

Re: ED 2018 OCR 0064

To Whom It May Concern,

Thank you for the opportunity to comment on Notice of Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance¹. We are the Student Senate of Stockton University in New Jersey, representing the over 9000 undergraduate and graduate students who attend the University. The Student Senate has a history of advocacy on behalf of survivors of sexual harassment at our own institution and across the state of New Jersey; this includes increasing resources for victims and survivors of sexual misconduct; helping to open and later expand Stockton's Women's Center; and Sexuality Center; as well as working with New Jersey's Coalition Against Sexual Assault (NJ CASA) on their Student Prevention Initiative². Given our history, knowledge, and experience of how sexual harassment affects not only students' education, but their livelihood, we assure that the proposed changes to Title IX will have a significant negative impact on students not just at Stockton, but at schools across the country, and we cannot sit idly by, allowing our students to be placed in harm's way.

Many aspects of this proposed rule will be detrimental to students who have been victimized by sexual misconduct, specifically by making the process to report and investigate sexual assault and sexual harassment unnecessarily strenuous. Specifically concerning a) the updated definitions of sexual harassment and actual knowledge which open many loopholes institutions will be able to exploit to avoid being held responsible for sexual misconduct; allowing for the cross examination of survivors by the accused's representative, and the new standard of evidence

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States. At Stockton University, between 2015 and 2017, there were 14 Clery reported rapes, in addition to 49 Title IX reports of sexual harassment and rape. Meanwhile, the Student Campus Climate Survey conducted by the Stockton University Faculty Senate in Spring 2018, which was taken anonymously by 2,511 Stockton students, reported that 71% of respondents had “experienced unwanted physical sexual conduct (including sexual harassment) at Stockton”. Providing the Climate Survey accurately represents the entire student body, this suggests that of the enrolled 8,770 undergraduate and graduate students at Stockton during the Spring 2018 term, 622 students faced sexual harassment of some sort, while only 58 Clery and/or Title IX reports of rape and sexual harassment were filed, many of which came from mandatory reporters and not student themselves. This disparity is reflected at institutions across the country and exists under current guidelines, which utilize a broader definition of sexual harassment and in which schools must act when any mandatory reporter at any level of the institution is made aware of an accusation or crime, standards that assure students their reports will be taken seriously. In narrowing the definitions of “sexual harassment” and “actual knowledge,” students will lose that assurance and will be further discouraged from reporting, widening the gap between occurrences and reports.

A. Sexual Harassment

The new overly restrictive definition of “sexual harassment” may result in schools ignoring allegations of sexual harassment that are not severe enough to qualify under the new definition and will cause students to be unsure if they have faced sexual harassment according to the law, both cases discouraging students from reporting an incident. Institutions must be required to take some kind of action on even the most minor reports of sexual harassment; otherwise, students will likely be subject to repeated and escalating levels of abuse. This abuse is known to affect the victim's mental health, academic success, relationships, and overall wellness; over 90% of rape victims experience Post-Traumatic Stress Disorder (PTSD) symptoms and are tentatively more likely to use major drugs. Additionally, one third of women

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repercussions regarding students' wellbeing and ability to achieve. By changing these definitions, the federal government would be allowing institutions to cover up and mishandle allegations, utilize loopholes in investigations, and deter victims from reporting.

II. Cross Examination of Survivors

Requiring school investigations to include a real-time cross examination of a victim⁵ by the accused's representative is dangerous to the victim's mental health as well as being misleading to an investigation. Forcing a victim to recount a traumatic incident is likely to re-victimize them as they attempt to find closure and learn to continue on with their life in the wake of such a disturbing incident. A cross examination is also unlikely to be effective in providing an

strive to put student success and wellbeing above all else; the University operates under a

risk no experienced education professional, and surely no employee of Stockton University, would willingly take while also undermining the integrity of the investigation itself.

III Standard of Evidence

Changing the standard of evidence from “preponderance”⁶ to “clear and convincing” is an unwarranted denoubrance for those seeking justice following an incident of sexual misconduct. Establishing a “clear and convincing” standard for only sexual harassment and other conduct violations singles out and discriminates against victims of sexual harassment and creates an imbalance of power that heavily benefits the accused. This proposal eracts biases and reinforces stereotypes that Title IX was created to dismiss.

At Stockton University, like many higher education institutions, “preponderance” of the evidence is used in all conduct violation investigations, including for violations comparable to sexual harassment and sexual assault, such as physical assault. Replacing this standard of evidence for only cases of sexual misconduct with a standard higher than that used for all other violations is a discriminatory recommendation rooted in sexism. While men are overall more likely to be the victims of violent crime, women are more likely to be the victims of gender and sex-based violent crime; according to Homicide Trends in the United States 1980-2008, a study completed by the US Department of Justice in 2010, 78% of murder victims are male while 63% of domestic homicide victims and 81% of sex-related homicide victims are female. These statistics show crime trends that college campuses are not exempt from; women are disproportionately the victims of sexual misconduct (1 in 6 women is a rape victim as opposed to 1 in 10 men), while men are typically the victims of other conduct violations. Requiring a higher standard of evidence for crimes women are more subject to facing is deeply discriminatory and compromises Title IX’s mission of equity in education.

This change in standard also heavily benefits the accused by placing unsubstantiated doubt on the victim, rather than treating allegations of sexual harassment with validity and treating the accused as innocent until proven guilty; this standard treats the allegations as false and treats the victim as guilty of false accusation until they prove it to be true. The proposal is meant to protect against false accusations, but, as has been proven time and time again, false

⁶“Preponderance” of the evidence essentially means it is more likely an incident happened than not; there is greater than a 50% chance that the claim is true. “Clear and convincing” requires the evidence to prove the claim is substantially more true than untrue. “Preponderance” of evidence is the burden of proof used in most civil trials.

accusations are extremely rare. The National Sexual Violence Resource Center cites a 2010 study entitled *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases* which found that on average, only 6% of rape allegations are false. This standard does not protect the TAn I.T. aka teRp haffily res oer> ce egoun at%o %