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To:

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COMMENTS ON PROPOSED TITLE IX RULE CHANGES

Submitted via <https://www.regulations.gov/comment?D=ED-2018-OCR-0064-0001>.

INTRODUCTION

The Association for the Treatment of Sexual Abusers (ATSA) appreciates the opportunity to comment on the proposed changes to the Title IX rules governing the handling of sexual harassment in educational institutions. ATSA is a multi-disciplinary professional organization comprised of 3,000 members dedicated to making society safer by preventing sexual abuse. We support sound research, effective practice, informed public policy, and collaborative community approaches that lead to comprehensive prevention strategies and promote the effective assessment, treatment, and management of individuals who have sexually abused or are at risk to abuse. It is within this framework that we make the following comments.

DEFINITION OF SEXUAL HARASSMENT

ATSA supports a comprehensive definition of “sexual harassment” that is inclusive of the range of behaviors that can interfere with a person’s equal access to an educational program or activity.

The current Title IX rules define sexual harassment as “unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.” This definition is appropriately inclusive of the range of behaviors that can interfere with a person’s equal access to an educational program or activity. This definition also offers individuals who have experienced sexual harassment the flexibility to determine the emotional and physical impacts of the incident(s) upon them, whether that incident

interferes with their equal access to a safe education and participation in school-sponsored activities, and whether that incident merits reporting to designated authorities within the educational institution or to authorities within the criminal justice system. By including a range of conduct that varies in severity, this definition promotes public safety by allowing educational institutions to become aware of all types of situations that impact students. Even when the alleged conduct may not rise to a level that merits a response under Title IX, knowledge of the inappropriate behavior enables institutions to intervene early when sexual harassment has been reported. This empowers institutions to offer the necessary support and services to all involved persons, as well as assist in identifying problem areas which can facilitate effective design and implementation of prevention programs. Promoting early intervention not only supports victims and future student safety, it provides the opportunity to offer the alleged abuser individualized risk-based interventions to address the concerning behavior with the goal of helping him/her/them receive the necessary supports to avoid the potential trajectory of repeated sexual harassment or violence.

The proposed Title IX rules define sexual harassment to mean “either an employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct; or 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; or sexual assault as defined in 34 CFR 668.46(a), implementing the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act).” This definition effectively narrows the range of reportable behaviors in an undesirable way in that it requires virtually a worst-case scenario to emerge before students can report incidents of sexual harassment under Title IX. Sexual harassment/assault is an underreported crime -- 80% of college students do not formally report their victimization to school authorities. Additionally, the rates of reporting are very low for sexual assault, between 2 and 10% according to numerous studies, including reviews conducted by the FBI. Narrowing the definition of sexual harassment likely will have the unintended consequence of further reducing the reporting of concerning behaviors, resulting in neither the victim nor the abuser engaging in counseling or other services they may need. Student and community safety are best served when schools are empowered to become aware of individuals who present a risk to others so that those individuals may receive individualized risk-based interventions with the goal of reducing the risk of future sexual harassment or violence. Restricting students’ access to Title IX services by strictly limiting the behaviors that can be identified as sexual harassment does nothing to help promote student safety, prevent future sexually inappropriate behavior, or make communities safer.

SANCTIONS

ATSA supports implementing individualized sanctions tailored to each situation.

Research on individuals convicted of sexual crimes has clearly demonstrated that sexual abusers vary significantly in their risk of engaging in future sexually abusive behavior. Although the research on individuals who have engaged in sexual harassment in academic institutions which has been

addressed through Title IX is limited, it is probable that those who commit sexual harassment in academic institutions also differ in their potential risk for engaging in future sexual harassment. Because the goals of sanctions are to reduce risk and prevent future harm, to be effective, sanctions must be individualized; vary in duration and intensity; and be appropriate for an individual's age, developmental level, and other personal characteristics. One-size-fits-all approaches, such as compulsory expulsion in all cases, do not necessarily meet the needs of either the victim or abuser. In some cases, counseling or therapy may be sufficient to address inappropriate behaviors. In other cases, restorative justice may be the best avenue. And in some cases, firing or expulsion may be appropriate.

Sanctions also must be implemented in a manner that respects the emotional and physical safety needs of the student who was harassed as well as the entire school community. Sanctions implemented in a one-size-fits-all manner ignore the relative risk the individual may present and, therefore, are not effective at promoting student and community safety. ATSA does not support mandatory expulsion in all cases. Rather, ATSA supports providing the individuals who have committed sexual harassment the necessary individualized sanctions to help change the trajectory of their behavior to prevent future offensive behavior and protect student and community safety. Future community safety also should be a goal and responsibility of all educational institutions. Providing appropriate early interventions for individuals who have committed sexual harassment addresses the issue head-on versus ignoring or pushing the problem down the road for others to deal with.

REPRESENTATION

ATSA supports the right of individuals on both sides of an allegation of sexual harassment to have an advisor who can present questions to the other party during any grievance proceeding.

Representation is a basic standard that helps ensure a fair and equitable process for all involved parties. Allowing each party to “be accompanied to any related meeting or proceeding by the advisor of their choice, and not limit the choice of advisor or presence for either the complainant or respondent in any meeting or grievance proceeding” recognizes the importance of guidance and support for all involved. However, it is equally important that access to an advisor be the same for both parties to alleviate any differences that may exist in access to resources based upon socioeconomic, cultural, and related factors. ATSA encourages the writers of Title IX to include requirements for advocacy that create parity when one student may have the means to hire an advisor to assist with questions and strategize about how to respond to the situation and the other student does not.

APPEALS

ATSA supports the right of individuals on both sides of a charge of sexual harassment to appeal the school's initial ruling.

The appellate process is a basic standard that helps ensure a fair and equitable process for all involved parties. It is equally important that access to an advisor be the same for both parties since there may be differences in the ability to access resources based upon socioeconomic, cultural, and related factors. ATSA encourages the writers of Title IX to include requirements for advocacy that create parity and ensure both parties have equal access to an advisor.

APPLICABILITY

ATSA supports applying Title IX rules to all schools, whether they are public, private, religious, or other.

Prevention of sexual harassment must apply equally to all students at all educational institutions. The application of Title IX rules for addressing sexual harassment promotes student safety, which must be a stated key goal of every educational institution. Providing an exemption to an educational institution based on religion does not ensure the safety of students or prevent sexual harassment within our communities.

SUMMARY

Everyone deserves to live free from sexual abuse, the threat of sexual harm, and sexual harassment in educational, workplace, and all other environments. To that aim, ATSA works actively at preventing and reducing sexual abuse. While the proposed changes to Title IX's rules regarding sexual harassment within educational institutions seek to create balance between all parties involved, they lack sufficient focus on creating safe student environments, addressing the harm caused to victims of sexual harassment, and ensuring that both victims and abusers receive the necessary interventions they need to enable them to move forward in a positive manner. The proposed regulations also do little to address the primary prevention of sexual harassment or support the forward progress that has been made to date within our educational institutions.

In addition, the goal of creating safe learning environments that are welcoming and open to all genders must receive as much attention as responding to reports of sexual harassment. ATSA recommends that the writers of the Title IX rules develop guidelines that focus on evidence-based prevention programs that can educate staff, volunteers, and students on how to recognize warning signs that lead to sexual harassment and prevent the harassment from occurring in the first place. Within the framework of well-considered policies and regulations, implemented through education, collaboration, and the involvement of all concerned parties, the prevention of sexual harassment and abuse can become a reality.