



January 30, 2019

**Submitted electronically via Federal eRulemaking Portal**

Secretary Betsy DeVos  
c/o Brittany Bull  
U.S. Department of Education  
400 Maryland Ave., SW Room 6E310  
Washington, D.C. 20202

**Re: Comments from the Presidents of the Seven Public Universities in Oregon (ED-2018-OCR-0064)**

Dear Secretary DeVos:

Thank you for the opportunity to respond to the Department of Education’s Notice of Proposed Rulemaking (NPRM) regarding Title IX of the Education Amendments of 1972. See 83 Fed. Reg. 230 (Nov. 29, 2018).

We write on behalf of the University of Oregon, Oregon State University, Portland State University, Southern Oregon University, Eastern Oregon University, Oregon Institute of Technology, and Western Oregon University, which collectively educate and employ hundreds of thousands of individuals across the state.

The NPRM proposes significant changes to how universities such as ours should handle complaints of sexual harassment. While we appreciate the Department’s goal of providing clear legal standards, we worry that the Department’s overly prescriptive approach goes beyond what is required by Title IX and is inconsistent with our schools’ values and educational missions.

This letter explores the impacts the proposed changes will have on our campuses, and requests that the Department adopt a more flexible approach with respect to our grievance procedures. We also direct the Department to the companion letter submitted by our institutions’ Title IX Coordinators setting forth additional, specific concerns regarding the NPRM.

Our institutions are deeply committed to ensuring the safety and wellbeing of students, faculty, staff, and members of our communities. Our universities not only educate students, but we also provide a host of other programs and activities central to their development and advancement. We offer

employment, housing, food, health and wellness, recreation, social activity, and civic engagement—many of the activities most essential to their daily lives.

With all those endeavors comes a concurrent responsibility to ensure student safety. Sexual assault is a problem on all college campuses, and we have welcomed the Department's guidance, over the past decade, encouraging institutions such as ours to refine their grievance processes and invest more resources in supporting student reporting of all forms of sexual harassment, including sexual assault. With better resources, processes, and standards in place, our campuses experienced a substantial increase in the number of Title IX complaints we receive each year. Students now know that they have a right to be free of sexual harassment and violence and are entitled to fair campus process that provides all participants an opportunity to be heard.

Most importantly, the Department's prior guidance has, at all times, given us the flexibility to adopt grievance processes that work for our campus constituents and are consistent with our educational missions. The proposed rules, however, remove nearly all of that flexibility. We fear that the recent advances on our campuses will be undone.

We support continued focus on clarity of obligations, but without resorting to a deliberately adversarial setting. Escalating the adversarial characteristics of the hearing process will inevitably have a chilling effect on parties and witnesses. We have grave concern that fewer incidents of sexual misconduct will be reported and fewer students will come forward out of fear that they will be dragged into a process that mimics a courtroom conflict.

The proposed requirement that universities conduct live hearings and permit direct cross-examination fundamentally changes the nature of university proceedings. As one party hires counsel, inevitably so shall others. Institutional administrators, who are not trained judges, will be called upon to control practicing lawyers engaged in verbal combat. Survivors of sexual assault will be forced to recount their experience directly to a prosecutorial advocate—without even the nominal safeguards of indirect questioning. Respondents likewise will endure irrelevant questioning by counsel and increasingly harmful and accusatory cross-examinations. Our student conduct processes are based on an educational and restorative sanctioning model. Forcing our processes to mirror criminal proceedings moves us too far from our primary goals and purpose.

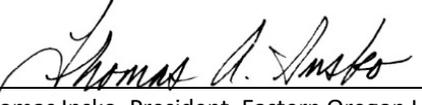
Moreover, the cost of implementing these changes will strain the ability of our institutions to deliver on their public mission. Our universities continue to advance public higher education for all during a twenty-year cycle of significantly declining state appropriations, rising costs, and fluctuating enrollment. The proposed rules would require universities to hire advisors to conduct direct cross-examination, procure technology and facilities that allow for separate rooms and live hearings, hire and train additional personnel to preside over hearings and evidentiary determinations that are beyond the level of expertise of university administrators, and absorb the increased legal costs inevitably associated with attorney-driven proceedings. These are significant costs without clear benefit to students in need of support and fair proceedings.

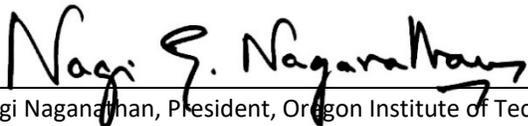
As presidents, we each have the pleasure of welcoming a new class of students every year. When we look out over the thousands of new arrivals each fall, we know that the students and their loved ones count on us to ensure their safety. And we wish that every single one of them reaches the end of their collegiate experience better for it and free from harm. But we know the statistics tell us a different story. Some of those students will face the burdens of sexual harassment, violence, and discrimination. It is in recognition of that worrisome reality and our manifest responsibility that we remain steadfast in our commitment to Title IX and to the well-being of our students. And for these reasons, we respectfully ask that the Department help us promote the safety of our students by allowing us the flexibility to adopt policies and procedures that meet the specific needs of our campus communities.

  
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Rex Fuller, President, Western Oregon University

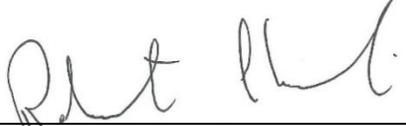
  
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Edward Ray, President, Oregon State University

  
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Linda Schott, President, Southern Oregon University

  
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Thomas Insko, President, Eastern Oregon University

  
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Nagi Nagaranathan, President, Oregon Institute of Technology

  
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Michael Schill, President, University of Oregon

  
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Rahmat Shoureshi, President, Portland State University