

The California Coalition Against Sexual Assault (CALCASA) formally requests that binding regulations on the enforcement and interpretation of Title IX of the Educational Amendments of 1972 be updated to include the below provisions that clearly connect sexual violence to sex discrimination, forward trauma-informed and wellness-centered protocols and practices, and build transparent and accessible accountability structures separate from the criminal justice system. CALCASA is the technical assistance and training provider for 84 rape crisis centers in California, as well as the founding member of Raliance, a long time service provider and collaborator with campus programs throughout the United States, and a California and national voice for survivors of sexual assault. Just a few short years ago, Title IX was seriously under-utilized and under-enforced. Survivors of sexual assault on and around campus were silenced, ignored, and chastised. Sexual violence was an accepted social norm on many campuses. Students and advocates organized to shine a light on this unacceptable state and many survivors came forward with similar stories of schools ignoring sexual harassment and sexual violence, or shared experiences of schools having largely inappropriate and useless processes for handling grievances. As a nation, we cannot go back to these dark ages of ignoring sexual harassment on campus and failing to create safe and healthy school systems—from Kindergarten to graduate school. Now is the time to preserve valuable gains in how sexual harassment is taken seriously in schools throughout the nation.

CALCASA recommends that the following features of guidance for Title IX include:

- Definitions: Sexual violence is a form of sexual harassment and is the prelude of Title IX enforcement and regulation through the Office of Civil Rights.
 - Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol.
 - Sexual violence can include rape, sexual assault, sexual battery and sexual coercion.
- Notice: Notice of nondiscrimination must be published (34 CFR 106.8(b) and 106.9)
 - This should be further strengthened with requirements to put notice on websites, and in easily accessible common areas
- Title IX E/ee: Schools must designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX. (Title IX implementing regulation 34 CFR 106.8(a))
 - Notice of who this person is should be published in a way that is accessible and easily available
- Training: Schools need to insure that employees are properly trained regarding reporting and responding to harassment. Training shall include practical information about how to identify and report sexual harassment and violence. This training should be provided to all employees likely to witness or receive reports of sexual harassment and violence (including but not limited to: teachers, school law enforcement, school administrators, school counselors, general counsels, health personnel, and resident advisors). Fact-

finders and decision makers in the hearing process need adequate training, including training on applicable confidentiality and privileged communications requirements.

- Off-Campus Considerations: Off-campus impacts shall be considered in evaluating a hostile environment on campus. Complaint procedures should be followed regardless of where the conduct occurred
- Office of Civil Rights Oversight: OCR will continue to review all aspects of the school's compliance with Title IX, including procedures, notice, and training.
- Confidentiality and Privilege: Confidentiality requests and confidentiality and privileged communications laws in the state should be respected and safeguarded to the extent possible
- Intersections with Criminal Investigations: Criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably. And police investigations or reports are not determinative of whether sexual harassment violates Title IX. Schools should notify complainant of right to file a criminal complaint and not dissuade a victim from doing so at any time. Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation. Schools must, if needed, take immediate steps to protect the student in the educational setting and not wait to see if alleged perpetrator is found guilty of a crime.
 - Further, MOUs with law enforcement agencies need to include clear policies on when a school will refer a matter to local law enforcement.
- Evidence Standard for Hearings/Proceedings: A preponderance of the evidence standard shall be used under Title IX, given that this is a moral conduct proceeding, not a criminal proceeding. There is no need to increase the evidence standard to create a duplicative criminal justice process (beyond a reasonable doubt)
- Equality of Process: Parties must have equal opportunity to present relevant evidence and witnesses, have similar opportunities to access information used at the hearing, and should have the same access to representation.
- Appeals: There must be a clear appeals process with notice of that process to all parties and details about timeline and how appeals outcomes will be decided.
- Clear and Fair School Proceedings: School proceedings on Title IX grievances must have certain protections and maintain a spirit of equality and fairness.
 - Schools must maintain documentation of all proceedings.
 - Individuals involved in these proceedings must be adequately trained.
 - Any real or perceived conflicts of interest between fact-finder or decision-maker and the parties should be disclosed.
 - Both parties shall be notified in writing about the outcome of the complaint and any appeal.
 - Schools shall provide written determination of the final outcome of the process to the complainant and the alleged perpetrator concurrently.
- Prevention: In order to change school climates and reduce sexual harassment, schools must take seriously the prevention of sexual violence. This includes implementing comprehensive prevention education programs and campaigns, taking immediate action to eliminate a hostile environment, prevent recurrence and address the effects of sexual

harassment and sexual violence. Sexual violence materials shall include the school's policies, rules and resources for students, faculty, staff, coaches and administrators—all persons involved with the school system. Notice must include publishing in employee and student handbooks and code of conduct manuals, including those given to student-athletes, fraternity and sorority organizations, and clubs/student organizations on campus.

- Remedies and Enforcement: Schools need to take immediate steps to reduce the impacts of sexual harassment, including interim steps before the final outcome of an investigation. The burden on the complaint needs to be minimized. Retaliation shall not be tolerated and complainants should be informed that retaliation by alleged perpetrators or associates is retaliatory harassment and could be a new incident of harassment.
- Community-connected Memorandums of Understanding (MOU): Schools should be required to develop MOU/contracts with community-based services, such as rape crisis centers, so that survivors have access to supportive services both on-campus and off campus and throughout their lifetime. Community-school partnerships foster greater communication, sharing of resources, and improve comprehensive approaches through multi-disciplinary strategies and frameworks.
- Trauma-informed Framework and Approaches: Trauma-informed care and practice should be a central framework for educational approaches to sexual harassment and sexual violence. Trauma-informed care impacts the response to trauma by educating the community about the impact of trauma on survivors, allowing for critical analysis of system practices that retraumatize, and establishing more comprehensive approaches that work for all instances of sexual violence.

These changes are needed to effect a meaningful impact on the school climate in colleges, universities and schools systems to respond to and prevent sexual harassment and sex discrimination. We urge the Office of Civil Rights and US Department of Education to make these recommendations binding regulations for schools in order to better support survivors of sexual assault and harassment, provide for a more transparent and fair system, and interrupt harmful norms that ignore sex discrimination and sexual harassment.