



mcadsv

Missouri Coalition Against
Domestic and Sexual Violence

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Missourians with
a shared value that
rape and abuse
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public policy.

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400 Maryland Avenue SW., Room 6E231
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**Re: U.S. Department of Education Public Comment Period: Evaluation of
Existing Regulations (82 FR 28431)**

This letter is written to provide public comment to the U.S. Department of Education regarding its current guidance for Title IX.

The Missouri Coalition Against Domestic and Sexual Violence (MCADSV) unites Missourians with a shared value that rape and abuse must end, and advances this through education, alliance, research and public policy. MCADSV is a statewide membership association comprised of 124 domestic and sexual violence agencies and organizations such as shelters and rape crisis centers, including campus-based programs. Additionally, MCADSV works alongside our statewide partners in elementary, secondary, and higher education to create spaces where students are safe from intimate partner violence and sexual harassment or assault.

MCADSV gathered feedback from our membership and allied partners in regard to [Executive Order 13777](#), "Enforcing the Regulatory Reform Agenda," with specific reference to Title IX enforcement and guidance of the 2011 Dear Colleague Letter.

Requiring every school to designate at least one employee be responsible for coordinating compliance with Title IX creates a safer learning environment, and promotes taking proactive measures to prevent sexual violence from initially occurring. Still, there is certainly room for growth and clarification in how the U.S. Department of Education, Office on Civil Rights (OCR) enforces Title IX. Schools and universities have developed their own procedures for handling investigations of sexual misconduct, and federal clarification and consistency about the intention of Title IX can be of great benefit to students and administrators.

An opportunity for further clarification would be a careful review of timing of the alleged assault. Under current guidance of the 2011 Dear Colleague Letter, once a school knows or reasonably should know of possible sexual violence, the institution must take immediate and appropriate action to investigate or otherwise determine what occurred. A prompt response is paramount to ensure due process, and lessen trauma for the person who has experienced an assault. Yet it is important to have a clear distinction of when the assault took place. In the event of a recent/current assault, a school or university should continue to take prompt and effective steps to end the sexual violence, prevent its recurrence, and address its effects. However, if a student discloses former acts of abuse or assault where there is no on-going relationship or threat of violence, it can be re-traumatizing to go through an investigation that will ultimately bare no benefit to the survivor.

Additionally, many colleges and universities have policies that designate all faculty and staff, including some student employees, as “responsible employee” mandated reporters. This blanket employee classification can have unintended consequences. Like the aforementioned example, for a survivor who is no longer going through the immediate aftermath of an assault, disclosing former experiences might be a way of coping with previous trauma. Should a mandated reporter hear a disclosure they are obligated to report the assault, regardless of the survivor’s sentiment, which can also be re-traumatizing. Schools and universities should be transparent about Title IX investigation protocols so that students can be empowered to make the decision for themselves when and to whom they report, while also knowing conversations with trusted faculty and staff can remain confidential. A wide-ranging “responsible employee” mandated reporter policy can result in a freezing effect where students are unclear about their options, creating a barrier for confidential disclosures.

Investigations of sexual misconduct should be taken seriously, met with a prompt response, and the current standard of evidence used on campus should not change. “Preponderance of the evidence” is appropriate for administrative proceedings, and provides due process for the victim and accused.

The 2011 Dear Colleague Letter provides guidance on the unique concerns that arise in sexual violence cases, such as the role of criminal investigations and a school’s independent responsibility to investigate and address sexual violence. A Title IX investigation, which is based on an educational institution’s code of conduct policies, should not be compared to criminal justice investigations of sexual assault. Schools and universities are not investigating criminal statutes, and do not have the resources for criminal investigations or access to crime labs. Schools and universities have developed thorough investigation procedures that have retired the “he said, she said” standard assumption that sexual violence is a miscommunication. As such, K-12 and college students now expect protections under Title IX; reversing current guidance will create additional inconsistency and confusion.

Every survivor of sexual violence must be taken seriously, and every accused should know guilt is not predetermined, yet the experience of survivors and accused cannot be conflated. Perpetrators of sexual violence silence victims through intimidation and coercion, resulting in many survivors not coming forward to report their assault. This creates an environment where access to education is not equitable, the basis for Title IX. Failures of due process are not the result of erroneous OCR guidance, but rather misapplication of such guidance. The U.S. Department of Education has the opportunity to strengthen Title IX protections by providing additional clarification through OCR. Rolling back current protections will place additional burden on students who have experienced sexual violence, and how their campus is able to respond.

In conclusion, MCADSV appreciates having these comments taken into consideration.

Sincerely,

A handwritten signature in black ink, reading "Jennifer Carter Dochler". The signature is written in a cursive, flowing style.

Jennifer Carter Dochler
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