To: U.S. Department of Education

From: Gregory Josefchuk, President, National Coalition For Men Carolinas (NCFMC)

Re: Comments regarding Evaluation of Existing Regulations (Docket # ED-2017-OS-0074)

I submit these comments in my capacity as the Carolinas chapter president for the National Coalition For Men (NCFM) a non-partisan men’s human rights organization that advocates on behalf of men that have been discriminated against or treated in a harmful way.

Our organization opposes the U.S. Department of Education Office for Civil Rights (OCR) guidance given to universities in the handling of disciplinary cases related to Title IX of the Educational Amendments of 1972. In this regard, we support the evaluation of existing regulations (Docket # ED-2017-OS-0074)

While higher education faces many challenges today, the issue of how to handle sexual misconduct on college campuses is firmly planted in the national spotlight. No one denies that sexual assault on college campuses is a serious matter that warrants attention yet the prescribed cure by the Department of Education under the previous administration was worse than the disease inasmuch as it has done violence to the concept of the presumption of innocence and eviscerates due process for any student facing a Title IX university disciplinary hearing.

Title IX, of the Education Amendments of 1972, prohibits discrimination on the basis of sex in education programs or publicly funded institutions. Over the years, this has come to encompass investigating cases of sexual harassment and sexual assault. In 2011, the Office for Civil Rights, under the Obama administration’s Education Department, informed colleges that they should deploy a ‘preponderance of the evidence’ standard in campus sexual-assault hearings which requires a 50 percent plus a feather outcome, to determine guilt. Title IX related sexual assault cases should require that the burden of proof be at minimum that of "clear and convincing evidence" standard used when adjudicating such life-altering cases.

It seems inconceivable that our nation has forgotten the painful lessons learned at the expense of so many college men falsely accused of rape. Perhaps the following examples can serve as a brief yet vital reminder of Title IX related injustices faced by college students today:

* Duke Lacrosse case – gang rape hoax; the three accused college men ultimately were declared innocent by the Attorney General of North Carolina but not until after their young lives and family names were irreparably destroyed
* UVa case – the recent infamous Rolling Stone gang rape hoax story that resulted in vandalism and threats of violence made against innocent fraternity members. As has been recognized, the story was a fabrication that perpetuates a harmful myth that depicts fraternity men as rapists in waiting who ply woman with alcohol in order to use sexual violence against them.
* Amherst College case – male student walked his girlfriend’s roommate back to her dorm after a party and while he was passed out the roommate accuser performed a sex act on him that she admitted to. Twenty-one months later she accused him of sexual assault. Amherst said his account of being blacked out was credible but still ruled against him and expelled him.
* Columbia University case - male student was terrorized by a jilted female student who determined to ruin his life. Even though Columbia exonerated him of any wrongdoing, his accuser made his life a living hell by publicly naming him as a rapist and then made him a target of public ridicule and humiliation by the accuser carrying a mattress around campus as her “art project”. The accused student and his family had to endure the humiliation and shame of seeing his accuser up on stage carrying her mattress during their graduation ceremony. The male student was subjected to discrimination under Columbia’s toxic campus environment, yet neither Columbia nor OCR stepped in to protect this male student’s Title IX rights.
* CSU-Pueblo case – pre-med male student who had consensual sex with a casual friend who had invited him up to her room, undressed and got in bed with him. The next morning, a friend of the woman’s noticed a hickey on the woman’s neck. When she learned the woman had sex with a prominent football player, she surmised her friend had been raped and reported that to university authorities. CSU-Pueblo suspended him even though the female student told the university that the sex was consensual and that he did nothing wrong.

These cases represent just a small sampling of the approximately 180 lawsuits filed against universities in which male student plaintiffs allege being denied due process, subjected to what can only be described as a kangaroo court process and summarily expelled as a direct result of flawed directives issued and enforced by the Office of Civil Rights (OCR) within the Department of Education.

Universities are not the proper institution to prosecute a rape case. In that regard, I would echo testimony provided to Congress recently by Molly Corbett Broad, President of the American Council on Education, who stated:

*“Conducting education and providing information is an area where college officials have vast experience. We must redouble our education efforts on sexual assault, and as I noted earlier, institutions are moving aggressively to do this.* ***But performing investigations and adjudicating cases is a far more difficult challenge. We lack the authority to subpoena witnesses, control evidence and impose legal standards.******Our disciplinary and grievance procedures were designed to provide appropriate resolution of institutional standards for student conduct, especially with respect to academic matters. They were never meant for misdemeanors, let alone felonies.******While we take our obligations to the victims/survivors of sexual assault very seriously and are fully aware of our responsibilities with respect to sexual assaults, our on-campus disciplinary processes are not proxies for the criminal justice system, nor should they be.”***

Clearly defined regulations around the proper way to handle Title IX related sexual misconduct cases that embrace a presumption of innocence, impartial investigations and a balanced and fair approach to gathering reliable information with the objective of reaching equitable outcomes is greatly needed.

The Education Department must not impugn any student’s fundamental right to due process. Furthermore, sexual assault should not be swept under the rug by universities, and neither should due process rights of students be tossed out the door. Protecting the rights of sexual assault victims and accused students are not mutually exclusive and should not be treated as a zero-sum game.

OCR guidance that predisposes college men as rapists is where we stand today which is an aberration to civil liberties. That the only evidence needed to warrant a college student’s permanent removal from campus, forever ending one’s educational attainment while branding them a rapist for life, is an unsubstantiated accusation is beyond unconscionable.

Deeply flawed policies developed by the Education Department’ Office of Civil Rights (OCR) as issued through the 2011 Dear Colleague Letter directive have promulgated rules that waste millions of taxpayer dollars and that foster false beliefs that university campuses are default sanctuaries for sexually violent male students.

We ask for an immediate repeal of OCR’s 2011 Dear Colleague Letter guidance and request that the rulemaking process is utilized so that all sides to this complex issue can be heard and taken into consideration. A system without due process serves no one in the end.