



State of Rhode Island and Providence Plantations

State House
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Gina M. Raimondo
Governor

January 29, 2019

Ms. Betsy Devos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

Sexual harassment and violence are a scourge across the nation, particularly on college campuses, spaces that must uphold and safeguard our nation's common values and respect for human rights. Incidents of sexual violence often result in horrific and long-lasting consequences for student survivors, impacting their academic studies, educational outcomes, mental health and wellbeing, and, ultimately, their quality of life.

The state of Rhode Island is committed to fostering an environment of safety, empowerment, protection, and affirmative consent for our postsecondary students. The proposed changes to Title IX regulations released by the Department of Education in late 2018 undermine these fundamental commitments. The proposed revisions would weaken a higher education institution's obligation to create an equitable learning environment for all students and create unrealistic and potentially harmful hurdles for victims. Despite an emphasis on ensuring due process and empowering institutions, these proposed changes undermine the positive, systemic progress made on college campuses to address sexual violence over the course of the past two decades. **The students of Rhode Island have been served well by existing Title IX guidance, and we oppose the proposed changes.**

There are a number of provisions in the proposed changes to the regulations that would create unnecessary obstacles to appropriately implementing Title IX protections at Rhode Island's institutions of higher education.

Those provisions are:

1. **Definition of sexual harassment:** The definition of sexual harassment has been significantly narrowed to: "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." This change in definition creates conditions in which survivors are forced to self-assess the level of their trauma before coming forward.

2. **Reporting process:** In order to begin a Title IX process, students would be required to report an assault to a Title IX Coordinator at their campus, instead of to a trusted adult, as provided for in previous guidance. This change would require traumatized students to report claims to an unknown administrator and navigate bureaucracy, which ultimately presents an additional barrier to reporting. Furthermore, this provision disempowers our higher education faculty in Rhode Island, who work diligently to create strong, consistent bonds with students and are often best situated to support them in times of crisis.
3. **Location:** Administrators would no longer be required to investigate episodes of sexual violence that happen off campus grounds, based on location, or if the misconduct doesn't fall within the scope of an "education program or activity." This narrowly defines jurisdiction, both in terms of geography (it doesn't take into account the students who live off campus) and activity (sexual violence is more likely to occur in private settings than in the midst of educational programs or activities), willfully ignoring the conditions in which sexual assault is most likely to occur. Given the small size of Rhode Island, many of our postsecondary students commute to their campus locations, and this provision will disproportionately impact them, stripping them of vital protections.
4. **Cross examination:** Colleges and universities would be required to hold a live hearing where cross-examination would be conducted through the parties' advisors. In addition to forcing a quasi-judicial process onto college campuses and processes, allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile situation toward the alleged victim.
5. **Standard of evidence:** Institutions would be able to determine their own standard of evidence, such as a "preponderance" standard (i.e., it is more likely than not that sexual harassment or violence occurred) or a "clear and convincing evidence" standard. The "clear and convincing evidence" standard puts an unreasonable burden of proof on survivors in sensitive situations who often have little evidence beyond lived experience.
6. **Timeframe of investigation:** There would no longer be a fixed timeframe under which a school must complete a Title IX investigation. Removing a reasonable, timely process provision creates a potential environment in which survivors concerns will not immediately addressed and increases the likelihood that their concerns will be ignored.
7. **Appeals process:** Institutions may opt to set an appeals process policy that allows appeals by both parties or by accused students only, giving victims no recourse.
8. **Resolution:** Institutions may determine whether or not they utilize an informal resolution such as mediation in instances of sexual assault, disempowering victims to seek justice, and most likely reducing reporting. Institutions should not be allowed to sweep incidents of sexual violence under the rug.

The proposed changes to existing Title IX guidance can only be construed as a misguided effort to reduce the reporting burden placed on educational institutions and protect the accused at the expense of the victim. Sadly, the reality is that the proposed changes will further traumatize victims in the very environments that are meant to prepare and inspire them for successful careers and lives. Rhode Island believes that our institutions of higher education bear a profound responsibility to our students, and that this responsibility requires us, as a state, to vocally protest the policy embodied in the proposed changes to Title IX.

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The existing Title IX guidance has served the students of Rhode Island well, and we strongly oppose these changes.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gina Raimondo".

Gina M. Raimondo
Governor of the State of Rhode Island

A handwritten signature in blue ink, appearing to read "Dr. Brenda Dann-Messier".

Dr. Brenda Dann-Messier
Rhode Island Commissioner of Postsecondary
Education