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OPINION | REVIEW & OUTLOOK

DeVos's Sexual-Assault Rule Prevails

The new standard for due process on campus survives in court.

By [The Editorial Board](#)

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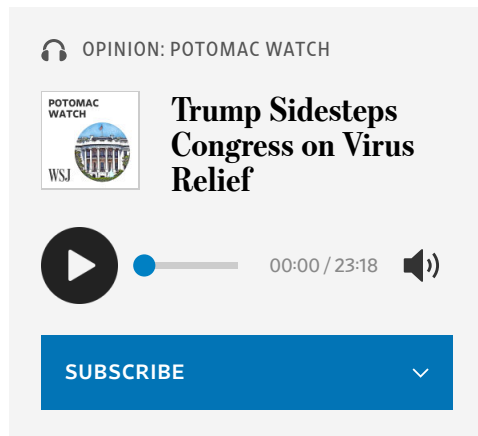
Education Secretary Betsy DeVos speaks during a briefing at the Department of Education building, Washington, D.C., July 17.

PHOTO: MANUEL BALCE CENETA/ASSOCIATED PRESS

One of the stakes in November's election is the fate of the Trump Administration's due-process reforms for campus sexual-assault cases. Education Secretary Betsy DeVos's new rule goes into effect Friday, and this week it passed its first legal tests.

New York Attorney General Letitia James sued to stop the rule and

sought a preliminary injunction. Federal Judge John Koeltl, a Bill Clinton appointee, denied the injunction this week on grounds that the department had followed proper procedure in drafting the rule and would likely prevail on the merits.



The rule defines sexual harassment under Title IX of the Education Amendments of 1972 and requires schools to set up grievance processes for handling complaints. Colleges must allow accuser and accused to choose advisers who can cross-examine witnesses. Both will receive the same notice of allegations and are given the same right

to appeal.

“Rather than harming students,” Judge Koeltl wrote, “the Rule has the potential to benefit” both accuser and accused because they “are given greater assurance that if they prevail in the grievance proceeding, that result will not be overturned because the process did not comply with due process.” Meanwhile, federal Judge Carl Nichols ruled on similar grounds Wednesday against a challenge to the new rule by 17 state attorneys general.

The rulings are vindication for Mrs. DeVos for following the Administrative Procedure Act (APA) in writing the rule. The Obama Administration, led on this issue by Vice President Joe Biden, disregarded the APA by writing “Dear Colleague” guidance to schools that eschewed public comment. The Trump Administration reviewed nearly 125,000 comments before making its rule final.

The downside of the long process is that the timing means the rule could be vulnerable to being overturned by the Congressional Review Act if Democrats run Congress and the White House next year. That would be a tragedy for due process and justice on campus.