. Meanwhile the most right-wing administration in history is taking up the cudgels against “political correctness” to play to their reactionary base and divert attention from their own anti-working class policies.

The policies of the Obama administration paved the way. What is life like now for many college students? Tuition has gone through the roof. Student loan debt now exceeds \$1.4 trillion, affecting more than 70 percent of all college students. Under the Obama rules, these loans became a profit center, funneling hundreds of millions of dollars back to the federal government in interest charges.

As a result of catastrophic levels of social inequality and unrelenting budget cuts to education, virtually every college campus has a food bank which large numbers of student depend upon and significant numbers of students are homeless. Students face a proliferation of low-paying “gig” type jobs and declining employment prospects even after graduation.

Deliberately deflecting from such glaring class issues and the Democratic Party's role as frontmen for the oligarchic financial elite, the Obama administration's signature college initiative was “Dear Colleague.” It was designed from the beginning as part of the Democratic Party's core strategy of diverting of social anger along the lines of racial

and gender identity.

What is “Dear Colleague”?

In 2011, the Obama administration's “Dear Colleague” letter on sexual misconduct put into place a series of measures purportedly to address a “national epidemic of campus rape.” Essentially these policies addressed campus misconduct by creating a bias towards the accuser.

“Dear Colleague” abandoned the previous requirement for “clear and convincing” evidence and adopted the much watered-down criteria of a “preponderance of evidence,” sometimes referred to as “50 percent plus a feather” as a standard of guilt. Alongside changes in procedures, the measures mandated the hiring of advisors on every campus to monitor, investigate and adjudicate—and, frankly, solicit—Title IX complaints, which involved a substantial layer of well-paid advocates around the country. Harvard now has 55 full- or part-time Title IX positions, Princeton 41.

Colleges are not civil courts and Title IX personnel are not lawyers, but their decisions carry grave consequences. Schools have the right to suspend or expel students found guilty, and some states have required these decisions to be noted permanently on school transcripts. Lives and careers can be ruined as a result.

The “preponderance of evidence” standard, alongside the hyper-politicization of campus sexual assault, encouraged a witch-hunt atmosphere. Title IX officers promoted aggressive reporting. Third parties, who were not involved in the alleged incident but became suspicious of possible sexual misconduct, were encouraged to file complaints. Complaints were also filed in cases where the accusers refused to cooperate with the university investigation.

Emily Yoffe, writing in the Atlantic earlier this month, characterized the filthy atmosphere. “On too many campuses, a new attitude about due process—and the right to be presumed innocent until proved guilty—has taken hold, one that echoes the infamous logic of Edwin Meese, who served in the Reagan administration as attorney general, in his argument against the Miranda warning. ‘The thing is,’ Meese said, ‘you don't have many suspects who are innocent of a crime. That's contradictory. If a person is innocent of a crime, then he is not a suspect’.”

“Dear Colleague” denied the right of the accused to face the accuser (or in some cases to be informed of the name of the accuser) and to cross-examine them or other alleged witnesses. The 2011 measures required “interim measures” be taken against an accused before any finding of responsibility, which commonly included limiting the places on campus an accused can go, forcing him/her to change classes and barring him/her from activities.

A succession of law professors have objected to the 2011 rules, pointing to both the institutional bias of Title IX officers and the inability of the

accused to cross-examine witnesses as examples of violations of the right to due process. In 2015, 16 University of Pennsylvania law professors argued that “the policies did not permit an accused student’s lawyer or representative to cross-examine witnesses,” did not “ensure adequate representation for the accused” and did not permit an “adequate opportunity to discover the facts.” They warned, “Due process of law is not window dressing; it is the distillation of centuries of experience, and we ignore the lessons of history at our own peril.”

The Obama measures were of an extremely reactionary character and deserved to be revoked. While not part of criminal law, these policies set a dangerous precedent for bending legal policies in favor of accusers and undermining the most fundamental civil liberties for the accused.

Giving a sense of these implications, Jennie Suk Gersen recalled the famous “Blackstone ratio,” in a June 18 article in the *New Yorker* magazine. She noted, “The extraordinarily high prosecutorial burden of proof in any criminal trial is intentionally designed to heavily favor defendants, because we long ago embraced a society Blackstone’s principle. Formulated in the seventeen-sixties by the English jurist William Blackstone, the presumption is that it is better to have ten guilty people go free than that one innocent person suffer.”

The long history of the politically or racially motivated false accusations, as well as the hundreds of years required to establish rights of due process, speak volumes in regard to the importance of Blackstone’s ratio and the critical nature of the rights of the accused. One recalls Emmet Till and the thousands of black men lynched over false sexual misconduct allegations, the fate of the Scottsboro Boys, Leo Frank, the McMartin preschool personnel, Julian Assange and many others who were framed.

There are the reasons, and then there are the real reasons

A “national epidemic” of campus rape was the rationale for the guideline changes in 2011. While sexual abuse and campus rapes are certainly crimes, the implication that an about-face was needed on national policy due to the outbreak of an “epidemic” was never established. The strongest claim made by Vice President Joe Biden (reportedly the author of “Dear Colleague”) was that sexual assaults had failed to “diminish” over 20 years.

Studies attempting to quantify the number of campus sexual assaults have ranged from 0.61 percent of female students sexually assaulted annually to 19–27 percent of college women and 6–8 percent of college men sexually assaulted during their time in college, according to Wikipedia, citing the National Institute of Justice survey and several other major surveys. The large discrepancies reflected in these studies indicates problems and unevenness in reporting, varying definitions of harassment, assault and rape, and the sometimes difficult and contradictory nature of human sexual relations.

While any of these numbers are indeed troubling, they are a strong indication of a deeply exploitative and brutal society. How can the social climate on campuses be markedly different than that in society-at-large—increasingly dominated by the glorification of the police, the military and violence in general?

Addressing the underlying social dysfunction, of course, was the last thing on the minds of Biden and other architects of “Dear Colleague,” since they were, of course, instigators, overseers and beneficiaries of such policies.

The repackaging of the problem of sexual abuse on campus as a “national epidemic” was a political project. It was designed to push the identity politics agenda of the Democratic Party and to deflect the growth of popular opposition. No longer the candidate of “hope and change, Obama and his horrific “terror Tuesdays” and “kill lists” had become front page news in 2011.

In 2016, to the shock and horror of the ruling elites, Bernie Sanders, a

self-described “democratic socialist,” began overfilling stadiums with tens of thousands of supporters, tapping into massive and unexpected support by calling for a “political revolution” against the “billionaire class.”

Both political parties quickly reached a consensus to do whatever was necessary to bury the class issues raised by the Sanders candidacy. The Democrats doubled down on their identity politics agenda promoting race, gender and sexual orientation as society’s essential divisions. This included a pathetic reboot of the Hillary Clinton campaign, casting her as a spokesperson for the oppressed, and the promotion of racially based middle-class opportunists such as Black Lives Matter.

As the *WSWS* noted in 2014, in relation to the issues raised by Harvard’s new sexual misconduct policy, “Obama’s sexual assault publicity stunt is directed in particular at shoring up support for the Democrats among those liberal and ‘left’ layers of the upper middle class mesmerized by questions of personal identity. These layers, who are as indifferent to the conditions of the broad mass of the population as the White House itself and who support the administration’s imperialist interventions abroad, are being rallied on issues of gender, sexual orientation and race.”

A critical event in this extended scenario was the case of Brock Turner, convicted of rape while at Stanford University in 2016. The case, like many other similar cases, was shrouded in alcohol and confusion, but was picked up by feminists and the pseudo-left as a cause celebre. Unabashed proponents of law-and-order, these groups clamored for a harsh sentence and demanded the recall of the local judge who had sentenced Turner to six months in jail.

Vice President Biden, making an extraordinary intervention in the case, joined this political witch-hunt against the judge. The case was used by the highest levels of the Democratic Party in a dishonest and filthy attempt to draw in students who had supported the Sanders campaign and to try to pass off the Clinton campaign as an advance for gender equality.

The pseudo-left and the Democrats react

Virtually the entire Democratic Party establishment has pronounced on the DeVos policies—with an energy dwarfing their reactions to the Trump threat to annihilate North Korea. “This is a disgrace and a disservice to everyone who has worked to address sexual violence. Congress must act to undo this terrible decision,” tweeted Bernie Sanders. Twenty-nine Democratic Senators including Majority Leader Chuck Schumer vociferously defended the Obama guidelines.

But the most fervent defenders of the Obama measures are found among the liberals and pseudo-leftists who cast themselves as defending “survivors,” while supporting the shredding of basic democratic rights.

An article in the *New York Times* on September 19 by Miriam Gleckman-Krut and Nicole Bedera, two gender studies researchers, is typical. It goes to great lengths to defend the use of the standard “preponderance of evidence” to convict students of sexual misconduct, contrasting it with the criminal notion of “guilty beyond a shadow of a doubt.” Their argument dishonestly omits the fact that the standard vacated by Obama had been “clear and convincing evidence,” not “guilty beyond a shadow of a doubt.” They then admit that “The preponderance of evidence standard is ... survivor-centered,” e.g., not neutral but tilted in favor of the accuser.

They further dismiss the problem of a lack of evidentiary-based hearings since “Many survivors struggle to produce what campus hearing boards would consider evidence,” arguing that lack of evidence shouldn’t rule out labeling someone as a rapist and expelling them from college.

In other words, the *Times*’ opinion piece defends the Obama policy for its anti-democratic content. The idea that it is necessary to bend, if not obliterate, democratic rights—with the claim that the history of violence against women necessitates it—is unprincipled and bankrupt. What kind of

legal system favors the accusers over the accused and dispenses with the need for evidence? An authoritarian one.

In the same political vein, a September 12 article in the liberal-left Nation makes the absurd suggestion that the Obama measures were holding back a proliferation of rapists on campuses. They claim that rolling back the guidelines “sends a message” to those who may “forgo consent and commit sexual assault.”

The Democratic Party, their spokesmen and pseudo-left hangers-on have demonstrated their fundamental hostility to democratic rights, and as a result handed the neo-fascist Republicans an opportunity to confuse and disorient popular sentiment.

What about DeVos?

The Trump administration’s assault on democratic rights—from plans for a militarized wall on the US-Mexican border, Muslim bans, sanctioning police violence to a murderous Nazi rampage in Charlottesville—seeks to appeal to popular anger and disaffection to advance a nationalist and fascistic policy, and this includes appeals to racists, homophobes and misogynists.

While DeVos has not revealed details the policy she and Office of Civil Rights (OCR) director Candice Jackson will enact, the Republican Party 2016 platform called for moving all cases of sexual misconduct to the police and courts—a policy that would have a chilling effect on victims seeking to report sexual abuse while strengthening the jurisdiction and influence of police on campuses.

Director Jackson, in charge of enforcing the new Trump administration policies on sexual misconduct, epitomizes the nexus between extreme-right and the current administration. She has long associated herself with the Ludwig von Mises Institute, described by the Southern Poverty Law Center as a “network(s) for the spread of bigotry,” and the thinking of Murray Rothbard. Rothbard—an outright racist and ferocious anti-communist—denounced Brown v. Board of Education, called for the repeal of the 1964 Civil Rights Act (the basis of Title IX) and claimed the “entire civil rights structure” trampled on property rights.

The Democratic Party and the pseudo-left, through their embrace of reactionary attacks on democratic rights and social policy, have opened the door to the cynical right-wing populism of the Trump administration. Breaking political ties with both capitalist parties is the prerequisite for the working class to elaborate an independent class policy for the defense of all democratic rights, which is only possible on a socialist basis.

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