



American Association of University Women California  
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January 23, 2019

Kenneth L. Marcus  
Assistant Secretary for Civil Rights  
Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

Via electronic submission

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

Dear Assistant Secretary Marcus:

On behalf of the American Association of University Women (AAUW) of California, I am writing in response to the Department of Education's Notice of Proposed rulemaking to express our very strong opposition to the proposed rules relating to sexual harassment ("Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance") as published in the Federal Register on November 29, 2018. The proposed changes threaten to reverse the progress made in improving the school environment for everyone by unraveling important protections for students who are sexually harassed. It also works to undermine the Title IX procedures designed to ensure fairness and justice for all students.

AAUW was founded in 1881 and has a noteworthy history of working to create a fair and equitable world for all women and girls. AAUW of California (AAUW CA) was organized in 1921 and is a state-wide organization made up of 124 branches, 13 AAUW student clubs, and 74 College/University partners, with more than 13,800 members and supporters. As advocates for equity in education, AAUW CA promotes the economic, social, and physical well-being of all persons.

In 1993, AAUW CA worked with then CA Assemblywoman, the Honorable Jackie Speier, on legislation to include Federal Title IX and California Education Code and CA Title V Regulations regarding gender equity into the comprehensive review process for publically-funded kindergarten through high school districts. An AAUW member, expert in Title IX, was hired to develop, implement and conduct the onsite reviews based on all the legal requirements. It was discovered that very few Title IX Coordinators, as required by Title IX since 1975, were trained on how to implement the provisions of the law. Without

proper and on-going training, Title IX was not understood and embraced by many school districts and consequently, students had not been provided with the legal protections under Title IX.

In California, since the inception of the required gender equity trainings and reviews, more students, parents and school employees are now somewhat familiar with civil rights requirements and protections. In schools where Title IX has been embraced and students know their rights and are supported, we have seen more students prosper as they are fairly treated in their educational environments and harassment and abuse are quickly resolved through the schools' complaint procedures. However, in a multitude of California schools, students continue to be sexually bullied, harassed, assaulted and raped. The proposed rules would add another huge problem by requiring schools to basically ignore all sexual harassment unless the student had already been denied equal access to education—even if the student has to sit near their harasser or rapist in class every day. This proposal is a miscarriage of justice and completely immoral. The changes weaken the authority of the Office for Civil Rights which is currently charged with Title IX complaint investigations. If all sexual harassment and assault cases are forced to go to the resolution process proposed, which would require schools allow attorneys of the accused to cross-examine complainants at live hearings, it will silence all victims and cause further harm. Any one of the proposed changes would be enough to make it extraordinarily difficult for a survivor to learn, feel safe and stay in school. Title IX was enacted after it was determined that the Civil Rights Act of 1964 had not adequately addressed discrimination based on sex. The proposed regulations will once again cause additional discrimination against females and would effectively transform Title IX from a law that protects students into one that shields schools and perpetrators from accountability.

Title IX of 1972 is properly written and the 2011 OCR, Dear Colleague Letter and the 2001 Sexual Harassment Guidance are the most appropriate language that should have been used to update Title IX on the subject of sexual harassment. 79.1 percent ([AAUW analysis of 2016 Clery Act reports, 2018](#)) of higher education campuses in California reported zero incidents of sexual assault, including rape and fondling, domestic violence, dating violence, and stalking—a shocking statistic given how frequently these incidents occur on campuses. In addition, 74.4 percent ([AAUW analysis 2016 Clery Act reports, 2018](#)) of the public schools with students in grades 7 through 12 in California disclosed zero reported allegations of harassment or bullying on the basis of sex. These numbers do not square with what research shows about students' experiences. Despite schools' legal obligation to address these issues, improvement in both welcoming students' reports of sexual harassment and violence—and accurately disclosing those incidents in annual reporting—has been slow at all levels of education. These findings further demonstrate our need for full enforcement of a strong Title IX and the Clery Act provisions, not a rollback of critical protections for students who experience unwelcomed incidents that are already frequently under and/or inaccurately reported.

Under the current Title IX guidance, a school must respond to a report of sexual harassment when a student tells an employee, as long as the student reasonably believes that the employee has the authority to take action to address the harassment or has a duty to report it to appropriate school officials. It is our belief, that all employees have a duty to report to the appropriate school official any report that a student may have been a victim of unwelcomed harassment or sexual assault and is looking for guidance with getting the assistance she may need to continue to survive in the educational setting. However, your proposed rules would allow most school employees to ignore what students tell them and to not get involved. Ultimately, your proposal will re-victimize a student for reaching out to “the incorrect” school employee for help during a very difficult time in their life. Children as young as Kindergarten have been sexually harassed, including inappropriately touched, and your proposal expects

young children to find the correct person to tell. That is outrageous because in many families, children will not even tell their parents as they feel shame. A student who is being teased, bullied, harassed, assaulted should never be forced to find their own way through a difficult system to find relief and support after being a victim of sexual harassment and/or sexual assault.

As stated by Janet Napolitano, president of the University of California, "The problems of sexual harassment and sexual violence won't go away until we work together to make them go away and change the culture of what is acceptable behavior. In the face of efforts to set this important work back, colleges and universities cannot waver in their commitment to do what is right. For too long, our culture has blamed and stigmatized survivors and allowed sexual misconduct without accountability. Together, we can build on progress we have already made to change that. We can, and we must."

The proposed regulations as brought forward significantly erode the civil rights protections currently offered in Title IX. This is an unacceptable approach and will deny too many students access to an education free of harassment, abuse, and/or rape. AAUW Members in California are vehemently opposed to the Department of Education's proposed rule, which would significantly and detrimentally impact women' and girls' ability to access their education free from sexual harassment and/or assault. We strongly urge the Department to immediately withdraw its current proposal.

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