To: U.S. Department of Education
From: Chris Kaiser, Texas Association Against Sexual Assault
Re: Comments regarding Evaluation of Existing Regulations (Docket #ED-2017-OS-0074)
Date: August 10, 2017

The Texas Association Against Sexual Assault (TAASA) is the statewide organization committed to ending sexual violence in Texas. TAASA's membership includes the 117 rape crisis centers throughout Texas, as well as hundreds of sexual assault survivors, their loved ones, and professionals who serve them.

Respectfully, we offer these comments in strong, unequivocal support of regulatory approach to Title IX compliance by the Department of Education's Office for Civil Rights (OCR) since 2011, including the *2011 Dear Colleague Letter* and the *2014 Questions and Answers on Title IX and Sexual Violence*.

During the last eight years, TAASA has committed significant efforts toward both training and policy analysis related to sexual violence in the educational setting. Annually, TAASA provides training to thousands of survivor advocates, criminal justice professionals, social workers, attorneys, and higher education professionals to support their work related to sexual violence. This includes the annual University Police Sexual Assault Training (UPSAT) Conference, which draws more than 200 campus police chiefs and investigators each year. In addition, our public policy staff consults with institutional officials on federal compliance matters and best practices for responding fairly and equitably to reports of sexual violence.

Support for 2011 and 2014 Guidance Documents

Although many institutions' responses to sexual assault complaints still require significant improvements, the approaches described by the *2011 Dear Colleague Letter* and the *2014 Questions and Answers* have been immensely helpful to sexual assault survivors. They have clarified institutions' fundamental obligation to respond to sexual assault as a serious form of sexual harassment that imperils survivors' equitable access to education.

Significant changes to, or the rescindment of, the Department's guidance on this issue would likely signal the Department's diminished commitment to defending survivors' rights to enjoy a safe educational environment, free from harassment and violence.

Support for the Preponderance of the Evidence Standard

We specifically and strenuously oppose any regulatory action permitting institutions to employ a standard of evidence higher than the preponderance of the evidence to adjudicate sexual harassment claims.

All civil rights laws prohibiting discrimination—including, for example, Title VI of the Civil Rights Act of 1964, which prohibits racial discrimination by educational institutions and is

enforced by OCR—use the preponderance of the evidence standard. Indeed, that is why the vast majority of postsecondary institutions used the preponderance standard before OCR's issuance of the *2011 Dear Colleague Letter*. To permit institutions to use a higher standard of evidence in sexual harassment claims is to subject these particular complainants—sexual harassment complainants—to a special, heavier evidentiary burden than all other civil rights complainants. Given that the purpose and spirit of Title IX is to prohibit discrimination on the basis of sex, such an outcome would be not only ironic, but absurd.

By contrast, the approach described by the *2011 Dear Colleague Letter* and the *2014 Questions and Answers* ensures consistent and equitable treatment of sexual harassment complainants.

Failures Lie in Application—Not Policy

To be sure, many students have been subjected to unfair treatment in institutional sexual harassment processes, despite OCR's guidance. However, in our experience sexual harassment complainants have predominantly borne the weight of those failures, not respondents.

Today, more than six years after the issuance of the *2011 Dear Colleague Letter*, most institutions have compliant policies in writing. Policies reflect the appropriate evidentiary standard, equitable rights to appeals and participation in disciplinary hearings, and resources for interim supports and accommodations. Nevertheless, inequitable application of those policies remains a pervasive problem for complainants.

For example, it is still quite common for institutional investigators to fail to interview complainants witnesses; to interpret complainants' manifestations of trauma as discrediting; to refuse even basic accommodations to complainants, separate from disciplinary action against respondents; and to apply a standard of evidence higher than that required by the institution's policy on an ad hoc basis. For an individual seeking help from a school following a rape, the burden of such institutional failures often weigh too heavily for the survivor to stay healthy, much less remain in school.

The pendulum has not shifted in favor of sexual harassment complainants—far from it. To find safety and healing on college campuses and the criminal courts alike, they must still overcome intense gender bias, inadequately trained officials, and threats of retaliation from their friends and loved ones.

Thus, to fulfill Title IX's promise of equitable educational access, institutions need more guidance and more training—not less. The solution to any unfair treatment, whether toward a complainant or a respondent, is to improve institutional officials' competency in applying their policies. Rescinding or materially altering the Department's regulatory approach would negate the significant progress we have made.

We thank the Department for its thoughtful consideration.

Sincerely,

Chris Kaiser
Director of Public Policy &
General Counsel
Texas Association Against Sexual Assault