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Submitted via regulations.gov

Dr. Miguel Cardona
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U.S. Department of Education
400 Maryland Ave SW
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Catherine E. Lhamon
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Re: Docket ID ED–2021–OCR–0166, RIN 1870–AA16, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Dear Secretary Cardona and Assistant Secretary Lhamon,

The Victim Rights Law Center (VRLC) along with the undersigned organizations who also serve survivors in Massachusetts and Oregon submit this public comment in response to the Department of Education’s Notice of Proposed Rulemaking (NPRM) related to the Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (“proposed regulations”).

The VRLC is a nonprofit law center that provides free legal services to victims of rape and sexual assault. We have practiced in the area of education and Title IX since the organization’s inception in 2013. In that time, we have served thousands of student-victims seeking to access their education freely and equally. Our work in this area has provided a unique insight into what aspects of a regulatory framework advance the purpose of Title IX and which aspects hinder it. We are joined by partners and organizations that share in our mission and also serve survivors across Massachusetts and Oregon as advocates, attorneys, and change-makers in both policy and culture.

We evaluate the proposed regulations from the perspective of the survivors we collectively serve: the elementary school student who wants to access the bathroom without fear, the high school student who does not want to report to law enforcement but desperately

wants the responding party to stop showing up at their locker and sports games, the college student who has to sit through two full days of a hearing and be cross-examined for hours by the responding party's criminal defense attorney. Without effective agency regulations, students like these experience barriers to accessing their education at every turn. We have seen too many eventually give up and withdraw – either from school itself or from trying to get school to work for them. When this happens, there are long term ramifications for their lives and well-being as well as for society writ large; equal access to education is fundamental to gender and racial equality and critical to addressing vast socioeconomic disparities.

Since 2017, survivors have weathered a torrent of barriers in the Title IX space. One VRLC client wanted to transfer from the institution where she experienced a sexual assault but stayed enrolled out of fear that her complaint against the responding student would be dismissed as permitted by the current regulations. Another client participated actively in a nine-month investigation into the sexual assault she experienced, only to have the responding student unenroll and her case dismissed. Another client reported her sexual assault the day after it occurred, participated in an investigation spanning months, and endured days of a live hearing. When the responding student was found responsible, the institution would not implement the sanctions during the appeal phase. The client was even subjected to restrictions during this phase because a mutual no contact order remained in effect. The responding student's advisor delayed the appeal process so substantially that only a fraction of the sanction ultimately went into effect after the appeal process had concluded. Meanwhile, the client spent the entire first year of college in fear while walking across campus, using common spaces, and attending social events. These case summaries only capture bits and pieces of what student-victims endured under the current regulatory framework. Time and time again, responding students' advisors would threaten institutions with lawsuits and, due to the emphasis on responding students' rights in the current regulations, institutions would bend over backwards to accommodate the responding student. Meanwhile, student-victims were left to access their education in fear, reeling from trauma, and trying to navigate a complicated Title IX process that was stacked against them.

The proposed regulations address many of the harmful issues we have encountered under the current framework as Title IX advisors, victim advocates, and trainers. Specifically, we welcome the broadening of conduct that triggers a school's obligations under Title IX, prioritizing the preponderance standard, and providing schools discretion around their adjudication methods. We also welcome the move away from the deliberate indifference standard for agency review and towards noncompliance. On top of the barriers students have faced with respect to their school's response to allegations of sexual assault, the deliberate indifference standard effectively foreclosed the Office of Civil Rights (OCR) as a viable remedy in the wake of institutional failure. We could not confidently advise clients to utilize OCR's complaint process since the threshold was so high for obtaining any meaningful result. Additionally, with the prioritization of responding parties reflected in the current regulations, we feared that resolution agreements stemming from an OCR investigative process would harm

prospective complaints by student-victims and create even more hurdles to obtaining a remedy. Moreover, there are several complaints against Massachusetts institutions that have been pending before OCR for almost ten years. This in and of itself illustrates OCR's failure to act in ensuring schools are taking action to end sex discrimination, prevent its recurrence, and remedy its effects. We hope that the shift away from deliberate indifference makes OCR an effective avenue for those experiencing sex discrimination in their education.

This comment outlines our response to the elements of the proposed regulations that we welcome, areas where we think clarity would be beneficial, and what specifically we would like to see changed. Finally, we will address separately the distinctions between the requirements for K-12 and higher education, largely contained in § 106.45 and § 106.46.

I. Shifting Agency Standard of Review, Expanding Jurisdiction of Title IX, and Incorporating Discretion in Adjudication Methods Are Important to Reestablishing Equity and Restoring Fairness in Grievance Processes.

A. Moving Away from Deliberate Indifference as a Standard for Agency Enforcement Restores the Ability of the Department to be Effective in Ensuring Compliance with Title IX Obligations.

In setting forth an administrative enforcement standard, the proposed regulations rightly restore the Department's ability to enforce Title IX compliance.¹ While the Department has long recognized its own regulatory authority, the current regulations adopt deliberate indifference as the standard of review for assessing a recipient's compliance with its legal obligations to address sexual harassment under Title IX.² Coupled with requiring actual knowledge to initiate a recipient's obligation to respond, the current regulations effectively nullify agency review by setting the bar for relief impossibly high. Under this system, the ability of student-victims to seek accountability and a remedy when their schools failed to respond adequately to complaints of sexual assault has been essentially foreclosed.

For example, in a sexual assault case under the current regulations, a student-victim filed a formal complaint in February against another student who was due to graduate in May. The complainant complied with all timelines and steps throughout the investigation. By contrast, the respondent asked for numerous delays and the school itself caused several delays due to a variety of foreseeable and avoidable administrative factors. The investigation

¹Proposed § 106.44(a).

² 34 C.F.R. § 106.44(a). In Gebser v. Lago Vista Independent School District and later in Davis v. Monroe County Board of Education, the Court created a framework with deliberate indifference as the standard for private monetary damages against the recipients. Gebser, 524 U.S. 274 (1998); Davis, 526 U.S. 629 (1999). In doing so, the Court expressed concern that an education institution could pay money damages for harassment that it was unaware of and that the damages amount could exceed the school's federal funding. See Gebser, 524 U.S. at 290. Notably, the Court acknowledged the Department's authority to use administrative enforcement in other matters. Id. at 292. The 2020 Amendments extended and adapted this standard from private lawsuits for money damages to the circumstances surrounding administrative enforcement of Title IX.

concluded in April and the complainant was told a hearing would be scheduled prior to the respondent's graduation in mid-May. This, however, did not occur, despite the complainant agreeing to dates and responding efficiently to all scheduling emails. The respondent's graduation date came and went without a hearing. School administrators indicated to the complainant that the hearing would still move forward and proposed several dates, some even into June. Again, the complainant timely replied indicating her availability and interest in ensuring this hearing went forward. After several scheduling emails, the complainant was suddenly informed that the school was dismissing the case since the respondent had graduated and the policy allowed for such discretionary dismissals. She was given no opportunity to appeal this dismissal until four months later – after significant advocacy from the VRLC. However, this appeal option was not included in the school's policy and it was clear that it was a hollow procedural step, even though the current regulations require the opportunity to appeal discretionary dismissals.

Despite the student-victim doing everything that she was supposed to do by way of filing a complaint and complying with all procedural steps – including providing copious details of a sexual assault as well as evidence to support her complaint – the school summarily dismissed the case at the last second without warning, information, or providing a timely opportunity to challenge the decision. While many aspects of this case were mishandled and failed to comply with the regulations, the student-victim was left without recourse to hold the school accountable and, importantly, *the school was aware of this*. It operated without fear of any oversight since the deliberate indifference standard applied to both agency and judicial review. Put another way, the student-victim had no viable recourse even though there was ample evidence of noncompliance.

This case, and so many others, underscore why deliberate indifference, a liability standard stemming from private lawsuits for money damages, is an inappropriately narrow standard to use when investigating a recipient's failure to respond to sex discrimination.³ Deliberate indifference requires that a recipient's response to sex discrimination be "clearly unreasonable in light of known circumstances."⁴ By using deliberate indifference, the current regulations have allowed for – and arguably cultivated – blatant noncompliance. Because only the most severe cases meet the standard, a recipient can do almost nothing in response to a sexual harassment complaint and still not be held accountable.⁵

The shift away from deliberate indifference in the proposed regulations is a welcomed and necessary change for the Department to effectively enforce Title IX. The proposed administrative enforcement standard makes clear that recipients must take prompt and

³ Gebser, 524 U.S. at 283; Davis, 526 U.S. at 639.

⁴ Davis, 526 U.S. at 648.

⁵ The current regulations deprive OCR of its enforcement authority by imposing a standard used in private litigation for money damages lawsuit. As such, until a recipient's actions – or lack thereof – have risen to the point of being liable in a private lawsuit for money damages, OCR's ability to investigate is minimal.

effective action to end sex-based harassment, prevent its recurrence, and remedy its impact, which makes it easier to ensure that Title IX's purpose is being pursued by recipients.⁶ Moreover, the proposed affirmative duty of the Title IX Coordinator to monitor barriers to reporting information that may constitute sex discrimination in a recipient's education program or activity is another layer that the proposed regulations include to reiterate the significance of a recipient's duty to address sex discrimination writ large.⁷ Together, these proposed revisions have the potential to restore trust in the Department. Under this system, student-victims who experience cases as described above where there is significant failure by a recipient to comply with its obligations will have a mechanism to seek redress.

However, it is imperative that the Department also puts into place an efficient framework to receive, process, and respond to complaints. The VRLC currently has six cases pending with OCR that have been open for seven years and over, including one which has lingered for almost a decade. All of these complaints involve sexual assault and institutions that deviated from their obligations to promptly and effectively respond. In some cases, the student-victims left school entirely because they were so traumatized by the institutional process and its procedural missteps. Despite multiple attempts to gain insight into these cases and their status over the years, OCR has refused to provide any meaningful information. The only information forthcoming in many of these cases is requests at random from OCR attorneys for updated consent forms that often threaten case closure if they are not timely received. The student-victims in these cases have long since moved on from their institutions and will never experience any meaningful redress from their complaints. The lack of transparency and investigative inefficiency have eroded trust in OCR as a viable enforcement mechanism.

The proposed regulations represent a pivotal moment for the Department in terms of its ability to effectively enforce Title IX. The changes reflected in the proposed regulations cannot be the end of the story, however. The Department must take stock of its internal processing and response procedures and revamp in practice how it will respond promptly to complaints of sex discrimination in a transparent and proactive manner.

⁶ Proposed § 106.44(a).

⁷ See Proposed § 106.44(b). Sex-based harassment is grossly underreported. Barriers to reporting include, but are not limited to, a recipient's inadequate response to past reports, including failures to communicate, investigate, address violations of no contact orders, and respond to retaliation and disciplining student-victims for collateral conduct violations. Particularly, in the K-12 context, a lack of understanding as to who the Title IX Coordinator is and what their responsibilities are is a significant barrier to reporting.

Recognizing that recipients have diverse sizes and varying resources, how a recipient must monitor is not dictated. A recipient can use multiple tools to monitor barriers reporting sex-discrimination, including, but not limited to, campus surveys, soliciting feedback from student-victims and employees who have participated in the grievance process, participating in public awareness events where feedback is sought, and maintaining an email address to receive anonymous feedback about barriers to reporting. A recipient must ensure that it monitors barriers to reporting for all groups, including student-victims with disabilities and/or limited English proficiency.

B. Expanding the Scope of Title IX to Include Hostile Environment/Off-Campus Conduct More Adequately Reflects the Reality of Perpetration and Victimization in Education Contexts.

The proposed regulations rightly restore the requirement that institutions of higher education and K-12 districts respond to any sex-based harassment that creates a hostile environment in an education program regardless of where that conduct occurs. The proposed change appropriately recognizes that schools and students do not operate in a vacuum, and that certain contexts like study abroad increase the risk of sexual victimization. This marks a shift from the current regulatory framework where recipients have no duty to respond to incidents of sex discrimination that occur off campus, even if it is between two students and affects the ability of the student-victim to access their education.

The current regulations fail to account for the fact that what happens off campus or in a study abroad program often creates a hostile environment in an education program, thereby impacting its students' abilities to access it. We have witnessed student-victims face immense difficulty staying in school following an off-campus assault by a fellow student, especially in the K-12 context. In these settings, student-victims are confined to the same building as the responding student, see them walking through the halls, sit near them in classes, and eat lunch in the same space. Without the express obligation to take action in response to these incidents, schools have left student-victims to deal with the ramifications on their own or suggested that the incidents are a matter for law enforcement to address. In many of these cases, student-victims have withdrawn from school and social activities and in far too many they have left altogether.

Our experience working with student-victims who were assaulted in their study abroad program is consistent with this as well. There is an increased vulnerability to sexual violence when it comes to studying abroad, which is reflected in our anecdotal case experiences and research.⁸ In one case, a student-victim was sexually assaulted in a study abroad program in a country where they were unable to speak the language and were conducting research for their graduate degree. They had little recourse yet were expected to fulfill their research obligations while managing the traumatic effects of an assault. The student and the perpetrator returned to their home institution in the U.S. but the institution did not have a duty to respond to the sexual assault under the current regulations. This continued the effects of the hostile environment and the student-victim's ability to access their education fully. In order to fulfill Title IX's stated purpose of prohibiting sex-based discrimination in all federally funded education programs and providing effective protection to students against discriminatory

⁸ Eric Pedersen, et al., Alcohol and Sexual Risk Among American College Students Studying Abroad, PREV. SCI. 21(7) 926-936 (2020) ("In one study, the rate of sexual violence victimization among 218 female students was three to five times higher while abroad compared to on campus, where rates of sexual assault are already high (upwards of 1 in 5 female students).").

practices, education institutions must be expected to respond to all complaints of sex-based harassment regardless of where it occurs.⁹

The proposed regulations address this disparity and make clear that recipients must respond to all sex-based harassment that creates a hostile environment,¹⁰ regardless of whether that conduct occurred outside that recipient's education program or activity or outside of the United States.¹¹ By reestablishing a recipient's obligation to respond to any sex-based harassment that creates a hostile environment in an education program, the proposed regulations reflect the reality of sex discrimination in educational contexts. We welcome this change to the Title IX regulatory framework and encourage OCR as the enforcement agency to ensure that recipients are proactively and comprehensively addressing sex discrimination that has lingering effects on the educational environment.

C. Discretion around Adjudication Restores Balance to the Grievance Process and Removes Barriers to Student-Victims Reporting.

The proposed regulations restore an institution's ability to respond to sex-based discrimination by giving them the flexibility to implement a fair and equitable process without requiring a live hearing and live cross-examination.¹² Institutions of higher education are diverse communities with different cultures and varying resources. The proposed regulations recognize that diversity and set forth guidelines in a flexible model that offers recipients the ability to tailor their response to sex-based discrimination.¹³

The current regulations' requirement that all schools must conduct a live hearing with live adversarial cross-examination has a detrimental effect on student-victims across the board.

⁹ See Cannon v. U. of Chicago, 441 U.S. 677, 704 (1979) ("Title IX, like its model Title VI, sought to accomplish two related, but nevertheless somewhat different, objectives. First, Congress wanted to avoid the use of federal resources to support discriminatory practices; second, it wanted to provide individual citizens effective protection against those practices.").

¹⁰ Notably, the Department rejects the current narrow definition of sexual harassment, adopted in the 2020 Amendments, as "unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity." 34 C.F.R. § 106.30. This definition narrowed the scope of behavior covered by Title IX, thereby denying redress to a significant amount of student-victims who could not meet the high burden of "so severe, pervasive, and objectively offensive." See id.

In the proposed regulations, the Department returns to an expanded understanding that sets forth factors that recipients must use to evaluate whether sex-based misconduct creates a hostile environment in an education program. See Proposed § 106.2. This framework expands the scope of conduct that falls under sex-based harassment. Specifically, the proposed regulations establish that a hostile environment is created by "unwelcome sex-based conduct that is sufficiently severe or pervasive, that, based on the totality of the circumstances and evaluated subjectively and objectively, denies or limits a person's ability to participate in or benefit from the recipient's education program or activity." See id.

¹¹ See Proposed § 106.11.

¹² See Proposed § 106.46(g), 106.46(f)(1)(i).

¹³ Id.

Over the past two years, many expressed fears of even reporting incidents of sexual assault to their institution due to these requirements; those that went through the grievance process faced hearings marked by unrelenting victim-blaming questions. While Title IX hearings are more akin to administrative proceedings, the current regulations carelessly fashion them as quasi-judicial proceedings that require some of the most complex legal techniques without the safeguards to keep those techniques in check. In a typical courtroom proceeding, cross-examination is highly contentious yet there are procedural safeguards to ensure that it is being utilized appropriately and staying within evidentiary boundaries and protocol. Under the current regulations, however, these safeguards are explicitly not present, and the rules of evidence do not apply. This has led to proceedings that retraumatize the student-victim. For instance, in one case under the current regulations, the responding party's advisor was a seasoned criminal defense attorney who did not care to understand the distinctions between the criminal justice process and Title IX proceedings. His cross-examination of the student-victim lasted for hours and included questions suggesting that she was a liar, withheld evidence, and was actively manipulating the Title IX complaint process. This is common under the current regulations. Moreover, many Title IX advisors are not attorneys and do not have training in conducting cross-examinations. The resulting process does not unveil any more truth than another mode of probing credibility, including questions posed by a decisionmaker or investigator. Indeed, there is no evidence that direct cross-examination by a student's advisor is the most effective way to determine whether a sexual misconduct violation occurred.¹⁴

We are encouraged by the proposed flexibility around adjudication method; however, we urge the Department to consider how this will result in significant disparities in experiences of student-victims, particularly those who must continue to endure direct cross-examination. By empowering institutions to implement their rules of decorum and stating clearly the expectation that live hearings in these settings should not be likened to courtroom proceedings, the Department will further establish itself as a check and balance on these processes.

II. Recommendations Regarding the Proposed Regulations Impacting Higher Education and K-12 Recipients: Informal Resolutions, Presumption of Not Responsible

A. Revise the Proposed Regulations Related to Informal Resolutions.

The Department of Education has historically premised its guidance and regulations related to informal resolutions on the assumption that the resolutions in informal processes are less effective at addressing sex-based discrimination and more prone to the detrimental

¹⁴ Haidak v. Univ. of Mass.- Amherst, 933 F.3d 56, 68-69. (1st Cir. 2019) (“We are aware of no data proving which form of inquiry produces the more accurate result in the school disciplinary setting...In the hands of a relative tyro, cross-examination can devolve into more of a debate.”).

impacts of power imbalances. The current and proposed regulations prohibit certain cases from being resolved informally,¹⁵ offer broad discretion to recipients to decline to resolve a case informally,¹⁶ and previous guidance went so far as to strongly discourage certain types of alternative dispute resolutions.¹⁷ Embedded, too, has been an assumption that without the option for an informal resolution process, a student-victim will proceed through a formal process.¹⁸ The Department's guidance and regulations related to informal resolutions have resulted in the most significant barriers to its success.

The proposed regulations prohibit recipients from resolving allegations of sex-based discrimination brought forward by a student against an employee using an informal resolution process. While this is appropriate in the K-12 context, it inappropriately deprives adult victims of autonomy and decision-making power in the higher education setting. This policy is predicated on the idea that the power imbalance will lead to an unfair result but fails to recognize that this same power imbalance exists in the formal grievance process. Employees often have greater access to skilled attorneys as advisors, raise greater litigation concerns for the institution, and understand the dynamics of the institutions in ways a student does not. This leads to significant advantages in the formal grievance process. Power imbalances also exist even in student-on-student cases and are not reason enough to ban all forms of informal resolutions. A trained informal resolution facilitator must have the skills to recognize power imbalances and ensure that they do not impact the outcome. Another important consideration is that reporting rates by students who experience sex-based discrimination by staff, especially faculty, are extraordinarily low.¹⁹ Creating fewer options perpetuates, not helps, the longstanding hesitancy of students pursuing any process against an employee. The recipient's obligation to obtain written consent from the parties and avoid pressuring students²⁰ coupled with the reporting party's right to withdraw at any time before a resolution²¹ creates safeguards that address the Department's concerns. We recommend that the Department remove the prohibition on resolving allegations of sex-based harassment by an employee against a student in the higher education context. The recipient may use its discretion to

¹⁵ Proposed § 106.44(k)(1).

¹⁶ Proposed § 106.44(k)(1)(i).

¹⁷ "Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis." Dear Colleague Letter, Dept. of Education, Office for Civil Rights at 8 (2011).

¹⁸ The proposed regulations offer future risk of harm to others as a reason to decline to resolve a case informally. This language implies that a recipient will be able to proceed through a formal grievance process and any sanction assigned will lead to increased safety for the recipient's school community.

¹⁹ In addition, the empirical research both inside and outside of academia shows rates of sexual harassment and sexual violence that are much higher than the number of reports of such conduct to anyone in an official capacity. Indeed, that sexual harassment is a significantly and consistently underreported problem, whether on a campus or not, is well-established. Nancy Chi Cantalupo & William C. Kidder, A Systematic Look at a Serial Problem, Sexual Harassment of Students by University Faculty, 2018 UTAH L. REV. 671 (2018).

²⁰ Proposed § 106.44(k)(2) A recipient's discretion would be further limited by proposed § 106.44(k)(2) which states a recipient must not require or pressure the parties to participate in an informal resolution process, and that the recipient must obtain the parties' voluntary consent to the informal resolution process.

²¹ Proposed § 106.44(k)(3)(iii).

decline to informally resolve cases in which it feels that the power differential is too great, but the student-victim's autonomy is too critical to maintain an outright ban.

The proposed regulations also offer broad discretion for an institution to determine that a case is not appropriate for informal resolution without any encouragement to consider the reporting party's wishes. While some victims will choose to proceed through a formal grievance process if an informal resolution is not available, in many cases the victim will instead choose not to make a complaint at all. Specifically, when a recipient eliminates informal resolutions as an option, the impact is often that the district or institution is unable to address the sex-based discrimination at all. For example, if an institution determines that a case is not appropriate for informal resolution because of the future risk of harm to others,²² the reporting party may choose not to participate in a formal grievance process. While the recipient can proceed with an investigation, without the cooperation and participation of the person who experienced the sex-based discrimination, it is nearly impossible to gather sufficient information to reach a finding of responsibility.

The proposed regulations justify the broad discretion to determine whether a case is inappropriate for an informal resolution by presuming that a formal resolution will be more effective or lead to a safer school or campus. This is not supported by any research and in fact there is data that suggests many sanctions following a formal grievance process are assigned arbitrarily.²³ The sanctions recipients assign are often limited to those that simply exclude the respondent from the community, temporarily or permanently, and there is no research to support that this leads to a reduction in likelihood to engage in future harm. This stands in contrast to an alternative resolution where responding parties may agree to research-informed interventions that are more likely to reduce future violence.²⁴ Informal resolutions allow a reporting party to make specific requests about what they are seeking or what may repair the harm they experienced, which may or may not be a temporary or permanent exclusion from the community. The regulations should urge recipients to consider the reporting party's wishes when assessing the appropriateness of informal resolution, and the preamble should urge them

²² Proposed § 106.44(k)(1)(i)-(ii).

²³ In a University of Michigan survey, 384 university administrators at various institutions reported that less than "10% of sanctioning decisions were informed by a written sanctioning guide developed for student sexual misconduct matters." Furthermore, a majority of the survey respondents indicated that their respective institutions need, desire, or would benefit from high levels of training, technical assistance, or support in a multitude of areas including research-informed approaches to sanctioning students found responsible for sexual misconduct. Wilgus J., et al., National Survey of Sanctioning Practices for Student Sexual Misconduct at Institutions of Higher Education (University of Michigan, 2014).

²⁴ Factors that may mitigate the risk of future harm include: pro-social activities, coordinated educational input, opportunities for social-emotional learning, openness to positive peer attitudes, developmental malleability, receptivity to change. Raina V. Lamade, et al., Developing and Implementing a Treatment Intervention for College Students Found Responsible for Sexual Misconduct, Journal of Aggression, Conflict and Peace Research, 10, August 31, 2018 at 134.

https://www.researchgate.net/publication/321175561_Developing_and_implementing_a_treatment_intervention_for_college_students_found_responsible_for_sexual_misconduct.

to consider the likelihood that a case would be meaningfully investigated without the participation of the victim.

Institutions that have invested in skilled informal resolution facilitators and created procedures based on developed practices, such as shuttle negotiation or restorative justice, have seen students reach robust resolutions that can be just as effective at addressing behavior or holding responding parties accountable. In cases where this has not been the case, it is often because the institution has not provided adequate training for its facilitators, or it limited the ability of the responding party to seek a solution that is tailored to their needs. Student-victims across the country have been clear that they are seeking resolution options beyond the formal grievance process.²⁵ The focus of regulations related to informal resolutions should be on the competency and skill of the administrators facilitating them, providing autonomy to student-victims, and ensuring that they are entered into voluntarily.

In summary, we support:

- The proposal to remove the requirement that a formal complaint is filed in order to engage in the informal resolution process.²⁶
- The specific training requirements informal resolution facilitators must receive as outlined by § 106.8(d)(3).

We recommend the following revisions:

- Remove the ban on informally resolving allegations that an employee engaged in sex discrimination toward a student for institutions of higher education. Revise § 106.44(k)(1) to state: (1) At any time prior to determining whether sex discrimination occurred under § 106.45, and if applicable § 106.46, a recipient may offer to a complainant and respondent an informal resolution process, unless such a process would conflict with Federal, State or local law.
- Revise § 106.44(k)(1)(i) to state: A recipient has discretion to determine whether it is appropriate to offer an informal resolution process when it receives information about conduct that may constitute sex discrimination under Title IX or a complaint of sex discrimination is made. A recipient may decline to offer informal resolution but should consider the wishes of the parties.

²⁵ See also: Lyra Walsh Fuchs, [When Title IX Is Not Enough](https://www.dissentmagazine.org/article/when-title-ix-is-not-enough), Dissent Magazine, <https://www.dissentmagazine.org/article/when-title-ix-is-not-enough>; Leila Henry, [From Title IX to Yik Yak, Wesleyan Disempowers Survivors of Sexual Assault](http://wesleyanargus.com/2021/10/28/from-title-ix-to-yik-yak-wesleyan-disempowers-survivors-of-sexual-assault/), Wesleyan Argus, <http://wesleyanargus.com/2021/10/28/from-title-ix-to-yik-yak-wesleyan-disempowers-survivors-of-sexual-assault/>.

²⁶ As the proposed regulations would no longer require a party to file a formal complaint, the Department proposes removing the requirement in current § 106.45(b)(9) that a recipient must not offer informal resolution unless a formal complaint has been filed.

B. Eliminate the Presumption of Not Responsible.

Both the current and proposed regulations include, as part of the grievance process, an initial presumption that the responding party is not responsible for the alleged conduct. While we agree that a responding party should not be considered or treated as responsible until a determination is made, the Department takes it a step too far by requiring a presumption of not responsible for the reporting party to overcome. Imposing a presumption of not responsible at the onset of a process shifts the burden of proof onto the complainant, despite the Department's established position that the burden remains with the recipient. Maintaining this harmful requirement from the current regulations perpetuates the notion that responding parties are or should be entitled to protections found in the criminal justice system – a fundamental misunderstanding of the grievance process. Criminal procedure has no place in the educational system and only stands to benefit responding parties, creating an inequity that undermines that role and purpose of Title IX.

By treating responding parties, largely men, as presumptively innocent the Department buys into the longstanding and insidious myth that this is necessary because reporting parties, largely women, are bringing forward false allegations.²⁷ As part of its justification, the Department states in the preamble, “the Department would not presume that a recipient accused of sex discrimination through its policy or practice operated its program or activity in a discriminatory manner until a determination whether sex discrimination occurred is made at the conclusion of the recipient’s grievance procedures for complaints of sex discrimination.”²⁸ We agree with this assessment but disagree with the Department that this is equivalent to or a justification for a presumption of not responsible. A policy against presuming a student or recipient is responsible before a determination is made is not the same as presuming someone is innocent or not responsible. The distinction is critical. The former refuses to presume guilt or responsibility, while the latter presumes innocence until proven otherwise. A process rooted in equity and intended to protect an individual’s civil rights must begin without presumptions regarding responsibility.

In summary, we recommend the following revision:

- Revise § 106.45(b)(3): Include a statement that no presumptions are made regarding responsibility until the conclusion of the recipient’s grievance procedures for complaints of sex discrimination.

²⁷ See, e.g., Lynne Henderson, Rape and Responsibility, 11 LAW & PHIL. 127 (1992).

²⁸ Preamble to Proposed Regulations at 286 (Unofficial).

III. Recommendations Specifically Related to the Proposed Regulations for Higher Education Institutions: Exclusionary Rule, Reporting Requirements, and the Need for Investigation Reports

A. § 106.46(f)(4) Is A Differently Packaged Exclusionary Rule That Needs Additional Clarity.

Prior to the decision in *VRLC v. Cardona*, the exclusionary rule contained in the current regulations presented a scheme whereby the student-victim would bear risk after risk going through the grievance process, while the responding party would be able to game the system in order to exclude prior admissions. When this was first promulgated, we surmised that such a scheme would cause the student-victim to wonder whether it was worth reporting in the first place. Unfortunately, we have seen this bear out and such concern was echoed in the *Cardona* decision holding that this provision was arbitrary and capricious.

Nonetheless, some institutions have retained the exclusionary rule in their Title IX policies and continue to implement it. In our cases under these policies, we have seen student-victims asked questions by a range of responding party advisors, including seasoned criminal defense attorneys who do not understand or appreciate the distinction between Title IX proceedings and a court of law. Importantly, the concomitant lack of evidentiary protections in the current regulations has led to hearings lasting multiple days and being highly contentious, with several debates between the decisionmaker and the advisor conducting cross-examination. One client's cross-examination took several hours during which she was forced to answer every question deemed relevant, including questions about her history of flirting, loyalty to friends, and repeated questions alleging she intentionally withheld evidence from the investigator with no basis. The 2020 exclusionary rule did not further due process protections; it was a tool to prioritize the rights of the responding parties to the detriment of student-victims.

Proposed § 106.46(f)(4) is a different version of the same problematic scheme. Its breadth raises concerns about its implementation and the inequities stemming therefrom. These concerns are not wholly dissimilar to those stemming from the previous version. To begin, § 106.46(f)(1) states "when credibility is in dispute" which suggests that this provision is only applicable in certain circumstances, but it is not clear whether a determination about this needs to be made, at what stage of the process, or by whom. The preamble nonetheless contemplates situations in which this provision isn't necessary, suggesting that a determination is warranted: "respondent admits to engaging in the misconduct,... recipient reaches a decision based on evidence other than the complainant's statements, and ... respondent waives their right to a hearing."²⁹ This is the extent of information provided related to the inapplicability of this provision. However, these situations implicate different individuals in making the determination about whether credibility is an issue and the procedural stage at which it is to be

²⁹ Preamble to Proposed Regulations at 433-34 (Unofficial).

undertaken. With respect to the first scenario – in which a respondent admits to engaging in the misconduct – this could happen at any point during the investigation and adjudication. Does it mean that whoever is coordinating the process immediately halts and indicates that credibility is no longer an issue? What notice and information are required to establish that this provision no longer applies?

The second circumstance, where a recipient reaches a decision based on evidence other than the complainant's statements, suggests that this is a determination made at the tail end of a process, after an investigation and decisionmaker has weighed in. At that point, however, it is unclear whether further questioning needs to be undertaken. Finally, in the last situation, where a respondent waives their right to a hearing, a Title IX Coordinator or a decisionmaker is responsible for making the call about this provision's applicability, but how and what information is required to do so remain unclear.

After the determination has been made that credibility is in dispute, it is unclear how the decisionmaker determines whether a question is related to credibility per § 106.46(f)(4) since that could ostensibly encompass all questions, even ones that border on information related to a student-victim's sexual orientation and sexual history. Without more direction on this, student-victims could be asked all manner of questions under the auspices of credibility. It is further unclear how a decisionmaker determines whether a statement supports that party's position if the student-victim declines to answer a question. For instance, is it a statement of that party's position if a student-victim asserted that they were not interested in the responding student romantically? Would all of their statements to an investigator essentially be excluded from consideration? Would the responding student's advisor have the ability to argue for exclusion of certain statements?

Without clear expectations related to the implementation of this provision, institutions are likely to err on the side of caution and institute it across the board. For the swath of institutions that retain a live hearing, this will not be substantially different from the 2020 exclusionary rule when it comes to the parties' participation in this proceeding. Student-victims will be forced to undergo protracted live cross-examination, particularly if they have alleged a sexual assault which almost always implicates credibility.

Evaluating the Department's rationale for including this provision - that it prevents manipulation by the parties – reveals that it misses the mark and that its stated goal can be achieved in other ways. The Department points to an example of a party sending a voicemail or email to a friend and not subsequently answering questions about their credibility. According to the Department, this situation would require the decisionmaker to consider the voicemail or email for its truth without it being subjected to proper probing. However, this rationale does not fully account for how credibility is evaluated in the context of these processes and fails to consider other options for addressing such a situation that would not lead to the same concerns as the exclusionary rule. First, credibility is not assessed in a vacuum. It is weighed in the context of all information and evidence gathered over the course of the process. The

parties' accounts should ideally be considered in relationship to each other, witness information, documentary and other evidence, as well as any other information gleaned and observed. The Department's suggestion that the only way to test credibility is via direct questions is a fundamental misstatement of how these assessments are accurately and ideally undertaken.

Secondly, the decisionmaker should be trained in weighing evidence and would be able to assign lesser weight to evidence and information that has not been explored. In the event that they are not able to probe the nature, context, and veracity of evidence such as a voicemail or email from a party to a friend, the decisionmaker would weigh that against other evidence and information that they were able to probe and reach a conclusion based on the totality of the information. While preventing manipulation by the parties is important to consider, it should not outweigh the myriad of problems that comes with incorporating a vague, overbroad exclusionary rule that leads to many of the same concerns as the 2020 exclusionary.

The final element of this provision related to inferences by a decisionmaker could be a helpful safeguard or check on the parties' ability to manipulate the process and obviate the need for such a broad exclusionary rule, but this would require some instruction by the Department. While the text of the proposed provision states that the decisionmaker "must not draw an inference about whether sex-based harassment occurred *based solely* on a party's or witness's refusal to respond to questions related to their credibility,"³⁰ it suggests that a decisionmaker *could* consider the refusal in their decision making but that this fact alone would be insufficient to draw a conclusion. If this interpretation is in line with the Department's intention, the final regulations should make that clear.

In summary, we recommend the following revision:

- Revise § 106.46(f)(4) to state: ~~(4) Refusal to respond to questions related to credibility. If a party does not respond to questions related to their credibility, the decisionmaker must not rely on any statement of that party that supports that party's position.~~ The decisionmaker must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond questions related to their credibility.
- B. § 106.44(c)(2) Requires a Reporting Structure that is Confusing and Does Not Fully Address the Need for Victim Agency and Confidential Resources.

In the context of higher education, a robust and transparent reporting structure is critical to advancing the goals of encouraging reporting, tracking patterns and trends of perpetration, and preventing the burden of disclosing and reporting from falling solely on

³⁰ Proposed § 106.46(f)(4) (emphasis added).

students. Under the current regulations, the actual knowledge requirement coupled with the nebulous reporting obligations of employees has led to many incidents of sexual assault, dating and domestic violence, and stalking falling through the cracks.

In combination with this, the requirement that all supportive measures be coordinated by the Title IX Coordinator means that students who otherwise would have reached out for support are hesitant to do so – either due to concerns around the ability to maintain privacy or a lack of trust in the institution. Under this framework, institutions have reported a dramatic reduction in reports. This does not indicate a sudden reduction in perpetration, but that students are not reporting to the Officials with Authority or getting to the Title IX Coordinator.

In this context, those who have historically assisted student-victims in obtaining accommodations and other supportive measures, such as campus advocates, are prevented from continuing in that role or must coordinate directly with the Title IX Coordinator. This scheme complicates the role of campus advocates and other employees who had generally not been required to report to the Title IX Coordinator. Student-victims are left to navigate this confusing and opaque reporting structure without clear confidential options.

The proposed regulations seek to rectify the extent to which the current regulations undermine the object and purpose of Title IX, but the proposed provisions fall short of this in a few critical ways. While the Department is attempting to strike a balance between a broad rule requiring all employees to report and the current regulations, its proposal with such vague categories creates more confusion than is necessary. Specifically, it fails to require recipients to communicate this structure to its community. While this does not need to be prescriptive, the proposed regulations' silence on this fails to consider how critical this information is to student-victims making informed choices around disclosure and exercising autonomy. Taking that into consideration, the Department should require that recipients communicate to their community which employees are required to report to the Title IX Coordinator. The recipients should be able to exercise discretion around how to do this effectively depending on their particular institutional culture and community, but it should be an expectation that this information is accessible to students.

Moreover, the proposed reporting scheme acknowledges that there are confidential employees, but its failure to require institutions to have at least one does not fully account for the pressing need for confidential resources for student-victims. We have observed through our casework across Massachusetts and Oregon that access to confidential resources on campus ends up facilitating more reports to the institution. This not only allows recipients to understand sexual assault perpetration more fully on their campuses but also instills a greater amount of trust and informed decision-making from the student-victim. As a matter of policy, ensuring that campuses have confidential resources is critical to advancing the effectiveness of Title IX. One way that institutions have done this is by investing in victim advocates on campus who are directly accessible and familiar with the institution's policies and processes. We have observed victim advocates play a crucial role in supporting student-victims as they prepare to

report to the institution and as they reach out for support in other areas of their recovery. It is critical for the Department to mandate that institutions have confidential resources available to students.³¹

In summary, we recommend the Department provide further clarity on:

- How institutions are expected to communicate with their community the specific individuals who are required to report.

We urge the Department to consider the following revision:

- Mandate that institutions have at least one confidential employee.

C. § 106.46(e)(6)(i): Not Requiring an Investigative Report Has Detrimental Effects on the Investigative Process.

In a departure from established practice, proposed § 106.46(e)(6)(i) requires institutions to provide access to the relevant evidence *or* to an investigative report that summarizes the evidence. However, if the institution chooses the latter, it must also provide access to the relevant evidence upon request. Under this framework, institutions are incentivized to forego the investigative report since access to the evidence is required either way. For the following reasons, we urge the Department to reconsider this and require investigative reports during grievance processes.

First, investigative reports are intended to organize the evidence, including information gathered through interviews, so that it is presented to the decisionmaker or relied upon by the investigator to weigh the evidence and come to a determination. These reports are often an opportunity for parties to review how the evidence is organized and make corrections as well as to prepare for the next step in the adjudication process, particularly if there is a hearing. When parties are given access to the relevant evidence, it is often hundreds of pages of interview summaries, text messages, photographs, police reports, and other documents in a format that is overwhelming. It shifts an incredible burden to the parties to sift and sort through the evidence, often shared using platforms that disable the viewer's ability to search, print, or download the materials. Parties, especially those without a skilled advisor, often do not know what they are looking for or how to respond to this evidence without any context about its relevance, weight, or importance to the decision. These reports essentially serve as a check and balance on the decision-making process in that they give parties the opportunity to review how

³¹ It is important to note that the proposed regulations do not deviate from the current regulations' requirement for the Title IX Coordinator to coordinate all supportive measures. Before the current regulations went into effect, victim advocates often assisted student-victims in obtaining supportive measures. Many institutions interpret "coordinate" to mean that all supportive measures must be funneled through the Title IX Office. This adds another step that student-victims must take in order to receive support and this can often be too daunting and redundant for them. Our concern related to this provision is about ensuring the student-victim is not asked to repeat their experience and speak with many administrators to receive the support they need.

the investigation has gone and understand what the decisionmaker is relying on in determining an outcome.

Secondly, investigative reports can be critical in providing an insight into the credibility and demeanor of the parties and witnesses prior to a decision or a hearing. In many of our cases, the investigative report allows the decisionmaker to get a critical baseline of information to which they can compare their own assessments.

Additionally, investigative reports often summarize the discrepancies in the narratives and what issues remain for the decisionmaker to home in on. We have had cases drawn out over entire academic years, and the investigative report has been critical in detailing the facts agreed upon versus the facts in contention. This has allowed the decisionmaker to tailor their questions to the areas where there are discrepancies, which moves the process along more efficiently.

Finally, investigative reports are critical in assisting parties in discerning whether there is an appealable issue. We have seen many cases that culminate in a written outcome with a very brief rationale. In these cases, the investigative report can be a helpful insight into what was relied on and whether there were errors in the process that could be raised on appeal. Foreclosing this avenue disrupts the ability of parties to fully understand what led to the outcome and whether there is a legitimate appealable issue. Without investigative reports, parties may file more frivolous appeals if they are left without a complete record and little rationale from the decisionmaker.

In summary, we recommend that the Department reconsider this proposed revision and continue with established practice of requiring an investigative report that provides a check and balance on the decision-making process.

IV. Recommendations Specifically Related to the Proposed Regulations for Elementary and Secondary Schools: K-12 Climate and the Need for Specificity in Complaint Procedures

A. § 106.44(c)(1): The Proposed Reporting Structure in the K-12 Context Does Not Fully Address How Districts Have Operated in Response to Sex Discrimination.

In the context of K-12 districts, we agree with the reporting structure outlined in § 106.44(c)(1), which designates all employees who are not confidential as required reporters. In our experience, this aligns with the needs of the student-victims and accounts for the longevity in teachers' relationships with their students. In theory, this should also help track the provision of supportive measures to ensure that student-victims are able to access them irrespective of whether a grievance process is moving forward. However, the reality is that districts have largely not implemented this reporting structure in an effective way despite being mandated to do so.

We urge the Department to consider the following realities of student-victims reporting to teachers and administrators in their elementary and secondary school settings as it works to revise these proposed regulations:

- In the context of K-12 schools, disclosures of sexual assault are largely not being reported in a centralized fashion within the school or across the district. This is despite clear mandates to do so under the current regulations and previous guidance. Depending on the school, reports received by teachers are typically shared with administrators who are unaware of their Title IX obligations or even who the Title IX Coordinator is in the district. Schools are not likely to bring in someone from the district unless there is a complication, or the issue escalates.
- Once a report of sexual assault reaches a school administrator, student-victims are often told that the report is a criminal matter that should be handled by law enforcement. We have had many cases in which school administrators – not the Title IX Coordinator – call law enforcement and report the information without considering the student-victim’s wishes. If an investigation is undertaken by the school, they have lacked transparency and organization, and are typically not done by or coordinated by the Title IX Coordinator. In one case, the client received a page of handwritten notes hastily jotted down by an Assistant Principal as the culmination of the “investigation.”
- Importantly, student-victims continue to face roadblocks in seeking supportive measures. This is frequently defended by the school as protecting the accused student’s right to education, even if supportive measures would affect the parties mutually. By and large, Title IX Coordinators are not coordinating these measures or even involved. If we as attorney-advocates are aware of who the Title IX Coordinator is in specific districts it is only because they have become involved when something went awry. The provision and coordination of supportive measures is largely undertaken by school administrators who are more familiar with state laws than Title IX, thus presenting roadblock after roadblock to student-victims being able to efficiently and effectively access supportive measures. Since the Title IX Coordinator is not the centralized individual to receive reports, it is impossible to hold schools accountable for the lack of supportive measures.

It is imperative that the Department account for these realities in the elementary and secondary context. While the move away from deliberate indifference is a helpful start, it will not fully account for these pervasive issues in elementary and secondary schools. Specific, actionable requirements with follow up are needed to see a material change in how schools handle disclosures, report disclosures, and respond to disclosures.

In summary, we recommend that the Department addresses:

- Elementary and secondary schools’ habit of outsourcing its obligations under Title IX to law enforcement or automatically referring a report of sexual assault to law enforcement;
 - The widespread misunderstanding of Title IX in the context of K-12;
 - Common challenges student-victims face obtaining supportive measures before or during an investigation and even when no investigation will occur.
- B. § 106.45: Requirements Related to a District’s Complaint Resolution Procedures Fail to Ensure Districts Conduct Processes that Address Sex Discrimination.

In the K-12 context, it is necessary to strike the balance between requiring a clear and careful set of complaint resolution procedures and the unique factors of this age demographic and educational context, particularly the need for promptness and immediate availability of supportive measures. The current regulations do not adequately strike this balance, particularly since there remains widespread misunderstanding by school administrators of their obligations under Title IX and how to conduct a process that is responsive to student-victims. For instance, in one of our cases an elementary-aged student was sexually assaulted in the bathroom at school. Through his mother, he immediately reported this to school administrators who indicated that they could choose either a Title IX complaint and investigation or another general civil rights investigation. The school did not explain the implications of the decision and dissuaded the student-victim’s mom from pursuing a Title IX process, suggesting that the student-victim could essentially waive his rights under Title IX. Had we not become involved, the student-victim would not have known about his rights and options, including robust supportive measures. It is also not clear how many times the school has done this in cases where Title IX applies.

Exacerbating this widespread misunderstanding of Title IX obligations in the K-12 context is the impossibly high threshold of the deliberate indifference standard of agency review, which essentially undermines the role of the Department as an effective enforcement mechanism. Student-victims who were failed by districts have no effective remedial avenue and are therefore left with few choices. Many of these students either left school altogether or transferred because they could not access their education without fear. It is therefore critical that any framework for elementary and secondary schools be overseen effectively by the Department and that complaints to OCR be handled in a prompt, efficient, and reliable fashion that incentivizes districts to move the needle when it comes to implementing Title IX.

- i. *Requiring only a description of the evidence that is relevant to the allegations (§ 106.45(f)(4)) fails to ensure a thorough and impartial investigation into sex discrimination.*

A departure from past practice, the Department fails to require an investigative report or the actual evidence relevant to the allegations as well as the opportunity to respond to such

information. The proposed revision is far too broad to be effective and will have unintended repercussions that fail to advance Title IX's mandate. Investigations in these settings are already haphazard with student-victims being provided with little information about the process or any evidence gathered. Schools often hide behind the Family Educational Rights and Privacy Act (FERPA) when withholding information obtained in the course of an investigation or outcome. Allowing districts to broadly "describe" evidence will reinforce the bad habits established over time by districts when they conduct investigations. Under this rubric, schools will not be incentivized to conduct detailed and thorough interviews, for example. If past is prologue, the Department's proposals should require districts to be more meticulous when it comes to conducting an investigation under Title IX. A description of evidence without a right to respond does not set a standard of thoroughness in this context that is needed.

- ii. Failure to require an outcome with a rationale or explanation allows districts to make determinations in a vacuum and without fear of oversight or scrutiny.*

Proposed § 106.45(h)(2) requires that schools provide notice of the outcome, but notably fails to require any rationale or basis for that outcome. Coupled with a lack of comprehensive information related to the investigation, this leaves student-victims without sufficient information about the process and whether the school lived up to its obligations as outlined by the Department. Moreover, without requiring an opportunity to appeal in these processes, parties are essentially left with OCR or the judicial process as next steps if they feel the process erred. However, without access to this information, it is difficult to pinpoint and articulate errors in pursuing a further remedy. Even if OCR is seeking to be more accessible as an enforcement mechanism, failure to require information that would allow parties to effectively utilize it negates its potential. It is critical that schools provide a rationale or explanation for outcomes so that parties are provided sufficient information and so that schools are not incentivized to maintain a practice of implementing haphazard processes.

- iii. Failing to require elementary and secondary schools to notify parties of their right to an advisor leaves vulnerable student-victims who would otherwise benefit from assistance through the complaint resolution process.*

Expressly indicating that parties may have an advisor for the complaint resolution process alleviates the burden on student-victims and/or parents to proactively think about the need for assistance navigating Title IX. As already described herein, districts commonly shirk their duties under Title IX, either intentionally or unintentionally. It is therefore often incumbent on parents and student-victims themselves to advocate for the rights and options that Title IX affords, yet Title IX itself can be quite confusing to understand. While the Department seems to rely on the fact that students have the right to a parent/guardian or legal representative at meetings or proceedings in dispensing with this requirement, it fails to account for the value of communicating that an advisor is allowed.

In summary, we encourage the Department to revise its proposed regulations related to the complaint resolution process in elementary and secondary schools in the following ways:

- Consider and take steps to ensure that the Department responds promptly and effectively when receiving complaints related to elementary and secondary schools' response to sex discrimination;
- Require that elementary and secondary schools provide sufficient access to evidence and information as well as an opportunity to respond to such information and evidence, whether that be via an investigative report or otherwise;
- Require that elementary and secondary schools provide a rationale or explanation for the outcome rendered;
- Require that elementary and secondary schools notify students and parents of the right to have an advisor throughout meetings and proceedings related to Title IX, including when requesting or accessing supportive measures.

V. Conclusion

Since the implementation of the current regulations, student-victims have faced increasing hurdles to asserting their right to equal access to education. These hurdles have had a detrimental effect on student-victims reporting to their schools, seeking supportive measures, and pursuing grievance processes. In the aggregate, student-victims around the country have weathered the effects of sexual assault in the context of their education with little recourse or help. This defies the premise and purpose of Title IX.

The proposed regulations address some of the most insidious aspects of the current regulatory regime. We offer this comment to help guide and facilitate changes that would strike the appropriate balance of equity and fairness from a trauma-informed perspective. Our sincerest hope is that student-victims will not be afraid of reporting sexual assault to their school and be able to trust again that Title IX provides an effective remedy.

* * * * *

Joined by:

Jane Doe Inc.: *The Massachusetts Coalition Against Sexual Assault and Domestic Violence (JDI) brings together organizations and people committed to ending sexual assault and domestic violence and creating a more just and equitable world.*

Ladder Consulting: *Ladder Consulting provides guidance and training on a trauma-informed systemic response to gender-based violence, including policy, reporting mechanisms, and investigation procedures.*

Oregon Sexual Assault Task Force: *Providing training, resources and support to organizations and communities working to prevent and respond to sexual violence.*