From: Grace Huang
Sent: Fri, 11 Jun 2021 20:13:29 +0000
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing (API-GBV comment & recommendations on the Title IX sexual harassment & violence regulation re: API and immigrant survivors, including international students)
Attachments: API GBV Title IX 2021 Comments06_11_2021.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To whom it may concern, please see attached the written comments from the Asian Pacific Institute on Gender-Based Violence regarding the Title IX rule. Thank you.

Grace Huang
Director of Policy
Pronouns: She/Her
E: ghuang@api-gbv.org | **T:** 206.420.7369
W: www.api-gbv.org | **A:** Seattle Office

apigbv
ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE

Asian Pacific Institute on Gender-Based Violence
T 206-420-7369 E info@api-gbv.org W www.api-gbv.org

June 11, 2021

Submitted via electronic mail, to T9PublicHearing@ed.gov

Dr. Miguel Cardona, Secretary
Suzanne Goldberg, Acting Assistant Secretary for Civil Rights
Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Re: ED Notice of Public Hearing, Title IX of the Education Amendments of 1972, EO 14201 and EO 13988- Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance/ 86 FR 27429 (May 20, 2021).

Dear Dr. Cardona & Ms. Goldberg:

We write on behalf of the Asian Pacific Institute on Gender-Based Violence (API-GBV) to submit written comments for the Department of Education's Office for Civil Rights' public hearing from June 7-11, 2021. We further write to express our strong opposition to the prior Administration's Title IX rule published in the Federal Register on May 19, 2020 (85 FR 30026). We urge the Biden-Harris Administration to ***rescind the prior rule***, and to ***restore previous guidance*** and ***strengthen*** Title IX protections immediately.

API-GBV is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander and immigrant communities. API-GBV works in partnership with various national networks of advocates, community-based service programs, federal and state government agencies, national and state organizations, legal, health, and mental health professionals, researchers, policy advocates, and activists from social justice organizations to better address the needs of Asian and Pacific Islander and immigrant victims. API-GBV analyzes critical issues, promotes culturally relevant evidence-informed intervention and prevention, provides consultation, technical assistance, and training; develops resources, conducts and disseminates research and impacts systems change through administrative advocacy and policy analysis.

Based on our experiences working in partnership with survivor advocates who work with Asian, Asian American, Native Hawaiian, Pacific Islander and immigrant survivors of gender-based violence, and in working directly with survivors of gender-based violence,

we strongly recommend that the Administration ***rescind the current rule, restore longstanding protections for student survivors, reissue rules to make clear that survivors of sexual harassment and violence are entitled to equal access to education, protect student survivors against retaliation***, and support making schools more safe and welcoming to all students.

Title IX was originally enacted to ensure that sex discrimination (including sexual assault, sexual harassment, and domestic or dating violence) would not hamper one's education. Yet the current rule enacted by the prior Administration undermines the very purpose of Title IX. The current rule reduces the responsibility of schools to recognize and respond to sexual harassment and assault, and jeopardizes survivors in the following ways:

1. Undermines the progress that our communities have made in supporting survivors and preventing sexual and domestic violence in schools at a time when awareness of the scope of sexual harassment, sexual assault, and domestic violence has never been greater.
2. Discourages survivors of sexual harassment, sexual assault and domestic or dating violence from coming forward by creating a hostile environment where schools would be allowed, or in many ways required, to ignore victims who report harassment or violence.
3. Promotes unequal treatment of students who report harassment, denying victims due process and creating a system that could re-traumatize victims.

In particular, ANHPI and other survivors from communities of color are disproportionately targeted for sexual harassment and assault,[1] and face many barriers to reporting abuse. The existing guidance only serves to further deter survivors from coming forward and make schools dangerous for all students. Due to these detrimental impacts, API-GBV submits the following comments:

1. **At a time when awareness of the scope of sexual harassment, sexual assault, and domestic violence has never been greater, the current rule undermines the work that our communities have been doing to support survivors and prevent sexual and domestic and dating violence in schools and must be rescinded.**

Sexual violence and intimate partner violence (IPV) are highly pervasive in the United States, with one in three women and one in six men experiencing some form of sexual

[1] Sanchez Gill, A., Warren, A., LaFortune, L., & Patel, S. (2019, January 14). Women and Girls of Color Need Justice Too. Retrieved from https://rewire.news/article/2019/01/14/women-and-girls-of-color-need-justice-too/

violence in a lifetime and over one in three women and nearly one in three men experiencing IPV.[2] Experiences of sexual harassment are even more common with 77% of women and 34% of men experiencing verbal sexual harassment.[3] Between 21-55% of API women report experiencing domestic or sexual violence during their lifetimes.[4] UN Women estimates this figure to be even higher for Pacific Islanders, estimating that 60-80% of Pacific Islander women and girls experience physical or sexual violence by a partner or other individual in their lifetimes.[5]

A study conducted by Centers for Disease Control found that in the Asian and Pacific Islander (API) community, 22.9% of women and 9.4% of men experienced some sort of contact sexual violence and 21.4% women and 9.4% men experienced non-contact unwanted sexual experiences in their lifetime.[6]

College-age women – between the ages of 18 and 24 – experience the highest rate of rape and sexual assault victimization compared to women of all other age groups,[7] and women and individuals identifying as transgender, genderqueer, gender non-conforming and questioning (TGQN) are at a higher risk of sexual harassment and assault and intimate partner violence (IPV) as compared to men. For example, 61.9% of undergraduate and 44.1% of graduate females, 75.2% of undergraduate and 69.4% of graduate TGQN individuals, and 42.9% of undergraduate and 29.6% of graduate males experience sexual harassment.[8]

Asian and Pacific Islander (API) women and individuals identifying as TGQN face unique experiences of sexual harassment, sexual assault, and IPV, often due to cultural dynamics within the API community, as well as outside stereotypes and perceptions. Among API students, women and individuals identifying as TGQN again, experience

---

[2] Centers for Disease Control and Prevention. (2017). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report. Available at https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf

[3] Stop Street Harassment (2018, February). The Facts Behind the #MeToo Movement: A National Study on Sexual Harassment and Assault. Available at http://www.stopstreetharassment.org/wp-content/uploads/2018/01/Full-Report-2018-National-Study-on-Sexual-Harassment-and-Assault.pdf

[4] Yoshihama, M. & Dabby, C. (2015) Asian Pacific Institute on Gender-Based Violence. Facts & Stats Report: Domestic Violence in Asian and Pacific Islander Homes, Oakland, CA: Available at https://www.api-gbv.org/resources/facts-stats-dv-api-homes/.

[5] United Nations Population Fund, Pacific Sub-Regional Office (2014, April). Population and Development Profiles: Pacific Island Countries. Available at: https://pacific.unfpa.org/sites/default/files/pub-pdf/web__140414_UNFPAPopulationandDevelopmentProfiles-PacificSub-RegionExtendedv1LRv2_0.pdf.

[6] Centers for Disease Control and Prevention, supra, note 2.

[7] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2014, December). Rape and Sexual Assault Victimization Among College-Age Females, 1995-2013. Available at: https://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf

[8] Cantor D, et al. (2017, October 20). Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct. Rockville, Maryland: Westat. Available at https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/AAU-Campus-Climate-Survey-FINAL-10-20-17.pdf.

higher rates of sexual violence compared to men.

Sexual Assault: Overall, 7.7% of Asian and 12.2% of Native Hawaiian or Other Pacific Islander (NHOPI) students report experiencing nonconsensual sexual contact involving force or incapacitation. 13.1% of Asian women, 17.6% of Asian TGQN-identifying individuals, and 2.9% of Asian men reporting being victims of nonconsensual sexual contact. 21.2% of NHOPI women, 22.6% of NHOPI TGQN individuals, and 3.8% of NHOPI males experience nonconsensual sexual contact.[9]

Sexual Harassment: Overall, 37.9% of Asian and 51.8% of NHOPI students report experiencing sexual harassment. Among Asians, 54.6% of undergraduate and 34.7% of graduate women, 64% of undergraduate and 61.6% of graduate TGQN individuals, and 37.5% of undergraduate and 20.9% of graduate men report being subjected to sexual harassment. Among NHOPI individuals, 64.4% of undergraduate and 46.7% of graduate women, 67.9% of undergraduate and 47.3% of graduate TGQN identifying individuals, and 50.1% of undergraduate and 34.1% of graduate men report experiences of sexual harassment.[10]

These statistics likely reflect under-reporting from API survivors, often due to cultural differences. Asian students are more likely to blame the victim, believe rape myths, and negative feelings toward victims, for example. Research suggests that Asian students are more likely than Caucasian students to believe that women should be held responsible for preventing rape, and have stronger beliefs that victims cause the rape and most rapists are strangers.[11] A comparison between Japanese and American college students showed that Japanese students tended to minimize, blame, and excuse domestic violence more than did American students.[12] Asian students at a Canadian university were more tolerant of sexual harassment compared to their non-Asian counterparts[13] and Asian and Asian-American men from three large public universities in the United States rated four rape vignettes with more rape-supportiveness than White and Caucasian American men.[14] Few countries in the Pacific

---

[9] *Id.*
[10] *Id.*
[11] Lee, J., Pomeroy, E. C., Yoo, S. K., & Rheinboldt, K. T. (2005). Attitudes toward rape a comparison between Asian and Caucasian college students. Violence against Women, 11, 177–196. https://journals.sagepub.com/doi/10.1177/1077801204271663
[12] Yamawaki, N., Ostenson, J., & Brown, C. R. (2009). The functions of gender role traditionality, ambivalent sexism, injury, and frequency of assault on domestic violence perception a study between Japanese and American college students. Violence Against Women, 15, 1126–1142. https://journals.sagepub.com/doi/10.1177/1077801209340758
[13] Kennedy, M. A., & Gorzalka, B. B. (2002). Asian and non-Asian attitudes toward rape, sexual harassment, and sexuality. Sex Roles, 46(7/8), 227-238.
[14] Koo, K.H., Stephens, K.A., Lindgren, K.P., & George, W.H. (2012). Misogyny, Acculturation, and Ethnic Identity: Relation to Rape-Supportive Attitudes in Asian American College Men. Archives of Sexual Behavior, *41*(4).

Islands have laws addressing violence against women[15] and Pacific Islanders and Asians view IPV to be customary and acceptable under certain circumstances.[16] '

At a time that the Biden/Harris Administration has taken note about the prevalence of anti-Asian bias and violence,[17] it is critical that the Department of Education's Title IX regulation also ***acknowledge the intersectional nature of the sexual and domestic violenc***e experienced by API students, staff, and faculty. This past year has especially demonstrated that Asian women face targeted attacks at the intersection of race and gender. There were nearly 3,800 reported anti-Asian incidents from March 19, 2020 – February 28, 2021, with women making up a far higher share of the reports (68 percent) compared to men (29 percent).[18] Following the March 2021 shootings in Atlanta that took the lives of six Asian women, API women's experiences with the intersections of racism, sexism, and xenophobia, have been made more visible.[19]

API women and gender non-conforming people are frequently targeted for sexual harassment and assault due to race, stereotyped as submissive and exotic sexual objects. Typical representations of Asian-American and Pacific Islander women in American media are the "Lotus Blossom Baby" – such as "China doll," "Suzie Wong sex pot," "Geisha girl," and shy Polynesian beauty – and the "Dragon Lady," such as prostitutes and devious madams.[20] This fetishization and objectification puts API women

---

[15] Thomas, E. Asian/Pacific Islander Domestic Violence Resource Project (2017). Domestic Violence and Sexual Assault in the Pacific Islander Community. Available at: http://dvrp.org/wp-content/uploads/2017/05/GBV-in-the-PI-Community.pdf.

[16] Thomas, E. Asian/Pacific Islander Domestic Violence Resource Project, supra note 11; Lee, Y.-S., & Hadeed, L. (2009). Intimate Partner Violence Among Asian Immigrant Communities: Health/Mental Health Consequences, Help-Seeking Behaviors, and Service Utilization. *Trauma, Violence, & Abuse*, *10*(2), 143–170. https://doi.org/10.1177/1524838009334130; United Nations Population Fund, Pacific Island Countries (2015, November 30). *Hurting a woman harms all of us*. Available at: https://pacific.unfpa.org/en/news/hurting-woman-harms-all-us.

[17] https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/30/fact-sheet-president-biden-announces-additional-actions-to-respond-to-anti-asian-violence-xenophobia-and-bias/

[18] Stop AAPI Hate National Report, *see* https://secureservercdn.net/104.238.69.231/a1w.90d.myftpupload.com/wpcontent/uploads/2021/03/210312-Stop-AAPI-Hate-National-Report-.pdf

[19] API-GBV Statement on Shootings at Atlanta-Area Spas and Crimes Against Asian Americans, *see* https://www.api-gbv.org/resources/atlanta-spas-statement/

[20]Ashar, S., Alvarez, A., Farina, A., & Klumpner, S. (2021) "You're So Exotic Looking," An Inersectional Analysis of Asian American and Pacific Islander Stereotypes, *Affilia; Journal of Women and Social Work, 1-20.* DOI: 10.1177/08861099211001460, available at: https://www.researchgate.net/profile/Sameena-Azhar-2/publication/350091167_You're_So_Exotic_Looking_An_Intersectional_Analysis_of_Asian_American_and_Pacific_Islander_Stereotypes/links/60509d9fa6fdccbfeae46431/Youre-So-Exotic-Looking-An-Intersectional-Analysis-of-Asian-American-and-Pacific-Islander-Stereotypes.pdf; Pandika, M. (March 2021) For Asian Women, this is what racist, sexist violence looks like, available at: https://www.mic.com/p/for-asian-women-this-is-what-racist-sexist-violence-looks-like-66761331?; Kim, M. & Chung, A.Y. (Spring 2005). Consuming Orientalism: Images of Asian/American Women in Multicultural Advertising. *Qualitative Sociology*, *28*(2), 67-91.

at risk of sexual harassment and assault as API women are hyper-sexualized and associated with tropes of sexual imperialism and violence.

International students are an especially vulnerable population for sexual harassment and sexual and domestic violence, as they can be exploited for their lack of knowledge or experience with American customs, unstable immigration status, and unfamiliarity with their rights. In fiscal year 2019, 388,839 F-1 student visas and 391,561 J-1 exchange visitor visas were issued.[21] There are 85% more international students studying in the United States than there were a decade ago, and they now represent 5.2% of the total students enrolled in higher education. The increase in the number of international students pursuing graduate education is so significant that in recent years, some graduate programs have more international students than domestic students.[22] The targeting of international students puts Asian students at high risk for sexual harassment and assault as a significant percentage of international students attending college in the U.S. are from Asian countries. In the 2016-2017 school year, the top three countries of origin were China, India, and South Korea, representing 33%, 17%, and 5% of the total number of international students, respectively.[23]

International students face harassment or assault not only from fellow students, but also from professors or staff.[24] Some report being verbally assaulted, physically assaulted, and even sexually harassed by their professors. Yet not all international students endure the same hardships; the experiences of White international students and international students of color were very different. Research indicates that students from Western cultures and English-speaking countries experienced minimal or no discrimination at all; however, students from Asia, India, Latin America, and the Middle East reported considerable amounts of discrimination.[25]

Particularly egregious examples of sexual harassment and assault by faculty or staff occurred at the University of Southern California (USC), where the student health clinic gynecologist, Dr. George Tyndall, had sexually harassed and abused female students while conducting pelvic exams. Dr. Tyndall targeted Asian students by making sexually suggestive remarks about their bodies, such as the size of their breasts and "tightness"

---

[21] U.S. Department of State (2019), Report of the Visa Office 2019, available at: https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2019AnnualReport/FY19AnnualReport-TableXVII.pdf

[22] S. Anderson (2013). The importance of international students to America. National Foundation for American Policy Brief, 1–22. Available at http://nfap.com/pdf/New%20NFAP%20Policy%20Brief%20The%20Importance%20of%20International%20Students%20to%20America,%20July%202013.pdf

[23] Migration Policy Institute (2018, May 9). International Students in the United States. Available at: https://www.migrationpolicy.org/article/international-students-united-states#CountryOrigin.

[24] Lee, J., & Rice, C. (2007). Welcome to America? International Student Perceptions of Discrimination. *Higher Education* 53(3), 381-409. Available at https://www.jstor.org/stable/29735060

[25] *Id*.

of their vaginas in comparison with those of other Asians; touching them inappropriately during the exams; and improperly photographing their genitals. In particular, Dr. Tyndall victimized Chinese international students, exploiting their young age, their limited English proficiency, and the fact that for many of them it was their first gynecological exam and they were unaware of American medical norms.[26] Similarly, a professor at the University of Cincinnati had a pattern of targeting Asian students under the age of eighteen.[27]

Given the pervasive nature of sexual harassment and gender-based violence that occurs in educational settings, the Administration must prioritize the reinstatement and strengthening of longstanding guidance to effectuate the remedial purpose of Title IX.

2. **The existing rule discourages survivors of sexual harassment and assault from coming forward by creating a hostile environment where schools would be allowed, or in many ways required, to ignore victims who report sexual harassment.**

    a. Schools should ***respond to harassment they know or should know about***, as well as any sex-based harassment by employees ***that occurs in the contexts of the employee's responsibilities*** to provide aid, benefits, or services within the school's program activity

Despite the high rates of sexual harassment and violence, the vast majority of victims do not report their experiences, with only 12% of college age survivors and 2% of girls ages 14-18 reporting the assault to their schools or the police.[28] Victims face a number of barriers that deter them from coming forward, and the existing rule only serves to further discourage or limit the ability for survivors to report the harassment or violence and seek and receive help. Under sections 106.44(a) and 106.30 of the current rule,[29] schools are not required to address sexual harassment unless there was "actual knowledge" of the harassment by (i) a Title IX coordinator; (ii) an employee of an

---

[26] Ryan, H., Hamilton, M., & Pringle, P. (2018, May 16). A USC doctor was accused of bad behavior with young women for years. The university let him continue treating students. Retrieved from https://www.latimes.com/local/california/la-me-usc-doctor-misconduct-complaints-20180515-story.html; Elam, S. (2018, October 19). 93 more ex-students accuse former USC gynecologist of sexual misconduct, attorney says. Retrieved from https://www.cnn.com/2018/10/18/us/usc-gynecologist-george-tyndall-new-accusers/index.html

[27] Murphy, K. (2018, February 08). Flute students accuse ex-University of Cincinnati professor of sexual misconduct over 2 decades. Retrieved from https://www.cincinnati.com/story/news/2018/02/06/students-accuse-university-cincinnati-professor-musician-flutist-sex-harassment-having-sex-students/1057552001.

[28] National Women's Law Center. DeVos' Proposed Changes to Title IX, Explained. Available at: https://nwlc.org/resources/devos-proposed-changes-to-title-ix-explained/.

[29] 85 Fed. Reg. at 30574

elementary or secondary school; or (iii) an official who has "the authority to institute corrective measures."

Sexual harassment and assault are extremely violating and traumatic experiences about which survivors often feel comfortable telling to only those whom they deeply trust. Students in college often have more interactions and opportunities to develop a trusting relationship with professors and other faculty members than with a Title IX coordinator or other officials who may be in a position to "institute corrective measures." Indeed, campus climate surveys of various universities found that students are largely unfamiliar with the role and responsibilities of the Title IX coordinator[30] and that students generally perceive faculty members as more caring and more genuinely concerned for the safety of students than school administrators or leadership.[31] Victims of sexual harassment or assault may therefore be more willing to tell a professor about their experiences of harassment or assault than an official in a position of authority at the school.

International students or their partners who are experience sexual harassment, assault, or domestic violence or dating violence may experience additional barriers for reporting to a Title IX coordinator, or an authorized school official. For Asian students, cultural differences may impact their willingness to come forward and seek help.[32] Traditions in many of their home countries may emphasize hierarchy, and teachers are often highly revered as figures of authority. Students accustomed to such a cultural environment and education system may continue to feel this power distance with teachers in the United States.

In other cases, the education system in several Asian countries from which international students come leads students and teachers to spend a significant amount of time together and therefore do provide an opportunity for students and teachers to develop a deep, trusting relationship. For example, beyond normal school hours, students in South

---

[30] City University of New York. CUNY's 'Enough is Enough' Sexual Violence Campus Climate Survey. Available at: https://www1.cuny.edu/sites/title-ix/campus-websites/cunys-sexual-violence-campus-climate-survey/campus/cuny-school-of-professional-studies/; Emory University (2015). Summary Report of the Emory University Student Campus Climate Survey 2015. Available at: http://equityandinclusion.emory.edu/title-ix/climate.html; Portland State University (2016). 2016 Sexual Misconduct Campus Climate Survey Report. Available at: https://www.pdx.edu/diversity/sexual-misconduct-campus-climate-survey.

[31] Stanford University, Office of the Provost, Office of Institutional Research and Decision Support (2015 September). Report on the 2015 Stanford Campus Climate Survey. Available at: https://provost.stanford.edu/stanford-campus-climate-survey/; Duke University (20 February 2017). Duke University Student Experiences Survey. Available at: https://studentaffairs.duke.edu/sexual-misconduct-prevention-and-response/get-educated; Boston University (15 September 2015). *Sexual Misconduct Climate Survey Results*. Available at: https://www.bu.edu/safety/sexual-misconduct/climate-survey-results/.

[32] Mori, S.C. (2000). Addressing the mental health concerns of international students. Journal of Counseling and Development, 78, 137-144.

Korea often return to school after a short dinner break and study until sometime between 10:00 P.M. and midnight[33] and students in China are required to participate in after-school activities led by teachers.[34] In one study, elementary school students in China described their teachers as "caring," "approachable," and "close," and considered teachers to be their friends and family.[35] Students in Indonesia associate teachers with more cooperative behaviors, such as helpful/friendliness and understanding, than negative behaviors, such as admonishing.[36] International students who have had positive experiences with their teachers before arriving in the U.S. to attend college may hold similarly positive views of their professors. Survivors of sexual harassment or assault may therefore feel safer disclosing to a professor whom they trust.

Many schools also have an international students center with a central office or central staff who serve as point people for international students. Because the role of these centers is to support international students, victims may feel safer reporting to an employee of the center that they had been harassed or assaulted, or they may notice students who are attempting to cope with the trauma of sexual assault or harassment. However, under the current rule, even if a professor or another school employee whom the victim trusts is aware of the harassment, because they are not included in the limited subset of school officials with authority to "institute corrective measures," the school's obligation would be significantly diminished. API-GBV strongly recommends guidance incorporating ***proactive engagement with schools' international student offices*** to include training, outreach, and reporting responsibilities to make sure these students are not left out.

The current rule allows perpetrators to continue their harassment and violence and fail to hold schools responsible for addressing sexual harassment, even when school employees know about the harassment. For example, under the rule, Michigan State and Penn State would not have had responsibility under Title IX to stop Larry Nassar and Jerry Sandusky—just because their victims reported sexual abuse to athletic trainers and coaches rather than employees with the "authority to institute corrective measures."

API-GBV recommends that the Title IX guidance be strengthened by requiring schools to respond to sexual harassment, or sexual or domestic violence if ***almost any school***

---

[33] Asia Society Center for Global Education. South Korean Education. Available at: https://asiasociety.org/education/south-korean-education

[34] Liu, P. (2013). Perceptions of the Teacher-Student Relationship: A Study of Upper Elementary Teachers and Their Students. International Education, Vol. 42 Issue (2). Retrieved from: http://trace.tennessee.edu/internationaleducation/vol42/iss2/3

[35] *Id*.

[36] Maulana, R., Opdenakker, M., Brok, P.D., & Bosker, R. (2011). Teacher-student interpersonal relationships in Indonesia: Profiles and importance to student motivation. *Asia Pacific Journal of Education*, *31*(1), 33-49. doi: 10.1080/02188791.2011.544061.

employee either knows about it or should reasonably have known about it. The Department of Education should ***expand categories of school officials responsible*** for responding to sexual harassment and violence beyond only those with actual knowledge, as the current rule unnecessarily thwarts students from receiving assistance from institutions, encourages school personnel to ignore sexual harassment and violence, exacerbates the disparities between actual and reported acts of sexual assault and harassment in schools, and reinforces harmful, victim-blaming messages to survivors. The rule should be modified to avoid sending the message to survivors that disclosing their experiences of violence and harassment are a waste of time, if not outright detrimental to their well-being and ability to succeed in school.

b. The definition of actionable sexual harassment must be expanded to encompass unwelcome sexual conduct

Sections 106.30 and 106.45(b)(3) of the rule provides that schools "must dismiss" a formal complaint if it alleges conduct that is not (i) an employee requesting sexual favors in return for good grades or other educational benefits; (ii) "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"; or (iii) "sexual assault,"" dating violence," "domestic violence," or "stalking." [37]

The definition of sexual harassment in rule denies the experiences of a wide majority of survivors and increases the risk of harassment at educational institutions. Experiences of sexual harassment and assault are deeply disturbing to survivors. The vast majority (79%) of rape incidents are described as upsetting or very upsetting and 47% of sexual battery incidents are described the same.[38] Despite the severity of the violence, the primary reason cited by students who do not report sexual harassment or assault is that they do not believe the violence was serious or important enough to report. This is true even of victims of the most serious assaults, such as forced penetration.[39]

By requiring schools to ignore a victim's Title IX complaint if the harassment hasn't advanced to a point that it is actively harming the student's education, the rule further cements the belief among survivors that their experiences and trauma are not serious and "bad enough" to report and seek help. In reality, many incidents of sexual harassment or assault do greatly impact victims' education. 30.7% of rape incidents

---

[37] 85 Fed. Reg 30574-30575 (May 19, 2020)

[38] U.S. Bureau of Justice Statistics, Office of Justice Programs, Bureau of Justice Statistics (2016, January 20). Campus Climate Survey Validation Study Final Technical Report, at 113-114. Available at: https://www.bjs.gov/content/pub/pdf/ccsvsftr.pdf.

[39] Cantor, D., e al., *supra* note 8 at 50; U.S. Bureau of Justice Statistics, Office of Justice Programs, Bureau of Justice Statistics, *supra,* note 38 at Appendix E-52-54

affected victims' schoolwork or grades[40] and 34.1% of students who have experienced sexual assault drop out of college, higher than the overall dropout rate for college students.[41] However, even if a student victim is having a difficult time keeping up with school, they may choose not to report the harassment or assault because of uncertainty as to whether the experience would fit the limited language of sexual harassment under the proposed rule.

The heightened standard in the rule to be considered sexual harassment has a significant negative impact on impact Asian and Pacific Islander (API) victims. Asian immigrants may already be less likely than other ethnic groups to recognize abuse due to cultural norms[42] and be more likely to dismiss sexual harassment. In universities, Asian students are more likely than their non-Asian counterparts to consider potential acts of sexual harassment as normal flirtation or unwanted sexual attention that aren't too serious.[43]

In a study of mostly API university students at the University of Hawaii-Manoa, only one in three women who had experienced an interaction that met the legal definition of sexual assault in Hawaii correctly labeled it as so.[44] There is also great stigma attached to sexual assault in API communities and pressure to stay silent. In one study, 29% of Korean, 22% of Cambodian, 18% of Chinese, 9% of Vietnamese, and 5% of South Asian men and women said that a woman who is being abused should not tell anyone about the abuse.[45] A reason often cited by API victims for their decision not to disclose domestic or sexual violence is that they worry about bringing shame onto themselves and their families.[46] The restricted definition of actionable sexual harassment in the current rule only serves to exacerbate the pressure and fear of shame among API survivors. Survivors who may already have a hard time recognizing that they were or are being sexually harassed, assaulted, or abused may feel greater pressure to endure the harassment or assault and only disclose if they are sure that the incident(s) has reached a level that would be considered "severe" or "pervasive" enough, lest they bring shame onto themselves "for no reason" - by being turned away by the school.

---

[40] U.S. Department of Justice Statistics, Office of Justice Programs, Bureau of Justice Statistics, *supra* note 38 at 113-114.

[41] Mengo, C., & Black, B. M. (2016). Violence Victimization on a College Campus: Impact on GPA and School Dropout. *Journal of College Student Retention: Research, Theory & Practice*, *18*(2), 234–248. https://doi.org/10.1177/1521025115584750.

[42] Lee, Y.-S., & Hadeed, L., *supra* note 16.

[43] Kennedy, M. A., & Gorzalka, B. B., *supra* note 13.

[44] Mills, C. S., & Granoff, B. J. (1992). Date and Acquaintance Rape among a Sample of College Students. *Social Work, 37*(6), 504-509. doi:10.1093/sw/37.6.504

[45] Yoshioka, M.R., et al, (2001). Attitudes Toward Marital Violence-An Examination of Four Asian Communties. *Violence Against Women* 7(8), 900-926. https://doi.org/10.1177%2F10778010122182820

[46] KAN-WIN (May 2017). Community Survey Report on Sexual Violence in Asian American/Immigrant Community. Available at: http://www.kanwin.org/downloads/sareport.pdf; Yoshihama, M., Bybee, D., Dabby, C.,& Blazevski, J. (30 July 2010). Lifecourse Experiences of Intimate Partner Violence and Help-Seeking Among Filipina, Indian, and Pakistani Women: Implications for Justice System Responses. Available at: https://www.ncjrs.gov/pdffiles1/nij/grants/236174.pdf.

If a student does ultimately determine that they were subject to sexual harassment, if the school disagrees, and the student is turned away, they are unlikely to report a second time if the harassment escalates. And even if a school would be legally required to intervene later on, it may already be too late—the student might already be ineligible for an important Advanced Placement course, disqualified from applying to a dream college, or derailed from graduating altogether, or in the case of foreign students, ineligible to retain their student visas for failing to comply with caseload requirements. API-GBV ***recommends that the Department of Education adopt the definition of "sexual harassment"*** that both the Supreme Court and former Title IX guidance use, and require that "***unwelcome conduct of a sexual nature***," requires a response by the school before it effectively forces a student out of class or school.

c. "Supportive measures" should be expanded to cover the needs of international and limited English proficient students, staff and faculty.

Even if a student is able to report to an official with authority to institute corrective measures, they may still be offered inadequate "supportive measures" that purportedly help the student, but do little to actually help, or may even cause harm the victim.

API-GBV ***recommends that the rule be clarified*** to require schools to provide supportive services and accommodations to the complainant as immediately as possible, but no later than five school days after a report is made and to ***expand the definition*** of what constitutes supportive services.

This provision heavily impacts international students who may already be lacking the necessary educational and supportive measures that are available to their domestic counterparts. For example, students coming from Asian and Pacific Islander nations may not have had much exposure to sex education, as parents, teachers, and policymakers in many of these nations shy away from discussing sex and/or oppose providing sex education in schools.[47] The students are also likely to be unfamiliar with social and sexual cues and norms on American college campuses. They may also lack the language fluency to be able to access the range of measures available to domestic students.

[47] Seervai, S. (2015, January 30). Outsourcing Sex Education in India. Retrieved from https://blogs.wsj.com/indiarealtime/2015/01/30/indsex/; Chaudhary, F. (n.d.). Fiji Teachers, Parents Critical Of Sex Education Curriculum. Retrieved from http://www.pireport.org/articles/2016/05/03/fiji-teachers-parents-critical-sex-education-curriculum; Jha, D. N. (2014, June 27). Sex education in schools should be banned, Union health minister Harsh Vardhan says - Times of India. Retrieved from https://timesofindia.indiatimes.com/india/Sex-education-in-schools-should-be-banned-Union-health-minister-Harsh-Vardhan-says/articleshow/37274947.cms

This may result in international students being particularly vulnerable to sexual harassment or assault as perpetrators might exploit their lack of knowledge or they may run into confusing situations. It is therefore crucial that international students are offered comprehensive supports that equip them with education and information to recognize harassment and assault and understand their rights and the resources available to them. Many of these resources, however, are unlikely to be truly supportive if they fail to account for cultural and language barriers. Simply providing information in English will not be enough. The materials must be made available in other languages and with an understanding of how other cultures view and define sexual harassment, assault, disclosure, help-seeking, and other related factors.

International students are also likely to require different or additional supports if they are balancing coping with harassment or assault and meeting requirements to maintain their immigration visa status. In order to retain F-1 and J-1 visa statuses, students must take a full course of study each term and attend and pass all classes. However, the experience and trauma of sexual harassment and assault can greatly impact the ability of students to complete their courses, especially if the perpetrator is in the same class as the victim. Of note is also the host of barriers students may face while complying with the Student and Exchange Visitor Information Program (SEVIS) to maintain their non-immigrant status. SEVIS is an interagency information system designed to track and monitor foreign students. SEVIS designates Principal Designation School Officials (PDSO), who are the only individuals authorized to act officially on behalf of the school in carrying out the institution's responsibilities under the immigration regulations. Students must seek the PDSO's approval to drop below a full course load; must request a timely extension of stay should they need more time to complete course requirements; must work with the PDSO should they seek to transfer schools; and must report any change of address to the PDSO within certain timeframes depending on their visa.[48] Survivors may therefore fear losing their status should they come forward or be unable to overcome these logistical barriers to seeking safety.

Under the current Title IX rule, supportive measures must be "designed to restore or preserve access to" the school's program or activity "without unreasonably burdening the other party."[49] As a result, schools may be barred from transferring a harasser or rapist to another class because it would "unreasonably burden" the perpetrator, effectively forcing survivors to change their classes if they wish to avoid the perpetrators.

---

[48] Lin, J., Sreeharsha, K., & McKenzie, N. (2013). When Foreign Students or Their Family Members are Sexually Assaulted: Immigration Implications of the Student and Exchange Visitor System. https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/IMM-Man-Ch13-ForeignStudentsFamMebersSexuallyAssaulted.pdf

[49] 85 Fed. Reg. at 30574 (May 19, 2020).

For international students, this could threaten the status of their visas if they find that they are unable to keep up with the work, attend all their classes, maintain a full course load, or must change their classes in the middle of the school term. Schools must ***heed the unique challenges and restrictions that international students face*** when providing survivors with supports and ensure that a survivor's non-immigrant status is not jeopardized should the survivor need to change or drop a class, take a lighter course load, be unable to maintain full-time study, or require extensions of deadlines.

Furthermore, as part of providing supportive services, API-GBV recommends that ***schools make clear that states and local entities can provide additional protections*** beyond those in the Department's Title IX rule, including, but not limited to state educational legal protections, civil protective orders, immigration protections, and community-based victim services.

3. The current rule promotes unequal treatment of students who report harassment, denying victims due process and creating a system that serves to re-traumatize victims.

Current section 106.45(b)(1)(iv)) requires that schools' Title IX procedures include "a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process."[50] This undermines Title IX, which requires schools to treat the complaining and responding students "equitabl[y]." Presuming that the accused is not responsible implies a presumption that the survivor is making false allegations. Not only does this presumption perpetuate the myth that most allegations of sexual violence are false, notwithstanding data that demonstrates that the number of false allegations are extremely low and relatively similar to false allegations of other crimes.[51] More than 1 in 5 girls ages 14-18 are kissed or touched without their consent; and more than 1 in 5 women, nearly 1 in 18 men, and nearly 1 in 4 transgender and gender-nonconforming students are sexually assaulted in college.[52] In addition, males are more likely to experience sexual assault than be subject to a false accusations of sexual assault.[53]

Reporting sexual harassment and sexual assault is extremely difficult as it is, and a presumption against the reporting individual will only serve to further chill reporting of sexual violence. The fear of not being believed or being blamed for sexual harassment

---

[50] 85 Fed. Reg. 30575 (May 19,2020).
[51] Lisak, D., et al, (2010) False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases, 16, VIOLENCE AGAINST WOMEN 1318
[52] National Women's Law Center. DeVos' Proposed Changes to Title IX, Explained. Available at: https://nwlc.org/resources/devos-proposed-changes-to-title-ix-explained/.
[53] E.g., Kingkade, T., Males Are More Likely To Suffer Sexual Assault Than To Be Falsely Accused Of It, HUFFINGTON POST (Dec. 8, 2014) [last updated Oct. 16, 2015], https://www.huffingtonpost.com/2014/12/08/false-rape-accusations_n_6290380.html.

or assault is the reason behind many survivors' decision not to report abuse.[54] This is an especially powerful deterrent in API communities where victim-blaming leads to a culture that silences survivors, who fear that they will be considered to be at fault for being harassed or assaulted - that they did something to precipitate it and that they should have prevented it. This fear can lead to self-doubt as to whether something was "really" harassment or abuse, and concern that others will have similar doubts. Asian students are more likely than their Caucasian counterparts to believe that it is a woman's responsibility to prevent rape, to hold negative attitudes toward rape victims, and to endorse rape myth beliefs.[55] Requiring that underlying a school's Title IX procedures is a presumption that harassment did not occur simply perpetuates these views and may worsen the already existing issue of underreporting of domestic and sexual violence by API victims.[56] API-GBV urges that ***section 106.45(b)(1)(iv)) be removed*** in order to do away with the implication that the complainant is making false allegations.

Furthermore, in line with purpose and intent of Title IX, API-GBV recommends that the Department ***develop robust protections against retaliation*** for those who seek redress for sexual harassment or violence. Although Title IX prohibits retaliation against sex discrimination complainants,[57] student survivors, especially survivors of color, students with disabilities, and LGTBQ survivors, continue to face punishment when they turn to their schools for help. Some are disciplined for rule-breaking, such as honor-code violations that are disclosed when they report.[58] There have also been other egregious examples, such as students having been punished for sexual contact on school grounds when they were the victims of sexual assaults,[59] or survivors who have faced retaliation from their assailants, who file baseless cross-complaints in an effort to dissuade and punish them.[60]

---

[54] U.S. Bureau of Justice Statistics, Office of Justice Programs, Bureau of Justice Statistics, *supra* note 38.

[55] Lee, J., et al, *supra,* note 11; Kennedy, M. A., & Gorzalka, B. B., *supra* note 13; Mori, L., Bernat, J. A., Glenn, P. A., Selle, L. L., & Zarate, M. G. (1995). Attitudes toward rape: Gender and ethnic differences across Asian and Caucasian college students. *Sex Roles,32*(7-8), 457-467. doi:10.1007/bf01544182;

[56] Chang, D. F., Shen, B., & Takeuchi, D. T. (2009). Prevalence and demographic correlates of intimate partner violence in Asian Americans. *International Journal of Law and Psychiatry,32*(3), 167-175. doi:10.1016/j.ijlp.2009.02.004

[57] *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 171 (2005).

[58] *See, e.g.*, Christina Cauterucci, *BYU's Honor Code Sometimes Punishes Survivors Who Report Their Rapes*, Slate (Apr. 15, 2016), https://slate.com/human-interest/2016/04/byu-s-honor-code-sometimes-punishes-survivors-who-report-their-rapes.html.

[59] *See, e.g., S.M. v. Sealy Ind. Sch. Dist.,* No. CV H-20-705, 2021 WL 1599388, at *2-*3 (S.D. Tex. Apr. 23, 2021); Nora Caplan-Bricker, "*My School Punished* Me," Slate (Sept. 19, 2016), https://slate.com/human-interest/2016/09/title-ix-sexual-assault-allegations-in-k-12-schools.html.

[60] Know Your IX, *The Cost of Reporting: Perpetrator Retaliation, Institutional Betrayal, and Student Survivor Pushout* 17-22 (Mar. 2021), https://www.knowyourix.org/wp-content/uploads/2021/03/Know-Your-IX-2021-Report-Final-Copy.pdf [hereinafter "*Cost of Reporting*"].

The Department should promulgate regulations which ***explicitly prohibit common forms of retaliation*** by: (1) defining prohibited retaliation; (2) prohibiting disciplining complainants for collateral conduct violations that must be disclosed in order to report sexual harassment, dating violence, domestic violence, or stalking or that is disclosed in the investigation (e.g., alcohol or drug use, consensual sexual contact, reasonable self-defense, or presence in restricted parts of campus) or that occurs as a result of the reported harassment (e.g., nonattendance); (3) prohibiting disciplining complainants for false reports in instances where the school's concludes that there wasn't sufficient evidence to support a finding of harassment; (4) prohibiting disciplining complainants for prohibited sexual conduct in school in instances when the school concludes that the reported sexual harassment was instead "welcomed" sexual contact; (5) prohibiting disciplining a complainant for discussing the sex-based harassment report; and (6) prohibiting disciplining a victim for allegations that the school knew or should have known were brought by a third party for the purpose of using the disciplinary process to retaliate against a victim of sex-based harassment.

In addition, the regulations should specify that schools should dismiss, without having to conduct a full-fledged investigation, complaints of sexual harassment, dating violence, domestic violence, and stalking that are ***obviously retaliatory*** (e.g., where a student is reported for sexually assaulting a classmate, insists the contact was consensual, and then, after being found responsible, files a counter-complaint that their victim in fact sexually assaulted them).

Finally, the Department should reaffirm the notion that school discipline for sexual harassment must be fair to all involved parties by reiterating that schools' disciplinary procedures should be fair and allow both parties the same procedural rights.[61] To promote consistency, the Department should require that schools use the preponderance of evidence standard in determining responsibility for sexual harassment and other forms of sex-based harassment because that standard is used in civil rights lawsuits and by OCR in its own enforcement actions.

Conclusion

In summary, API-GBV requests that the Biden-Harris Administration restore and strengthen Title IX protections, including:

- **Restore longstanding protections for student survivors**. The Biden administration must reinstate the well-established principle that school officials should respond to all sexual harassment that interferes with a person's ability to participate in or benefit from their education, respond to sexual harassment in a timely manner, and address all sexual harassment that may create a hostile

[61] *See, e.g.*, 2014 Q&A at 26; 2011 DCL at 12; Revised Sexual Harassment Guidance at 22.

environment for students in schools, regardless of where the harassment occurred.

- **Protect student survivors from retaliation**. Title IX prohibits retaliation against those who complain of sex discrimination. Yet student survivors—and especially survivors of color—continue to face punishment when they turn to their schools for help in the wake of violence. Too often they are disbelieved, their trauma is minimized, or they are blamed for the harassment. The Title IX rule must make it clear that this type of treatment constitutes unlawful retaliation.

- **Ensure fair and prompt disciplinary procedures and school flexibility**. The current Title IX rule requires specific disciplinary procedures for sexual harassment—and sexual harassment alone—that dissuade reporting, are unfair to complainants, and unnecessarily burdensome. The Title IX rule should restore fairness and equity, central to Title IX's purpose.

- **Strengthen protections to treat students of color and international students equitably.** The Title IX rule must recognize the unique ways in which groups of students face additional hurdles to being able to pursue their education when they have experienced sexual harassment or violence, and should provide guidance for schools to address barriers to supportive services or the complaint process imposed by race or ethnicity, English language fluency, immigration status, cultural norms, or isolation in the school community.

Thank you for the opportunity to submit comments for the public hearing. Please do not hesitate to contact Grace Huang at ghuang@api-gbv.org to provide further information.

Sincerely,

The Asian Pacific Institute on Gender-Based Violence

(b)(6)

Grace Huang
Policy Director

(b)(6)

Michele Ko
Policy Associate