Dear Secretary Devos,

Pursuant to the Department of Education (DoE) Request for Policy Guidance on November 29th, 2018, this letter outlines University of Pennsylvania’s Sexual Harassment Reform Committee’s (SHRC) issues with the proposed regulation that alters schools’ responsibilities under Title IX, a federal law that bars recipients of federal funds from engaging in sex discrimination.

Forty percent of graduate students have experienced some form of sexual harassment (NCGWE, 2018). 32% of men, 42% of women, and 62% of trans, nonbinary, and gender non-conforming students within Penn’s graduate student population have experienced sexual harassment at Penn (Cantor, et al., 2015). Sexual harassment has demonstrated to predict posttraumatic stress symptoms, such as flashbacks, nightmares, and hyperarousal (Avina & O’Donohue, 2002). Sexual harassment also showed a decrease in wellbeing, and overall psychological distress, with outcomes such as depression and physical symptoms, including nausea or sleeplessness (Roosmalen & McDaniel, 2008). Research further shows that students who experience sexual harassment also experience negative educational outcomes including poorer student experiences and perceptions of faculty and advisors, lower ratings of fairness on campus, depleted confidence in academic competence, lower ratings of perceived respect on campus, decrease in students’ abilities to graduate, and students’ increased avoidance of enrolling in classes taught by professor of concern (Rosenthal, et al., 2016). Based on the empirical evidence, below are primary issues relating to the DoE’s proposed regulations.

1. Require schools to only investigate the most extreme forms of harassment and assault.

   Analysis: Gartner and Sterzing (2016) demonstrate that gendered microaggressions, including insults and other forms of daily aggression that may not constitute extreme harassment, are a component of a culture of sexual violence that increases the likelihood of high-severity sexual violence. Other studies also demonstrate that more subtle aggressive behavior, when unaddressed, can lead to more extreme sexual harassment. (Espelage, Basile, De La Rue, & Hamburger, 2015). Furthermore, microaggressions on their own have been linked to negative mental and physical health outcomes (Torres and Tahnint, 2015). The current rules restrict a school’s ability to intervene in less severe cases, potentially allowing a hostile environment to develop.

   Recommendation: Maintain the previous definition of sexual harassment and burdens of proof or, at a minimum, let schools decide which definition to employ.

2. Allow schools to ignore sexual violence that occurs outside of a school program, such as off-campus apartments.

   Analysis: 87% of college students live off campus.
Recommendation: The effect of sexual violence on a survivor’s education should be the determining factor of a university’s involvement, not the location of where an assault occurred.

3. Permit schools to discriminate against survivors and adopt a “clear and convincing” standard only for sexual harassment complaints.

Analysis: Only 5% of reported sexual violence claims are found to be false (Belknap, 2010). Making the reporting process more difficult for survivors has been linked to negative health outcomes for survivors. Smith and Freyd (2013) define “institutional betrayal” as “creating an environment where [sexually violent] experiences seemed more likely, making it difficult to report these experiences” and assert that “those women who reported institutional betrayal surrounding their unwanted sexual experience reported increased levels of anxiety, trauma-specific sexual symptoms, dissociation, and problematic sexual functioning.” Therefore, creating an environment in which it is difficult to report sexual violence has its own deleterious effects on survivor well-being.

Recommendation: Maintain the previous definition of sexual harassment and burdens of proof or, at a minimum, let schools decide which definition to employ.

4. Make it impossible for survivors to request that their perpetrator be moved out of their dorm or classes as an interim accommodation.

Analysis: Research shows that only 5% of reported sexual violence claims are found to be false and that at least 90% of rapes on college campuses are never reported to authorities (Belknap, 2010). Among other factors, the intensity, severity, and duration of threat experienced by an individual can impact the long-term mental and physical health outcomes of survivors (Tedeschi & Calhoun, 2004). Given that very few survivors falsely report, preventing a survivor from establishing distance from their assailant through an interim accommodation will increase the duration of a survivor’s exposure to threat, thus potentially causing further long-term harm to a survivor.

Recommendation: When equity between a survivor and perpetrator is impossible or could perpetuate a hostile environment for the survivor during the interim accommodation period, allow schools to prioritize the safety of the survivor.

5. Require schools to establish live cross-examination, where an accused student’s representative would be able to directly question a victim in real time.
Analysis: The practice of cross examination can be retraumatizing to survivors, often rooted in gender stereotypes and rape myths that contribute to a “victim blaming” narrative (Zydervelt, 2016). Survivors often experience “secondary victimization” as a result of interacting with community services providers who often partake in “victim blaming attitudes, behaviors, and practices” (Campbell, 2005).

Recommendation: Ban cross-examination or, at a minimum, allow schools to make their own decisions around the use of this process.

Therefore, we strongly oppose the proposed policies for they will have devastating consequences for students and their families.

Best,
University of Pennsylvania
Graduate and Professional Student Assembly
Sexual Harassment Reform Committee