



LIBERTY UNIVERSITY

OFFICE *of the* PRESIDENT

January 24, 2019

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

VIA ELECTRONIC SUBMISSION

RE: Docket ID ED–2018–OCR–0064; Public Comment on Proposed Title IX Regulations

Dear Secretary DeVos:

Liberty University welcomes the opportunity to comment on the Department of Education’s proposed amendments to the regulations implementing Title IX of the Education Amendments of 1972. As promised in your September 2017 remarks, the Secretary’s proposal demonstrates your commitment to hear from “those who walk side-by-side with students every day.” We also share your perspective that colleges and universities currently lack clear legal obligations. Despite the requirements of the Administrative Procedure Act, prior administrations have deprived stakeholders the benefit of the rulemaking process by promulgating sweeping changes to Title IX through a series of guidance documents without modifying Title IX’s implementing regulations. We applaud you and the Department for bringing an end to the “era of ‘rule by letter,’” and believe the majority of the Department’s proposal will improve Title IX for institutions and students.

However, § 106.45(b)(3)(vii) is an unprecedented expansion of campus due process rights that would undermine the entirety of the Department’s proposal by turning university “classrooms into courtrooms”¹ and essentially federalize the process every institution must provide to students and employees without regard to the hundreds of different models for fact finding and disciplinary determinations that have been demonstrated to be both effective and nondiscriminatory. Congress enacted Title IX in order to “prevent recipients of federal financial assistance from using the funds in a discriminatory manner.”² The majority of the Department’s proposal is consistent with Congress’s intent, comports with Supreme Court precedent, better reflects the realities of operating an institution of higher education, and provides important procedural safeguards for students and other participants. Mandating costly adversarial hearings in every sexual harassment proceeding

¹ *Murkowski v. Univ. of Del.*, 575 F. Supp. 2d 571, 585-86 (D. Del. 2008) (“[N]either a full-scale adversarial proceeding similar to those afforded criminal defendants, nor an investigation, which would withstand such a proceeding, is required to meet due process. A university’s primary purpose is to educate students: ‘[a] school is an academic institution, not a courtroom or administrative hearing room.’ A formalized hearing process would divert both resources and attention from a university’s main calling, that is education. Although a university must treat students fairly, it is not required to convert its classrooms into courtrooms.”).

² *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 292 (1998).

is a departure from these achievements and would likely dissuade complainants from coming forward, limiting the ability of campus administrators to foster a safe and inclusive learning environment. We strongly urge the Department to withdraw or substantively revise § 106.45(b)(3)(vii) prior to enacting its proposal.

1. General Comments

We support the Department’s goal of enacting regulations that “protect all students from sex discrimination” through grievance procedures “that provide a predictable, consistent, impartial process.”³ As others have observed, after the Department published its April 2011 guidance, many “colleges overcorrected their sexual assault policies by adopting policies that shirk the legally mandated due process rights of students accused of misconduct and effectively presume their guilt.”⁴ The Department likewise recognizes that prior guidance “pressured schools and colleges to forgo robust due process protections,” as well as obligating schools to police “too wide a range of misconduct,” which included “consensual, noncriminal sexual activity.”⁵

Any reform by the Department should also balance the competing interests of law enforcement and university officials.⁶ Colleges and universities have an obligation to their campus communities to respond to and resolve allegations of sexual assault. At the same time, justice for victims of sexual assault is the primary function and responsibility of the criminal justice system. Just as prior reforms resulted in overcorrection, the Department should not react to a lack of due process by setting a trajectory for Title IX that results in the creation of a competing quasi-judicial system on college campuses throughout the country. If enacted, the Department’s regulations will effect approximately twenty-million college students.⁷ Institutions need not create and operate trial court systems in order to prevent sex discrimination from blocking student access to federally supported higher education programs. A smaller and less prescriptive approach is all that is required—one that recognizes that there is a criminal justice system with all its due process for those who seek to access an adversarial system for their day in court. We further encourage the Department to seek input from law enforcement officers and prosecutors on how its proposal will impact their ability to administer justice. The proposed regulations could be strengthened with the addition of clear statements about the distinct roles of public law enforcement, prosecutors and criminal courts versus the education institutions that are recipients of federal funds, how they do and do not intersect, as well as how and when they are permitted to work together.

³ 83 Fed. Reg. 61,465.

⁴ Blair Baker, *When Campus Sexual Misconduct Policies Violate Due Process Rights*, 26 CORNELL J. L. & PUB. POL’Y 533, 535 (2017).

⁵ 83 Fed. Reg. 61,464.

⁶ See, e.g., Jake New, *Making Title IX Work*, INSIDE HIGHER ED, (July 6, 2015), <https://www.insidehighered.com/news/2015/07/06/college-law-enforcement-administrators-hear-approach-make-title-ix-more-effective>; Jed Rubenfeld, Opinion, *Mishandling Rape*, N.Y. TIMES (Nov. 15, 2014), <https://www.nytimes.com/2014/11/16/opinion/sunday/mishandling-rape.html>; *ABA Criminal Justice Section Task Force on College Due Process Rights and Victim Protections: Recommendations for Colleges and Universities in Resolving Allegations of Campus Sexual Misconduct*, AM. BAR ASS’N 2 (June 2017), <https://www.americanbar.org/content/dam/aba/publications/criminaljustice/2017/ABA-Due-Process-Task-Force-Recommendations-and-Report.authcheckdam.pdf>.

⁷ *Fast Facts Back to School Statistics*, NATIONAL CENTER FOR EDUCATION AND STATISTICS, <https://nces.ed.gov/fastfacts/display.asp?id=372> (Last accessed Jan. 16, 2019).

In regards to directed question #4, Liberty University does not object to requiring recipients to ensure that the necessary administrators receive training on all aspects of its institution's response to sexual harassment. In regards to directed question #8, Liberty University does not object to the requirement that institutions retain such records for three years.

2. Grievance Procedures for Formal Complaints of Sexual Harassment

Courts have consistently refrained from imposing the formalities of the judicial system on educational institutions and the Department should not use its regulatory authority to do so now. Because of the Department's express desire to adhere to Supreme Court precedent, it should apply the guiding principles of *Goss v. Lopez*, "the only Supreme Court case to address (non-academic) discipline in the educational context."⁸ In *Goss*, the Supreme Court held that due process did not require "truncated trial-type procedures" in a school disciplinary process and reasoned that "formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool, but also destroy its effectiveness as part of the teaching process."⁹ Using the same rationale, federal appellate courts have almost unanimously reached the same conclusion: due process does not require educational institutions to employ the formalities of trial, or full-scale adversarial proceedings in disciplinary proceedings.¹⁰ Liberty University strongly urges the Department to revise § 106.45(b)(3)(vii) accordingly, granting colleges and universities the flexibility to craft disciplinary procedures that afford appropriate measures of due process, and reflect the scope and purpose of Title IX.

Unfortunately, Section 106.45(b)(3)(vii) does not grant universities "flexibility to employ age-appropriate methods, exercise common sense and good judgment, and take into account the needs of the parties involved" as the Department suggests in its proposal.¹¹ If enacted, colleges and universities must provide, in all circumstances, live hearings with the opportunity to cross-examine parties and witnesses, conducted by a trained advisor; if any of the parties do not have a trained

⁸ Naomi Mann, *Taming Title IX Tensions*, 20 U. PA. J. CONST. L. 631, 649 (2018).

⁹ *Goss v. Lopez*, 419 U.S. 565, 583 (1975).

¹⁰ *See Doe v. Univ. of Cincinnati*, 872 F.3d 393, 399-400 (6th Cir. 2017) ("Thus, UC is not required to 'transform its classrooms into courtrooms' in pursuit of a more reliable disciplinary outcome."); *Osei v. Temple Univ.*, 518 F. App'x 86, 89 (3d Cir. 2013) ("[T]he school did not have to abide by the same evidentiary standards as one would in a courtroom."); *Osteen v. Henley*, 13 F.3d 221, 225 (7th Cir. 1993) ("To recognize such a right would force student disciplinary proceedings into the mold of adversary litigation."); *Gorman v. University of Rhode Island*, 837 F.2d 7, 16 (1st Cir. 1988) ("Hence, on review, the courts ought not to extol form over substance, and impose on educational institutions all the procedural requirements of a common law criminal trial."); *Nash v. Auburn Univ.*, 812 F.2d 655, 664 (11th Cir. 1987) ("[R]ights in the academic disciplinary process are not co-extensive with the rights of litigants in a civil trial or with those of defendants in a criminal trial."); *Winnick v. Manning*, 460 F.2d 545, 549 (2d Cir. 1972); *Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150, 159 (5th Cir. 1961) ("This is not to imply that a full-dress judicial hearing, with the right to cross-examine witnesses, is required."); *Powell v. Mont. State Univ.*, No. CV 17-15-BU-SEH, 2018 U.S. Dist. LEXIS 215891, at *17 (D. Mont. Dec. 21, 2018) ("Although the Ninth Circuit has not yet adopted the Sixth Circuit's requirements, it has expressed its view that a charge resulting in a disciplinary suspension of a student 'may require more formal procedures' to satisfy components of our system of constitutional due process."); *Doe v. Rector & Visitors of George Mason Univ.*, 149 F. Supp. 3d 602, 615 (E.D. Va. 2016) ("Specifically, the Fourth Circuit has embraced the Fifth Circuit's decision in *Dixon* . . . observing that *Dixon*'s 'summary of minimum due process requirements for disciplinary hearings in an academic setting is still accurate today.'").

¹¹ 83 Fed. Reg. 61,468.

advisor, one must be provided for them; and, decision-makers may not rely on any statements from parties or witnesses who do not submit to cross-examination. Parties must also have the option to participate in the proceedings from separate rooms, with technology that facilitates simultaneous viewing and hearing of the proceedings. This would require the scheduling of one high-stakes hearing where all parties, trained advisors, witnesses, and decision makers must be able to participate simultaneously, ensuring a process that is more difficult to conclude in a reasonably timely fashion. It would also require institutions to pay for a pool of trained advisors, many of whom will be expensive trial lawyers that institutions will feel compelled to provide to be certain they are not second-guessed on the sufficiency of training required to participate in an adversarial proceeding.¹² Compounding the additional expense would be the added cost of procuring, maintaining and operating the audio-visual technology mandated by the proposed rule. Additionally, the rule would require victims to make the Hobson's choice of being re-victimized by a trial lawyer's cross examination or not be cross-examined and thereby rendered mute because the decision maker can no longer utilize the commonsense alternative of simply factoring in the victim's level of participation in the assessment of witness credibility—all the victim's statements must be completely disregarded. This proposed change regarding cross examination is problematic for all institutions, regardless of size and resources available.

If one due process factor should drive regulatory action in Title IX, it must be context. Due process “is flexible and calls for such procedural protections as the particular situation demands.”¹³ Regulatory reform by the Department must recognize that colleges and universities are “in the business of education, not judicial administration.”¹⁴ The “adjudication of student disputes” is not their primary function,¹⁵ and stringent due process requirements “might be detrimental to the college's educational atmosphere.”¹⁶ Due process requires that procedural safeguards be “tailored, in light of the decision to be made.”¹⁷

Relying on a recent Sixth Circuit decision, the Department states that “cross-examination is not just a wise policy, but is a Constitutional requirement of Due Process.”¹⁸ In its decision, the Sixth Circuit concluded that “if credibility is in dispute and material to the outcome, due process requires cross-examination.”¹⁹ The dissent in *Baum* correctly points out that “the majority cites no case that would support its expansion of Doe's cross-examination rights beyond” their prior holding that Constitutional due process only required a limited form of cross-examination.²⁰ More importantly, the majority in *Baum* did not apply “the *Eldridge* balancing factors.”²¹ The Dissent rightly observes that “this expansion, in the absence of a focused and caselaw-supported analysis, leaves many questions unanswered.”²²

¹² Some commentators on the proposed rule suggest that the Department should also require professional hearing officers to conduct these adversarial hearings. That would be unnecessary and further escalate the cost of compliance. Such suggestions should be rejected.

¹³ *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

¹⁴ *Flaim v. Med. Coll. of Ohio*, 418 F.3d 629, 640 (6th Cir. 2005).

¹⁵ *Doe v. Univ. of Cincinnati*, 872 F.3d 393, 400 (6th Cir. 2017).

¹⁶ *Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150, 159 (5th Cir. 1961).

¹⁷ *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976).

¹⁸ 83 Fed. Reg. 61,476.

¹⁹ *Doe v. Baum*, 903 F.3d 575, 584 (6th Cir. 2018).

²⁰ *Id.* at 589 (Gilman, J., dissenting).

²¹ *Id.*

²² *Id.*

The Department's reliance on *Baum* is misplaced, and overlooks basic tenets of Supreme Court precedent in both *Goss* and *Eldridge*. *Baum* is a novel opinion and a minority view amongst the federal appellate courts. Although cross-examination may be the "greatest legal engine ever invented for the discovery of truth," it is the least effective method for ensuring equal and safe access to education under Title IX. The Second Circuit in *Winnick v. Manning* held that "the right to cross-examine witnesses generally has not been considered an essential requirement of due process in school disciplinary proceedings."²³ In fact, prior to *Baum*, "no federal appellate court [] held that there is an affirmative right to adversarial cross-examination in the educational context."²⁴

Moreover, even if the Constitution did require cross examination for due process to be achieved, which it does not, it would only require it of government-operated public institutions. There is no Constitutional due process required of private institutions.²⁵ Only the contractual due process of faithfully following an institution's own policies could be required of private institutions. That further undermines the Department's reliance on *Baum* as authority for a single federal standard of adversarial cross examination for all institutions, both public and private.

Lastly, the proposed rule concludes that due process can only be achieved through an adversarial trial process. This is a terribly misinformed and narrow view, betraying a bias in favor of common law traditions. It ignores that many cultures historically and currently rely upon the due process of the inquisitorial system to achieve justice. Countries and states that rely upon the civil legal system employ this non-adversarial process to find facts and determine sanctions. Instead of pitting the parties against each other to offer competing versions of truth, the decision maker is vested with the duty of uncovering the facts, both incriminating and exculpatory facts, in an active and participatory way, including determining whether there is a basis to initiate an inquiry, conducting an investigation, asking the parties and witnesses questions, and allowing the parties to present evidence and make suggestions on how to conduct the investigation. Many institutions use variations of the inquisitorial system, often called "investigator" models, to fairly adjudicate Title IX disputes. These models have published procedures and rules to ensure notice and opportunities to be heard, object and present evidence, are fair and even-handed to all parties and witnesses, are not dependent upon one high-stakes hearing, are less traumatic to participants, do not require parties to be equipped with trained advisors to do battle with each other, do not necessarily include live cross-examination by the parties, are less expensive, and can be concluded more timely than the adversarial hearing processes. Most organizations use an investigative model to conclude internal investigations and, whether the single investigator or double investigator or investigative panel method is used, it can effectively incorporate benefits of cross examination (albeit less formally than the adversarial procedures proposed by the Department) without the intimidation of the complainant that is sure to deter victims from reporting.

²³ *Winnick v. Manning*, 460 F.2d 545, 549 (2d Cir. 1972).

²⁴ *Mann*, *supra* note 8, at 658.

²⁵ WILLIAM A. KAPLIN AND BARBARA A. LEE, *The Law of Higher Education* § 10.2.3 (5th ed. 2013) ("Private institutions, not being subject to federal constitutional constraints, have even more latitude than public institutions do in promulgating disciplinary rules.").

In the name of assuring due process, the Department should not force institutions to abandon all use of an inquisitorial model for deciding Title IX matters in favor of employing an adversarial system that is foreign to their ethos and, more importantly, their good experience using non-adversarial models that are consistent with the requirements for due process. Instead, the Department should simply require processes that are fair, impartial, thorough, and appropriate for the educational environment. There is room for prescribing certain hallmarks of due process, such as adequate notice and opportunity to be heard, without prescribing scores of procedural standards and steps for all institutions to follow, from large to small, from public to private, and from residential to commuter to online.²⁶

3. Assurance of Religious Exemption

Liberty University strongly supports the Department’s proposed revision of § 106.12(b), which states unequivocally that religious institutions are not “required to seek assurance from the Assistant Secretary in order to assert” their religious exemption. This would clearly allow religious institutions to simply assert their exemption during the course of an investigation by the Department. The Department notes that this revision “brings the regulatory language into alignment with longstanding Department practice.”²⁷ However, we encourage the Department to further revise § 106.12, in order to eliminate another longstanding Department practice, and any continuing conflict between the statute and the regulation.

The legislative history of the implementing regulations demonstrate that § 106.12(b) was meant to serve as a “self-certification” process for religious institutions, “without review or qualification by a government agency.”²⁸ Nevertheless, the Department has “subtly but surely arrogated to itself power and authority to regulate religious exemption to Title IX, just as opponents of the regulatory procedure initially predicted.”²⁹ A review of the Department’s longstanding practice reveals that many “educational institutions have deferred to OCR’s arrogation of authority. Educational institutions’ use of inherent exemption language—verbs such as claim, notify, establish, assert, inform—in their communications with OCR decreased while their use of language that implied agency discretion—request, apply, seek—increased.”³⁰

Further, religious institutions are currently held to a different standard in exercising their exemption rights. The Department routinely recognizes non-religious exemptions to Title IX, but there is no similar pre-approval process in the regulations for any non-religious exemption. “An

²⁶ If the Department nevertheless elects to impose an adversarial model upon all institutions, and further require cross examination, it should not require that the cross examination be permitted by trained advisors. The prospect of enduring cross examination by a trial attorney for a school conduct hearing is itself intimidating and will prove a sufficient deterrent for many victims to file a sexual assault complaint. There are fair and sound procedures for questioning parties and witnesses short of subjecting students to the abuse of cross examination by trial attorneys. For example, cross examination questions can be offered by the parties, whether spoken themselves or written down and passed on to a hearing officer or investigator. Advisors could also pose questions in writing to a hearing officer to be asked without an intimidating and hostile tone.

²⁷ 83 Fed. Reg. 61,482.

²⁸ Kif Augustine-Adams, *Religious Exemptions to Title IX*, 65 KAN. L. REV. 327, 333-37 (2016).

²⁹ *Id.* at 331.

³⁰ *Id.* at 406.

institution’s exempt status is not dependent upon its submission of a written statement to OCR.”³¹ We urge the Department to further revise § 106.12 to include language that confirms religious institutions’ authority to properly assert and even self-certify their religious exemption, without prior review or qualification by the Department. Such a revision would result in equal treatment between secular and religious institutions in terms of asserting their Title IX exemptions, and ensure the Constitutional protections afforded religious institutions.

4. Recipient’s Response to Sexual Harassment

Section 106.44 contains a number of welcomed reforms. Chief among them is the Department’s decision to adopt Supreme Court standards for sexual harassment. We agree that this would result in a “uniform standard” and “a consistent body of law [that] will facilitate appropriate implementation.”³² Prior guidance did not, creating a bifurcated framework with standards for “administrative enforcement” and separate standards for “private lawsuits for monetary damages.”³³

We support the Department’s adoption of the “objectively offensive” standard for sexual harassment in § 106.44(e)(1). The 2011 Dear Colleague Letter definition of sexual harassment had “no counterpart in federal civil rights case law.”³⁴ This expanded the scope of campus sexual harassment investigations, forcing institutions to police a wide range of conduct not covered by the Supreme Court’s own interpretation of Title IX. By redefining sexual harassment to only include conduct “that effectively denies a person equal access to the recipient’s education program or activity,” the Department successfully reestablishes the original purpose of Title IX, and clarifies the obligations of recipient institutions.

Liberty University appreciates the flexibility in the proposed rule that allows institutions to only adopt its procedures for sexual harassment complaints, including sexual assault, leaving schools free to apply different procedures to other sexual misconduct (e.g., sexual exploitation, stalking, etc.), if they so choose. We also appreciate the Department’s recognition that every institution need not use a federally prescribed standard of proof for determining violations of conduct code provisions concerning sexual harassment and sexual assault. In light of inferences from prior guidance, the proposed regulations could be strengthened by making it clear that it is not necessarily discriminatory for an institution to have a burden of proof for sexual harassment and sexual assault that is different than that used for other Title IX violations, or other conduct code violations, or academic code violations. Institutions can have non-discriminatory reasons for, say, a higher burden of proof for offenses that can result in expulsion or suspension as compared to more minor offenses. Similarly, an employee disciplinary process might have a different burden of proof than a student disciplinary process without concluding such a difference is inherently discriminatory. Such a clarification should be part of the final rule.

³¹ *Exemptions from Title IX*, OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/index.html>.

³² 83 Fed. Reg. 61,466.

³³ Office for Civil Rights, U.S. Dep’t of Educ., Dear Colleague Letter (2011), at 4 n.12.

³⁴ *Plummer v. Univ. of Hous.*, 860 F.3d 767, 779 (5th Cir. 2017) (Jones, J., dissenting).

Liberty also supports the Department’s proposed standards for when institutions have “actual knowledge” and when they cannot be found to have acted in a “deliberately indifferent” manner, which provide welcome relief from unwarranted liability exposure. Specifically, we appreciate that “actual knowledge” of sexual harassment must be obtained by a school official with authority to institute corrective measures on behalf of the institution. This is both logical and practical. Also, we appreciate that institutions that follow their grievance procedures, consistent with the Department’s proposal, in response to a “formal complaint,” or that provide interim measures to a complainant when there has not been a formal complaint, cannot be found to have acted with deliberate indifference. This is clear guidance that ensures fairness to both institutions and those who access their Title IX grievance processes.

Lastly, Liberty University applauds the use of the rulemaking process for regulating in this area and encourages the abandonment of “regulation through guidance.” Institutions that comply with regulations are afforded certain safe harbors from liability as a matter of law but institutions that complied with the Department’s Title IX guidance were still subjected to litigation wherein plaintiffs’ attorneys freely second-guessed the Department’s Title IX guidance concerning practices that were and were not discriminatory. This “Catch 22” forced institutions to choose to follow the Department’s guidance and thereby subject themselves to liability (or at least the prospect of a long and expensive defense) from participants who had their own theories about discriminatory practices at odds with the Department’s guidance, or follow a non-discriminatory process different from the Department’s guidance and thereby invite enforcement actions from the Department’s Office of Civil Rights with the attendant risk of loss of federal funds. Institutions following the Department’s 2011 and 2014 guidance documents were subjected to a spate of costly private litigation related to their campus sexual harassment and assault investigations.³⁵ The proposed regulations could be improved by clearly rescinding all the Department’s prior guidance documents regarding this subject matter.

5. Conclusion

While Liberty University and many other schools will undoubtedly welcome Department reforms that curtail the scope of Title IX, the proposed procedural requirements will likely cost institutions

³⁵ See generally Kate Brumback & Kathleen Foody, *Students Accused in Campus Sex Assaults Target Federal Rules*, AP NEWS, May 18, 2016, <https://www.apnews.com/694e8cb7cd714afa8b833d927a264de2>; Craig Wood et al., *Between a Rock and a Hard Place: A Discussion of Issues That Frequently Arise in Sexual Misconduct-Related Litigation Against Colleges and Universities*, NACUA NOTES, May 18, 2016, <http://counsel.cua.edu/res/docs/titleixlitigation.pdf>; Jake New, *Out of Balance*, INSIDE HIGHER ED, April 14, 2016, <https://www.insidehighered.com/news/2016/04/14/several-students-win-recent-lawsuits-against-colleges-punished-them-sexual-assault>; *Review of Student-Victim Sexual Assault Claims With Losses*, Risk Research Bulletin by EduRisk (UE), November 2016; *Review of Student-Perpetrator Sexual Assault Claims With Losses*, Risk Research Bulletin by EduRisk (UE), April 2017. Since 2011, more than 185 lawsuits by alleged perpetrators have been filed in court—cases where the student who has been accused of misconduct is suing the university for violating Title IX, among other things. In the two decades prior to 2011, only 15 such cases were found. Title IX For All database, (accessed February 2, 2018), <https://titleixforall.knack.com/databases#due-process-lawsuits3/intro5/>; Elizabeth Llorente, *US Colleges Refuse to Ease Sex Assault Rules Despite Slew of Lawsuits Filed by Accused*, FOX NEWS, October 24, 2017, <http://www.foxnews.com/us/2017/10/24/us-colleges-refuse-to-ease-sex-assault-rules-despite-slew-lawsuits-filed-by-accused.html>.

more over time to implement than they currently pay in Title IX-related legal fees, settlements and damage awards. While foundationally, Liberty University objects to overly prescriptive regulatory requirements, the majority of the Department's proposal is a victory for the rule of law, protects institutions from unwarranted liability, and sets limits on Departmental fines for Title IX violations. It would indeed be unfortunate if, in the interest of easing the costly regulatory burden of prior guidance, the Department mandated the creation of a new bureaucracy on every college campus throughout the country that turned out to be more costly to implement than the increased liability institutions suffered under the uncertainty of the prior guidance the proposed rule replaced. By simply revising §106.45(b)(3)(vii), the Department's proposal would result in a net benefit for both institutions and students.

Thank you for inviting our public comment. We thank you and your staff for your good work on the proposed rules. And Liberty University looks forward to the Department's adoption of improved Title IX regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Falwell". The signature is written in a cursive, flowing style.

Jerry Falwell
President