

January 18, 2019

Submitted via Electronic Submission at www.regulations.gov

Kenneth L. Marcus
Assistant Secretary for Civil Rights
Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202

Re: Docket No. ED-2018-OCR-0064, RIN 1870-AA14, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Dear Mr. Marcus:

The National Association of Secondary School Principals (NASSP) submits the following comments in response to the Department of Education's (ED) Notice of Proposed Rulemaking (NPRM or proposed rules) to the proposed rules relating to sexual harassment as published in the Federal Register on November 29, 2018. NASSP strongly opposes this proposed rule as it will lessen protections for assault victims and will hinder the ability of schools and educators to properly address assault claims. As the leading voice for principals and other school leaders across the United States, NASSP seeks to transform education through effective school leadership. We believe that the fulfillment of each student's potential relies on great leaders in every school committed to the success of each student.

Principals serve as the leaders of their schools and strive to put each child in the best situation to succeed. Unfortunately, this proposed rule will greatly inhibit a principal's ability to prevent and address assault. Sexual harassment should never be the end of anyone's education, but this rule makes it increasingly difficult for school leaders to protect and address the well-being of assault victims.

Principals build their schools to be centers for learning where students feel safe, comfortable, and cared for. Often principals use federal policy to set in place procedures that ensure all complaints are addressed in an efficient fashion that offers fair protections for both the accuser and the accused. Under this proposed rule, schools would be allowed—and, in many cases, required—to ignore students who report sexual harassment. For example:

- **Notice:** In many instances, schools would not be responsible for addressing sexual harassment, even when school employees knew about the harassment. Oftentimes, victims may refuse to report assault because they believe no action will be taken even if they report it. This proposed rule could lead to even more nonreporting from victims, which could lead to prolonged harassment and suffering.
- **Off-campus/online:** Schools would be required to ignore harassment that occurs outside of a school activity, including most off-campus and online harassment.

- **Definition of harassment:** Schools would be required to ignore harassment until it becomes quite severe and harmful, denying students' equal access to educational opportunities. This new definition completely ignores the fact that students excel at a higher level when there are fewer distractions or outside influences that negatively impact their learning, such as bullying or harassment.
- **Deliberate indifference:** Schools would be allowed to treat survivors poorly as long as the school follows various procedures in place, regardless of how those procedures harm or fail to help survivors.
- **Religious exemptions:** Religious schools would be able to claim religious excuses for violating Title IX, even if the school had never before requested a religious exemption from ED. This exemption could allow religious schools the ability to discriminate against certain student populations, such as LGBTQ students.

While this proposed rule does include situations where schools are required to address harassment, these are sincerely lacking compared to the previous Title IX rules. In many cases that require a school to act, schools would be allowed—and, again, sometimes required—to deny harassment victims of due process. For example:

- **Timeframe:** There would be no clear timeframe for investigations, and schools would be able to delay taking any action if there is also an ongoing criminal investigation.
- **Presumption of no harassment:** Schools would be required to presume that no harassment occurred.
- **Standard of proof:** Many schools would be required to use an inappropriate and more demanding standard of proof to investigate sexual harassment than to investigate other types of student misconduct.
- **Appeals:** Schools would be required to give unequal appeal rights with respect to sanctions.
- **Mediation:** Schools would be allowed to pressure survivors into mediation with their assailants.

For the reasons detailed above, ED should immediately withdraw its current proposal and dedicate its efforts to advancing policies that ensure equal access to education for all students, including students who experience sexual harassment.

Sincerely,

JoAnn Bartoletti
Executive Director
NASSP