

From: Shirley Wilcher
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Attachments: AAAED Statement on Title IX Regulations 061121.pdf

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Attached please find our statement for the Record of the Hearing on the Title IX Regulations. Please include AAAED and our Equal Opportunity Professionals for future hearings and opportunities to provide input. Thank you.

Shirley J. Wilcher, MA, JD, CAAP

(she, her, hers)

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AMERICAN ASSOCIATION FOR ACCESS, EQUITY AND DIVERSITY

**STATEMENT OF RICHARD ANTHONY BAKER, PRESIDENT
AMERICAN ASSOCIATION FOR ACCESS, EQUITY AND DIVERSITY**

Thank you, Acting Assistant Secretary Goldberg, for allowing us to speak regarding steps the agency can take to ensure vigorous enforcement of Title IX of the Education Amendments of 1972. My name is Richard Anthony Baker, and I am President of the American Association for Access, Equity and Diversity (AAAED). Founded in 1974 by affirmative action professionals working for colleges and universities, AAAED is the longest-serving organization for the Equal Opportunity Profession. We are the compliance officers, Title IX Coordinators, Diversity professionals, Labor and Employment lawyers and consultants who are responsible for investigating and resolving matters involving complaints and other issues of discrimination under Title IX and other EEO laws.

We appreciated hearing from you at our recent Listening Session on May 20th and thank you for creating the opportunity for groups such as AAAED to communicate with you regarding the regulatory framework within which we are required to operate.

On January 30, 2019, we submitted comments on the Department's Notice of Proposed Rulemaking on the Title IX regulations, promulgated by the previous administration. In these comments, we wrote:

(T)he proposed regulations constitute an over-correction; that they are so onerous, if not draconian, they will effectively vitiate the rights of survivors and could compromise their access to Federally-funded educational programs and activities. Taking a sword to a problem that requires at best a pen to promote fairness for all is not the approach we would endorse.

We also spoke with the Office of Management and Budget before these regulations were finalized. When final, we were given approximately three months to comply, during a pandemic.

In our view, there are several impediments to equal opportunity presented by these regulations. Among those issues are the following:

1. **SEXUAL HARASSMENT DEFINITION.** The regulation would adopt a definition of sexual harassment which is so limited, it would fail to protect most victims.
2. **NOTICE TO THE INSTITUTION.** The regulation severely limits the number of persons to whom a student may go to seek redress from an act of harassment or sexual violence.
3. **QUASI-JUDICIAL PROCESS.** Live Hearings and Cross-Examination. The Department is seeking to convert an education-based disciplinary process to a quasi-judicial one. Clearly, it is

important to protect the rights of respondents, but to impose a new, expensive and contentious process upon educational institutions is extremely ill-advised and most importantly, will create a chilling effect on the survivors that Title IX was enacted to protect. Anecdotal information suggests that there has indeed been a chilling effect on the number of complaints filed since the regulations were finalized. We recommend that the Department re-think this proposal and solicit more input from Equal Opportunity Professionals about “How much process is due” in a collegiate setting where education is the primary mission.

4. CLEAR AND CONVINCING VS. PREPONDERANCE OF THE EVIDENCE STANDARD. The proposed regulations introduce a more demanding standard of proof: The Clear and Convincing Standard vs. the less onerous Preponderance of the Evidence Standard. The preponderance of the evidence standard is used administratively in other civil rights cases such as those alleging employment discrimination under Title VII or racial harassment under Title VI. By imposing a different standard under Title IX in sexual violence and other forms of gender-based harassment cases, the agency is effectively codifying a different standard of proof in one category of civil rights law against all others.

In summary, we, who are on the front line of investigations and enforcement would appreciate having an opportunity to be heard if the Title IX regulations are to be revised. As important, we recommend that the Department rescind these regulations and take more time to hear from all sides of this issue, including the vast array of colleges and universities and equal opportunity practitioners, many of whom are Title IX Coordinators, who have the expertise to adjudicate these matters. These individuals can provide the Department with evidence-based solutions that will promote due process and fairness to all parties. We respectfully urge the Department to talk to us, both in Washington and throughout the nation, and learn what truly works and where we need the agency’s support.

Thank you for the opportunity to speak before you today.

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Richard Anthony Baker, MPA, JD, Ph.D
President, AAAED