



University of Colorado

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To: Secretary Betsy DeVos  
United States Department of Education

From: Patrick O'Rourke, Vice President, University Counsel and Secretary of the Board of Regents on behalf of University of Colorado President Bruce Benson

Re: Comment on Proposed Rule - Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Date: January 30, 2019

The University of Colorado has committed to creating campus communities where students, faculty and staff can study, live, learn and work without discrimination, including sexual and gender based harassment and assault. When community members experience discrimination, it denies them equal access to educational and employment opportunities and harms our community. We are committed to preventing sexual harassment and assault, providing fair and effective processes for addressing misconduct when it occurs, and promoting a culture of respect and inclusion where everyone can reach their highest potential.

To further these commitments, the University of Colorado has continuously evaluated and improved its policies to provide safety and support to those who experience sexual assault, while simultaneously ensuring that everyone involved in an investigation has a genuine and meaningful opportunity to be heard. Our highly trained professionals administer these processes fairly and in a manner that reflects our commitment to educational and employment opportunity, equity, and the rule of law. We are confident that these values have served, and will continue to serve, the CU community well, even in an evolving legal framework.

On November 28, 2018, the U.S. Department of Education's Office for Civil Rights published notice of proposed new regulations on Title IX of the Education Amendments of 1972. The proposed regulations if implemented would mean further review and potential revisions to our policies and procedures. For example, the proposed regulations as currently drafted would:

Narrow the definition of sexual harassment and do not address other types of misconduct as currently also covered by our Sexual Misconduct, Intimate Partner Abuse and Stalking Policy <https://www.cu.edu/ope/aps/5014>;  
Require live cross-examination by party advisors (as opposed to the facilitated cross-examination currently provided through university staff <https://www.cu.edu/ope/aps/5014> ); and

Require the decision-maker(s) to make factual findings and determine the sanctioning outcome which would preclude the current procedure of utilizing multiple, separate levels of “review boards,” including any investigative and sanctioning boards that currently exist on the campuses.

The proposed regulations also appear to raise questions. Some of those questions include, “What specific procedural and evidentiary rules should accompany the live cross-examination requirement?” Or, “How do the regulations work in conjunction with the university’s distinct responsibilities and obligations to employees as required under Title VII, its implementing regulations, and any applicable state requirements?” To clarify these issues and potentially help to inform future decision-making, the university has sought clarification from the Department of Education.

Despite open questions, CU will continue to be thoughtful and act in accordance with its values while complying with all of its legal obligations and ensure that we provide vigorous and comprehensive prevention and response processes for all forms of sexual misconduct.