

United States Senate

WASHINGTON, DC 20510

September 21, 2022

The Honorable Gilbert R. Cisneros Jr.
Under Secretary of Defense for Personnel and Readiness
4000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Cisneros:

I write regarding the recent *New York Times* investigation describing an extraordinary failure to protect high school students enrolled in the Junior Reserve Officers' Training Corps (JROTC) from sexual predators. The *Times* found that "at least 33 J.R.O.T.C. instructors have been criminally charged with sexual misconduct involving students, far higher than the rate of civilian high school teachers in jurisdictions ... Many others have been accused of misconduct but never charged."¹ A few days after the *Times* investigation was published there was a new report that a former high school JROTC instructor in Savannah, Georgia was accused of child molestation.² Given that oversight of this program is shared between the Department of Defense (DoD) and the Department of Education (ED), I am writing to you both to learn more about your department's current processes for reviewing and ensuring the quality and safety of JROTC programs, and to determine where the failures that have left students vulnerable to sexual assault may have occurred.

The purpose of the JROTC program is to "instill in students in United States secondary educational institutions the values of citizenship, service to the United States, and personal responsibility and a sense of accomplishment."³ JROTC programs are most often facilitated by retired or reserve commissioned and non-commissioned officers.⁴ Each military service authorizes "active duty or retired officers and [non-commissioned officers] as JROTC instructors."⁵ Prospective instructors must apply to their respective military department to begin the process of seeking employment, which includes "background checks in accordance with the applicable Federal, State, and local requirements as part of the instructor certification process."⁶ Each military department is also responsible for developing and implementing "JROTC

¹ The New York Times, "I Felt Trapped': Sexual Abuse of Teens in the Military's J.R.O.T.C. Program," Mike Baker, Nicholas Bogel-Burroughs, and Ilana Marcus, July 9, 2022, <https://www.nytimes.com/2022/07/09/us/sexual-abuse-jrotc.html>.

² WJCL22, "JROTC instructor in Savannah resigns, charged after accusations of child molestation," Graham Cawthon, July 12, 2022, <https://www.wjcl.com/article/savannah-jrotc-instructor-child-molestation/40592507>; WTOC11, "New records detail investigation on former Beach High JROTC Instructor," Alyssa Jackson, August 3, 2022, <https://www.wtoc.com/2022/08/04/new-records-detail-investigation-former-beach-high-jrotc-instructor/>.

³ 10 U.S.C. 2031(a)(2); See more at Department of Defense, "DoD Instruction 1205.13 Junior Reserve Officers' Training Corps Program," May 21, 2021, p. 3, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/120513p.pdf>.

⁴ Congressional Research Service, "Defense Primer: Junior Reserve Officers' Training Corps (JROTC)," Kristy N. Kamarck, June 15, 2022, p. 1, <https://crsreports.congress.gov/product/pdf/IF/IF11313/10>.

⁵ Department of Defense, "DoD Instruction 1205.13 Junior Reserve Officers' Training Corps Program," May 21, 2021, p. 11, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/120513p.pdf>.

⁶ *Id.*

instructor qualification, certification, and training requirements.”⁷ DoD is also responsible for certifying instructors⁸ and has a role in overseeing how its funds are spent, since part of the instructor’s pay “is reimbursed by the military.”⁹

Each act of misconduct by the instructors, particularly those negative acts related to a vulnerable and extremely impressionable population, leaves a stain on the military. Furthermore, the DoD has stated that its goal is “a culture free of sexual assault, through an environment of prevention, education and training, response capability..., victim support, reporting procedures, and appropriate accountability that enhances the safety and well-being of all persons” who fall under its rules and regulations.¹⁰

The *Times* investigation identified a number of failures in the military’s oversight of the program, revealing that “at least seven [instructors]... who have been criminally charged [with sexual misconduct of students in JROTC programs] had already been flagged for previous allegations of misconduct but were allowed to stay on the job.”¹¹ Schools participating in the JROTC program are also unclear on where to report misconduct allegations. In one case a school district reported credible allegations of “inappropriate comments and touches” from a JROTC instructor to the state Public Education Department, but the state “had no jurisdiction to intervene” in JROTC instructor matters, revealing a “troubling loophole.”¹²

Current training may also be insufficient. One instructor told the *New York Times* that “much of the time [was] focused on the administrative functions of the job” and that there was “only a brief discussion of teacher-student boundaries.”¹³ Establishing appropriate boundaries is particularly important since JROTC instructors are not only expected to lead academic classes during the school day but also lead the students in activities outside regular school hours and off campus, including drill and marksmanship competitions, base visits, and academic bowls.¹⁴

The actions of these instructors did grievous harm to students who joined the JROTC program. For example, Dominique Mixon entered the JROTC program because she wanted to join the Air Force. Her instructor, Brad Gibson, groped and harassed her. She reported the incidents to a teacher and a campus police officer, but that report seemingly went nowhere, even though Gibson had “previously been counseled for ‘borderline inappropriate behavior with his female

⁷ *Id.*

⁸ Department of Defense, “DoD Instruction 1205.13 Junior Reserve Officers’ Training Corps Program,” May 21, 2021, p. 11, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/120513p.pdf>.

⁹ The New York Times, “‘I Felt Trapped’: Sexual Abuse of Teens in the Military’s J.R.O.T.C. Program,” Mike Baker, Nicholas Bogel-Burroughs, and Ilana Marcus, July 9, 2022, <https://www.nytimes.com/2022/07/09/us/sexual-abuse-jrotc.html>.

¹⁰ Department of Defense, “DoD Instruction NUMBER 6495.02, Volume 1,” November 10, 2021, p. 4, [DoDI 6495.02, Volume 2, "Sexual Assault Prevention and Response: Program Procedures," Effective March 28, 2013, Incorporating Change 6 on November 10, 2021 \(whs.mil\)](https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649502v1.pdf)

¹¹ New York Times, “‘I Felt Trapped’: Sexual Abuse of Teens in the Military’s J.R.O.T.C. Program,” Mike Baker, Nicholas Bogel-Burroughs, and Ilana Marcus, July 9, 2022. <https://www.nytimes.com/2022/07/09/us/sexual-abuse-jrotc.html>

¹² *Id.*

¹³ *Id.*

¹⁴ Air University, “Air Force JROTC General Job Description,” June 1, 2022, <https://www.airuniversity.af.edu/Holm-Center/AFJROTC/Display/Article/987560/general-job-description/>.

students.”¹⁵ Inaction in this case likely contributed to additional students being harassed: eight years after she was harassed by Mr. Gibson, Ms. Mixon received a call that another 16-year-old had filed a new report on him. Gibson pleaded guilty to indecent liberties with both girls.¹⁶

These were not isolated incidents: “records released under public disclosure laws show cases across the country in which J.R.O.T.C. instructors who wound up being criminally charged had been the subject of complaints from students in the past.”¹⁷ In another example of an insufficient response from DoD, in Mississippi an instructor who reported concerns about a fellow instructor to school administrators was criticized for failing to follow the chain of command and for not trying to resolve the complaint directly with the JROTC instructor in question.¹⁸

The JROTC environment may make it more difficult for victims to come forward – the JROTC instructors are more akin to superior officers, as opposed to teachers, “and students are taught to follow the chain of command.”¹⁹ The JROTC instructors, “although not on active duty, are still working in and managing a military-type unit” and the same “subordinate-supervisor relationship which existed on active duty must be maintained in the [JROTC] unit.”²⁰ It’s also unclear if there are any remedies for victims like Ms. Mixon who were retaliated against and pushed out for reporting JROTC instructor misconduct.²¹

JROTC host schools are also often located in economically disadvantaged areas and have larger-than-average minority populations.²² The *Times* reported that, in numerous instances, the high school students who participate in the JROTC program see it as a “pathway to a promising future.”²³

Overall, the *Times* analysis of arrest information for three of the country’s largest high school districts found “the J.R.O.T.C. program has recorded one arrest for every 232 instructor positions ... 68 percent higher than the next highest case rate” of teacher-student sexual misconduct.²⁴ These troubling data clearly reveal that this program may be at higher risk for abuse and needs enhanced oversight from the military services and DoD.

¹⁵ New York Times, “‘I Felt Trapped’: Sexual Abuse of Teens in the Military’s J.R.O.T.C. Program,” Mike Baker, Nicholas Bogel-Burroughs, and Ilana Marcus, July 9, 2022. <https://www.nytimes.com/2022/07/09/us/sexual-abuse-jrotc.html>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Marine Corps JROTC, “Job Descriptions,” <https://www.mcjrotc.marines.mil/Instructor-Information/Job-Descriptions/>.

²¹ The New York Times, “‘I Felt Trapped’: Sexual Abuse of Teens in the Military’s J.R.O.T.C. Program,” Mike Baker, Nicholas Bogel-Burroughs, and Ilana Marcus, July 9, 2022, <https://www.nytimes.com/2022/07/09/us/sexual-abuse-jrotc.html>.

²² Congressional Research Service, “Defense Primer: Junior Reserve Officers’ Training Corps (JROTC),” Kristy N. Kamarck, June 15, 2022, p. 2, <https://crsreports.congress.gov/product/pdf/IF/IF11313/10>.

²³ The New York Times, “‘I Felt Trapped’: Sexual Abuse of Teens in the Military’s J.R.O.T.C. Program,” Mike Baker, Nicholas Bogel-Burroughs, and Ilana Marcus, July 9, 2022, <https://www.nytimes.com/2022/07/09/us/sexual-abuse-jrotc.html>.

²⁴ *Id.*

The damage done by sexual abuse in the JROTC program can be devastating. In order to better understand how the DoD exercises its oversight of the JROTC program, I ask that you please answer the following questions no later than October 14:

1. In the last decade, how many reports have the DoD or the military services received involving allegations of acts of violence, including sexual abuse, or harassment by instructors against students in the JROTC program? Please provide all information by year, offense, and military service branch.
 - a. How many of these reports of sexual misconduct have been investigated?
 - b. How many of these reports or investigations led to instructors' removal from the JROTC program?
2. Have DoD or the military services issued any guidance to JROTC schools or instructors about their obligations to prevent sexual harassment and assault? Please provide a copy of this guidance.
3. Does DoD or do the military services require schools to share or report information about allegations of misconduct by JROTC instructors? If so, how does this process take place?
4. What criteria do DoD and the military services use to determine an applicant's eligibility, suitability, and qualifications for becoming a JROTC instructor?
5. What training does the DoD or the military services provide to its JROTC instructors, including training related to sexual harassment? If such training exists, then how often is the training provided to the JROTC instructors? Please provide my office a copy of any training materials currently used.
6. How do DoD and the military services conduct the initial certification and screening of its JROTC instructors?
7. Is there a recertification or review process for JROTC instructors? What are the performance metrics for the JROTC instructors and how often do any reviews occur?
8. In the past decade how many JROTC instructors have been recommended for probationary status, how many are on probation, and what was the cause for the recommendation?
9. What is the process that DoD and the military services follow upon learning of any allegations of sexual misconduct against a JROTC instructor?
10. Are JROTC instructors who receive reports of sexual misconduct mandatory reporters? Is there a requirement for instructors to report to DoD or military services before reporting to local law enforcement?
11. Are JROTC instructors subject to prosecution under the Uniform Code of Military Justice? If so, then have there been any prosecutions? Have there been any instances of reduction in retired rank or pay as a consequence?

12. What assistance and services does the DoD provide to victims who experience sexual misconduct as a result of participation in the JROTC program?
13. Does DoD conduct climate surveys for JROTC programs? Please provide the results if so.
14. What processes are in place for JROTC students to report allegations of misconduct? Is there a restricted reporting option?
15. What processes are in place for third parties to report allegations of misconduct?
16. Are instructors prohibited from retaliating against JROTC students who report allegations of misconduct? Does the Department of Defense provide any protections or recourse for students if they are retaliated against?
17. Does DoD inform JROTC instructors of their obligations to comply with Title IX?

Thank you for your attention to this matter. The JROTC program can provide a significant benefit to students, but it is clear that students have suffered incredible harm because ED and DoD currently lack the necessary oversight to prevent it from becoming a hunting ground.

Sincerely,



Elizabeth Warren
United States Senator



Kirsten Gillibrand
United States Senator



Richard Blumenthal
United States Senator



Mazie K. Hirono
United States Senator

United States Senate

WASHINGTON, DC 20510

September 21, 2022

Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Secretary Cardona:

The *New York Times* recently reported an extraordinary failure to protect high school students enrolled in the Junior Reserve Officers' Training Corps (JROTC) from sexual predators. The *Times* investigation found "at least 33 J.R.O.T.C. instructors have been criminally charged with sexual misconduct involving students, far higher than the rate of civilian high school teachers in jurisdictions ... Many others have been accused of misconduct but never charged."¹ A few days after the *Times* investigation was published there was a new report that a former high school JROTC instructor in Savannah, Georgia was accused of child molestation.² Given that oversight of this program is shared between the Department of Defense (DoD) and the Department of Education (ED), I am writing to you both to learn more about your department's current processes for reviewing and ensuring the quality and safety of JROTC programs, and to determine where the failures have left students vulnerable to sexual assault may have occurred.

Title IX of the *Education Amendments of 1972* "protects people from discrimination based on sex in education programs or activities that receive federal financial assistance."³ ED clarified its enforcement authority to protect students from discrimination based on gender identity in light of the Supreme Court's *Bostock v. Clayton County* decision, which found that discrimination based on gender identity inherently involves treating individuals differently because of their sex.⁴ ED has also found that gender-based harassment "encompasses sexual assault and other forms of sexual violence"⁵ and that "K-12 schools must respond promptly when any school employee has notice of sexual harassment, including sexual assault."⁶ ED policy also includes that "Retaliatory acts, which may include giving students failing grades, preventing students from participating in

¹ New York Times, "I Felt Trapped': Sexual Abuse of Teens in the Military's J.R.O.T.C. Program," Mike Baker, Nicholas Bogel-Burroughs, and Ilana Marcus, July 9, 2022. <https://www.nytimes.com/2022/07/09/us/sexual-abuse-jrotc.html>.

² WJCL22, "JROTC instructor in Savannah resigns, charged after accusations of child molestation," Graham Cawthon, July 12, 2022, <https://www.wjcl.com/article/savannah-jrotc-instructor-child-molestation/40592507>; WTOC11, "New records detail investigation on former Beach High JROTC Instructor," Alyssa Jackson, August 3, 2022, <https://www.wtoc.com/2022/08/04/new-records-detail-investigation-former-beach-high-jrotc-instructor/>

³ Department of Education, Office for Civil Rights, "Title IX and Sex Discrimination," August 2021, https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html.

⁴ Department of Education, Federal Register Notice, "Enforcement of Title IX with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County," June 22, 2021. <https://www.govinfo.gov/content/pkg/FR-2021-06-22/pdf/2021-13058.pdf>.

⁵ Department of Education, Office for Civil Rights, "Title IX and Sex Discrimination," August 2021, https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html.

⁶ Department of Education, "Fact Sheet: Final Title IX Regulation," <https://sites.ed.gov/titleix/policy/#fact-sheet>.

school activities, and threatening expulsion against any individual who exercises his or her rights under Title IX, are considered to be discrimination and are unlawful.”⁷ While military academies are exempt from Title IX,⁸ the office successfully acted under the statute in 1998 to address discrimination in a high school ROTC program.⁹

The *Times* investigation identified a number of failures in schools’ oversight of the program, revealing that “at least seven [instructors] ... who have been criminally charged [with sexual misconduct of students in JROTC programs] had already been flagged for previous allegations of misconduct but were allowed to stay on the job.”¹⁰ In one case a school district reported credible allegations of “inappropriate comments and touches” from a JROTC instructor to the state Public Education Department, but the state “had no jurisdiction to intervene” in JROTC instructor matters, revealing a “troubling loophole.”¹¹

The actions of these instructors clearly did grievous harm to students who joined the JROTC program. For example, Dominique Mixon entered the JROTC program because she wanted to join the Air Force. Her instructor, Brad Gibson, groped and harassed her. She reported the incidents to a teacher and a campus police officer, but that report seemingly went nowhere, even though Gibson had “previously been counseled for ‘borderline inappropriate behavior with his female students.’”¹² The school continued to violate Mixon’s Title IX rights by retaliating against her for coming forward and pushing her out of the program.¹³ The school’s inaction likely contributed to additional students being harmed as well: eight years after she was harassed by Mr. Gibson, Ms. Mixon received a call that another 16-year-old had filed a new report on him. Gibson pleaded guilty to indecent liberties with both girls.¹⁴

These were not isolated incidents: “records released under public disclosure laws show cases across the country in which J.R.O.T.C. instructors who wound up being criminally charged had been the subject of complaints from students in the past.”¹⁵ A police investigator in Louisiana “was left wondering how the abuse could have been going on so blatantly with school administrators seemingly unaware.”¹⁶ And in another insufficient response, a JROTC instructor in Mississippi who reported concerns about a fellow instructor to school administrators was

⁷ Department of Education, Office for Civil Rights, “Retaliation,” January 12, 2022, <https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/retaliation-pr.html>.

⁸ Department of Education, Office for Civil Rights, “Exemptions from Title IX,” March 8, 2021. <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/index.html>

⁹ Department of Education, Office for Civil Rights, *Annual Report to Congress: Guaranteeing Equal Access to High-Standards Education*, Fiscal Year 1998, 30. <https://www2.ed.gov/about/offices/list/ocr/ocrarc.pdf>

¹⁰ New York Times, “‘I Felt Trapped’: Sexual Abuse of Teens in the Military’s J.R.O.T.C. Program,” Mike Baker, Nicholas Bogel-Burroughs, and Ilana Marcus, July 9, 2022. <https://www.nytimes.com/2022/07/09/us/sexual-abuse-jrotc.html>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*; Department of Education, “Fact Sheet: Final Title IX Regulation,” <https://sites.ed.gov/titleix/policy/#fact-sheet>.

¹⁴ New York Times, “‘I Felt Trapped’: Sexual Abuse of Teens in the Military’s J.R.O.T.C. Program,” Mike Baker, Nicholas Bogel-Burroughs, and Ilana Marcus, July 9, 2022. <https://www.nytimes.com/2022/07/09/us/sexual-abuse-jrotc.html>.

¹⁵ *Id.*

¹⁶ *Id.*

criticized for failing to follow the chain of command and not trying to resolve the complaint directly with the JROTC instructor in question.¹⁷

In order to better understand how ED exercises its oversight and Title IX enforcement authority over this program, I ask for you to please answer the following questions no later than October 14:

1. How many complaints has ED received of allegations of Title IX violations in school-affiliated JROTC programs in the past 10 years?
 - a. How many of these cases were investigated?
 - b. What was the outcome of these cases?
2. Has ED issued any guidance to schools and state Departments of Education about JROTC programs' obligations to comply with Title IX?
3. Does ED require schools or state Departments of Education to share information about allegations of sexual misconduct to ED, DoD, or other school districts who may employ JROTC instructors?
4. Does ED have in place a process to receive from DoD any reports of sexual misconduct in JROTC programs, and to investigate them for potential Title IX violations?
5. Does ED have in place a process to report to DoD any allegations of sexual misconduct in the school-affiliated JROTC programs? Does ED have any requirement that schools share or report information to the Department about allegations of sexual misconduct by JROTC instructors? If so, how does this process take place?

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator



Kirsten Gillibrand
United States Senator

¹⁷ *Id.*

Richard Blumenthal

Richard Blumenthal
United States Senator

Mazie K. Hirono

Mazie K. Hirono
United States Senator