



January 28, 2019

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education

RE: Docket ID NO. ED-2018-OCR-0064
U.S. DEPARTMENT OF EDUCATION PROPOSED REGULATIONS, TITLE IX OF 1972, 34
CFR 106

Dear Secretary DeVos:

We, the undersigned members of the New York State Legislature, write to declare our resounding opposition to the Department of Education's ("the Department") proposed Title IX rule regulations as published in the Federal Register on November 29, 2018. For 47 years, Title IX has provided protections for students in New York State and nationwide. We believe that such protections should be strengthened and solidified, however the proposed rule changes run counter to that effort. Therefore, we respectfully request that the Title IX proposed rules be withdrawn and the 2011 and 2014 guidelines be reinstated.

Title IX of the Education Amendments Act of 1972 reads "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." The proposed rule changes are a stark departure from these civil rights protections and would establish new guidance that would shift the focus from protecting complainants to the rights of respondents. As such, we believe institutions would be incentivized to neglect cases of sexual assault and rape creating a significant ripple effect — campuses would be more unsafe and survivors would be less likely to come forward.

The proposed amendments go against the very premise and purpose of Title IX by curtailing the definition of sexual harassment and effectively limiting justifiable complaints. While the definition of sexual harassment under the 2011 guidelines defined sexual harassment as "unwelcome conduct of a sexual nature" the proposed amendments would narrow the definition to "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 school's education program or activity."

Further, the proposal “requires a formal complaint to trigger an institution’s obligation to respond and implement its grievances procedures.” The formal complaint is extremely narrow and requires both the signature of the complainant or Title IX Coordinator as well as specifically requesting initiation of grievance procedures. These requirements are a deviation from the Department’s guidance that allows various avenues to initiate reporting and would create barriers impacting a survivor’s decision to come forward with complaints.

Additionally, the proposed Title IX rules changes would require institutions to hold live hearings in which an accused student would be allowed to cross-examine the complainant. This is an inappropriate method for higher education institutions to determine a student’s responsibility for misconduct and would likely only benefit students with the financial means to afford a private attorney. Factoring in this proposed change with the new requirement that would call for higher evidentiary standards, it is clear that the emphasis in handling cases of rape and sexual assault is no longer on the survivor and their path of recourse. Moreover, the very fact that an accused could be in a position of cross-examining the victim in a live hearing setting greatly increases the likelihood of victim intimidation and will have a chilling effect on victims’ willingness to come forward, further endangering others on campus who might themselves fall prey to such offenders.

Lastly, the implementation of arbitrary geographic limits on Title IX liability does not recognize the reality of student and faculty interactions. The areas surrounding institutions are often viewed as an extension of campus. The new language would also unreasonably limit sexual harassment protections under Title IX for study abroad programs — even when the programs are run by US institutions receiving federal funds — and do not address how Title IX applies to cyber harassment.

As members of the New York State Legislature, we stand unified in opposition to the Department’s proposed rule changes and respectfully request their withdrawal from the Federal Register. Lacking valid justification, the proposed rule amendments are a dangerous attempt to dismantle student protections that would undoubtedly create unnecessary hurdles to combat incidents of rape and sexual assault and uphold accountability.

Sincerely,



Nily Rozic, Assemblywoman, 25th District

Didi Barrett, Assemblywoman, 106th District
Alessandra Biaggi, Senator, 34th District
Rodneyese Bichotte, Assemblywoman, 42nd District
Michael Blake, Assemblyman, 79th District
Marianne Buttenschon, Assemblywoman, 119th District
Catalina Cruz, Assemblywoman, 39th District
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Carmen De La Rosa, Assemblywoman, 72nd Assembly District
Inez Dickens, Assemblywoman, 70th District
Harvey Epstein, Assemblyman, 74th District
Patricia Fahy, Assemblywoman, 109th District
Nathalia Fernandez, Assemblywoman, 80th District
Mathylde Frontus, Assemblywoman, 46th District
Sandra Galef, Assemblywoman, 95th District

James Gaughran, Senator, 5th District
Deborah Glick, Assemblywoman, 66th District
Judy Griffin, Assemblywoman, 21st District
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Ellen Jaffee, Assemblywoman, 97th District
Kimberly Jean-Pierre, Assemblywoman, 11th District
Latoya Joyner, Assemblywoman, 77th District
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John C. Liu, Senator, 11th District
Donna Lupardo, Assemblywoman, 123rd District
William Magnarelli, Assemblyman, 129th District
Shelley Mayer, Senator, 37th District
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Monica Wallace, Assemblywoman, 143rd District
Helene Weinstein, Assemblywoman, 41st District
David Weprin, Assemblyman, 24th District
Tremaine Wright, Assemblywoman 56th District
Kenneth Zebrowski, Assemblyman, 96th District