



AMERICAN ASSOCIATION FOR ACCESS, EQUITY AND DIVERSITY

**THE AMERICAN ASSOCIATION FOR ACCESS, EQUITY AND DIVERSITY COMMENTS ON THE
RELEASE OF THE DEPARTMENT OF EDUCATION'S FINAL REGULATIONS ON SEXUAL HARASSMENT
AND MISCONDUCT**

Organization of equal opportunity and diversity professionals acknowledges the final rules reflect some of the concerns by AAAED and others, but ultimately concludes that the rules will have a chilling effect on intended beneficiaries

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Washington, DC, May 6, 2020 - The American Association for Access, Equity and Diversity (AAAED), an organization of equal opportunity, diversity and affirmative action professionals, issued a statement on the U.S. Department of Education's release of its final regulations regarding sexual harassment and assault under Title IX of the Education Amendments of 1972. The final regulations, initially proposed in 2018, have been intensely controversial and received more than 100,000 comments by institutions of higher education, victims' advocates and organizations including AAAED. This statement reflects AAAED's initial review of the more than 2000 pages of regulations.

Founded in 1974 as the American Association for Affirmative Action (AAAA), AAAED is a national not-for-profit association of professionals working in the areas of equal opportunity, compliance and diversity. The longest-serving representative of individuals in the equal opportunity and diversity professions, AAAED has 46 years of leadership providing quality professional training to practitioners and promoting understanding and advocacy of affirmative action and other equal opportunity laws. Nearly one-half of its membership is composed of EEO professionals working for academic institutions.

AAAED's 2019 comments on the proposed regulations were very critical, and stated that "Despite the progress that academic institutions have made in recent years, sexual assault continues to be a pervasive problem on college and university campuses. Unfortunately, the Secretary's proposed regulations, discussed herein, do not contribute to the progress that must continue if we are to eliminate the most egregious acts of discrimination on campus: sexual harassment and sexual assault." The comments concluded: "On balance, however, we submit that the 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."

"The final regulations appear to reflect some of the changes demanded by thousands including colleges and universities, associations and victim advocacy groups," stated AAAED President Richard Anthony Baker, MPA, JD, Ph.D. In addition to submitting comments on the proposed regulations, AAAED met with staff of the Office of Management and Budget and the Office for Civil Rights (OCR) and shared its "real world" concerns

about the proposed rules. Baker added, "We appreciate the obvious responsiveness to some of our concerns by OCR. They listened. However, the final regulations remain onerous to the academic institutions who are forced to rush compliance with this rule in the middle of a pandemic. More importantly, this rule will have a chilling effect on reports from victims of sexual violence who look to us for guidance and support."

What was most controversial for AAAED is the requirement for live hearings in the cases of sexual harassment and assault. "This is what we dreaded," Baker stated. "We are now forced to have mini trials, where students will be subjected to direct cross-examination by the other party's representative(s), which is a substantial change. We fear this sort of adversarial process is not suited for an academic institution. We can do better to protect the due process rights of all students," Dr. Baker added.

"While this was not the devastating blow we feared, these regulations remain troubling and may undermine Title IX." He continued: "Now that we have the rule, we hope that this conversation is ongoing and we look forward to the opportunity to continue to find the right process for all students."

As AAAED previously stated, "Taking a sword to a problem that requires at best a pen to promote fairness for all is not the approach we would endorse."

The AAAED's comments on the proposed regulations, submitted on January 30, 2019, may be accessed by clicking here: [AAAED Comments on Title IX Proposed Regs](#)

For more information about AAAED, go to www.aaaed.org. Information about the AAAED 46th National Conference - Virtual, may be found at <https://www.aaaed.org/aaaed/Conference.asp>.

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