January 30, 2019

To: Secretary of Education Betsy DeVos
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

CC: Assistant Secretary for Civil Rights Kenneth Marcus

Re: Docket ID ED-2018-OCR-0064-0001

Dear Secretary DeVos,

We, the 76 undersigned college and university student body presidents representing 32 states, write to express serious concerns with the recently proposed Title IX regulations.

In our roles, we have continuously seen institutions fail survivors of sexual violence. It is our stance that these proposed regulations will limit the ability of students to receive the uninterrupted education guaranteed to them by Title IX of the Education Amendments of 1972 and will allow institutions to turn even more of a blind eye toward instances of sexual violence within our campus communities.

In particular, we have highlighted the ten most problematic provisions that we oppose:

1. Section 106.44(e) of the proposed regulations suggests narrowing the definition of sexual harassment to only behavior that is so “severe, pervasive, and objectively offensive that it denies a person equal access to the recipient’s (or institution’s) education program or activity.” If implemented, this definition would limit the ability of a student to seek assistance from their school until their access to education is completely denied, rather than allowing students to seek assistance and for the university to correct problematic behavior before the trauma and abuse escalates from a point where a student’s educational access has been limited.

2. Section 106.44(e) proposes limiting a school’s responsibility to respond to off-campus or online sexual harassment / assault, stating that a school must only respond to “conduct that occurs within its education program or activity.” This section is deeply concerning given that at many of our institutions a majority of students live off-campus and many social gatherings take place off-campus.

3. We are concerned that Section 106.45 (b)(4)(i) will allow universities or colleges to use a higher standard of evidence for reports of sexual harassment/assault, despite the preponderance of the evidence standard being consistent with civil rights laws. We urge

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the Department of Education to require the preponderance of evidence standard across
the board, so that all students, regardless of what school or state they are in, have access to an equitable process.

4. We are opposed to Section 106.45(c)(3)(viii). Requiring schools to "provide both parties an opportunity to inspect and review any evidence obtained as a part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in making a determination regarding responsibility" means that confidential information such as mental health history or medical records may be shared with respondents, even if irrelevant to the case. We fear that the possibility of this information being improperly shared will deter survivors from reporting and getting access to resources.

5. By permitting live cross-examinations as suggested in Section 106.45(B)(3), we are concerned that students will be unnecessarily re-traumatized. We acknowledge the need for panels to make a determination about the credibility of a complainant, however, we believe this can be sufficiently accomplished through written questions provided ahead of time.

6. In Section 106.44(e)(4), the proposed regulations would change the current mechanism for interim accommodations by forcing survivors to bear the burden of the accommodation, which we are concerned will decrease the number of survivors who will report their assault. For example, previously survivors were able to request that their perpetrator be moved out of a class or dorm as part of an interim accommodation. Requiring a survivor to move instead further victimizes them and disincentivizes them from utilizing university resources.

7. Limiting university/college employees who must respond to sexual harassment/assault reports to "Title IX Coordinators or an official who has authority to institute corrective measures," per Section 106.44(e)(5)), will decrease institutional accountability at a time when our campuses desperately need more. We feel that this proposal could enable institutional cover-up of sexual harassment/assault if a student reports to another employee they trust who is not required to report to the Title IX Office and help the student get access to resources and additional support. We are also worried that this will increase the institutional betrayal experienced by our students.

8. We are concerned that institutions will be allowed to incorporate mediation into the Title IX process per Section 106.45(b)(6). We are aware of instances where students have felt pressured by administrators to enter into mediation, even when one of the parties involved may not truly wish to go through mediation. Instead, we urge the Department to consider restorative justice practices, which we have seen an increased demand for on our campuses in recent years, as they involve perpetrators taking responsibility for harm that they have caused.

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9. Section 106.45(b)(1)(iv) creates a problematic presumption of innocence for the accused, which creates a process where a survivor is automatically thought to be lying. We are concerned that the application of this criminal standard into a non-criminal proceeding will have a chilling effect on reporting and that survivors will be disincentivized to report their sexual assault.

10. Under Section 106.45(B)(5) of the proposed regulations, the appeals process, if offered, does not allow the complainant to appeal a sanction on the grounds of leniency. We’ve seen many instances where respondents who have been found responsible of sexual assault have been given sanctions where they have to write a book report or perform community service. Given this pattern of leniency at institutions, we believe that this new process would unduly favor respondents as they would still be able to appeal sanctions that they believe are too punitive, creating an inequitable process.

For these reasons and many more, we believe that the proposed Title IX Regulations protect institutions from any semblance of accountability while restricting the rights of students. The most marginalized members of our campuses including LGBTQ folks, women of color, and students with disabilities experience much higher rates of sexual violence than the one in five women statistic that is frequently shown in the headlines. These are the members of our community who also stand to be most disproportionately harmed by the proposed regulations. Amidst powerful movements such as #MeToo and #TimesUp, the proposed Title IX regulations will take our nation and our institutions a step back.

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7 https://www.ncjrs.gov/pdffiles1/nij/249736.pdf

8 https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm?s_cid=ss6308a1_e

Signed,

Valentina Fernandez, Student Government President, American University
Reed Piercey, President of the Undergraduate Government, Boston College
Brendi Bluitt, Student Body President, Campbell University
Matthew Smardz, President of the Undergraduate Student Association, Canisius College
Mason Foley, Student Body President, Clemson University
Meredith Coolidge & Adrian Cacho, Co-Presidents of the Student Government Association, College of the Holy Cross
Brendan J. Boylan, Student Assembly President, College of William & Mary
Samir Tawalare, Student Assembly Vice President, College of William & Mary
Jordan Singer, Student Body President, Columbia College
Donna Shahbazi, Students Union President, Creighton University
Marianne Martinez, Student Body President, DePauw University
Kenneth Brown Jr, Student Body President, Elon University
Demetrios Stratis, President of the Fordham Lincoln Center United Student Government, Fordham University
Connor Sullivan, Student Body President, Fordham University - Rose Hill
Juan Martinez, Student Body President, Georgetown University
Evan Gillon, Student Body President, Georgia Institute of Technology
Athena Sok, Student Body President, Gonzaga University
Sruthi Palaniappan, Student Body President, Harvard College
Alex Wisniewski, Student Body President, Indiana University
Julian Neely, Student Body President, Iowa State University
Michael H. Bishop, Student Union President, John Carroll University
Thomas Sacino, Student Body President, La Salle University
Hamza Elhabbal, Student Body President, LeMoyne College
Stewart Locektt, Student Body President, Louisiana State University
Ricky Brazzel, Student Body President, Louisiana State University at Alexandria
Alo Coleman, Student Body President, Loyola Marymount University
Lemuel Bourne, Student Body President, Loyola University Maryland
Meredith Gillespie, Student Body President, Marquette University
Alexa Martin, President of the Undergraduate Association, Massachusetts Institute of Technology
Ian Taylor, Student Body President, Millsaps College
Emily Ash, Student Body President, Northwestern University
Ayeshah Saleem, Student Body President, Nunez Community College
Rachel Yee, Student Body President, Princeton University
Rico Gomez, Student Body President, Regis University
Spencer Beckman, Student Body President, Rhodes College
Claire Webster, Student Body President, Rockhurst University
Rbrey Duane Singleton, Student Body President, Rowan University
Suzanne Link, Student Body President, Rutgers University - New Brunswick
Jason D’Antonio, Student Body President, Saint Joseph’s University
Katlyn Martin, Student Body President, Saint Louis University
Ryan Campen, Student Body President, Saint Peter’s University
Ryan Campen, Student Body President, Saint Peter’s University
Azrael Howell, Student Body President, Seattle University
Shanta Katipamula, President of the Associated Students of Stanford University, Stanford University
Connar Allen, Student Body President, Texas A&M University-Corpus Christi
Shamina Merchant, Student Body President, The Ohio State University
Erin Blake, Undergraduate Student Government President, Tulane University

Natalyann Masters, Student Body President, University of Arizona

Alexander Wilfert, Student Body President, University of California Berkeley

Claire Fieldman, Undergraduate Students Association Council President, University of California Los Angeles

Joshua Eddinger-Lucero, Executive President of the Student Government Association, University of Central Arkansas

Megdelawit Sinna Habteselassie, Student Body President, University of Cincinnati

Olivia Wittenberg, Student Body President, University of Colorado Boulder

Bryan Borodkin, Student Body President, University of Dayton

Bryce Armijo, Undergraduate Student Body President, University of Denver

Benjamin Westphal, Student Body President, University of Detroit Mercy

Walter Lindwall, Student Body President, University of Illinois at Urbana-Champaign

Hira Mustafa, Student Body President, University of Iowa

Noah Ries, Student Body President, University of Kansas

Jonathan Allen, Student Body President, University of Maryland

Simran Mishra, Undergraduate Student Body President, University of Minnesota - Twin Cities

Savannah Putnam, Student Body President, University of North Carolina at Chapel Hill

Matthew Coughlin, Student Body President, University of Scranton

Deborah (Debbie) Lee, Student Body President, University of Southern California

Ovi Kabir, Student Body President, University of Tennessee

Connor Morgan, Student Body President, University of Utah

Ritika Jain, Student Body President, University of Washington-Seattle

Billy Welsh, Student Body President, University of Wisconsin-Madison

Tariq Issa, Student Body President, Vanderbilt University

Danny Reeves, Student Government President, Wake Forest University
Savannah Rogers, Student Body President, Washington State University
Zachary Harper, Student Body President, Washington State University Tri-Cities
Isaac Obioma, Student Body President, West Virginia University
Darius Berry, Student Body President, Wheeling Jesuit University
Blair McKee, Student Body President, Xavier University