

January 27th, 2019

U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Submitted via regulations.gov

RE: Docket No. ED-2018-OCR-0064, RIN 1870-AA14, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (November 29, 2018)

To whom it may concern,

We are writing to provide comments on the November 29th 2018 proposal published in the Federal Register by the Department of Education to alter regulations imposed by Title IX of the Education Amendments Act of 1972 (“Title IX”). These comments were developed by student activists associated with the University of Pittsburgh’s Sexual Assault Facilitation and Education (SAFE) program. As a group of undergraduate student activists, we present workshops to our fellow peers, facilitating discussions on issues such as sexual violence, bystander intervention, consent, healthy relationships, and university resources. Dedicated to keeping our campus safe, we find aspects of the Department’s proposed Title IX changes to be deeply concerning. We believe that these proposed changes would not benefit sexual assault survivors at Pitt believe the proposal to be a major step back in addressing the public health crisis that is college sexual assault.

Below we have outlined and explained our concerns regarding the proposed changes and offer alternatives that we wish you to consider.

The proposed definition of “sexual harassment” narrows what investigators examine to only the most extreme forms of sexual misconduct.

The proposal defines sexual harassment as the “unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”¹ Under this proposed definition, schools are not required to investigate claims that limit “a personal equal access to education,” but are required to investigate claims that “deny” it, limiting investigated sexual harassment to its most extreme

¹ Department of Education, Office for Civil Rights, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” *Federal Register* 83, no. 230 (29 November 2018): 61466, <https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-nprm.pdf>

forms. In addition, this definition implies that there are certain types of sexual violence that are more intense and severe than others. We believe that all sexual harassment is severe, pervasive, and objectively offensive enough that it is worth investigating; no institution should prioritize the type of sexual harassment investigated.

We suggest that the Department broadens their definition of sexual harassment similar to that stated in the 2011 Dear Colleague Letter. The Letter states that sexual harassment is “unwelcome in nature” and the conduct creates an environment where it “is sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the school’s program.”² The Dear Colleague Letter recognized that there are many forms of severe sexual harassment that impair a student’s ability to learn.

The proposed changes do not require that recipients respond to conduct that occurs outside of school-sanctioned programs, impacting students who live off-campus or attend off-campus events.

While the proposal “reflects the statutory provision that a recipient is only responsible for responding to conduct that occurs within its ‘education program or activity,’”³ it does not require that recipients acknowledge sexual harassment that occurs on off-campus events. If this proposal is to stand, schools are not obliged to respond to a student who experiences sexual harassment at an off-campus event with fellow students.

With an estimated 87% of students living off campus⁴ and with college-aged students “78% more likely to be a victim of rape or sexual assault,”⁵ the proposal’s lack of requirements is extremely concerning. For example, if a student is sexual assaulted at a party off-campus, schools are not required to acknowledge the event and may ignore it.

We believe that the Department of Education should require schools to offer services for students who are sexually harassed off-campus or during an event that is not school sanctioned. Additionally, we believe that the Department of Education should require recipients to hold perpetrators of off-campus sexual assault accountable, particularly if they are also students of that school or university.

² Department of Education, Office for Civil Rights, “Dear Colleague Letter: Sexual Violence 11,” (4 April 2011), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

³ Department of Education, Office for Civil Rights, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” *Federal Register* 83, no. 230 (29 November 2018): 61468, <https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-nprm.pdf>

⁴ Rochelle Sharpe, “How Much Does Living Off-Campus Cost? Who Knows?” *The New York Times*, last modified August 5, 2016, <https://www.nytimes.com/2016/08/07/education/edlife/how-much-does-living-off-campus-cost-who-knows.html>

⁵ “Campus Sexual Violence: Statistics,” *RAINN*. <https://www.rainn.org/statistics/campus-sexual-violence>

Recipient institutions would be allowed to impose weak (or potentially harmful) “supportive measures.”

The proposal defines “supportive measures” as “non-disciplinary, non-punitive individual services offered as appropriate, reasonably available, and without fee or charge.”⁶ “Supportive measures” include “counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions of contact between parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.”⁷ It is up to the discretion of the Title IX Coordinator to properly implement the “supportive measures.” In addition, measures are not meant to “unreasonably burden[] the other party.”⁸

This proposed rule concerns us, as schools would have the ability to deny survivor’s the proper “supportive measures” they need to be an engaged student. Specifically, recipients may offer “supportive measures” that aim to help survivors, but instead harm them. For example, recipients may impose a mutual contact order between a survivor and their perpetrator, but do not have to act when a perpetrator harasses a survivor over the internet or uses a third party (ex. friend, family member) to taunt them. In another example, a survivor’s request to change their class schedule or living situation in order to avoid their perpetrator may be denied by the recipient, as an institution may find that would “unreasonably burden[]” the survivor’s perpetrator.

There is research that illustrates the harmful effects a sexual violence survivor’s reencounter with their perpetrator can have on their health. When a survivor encounters their perpetrator (or a representative for the perpetrator, like a friend), there is a chance that the survivor will endure secondary trauma. Secondary trauma “occurs when survivors seek assistance from medical, legal or healthcare professionals, but these professionals often exhibit and use victim-blaming behaviors.”⁹ Medical professionals advise that to prevent secondary trauma, survivors “avoid stimuli that provoke”¹⁰ triggering feelings. We believe that these proposed rules would increase the risk of secondary trauma within survivors, as recipients would be allowed to impose weak “supportive measures” that may harm the survivor.

⁶ Department of Education, Office for Civil Rights, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” *Federal Register* 83, no. 230 (29 November 2018): 61469, <https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-nprm.pdf>

⁷ Department of Education, Office for Civil Rights, “Nondiscrimination on the Basis of Sex,” p. 61469

⁸ Ibid

⁹ Kaitlin A. Chivers-Wilson, “Sexual assault and posttraumatic stress disorder: A review of the biological, psychological and sociological factors and treatments,” *McGill Journal of Medicine*, Vol. 9, no. 2 (2006): 116.

¹⁰ Kaitlin A. Chivers-Wilson, “Sexual assault and posttraumatic stress disorder,” 112.

In addition, nowhere in the proposal is it mentioned that survivors have the ability to receive a one-way no-contact order. We find that the mutual no-contact order is problematic, as “it implies that the survivor is at least partially responsible for their own assault.”¹¹

As an alternative to this proposal, we advise that the Department of Education allows schools to offer one way no-contact orders and remove “unreasonably burden[.]” from the definition of “supportive measures.” We also advise the Department to require recipients and their Title IX Coordinator’s to properly implement strong “supportive measures” that will positively impact survivors.

Across the nation, sexual violence is prevalent on college campuses. Among undergraduate and graduate students, approximately “11.2% of all students experience sexual assault...Among graduate and professional students, approximately 8.8% of females and 2.2% of males experience sexual assault.”¹² We believe that the Title IX amendments proposed by the Department of Education will do nothing to lower these statistics; rather, we believe that if implemented, they will allow this toxic culture to stand. For the reasons explained above, we ask that the Department of Education abandon their current proposal.

Thank you for the opportunity to submit comments on the Department of Education’s Notice of Proposed Rulemaking. Please feel free to contact Mary Roche at mkroche19@gmail.com to provide further information.

Sincerely,

The University of Pittsburgh’s Sexual Assault Facilitation and Education (SAFE) Peer Educators

¹¹ “NWLC Comment Guide re Title IX NPRM,” NWLC, last modified November 30, 2018, <https://nwlc.org/resources/devos-proposed-changes-to-title-ix-explained/>

¹² “Campus Sexual Violence: Statistics,” RAINN. <https://www.rainn.org/statistics/campus-sexual-violence>