

From: SASA Nonprofit
Sent: Fri, 11 Jun 2021 16:46:44 -0700
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing DOE OCR
Attachments: OCR_TIX_Hearing_SASA_Statement.pdf

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We apologize for the double email--we wanted to follow protocol and change the subject line of the email per the hearing notice's guidelines.

Good afternoon,

On behalf of Students Against Sexual Assault (SASA) Nonprofit, our community of survivors, survivor-advocates and allies, we are submitting a statement--attached to this email--to be heard in the OCR Title IX public hearing. We appreciate the opportunity to provide our perspective on the impact of these TIX regulations, and shed some light on how the Department of Education could better protect survivors.

As experts in the field of sexual harassment and sexual assault, we categorically oppose several glaring, problematic policy changes, and strongly urge the OCR to highly consider our words and recommendations. We stand with survivors and their advocates during this time, and always.

Thank you for your time.

Kind regards,

SASA Nonprofit Board

[Students Against Sexual Assault](#)



STUDENTS AGAINST SEXUAL ASSAULT

POLICY. EDUCATION. PREVENTION

June 11th, 2021

To the U.S. Department of Education's Office for Civil Rights (OCR),

Students Against Sexual Assault (SASA) is a nonprofit organization dedicated to the elimination of sexual assault and sexual harassment on the University of California, Santa Barbara, University of California, Santa Cruz, and the Santa Barbara City College campuses and their surrounding communities. We are dedicated to supporting survivors and providing necessary resources for students and community members. In this statement, we bring forth multiple concerns we have found within the Title IX policy changes made by the Department of Education under the leadership of Betsy DeVos. On behalf of survivors, survivor-advocates and allies, we ask that the OCR seriously consider the outlined critique while reviewing the Department's existing Title IX regulations.

Narrowed definition of sexual harassment [Section 106.44(e)(1)] & requiring the dismissal of formal complaints that do not meet the standards of the new definition (Section 106.45(b)(3)):

Section 106.44(e)(1) of the proposed Title IX amendments would unjustly narrow the definition of sexual harassment to instances of "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 recipient's education program or activity" (our emphasis). This definition as it stands is not comprehensive and effectively excludes other forms of sexual misconduct, such as single-instance forms of harassment, violence or assault, thereby not allowing for an established pattern or for disciplinary action to be taken after a single-instance act of aggression. In order to accurately and directly bring about disciplinary consequences to perpetrators, the Department of Education's definition of sexual harassment must be broadened to encompass all instances of inappropriate, unwelcome and abusive behavior.



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Ensure Title IX protections for marginalized students (BIPOC students, queer/trans/nonbinary students, etc):

Policy changes should center voices of survivors from marginalized communities including but not limited to Title IX protections for Black, Indigenous, and all other POC students, as well as queer, trans, and other non-genderconforming students, and disabled students. These students and student-survivors face sexual harassment and abuse that is specific to sex- and gender-based stereotypes and discrimination in their respective communities. Along with comprehensive educational programming and procedural protections for marginalized students, the Department of Education should make clear that all community members who experience and/or report gender violence have the same rights under school policy and applicable laws as other survivors. The Department of Education should also define “on the basis of sex” to encompass discrimination based on sexual orientation, gender identity, or transgender status. Because these communities have been historically marginalized and ignored in conversations and policy surrounding sexual violence and sexual harassment, centering their voices, experiences, and needs is crucial to implementing effective Title IX regulations.

Divesting from law enforcement & the criminal justice system:

Divesting from protections, processes, etc. that involve or support the use of law enforcement and the criminal justice system is crucial -- not solely in light of the past year, but especially because of it. These punitive and unjust institutions often cause further harm for survivors. Most survivors do not want to involve the police in reporting their assault and nearly 80% of sexual assaults go unreported to the police.¹ Students and survivors need to be able to report to their campuses and Title IX offices and seek accommodations if they wish, without being forced to deal with police and law enforcement. Schools and Title IX offices should not rely on the

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processes or outcomes of law enforcement investigations for reports of sexual assault and sexual harassment, unless explicitly requested by the survivor. Marginalized communities are historically negatively impacted and treated by law enforcement, and survivors in these communities face the same, if not more harmful, negative interactions. To be sensitive to the very real historic and present-day issues that marginalized survivors face in dealing with police and the courts, it is important that the Department of Education's policy changes do not invest further into campus police in the name of "justice".

Provide survivor centered and trauma informed grievance procedure, as opposed to the proposed recipient-centered grievance procedure [Sections 106.44(a), 106.45(b)(3)(vii), 106.45(b)(3)(vi), 106.5(b)(3)(viii), & 106.45(b)(5)]:

The proposed grievance standards of the Title IX proposal are recipient-centered and could threaten a survivor's willingness to report an incident of sexual assault or sexual harassment. According to the proposed Section 106.44(a), only "actual knowledge [of sexual assault and sexual harassment] ... triggers the recipient's duty to respond," in which "actual knowledge" is defined "as notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient." The definition of "actual knowledge" simultaneously, specifically narrows the pool of individuals that survivors can report a formal allegation to, and non-specifically identifies which individuals in particular have the authority, ability or obligation to report. This proposed change both limits and leaves ambiguous the list of individuals whose knowledge of a report would constitute the "actual knowledge" that "triggers the recipient's duty to respond." Further, proposed Section 106.5(b)(3)(vii) would replace the single investigator model with the 'live hearing model.' These changes would drastically jeopardize the survivor's equal access to a safe working and learning environment by creating an unwelcome and potentially traumatizing 'justice' procedure. By replacing the single-investigator model with the live-hearing model, the proposed amendments allow for the cross examination of survivors by



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the recipient's advisor or attorney. Live cross examinations are indeed unneeded and harmful for survivors. Oftentimes, legal professionals do not possess the correct language to adequately and appropriately address components of sexual harassment, assault and survivorship. Though these live-hearings are voluntary, if a survivor decides to not participate, any other statements they may have made are prohibited from being entered as evidence. This process contributes to intimidation and silencing tactics used by perpetrators/recipients in order to block survivors from an equal opportunity to achieve justice.

Increase protective/safety resources & expand access to said resources for survivors:

With the implementation of several harmful procedural aspects of reporting within these policy changes, survivors need resources that center their protection, safety and well-being now more than ever. Title IX investigations have been normalized to a lengthy, drawn-out standard; after months of potential trauma and lack of peace and security for the survivor, oftentimes no real outcome is presented in their findings. Even without an ongoing criminal investigation, survivors still face these extensive timelines after making a report as they share an environment with their perpetrators, further disenfranchising them from attending class and participating in their campus organizations. Because survivors are essentially forced into coexisting on campus with their abusers due to the schools' failure to create a reasonable investigation period, the likelihood of harm towards their education, physical and mental health grows. These lengthy investigation schedules and delays make it even less likely that a survivor will feel comfortable and supported if and when seeking help in the future. It is crucial to prioritize the needs and the safety of survivors by promptly and clearly delineating Title IX procedures in reporting and investigating. This would help limit the amount of potential further harm--physical, emotional, mental--survivors face during the length of the investigation.

Lastly, it is important to note that this public hearing is taking place during the finals week for University of California (UC) students across the state, with the UC system being one



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of the largest public university systems in the U.S. Opportunities to express concern, grievances and critique should be available and accessible to all affected survivors, students and stakeholders. Holding this hearing for public comment during a time where the aforementioned voices that should be centered and uplifted may not be able to participate is disappointing on the part of the OCR. We hope to see a concerted effort to give ample space, time and opportunity for survivors and stakeholders to access public hearings and comments in the future.

Sincerely,

SASA Nonprofit Board

(b)(6)

6/11/2021

Deborah Williams

Philippa Villalobos

President

Policy Analyst

SASA Nonprofit Board

SASA Nonprofit Board

From: SASA Nonprofit
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