



January 30, 2019

***Submitted via regulations.gov***

Secretary Betsy DeVos  
U.S. Department of Education  
400 Maryland Ave SW  
Washington, D.C. 20202

**RE: Docket ID ED-2018-OCR-0064 – Proposal to amend regulations implementing Title IX of the Education Amendments of 1972 (“Title IX”)**

Dear Secretary DeVos,

I write to you on behalf of the members of the United Steelworkers union. Our union represents and is actively organizing several thousand academic workers ranging from full- and part-time faculty to graduate student workers to other staff who work with students at higher education workplaces. Our union consulted many of these students and workers while crafting these comments and their feedback is included below. We appreciate the opportunity to comment on these proposed regulatory changes that address and change much of the Department’s 2001 Guidance that the agency has relied upon for nearly twenty years through both Republican and Democratic administrations.<sup>1</sup>

According to the latest American Association of Universities Campus Climate Survey, about 60 percent of lesbian and gay students and 70 percent of bisexual students report being sexually harassed on campus.<sup>2</sup> One in five women and nearly half of all LGBTQIA+ students will experience sexual assault over their academic career. However, less than 30 percent of the most serious incidents of nonconsensual sexual contact are reported to an organization or agency like a university’s Title IX office or law enforcement.<sup>3</sup>

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<sup>1</sup> U.S. Department of Education. *Revised sexual harassment guidance: Harassment of students by school employees, other students, or third parties* (2001) <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>

<sup>2</sup> *Report on the AAU campus climate survey on sexual assault and sexual misconduct* (2015) [https://www.aau.edu/sites/default/files/%40%20Files/Climate%20Survey/AAU\\_Campus\\_Climate\\_Survey\\_12\\_14\\_15.pdf](https://www.aau.edu/sites/default/files/%40%20Files/Climate%20Survey/AAU_Campus_Climate_Survey_12_14_15.pdf)

<sup>3</sup> *Id.*

In this climate where sexual harassment is far too common, this proposed rule fails to respond to or seek to address the reality of sexual harassment and assault in schools and could allow for specific instances of harassment, assault, or discrimination to be ignored or unaddressed. It also ignores the devastating impact that sexual harassment and sexual assault have on survivors.

A University of Pittsburgh graduate student and employee who is seeking representation by our union, and who has served as an advocate for individuals who have experienced sexual violence, is “emphatically certain that these changes will be harmful for students, universities, survivors, and will reduce the already low numbers of students who do report.”

Another University of Pittsburgh graduate employee said, “...the sweeping proposed changes to Federal Title IX regulations would in fact silence survivors, keeping them from seeking support and justice, and define transgender, genderqueer and non-binary people out of existence...As a survivor of sexual assault myself, and a transgender woman,... I have been utterly shaken by these proposed changes.”

Here are key flaws of the proposed regulatory changes:

- This proposal lowers the burden on institutions to provide prompt corrective action or remedy a hostile environment once it knows or should know that harassment was occurring. For nearly 20 years, the Department has used its 2001 Guidance to determine if a school violated Title IX. Under that Guidance, schools violated Title IX when they did not “take immediate and effective corrective action.”<sup>4</sup> This proposal improperly imports a standard from the Supreme Court intended for cases involving monetary liability that the Department rejected in 2001 because it was inappropriate for administrative enforcement.
- The proposal also improperly narrows the definition of sexual harassment and would require survivors to endure severe, pervasive, and objectively offensive conduct on the basis of sex that effectively denies a person equal access to the

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<sup>4</sup>U.S. Department of Education. *Revised sexual harassment guidance: Harassment of students by school employees, other students, or third parties* (2001) <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>

education program or activity. Any complaint that does not meet this standard would be dismissed. This new hurdle makes it less likely that survivors will have a successful claim even if they follow the prescribed reporting procedures.

- The proposal would also allow schools to ignore complaints of off-campus or online sexual harassment or assault even if the harassment impacts the reporter's education on-campus. This part of the proposal ignores the reality of sexual harassment and assault, which is traumatic for survivors no matter where it occurs particularly if survivors must see their assailant on campus.

In response to our union's query of members and potential members about these changes, a doctoral student at the University of Pittsburgh said,

“One of the most concerning policy change proposal is the dismissal of off-campus sexual violence between students, despite the fact that most students live off campus and many campuses are sprawled across urban areas where on- and off-campus become grey area. The impacts of violence and trauma do not discriminate on whether an event happened on- and off-campus; the effects of trauma from sexual violence lives with us and impacts students' ability to learn and work either way. Sexual trauma of any kind can lead to debilitating mental health struggles (Post-traumatic Stress Disorder, ADHD, Anxiety, Depression) that have long been correlated with changes in brain regions associated with focus, learning, memory, and attention. As a current student who is a member of a university community at large I expect Title IX to serve all students and create an environment that promotes knowledge and learning; students do not stop being students when they cross some arbitrary grey line into a designated off-campus area.”

- Another flaw in this proposal is that it makes reporting more difficult for survivors. Currently, certain officials are mandated reporters, which allow victims to report to a trusted adult. This proposal would only require higher education institutions to address reports made by the victim to the Title IX office or to an “official who

has the authority to institute corrective measures.” Again, this proposal ignores the reality that sexual assault is difficult to talk about and that students may not know which university officials have the power to take corrective action. Any regulatory change should seek to increase the low levels of reporting rather than restrict reporting, as this proposal would do.

- The new grievance procedures that are proposed are also flawed. For example, in talking about the proposed changes to allow live cross-examination between survivors and perpetrators, one graduate student and former advocate for survivors says, “Having worked with survivors, including in court settings, for many years I know that this will be sure to further reduce student’s willingness to come forward. These changes ultimately put greater risk on all students as we know that most acts of sexual violence are committed by serial perpetrators. In the past students have always had the ability to respond to accusations, live cross-examinations only serve to silence survivors.”

These proposed regulatory changes to Title IX are flawed and serve only to protect schools from liability rather than protect students from discrimination. This proposal does not support survivors by making reporting easier. In fact, it is quite the opposite. We received the below story below from a graduate student employee who illustrates the real experience of sexual assault and just how problematic this proposal would be if it were finalized:

“These proposed changes to Title IX will be detrimental to the health and safety of not just grads like me, but for everyone on campus.

I am afraid of retaliation for speaking about this so I'm going to be vague about my experience. A few years ago, I was sexually assaulted and then harassed and stalked by someone at a conference I was attending out of state. I was there to present a paper on my research and the contact I had with my assaulter was unwanted, happened more than once even though I tried to avoid them after the first time, and was physically intimidating. I wanted to report it because I didn't want anyone else to have to deal with the likes of this person.

This was several years ago and the process of reporting the incident and getting help from Title IX was hard and confusing even back then. I ended up not going through the whole process because it took so long and was so traumatic. Instead, I changed my phone number and kept the secret which led to me developing depression and anxiety. I just wanted to move on and was scared about retaliation or it getting out or me not being believed at all.

I feel a lot of guilt that I didn't go through with the report. I'm writing this because reporting was too hard back then, it is too hard now, and if these proposed changes happen it will be next to impossible. Had they been in effect back then I may not have even been able to report my assault in the first place because they are trying to make it easier for schools to choose not to investigate things that happen off of campus.

In addition, I may have had to face my assaulter in person and be questioned directly by them. I know that if that had been the case I wouldn't have even tried to report them.

Title IX reporting needs to be made easier, not harder. And we need our government to make sure that students, even ones attending out of state conferences, know that they can get help if they are sexually assaulted or harassed. Please don't implement these changes. Please don't further silence women like myself and many of my colleagues who have many of their own horror stories.”

Our union urges the Department to withdraw this proposal and focus on enforcing the Title IX program to ensure that students are protected and that schools are promptly and effectively responding to sexual harassment and assault.

Sincerely,



Roxanne D. Brown  
Legislative Director