



January 30, 2019

Ms. Brittany Bull
U.S. Department of Education
400 Maryland Avenue, S.W., Rm. 6E310
Washington, DC 20202

RE: (34 CFR Part 106) Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Proposed Rules implementing Title IX [Docket ID ED-2018-OCR-0064]

Dear Ms. Bull:

Johns Hopkins University, one of America's leading research universities enrolling over 25,000 undergraduate and graduate students, submits the following comments and recommendations in response to the proposed rule *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, as published in the Federal Register on November 29, 2018. We share the Department of Education's goals to ensure that sexual harassment is addressed on our campuses by assisting and protecting victims and also ensuring fair procedures for the investigation and resolution of complaints.

Organizations of which Johns Hopkins is a member have also sent comments to the Department and we refer you, in particular, to the January 24 letter from the Association of American Universities and the January 29 letter from the American Council of Education. Although the proposed rule is a comprehensive proposal raising a number of issues, we wish to focus on the following three matters:

Summary

- I. Clarify that other institution policies and procedures will remain fully available to allow institutions to address problematic conduct that does not fall within the limited Title IX purview clarified in these regulations;
- II. Live hearings should be optional, not required.
- III. If the requirement for live hearings is included in the final version of the rules, then written questions should be substituted for live questioning.

Discussion

- I. Termination of Grievance Procedures and addressing problematic conduct through other institution procedures – proposed § 106.45(b)(3)

Johns Hopkins University appreciates the Department's recognition that "the regulation does not prevent a school policy from prohibiting sexual behavior that does not meet the Title IX definition of harassment." See Background

and Summary of the Department's Proposed Title IX Regulation, p. 2. It would be helpful, however, for the Department to provide express clarification that the regulations are not intended in any way to impact or foreclose an institution's ability to appropriately address, and if necessary, sanction, conduct of a sexual nature that – while not defined as harassment by the Department – is otherwise prohibited by institutional policies and procedures, such as through student, staff, and faculty conduct procedures.

II. Requirement for live hearings with Cross-Examination by Aligned Advisors – hearing requirement - proposed § 106.45 (b)(3)(vii)

Johns Hopkins University objects strongly to the Department's proposed requirement for live hearings. We urge adoption of the same standard proposed for elementary and secondary schools where live hearings are allowed, but not required. In proposing this option for the elementary and secondary education sector, the Department took note of the "sensitivities associated with age and developmental ability", while choosing to ignore other important sensitivities. Institutions need to be able to address the individualized needs of their students, for example, and including, students with mental health conditions, including anxiety disorders, who are present at all levels of the education system, including at institutions of higher education. Institutions, investigators and decision-makers must have the option to craft their policies and procedures in a way that protects the best interests of all students and the broad proposed rule requiring live hearings is not consistent with that shared goal.

III. Requirement for live hearings with Cross-Examination by Aligned Advisors – manner of questioning – proposed § 106.45 (b)(3)(vii)

If the Department remains insistent that live hearings must be a part of the grievance process for Title IX cases, we strongly urge that live questioning with cross-examination by advisors should be prohibited. Johns Hopkins University's current procedures allow for the submission of written questions to the investigator(s) and adjudication panels by either party. This process works well and is more sensitive than potentially aggressive and/or intimidating questioning by hostile parties (or their advisors) during the proceedings.

Conclusion

On behalf of Johns Hopkins University, we thank you for the opportunity to provide feedback on this NPRM. We are hopeful that our constructive comments on improvements to the proposed rule are helpful, and we welcome any questions you may have.

Sincerely,

Kimberly Hewitt
Vice Provost for Institutional Equity