

[Docket ID ED-2018-OCR-0064]

January 30, 2019

Submitted via www.regulations.gov

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington DC, 20202

Kenneth L. Marcus
Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Avenue SW
Washington DC, 20202

Re: Docket ID ED-2018-OCR-0064, RIN 1870-AA14, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Dear Secretary DeVos and Assistant Secretary Marcus:

We are former students of The Ohio State University (OSU) and survivors of the sexual assault and harassment perpetrated by former OSU physician Richard Strauss. We are 21 of the estimated 1,500 to 2,500 former OSU students who were sexually assaulted, abused, and harassed by Dr. Strauss. OSU employed Dr. Strauss from 1978 to 1998 to provide medical care and treatment to its students, especially its student-athletes, making him the official physician for OSU's sports teams, an assistant professor of medicine, a part-time physician with Student Health Services, and a "Professor Emeritus" upon his retirement. Dr. Strauss used his position of trust and confidence at OSU to sexually abuse male students on a regular basis throughout his 20-year tenure. And for years, OSU facilitated and covered up this abuse—and the school's own role in perpetuating it. OSU employees told students that Dr. Strauss's examinations were appropriate and there was no reason to complain; OSU staff who witnessed the exams treated them as appropriate; and OSU even lied to some students, saying no one had previously complained about Dr. Strauss—even though complaints had poured in throughout his tenure. All the while, OSU continued to refer students to Dr. Strauss for medical care despite reports from students about his abuse.¹

As survivors of Dr. Strauss's sexual assault, and OSU's indifference and inaction, we know firsthand the impact schools have on students entrusted to their care when school officials neglect their critical duty—and legal obligations—to protect students on their watch. With that in mind, we are writing to offer comments on the Department of Education's proposed amendments to regulations implementing Title IX of the Education Amendment Act of 1972 (Title IX). We are deeply concerned that the proposed Title IX regulations will make schools less safe for students by allowing schools to ignore reports of sexual harassment made to the majority of school employees. If OSU had complied with Title IX, thousands of acts of sexual assault and harassment

¹ After we and other former OSU students filed Title IX lawsuits against OSU regarding its role in facilitating and concealing Dr. Strauss's sexual abuse (see attached copy of our [First Amended Complaint](#)), the Department's Office for Civil Rights opened a directed investigation into OSU's compliance with Title IX. See Dakin Adone. *Ohio State University faces federal investigation into alleged sexual misconduct by school doctor*, August 17, 2018, <https://www.cnn.com/2018/08/17/us/ohio-state-university-federal-investigation/index.html>. The investigation is ongoing.

by Dr. Strauss could have been prevented. Our experiences at OSU demonstrate how university employees are able to use their position, influence, and trust to sexually assault and harass students, and how school officials can willfully ignore that abuse—and, worse yet, perpetuate it—for years. The Department’s proposed Title IX regulations would make it far easier for serial sexual predators—like Richard Strauss at OSU, Larry Nassar at Michigan State University, George Tyndall at University of Southern California, and Jerry Sandusky at Penn State University—to prey on students for long periods of time without detection or consequences. Indeed, the proposed changes would allow serial sexual predators to thrive. Instead of requiring schools to respond quickly and effectively to serious incidents of sexual harassment, the proposed regulations would severely undermine schools’ obligations to ensure that students receive their education in an environment free from sexual harassment. This is contrary to the very purpose of Title IX and puts students at great risk.

Sexual harassment is already a serious problem in our nation’s schools. The Department of Education should not implement new regulations that would make the problem worse. During college, 62% of women and 61% of men experience sexual harassment.² More than 1 in 5 women and nearly 1 in 18 men are sexually assaulted in college.³ In addition, nearly 1 in 4 transgender and gender-nonconforming students are sexually assaulted during college.⁴ Men and boys are also far more likely to be victims of sexual assault than to be falsely accused of it.⁵ And, as many of us know from our own experiences, when schools fail to respond effectively to sexual assault and harassment, the impact can be devastating. More than one-third of college students who experience sexual assault drop out of school, which is higher than the overall dropout rate for college students.⁶ Indeed, some of us dropped out of OSU and never obtained a college degree because of Dr. Strauss’s sexual abuse and OSU’s failure to address it. Some of us suffered significant drops in our grades that altered our plans to pursue graduate degrees. But we survived, and we are asking you not to weaken Title IX’s protections by giving schools carte blanche to ignore the vast majority of students’ complaints of sexual harassment.

In particular, we strongly oppose the notice requirements in proposed regulations §§ 106.30 and 106.44(a). Under these proposed rules, schools would only be responsible for addressing sexual

² Catherine Hill & Elena Silva, *Drawing the Line: Sexual Harassment on Campus*, AAUW 17, 19 (2005), available at <https://history.aauw.org/aauw-research/2006-drawing-the-line> (noting differences in the types of sexual harassment and reactions to it).

³ E.g., David Cantor et al., *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct*, Association of American Universities 13-14 (Sept. 2015) [hereinafter *AAU Campus Climate Survey*], available at <https://www.aau.edu/key-issues/aau-climate-survey-sexual-assault-and-sexual-misconduct-2015>.

⁴ *AAU Campus Climate Survey*, *supra* note 3 at 13-14.

⁵ E.g., Tyler Kingkade, *Males Are More Likely To Suffer Sexual Assault Than To Be Falsely Accused Of It*, Huffington Post (Dec. 8, 2014) [last updated Oct. 16, 2015], https://www.huffingtonpost.com/2014/12/08/false-rape-accusations_n_6290380.html.

⁶ Cecilia Mengo & Beverly M. Black, *Violence Victimization on a College Campus: Impact on GPA and School Dropout*, 18(2) J.C. Student Retention: Res., Theory & Prac. 234, 244 (2015), available at <https://doi.org/10.1177/1521025115584750>.

harassment when a small subset of school employees actually knew about the allegation of harassment. Institutions of higher education, like OSU, wouldn't be required to address sexual harassment unless there was "actual knowledge" of the allegation of harassment by a Title IX coordinator or an official with "authority to institute corrective measures."⁷ This would be a dramatic change from the current requirements. The Department has long required schools to address all employee-on-student sexual harassment "whether or not the [school] has 'notice' of the harassment."⁸ The Department recognized the particularly egregious harm when students are preyed upon by adults, as well as students' vulnerability to pressure from adults to remain silent, and thus acknowledged schools' heightened responsibility to address harassment by their employees. In addition, the Department has long required schools to address student-on-student sexual harassment if almost any school employee either knows about it or should reasonably have known about it.⁹ This standard takes into account the reality that many students disclose sexual abuse to employees who do not have the authority to institute corrective measures, both because students seeking help turn to the adults they trust the most and because students are not informed about which employees have authority to address the harassment. The proposed changes to these longstanding requirements would, in essence, encourage many school employees to turn a blind eye to sexual assault and harassment.

Sexual assault and harassment are already hard enough to talk about. The proposed regulations in §§ 106.30 and 106.44(a) would mean that, even when students find the courage to tell a school employee they trust, schools often would have no obligation to respond. Many of us discussed Dr. Strauss's prolonged, unsettling genital exams with coaches, assistant coaches, athletic directors, other physicians, or other school employees who were not Title IX coordinators or high-ranking school officials with authority to institute corrective action. Under current rules, schools would be obligated to take action on these reports. Under the proposed rules, they wouldn't. Schools could claim that they had no responsibility to investigate serial sexual predators like Strauss, Nassar, Tyndall, and Sandusky, if students didn't report their assaults to the "right" employees, despite so many school employees knowing about the allegations of sexual abuse.

We believe that when a student reports that they have been sexually assaulted or harassed to any school employee, then the school has an obligation to respond. Allowing schools to ignore reports made to the vast majority of school employees under the proposed rules would be a serious threat to the safety of students. Title IX requires schools to support students when they come forward to report sexual assault, not ignore them. The notice requirements in the proposed regulations are dangerous and unconscionable.

The proposed regulations would return us to a time when schools could sweep sexual assault and harassment under the rug without any consequences. We had to live through this when we were students at OSU, and we don't want future generations of students to suffer similar trauma. The Department has the power to ensure that Title IX continues to protect equal access to education

⁷ Proposed regulation § 106.30.

⁸ U.S. Department of Educ., Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, at 10 (2001) [hereinafter 2001 Guidance], available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>.

⁹ 2001 Guidance, *supra* note 8, at 13-14.

for all students. We request that the Department not move forward with the proposed regulations on notice, as they will protect schools' complicity in sexual assault instead of the students Title IX is designed to protect.

Respectfully submitted,

Stephen Snyder-Hill, MAJ US Army

David Mulvin

Will Rieffer

William Brown

Kurt Huntsinger

John Doe 1

John Doe 3

John Doe 4

John Doe 9

John Doe 10

John Doe 11

John Doe 13

John Doe 14

John Doe 17

John Doe 20

John Doe 21

John Doe 23

John Doe 25

John Doe 26

John Doe 27

John Doe 29