



Maryland Coalition Against Sexual Assault

Working to end sexual violence in Maryland

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Hilary Malawer, Deputy Assistant General Counsel
U.S. Department of Education
400 Maryland Ave. SW, Room 6E231
Washington, D.C. 20024

Submitted Electronically via Regulations.gov

Dear Ms. Malawer:

We are writing regarding fair treatment and access to education for survivors of sexual assault on college campuses. The Maryland Coalition Against Sexual Assault (MCASA) is deeply concerned that rescinding the 2011 Dear Colleague Letter (DCL) and other existing Title IX guidance would undermine the safety of campuses across the country and discourage student survivors from reporting their assaults. We write to urge the Department of Education to recognize the existing Title IX guidance and the DCL as necessary tools in our country's efforts to end sexual violence and protect the rights of all students.

Sexual violence is an epidemic at our institutions of higher education. According to the Bureau of Justice, 21% of female students and 7% of male students will experience sexual assault during college.¹ Title IX and its associated guidance play a vital role in ensuring that all college students can safely access everything their schools have to offer. MCASA is certain that, if the Department of Education engages attentively with a variety of stakeholders, the Department will conclude that vigorous enforcement of Title IX and associated guidance is the best way forward.

Recently, Secretary DeVos has stated that the policies currently in place have been unfair and harmful for survivors, the accused, and administrators, but existing Title IX guidance already has ample protections in place to ensure fairness to all parties involved in a sexual misconduct investigation. In fact, current Title IX guidance affords even more due process than the Constitution does to all students (both those accused of misconduct and those seeking protection). If schools are failing to ensure fairness to all parties, the solution is to rigorously enforce Title IX regulations, not to undermine them.

It is also vitally important that Title IX guidance continues to support the use of the preponderance of the evidence standard in college investigations. The preponderance of the evidence is the standard generally used in civil cases, and is the standard used in other civil rights discrimination cases; to hold victims of sexual violence to a different standard would be discriminatory in itself. The preponderance

¹ Christopher Krebs, et al., Campus Climate Survey Validation Study Final Technical Report, at 73-74 (2016), available at <https://www.bjs.gov/content/pub/pdf/ccsvsftr.pdf>.

standard also equally values the education of both parties involved in a sexual misconduct investigation, which goes to the very heart of Title IX's purpose. Imposing a higher standard of evidence and rolling back Title IX protections would tip the scales against survivors and would discourage them from coming forward.

MCASA's Sexual Assault Legal Institute (SALI) is a legal services program in Maryland that regularly aids student survivors of sexual violence. Our clients depend on Title IX and its existing guidance to help them access their education in the aftermath of a sexual assault. One client, "Chloe," was being repeatedly harassed over the course of an evening by "Mark," who she had seen around, but had not hung out with before.² Eventually, she went back to her dorm to get away from him, but he followed her into her room. Mark repeatedly asked Chloe to have sex with him, and she repeatedly refused. Mark persisted, and eventually used a combination of coercion and physical pressure on Chloe's head to force her to fellate him.

Several weeks later, Chloe worked up the courage to report what had happened to her school. Chloe's school provided her with safety accommodations that she requested, including moving Mark to a different dorm and issuing a no contact order. Chloe's case caused the school to rethink its definition of sexual misconduct. The following school year, Chloe's school added sexual coercion to its sexual misconduct policy. The school also made changes to how investigations at the school are conducted as a result of investigator bias problems that arose in Chloe's case. Now, students who report sexual misconduct at Chloe's school have more reassurance that investigations will be conducted fairly and impartially, and the school has the ability to find perpetrators responsible for sexual misconduct when they use coercive tactics.

Because of Title IX, Chloe was able to get the accommodations and support she needed to continue her studies during her school's investigation, and her school improved its sexual misconduct policies, which it may not have done had robust Title IX guidance and enforcement not been in place. We cannot allow students like Chloe to suffer further after an assault because their colleges or their government refuse to support and rigorously enforce their rights. The 2011 Dear Colleague Letter and other Title IX guidance are essential to ensuring we do not fail our student survivors of sexual assault. MCASA urges the Department of Education to continue to enforce Title IX as it currently stands, and to focus its energy on supporting schools as they attempt to author and implement sexual misconduct policies that meet the full requirements of the law.

We appreciate your consideration of our comments. If you have any questions, please contact Lisae C. Jordan, Esq., Executive Director and Counsel (lcjordan@mcasa.org).

Sincerely,

Maryland Coalition Against Sexual Assault (MCASA)
MCASA's Sexual Assault Legal Institute

² Information changed to protect confidentiality and privacy.