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January 24, 2019

Mr. Kenneth Marcus, Assistant Secretary
Office of Civil Rights
U.S. Department of Education
400 Maryland Avenue SW, Room 6E310
Washington, DC 20202

Via Regulations.gov

Re: Docket ID ED-2018-OCR-0064

Dear Mr. Marcus:

Boston University appreciates the opportunity to comment on the U.S. Department of Education's notice of proposed rulemaking to amend the regulations implementing Title IX of the Education Amendments of 1972 [Docket ID ED-2018-OCR-0064].

In reviewing the proposed regulations, Boston University was guided by one overriding consideration: do the proposed regulations promote student safety and well-being and foster a campus environment that is free of harassment and discrimination? While we recognize the time and thought the Department has put into the proposed changes, we do not believe they adequately address this key consideration and, instead, would limit rather than secure the ability of students to seek redress when subjected to harassment or discrimination. The proposed regulations would also impair the University's ability to fulfill its obligations under the law to stop harassment and discrimination, prevent it from recurring, and remedy its effects.

BU is one of the 55 private, nonprofit colleges and universities who are members of the Association of Independent Colleges and Universities in Massachusetts (AICUM). We reaffirm the comments you have already received from AICUM. In particular, we share AICUM'S concerns regarding the following aspects of the regulations:

- Colleges must dismiss complaints that do not meet the narrow definition of sexual misconduct or do not occur at university programs or activities.

- The definition of “sexual harassment” described in the proposed regulations is narrower than the definition in BU’s current policies, as well as other federal and state employment discrimination standards.
- As a global university, BU students and employees engage in study, research, and work around the world. The proposal would restrict the University’s ability to address misconduct that occurs outside of the United States, yet impacts the BU community. It may also restrict our ability to address online harassment.
- Incidents that occur off-campus – including private housing, professional conferences, and local restaurants and bars – impact students and employees in the classroom and workplace. The proposed restriction to “programs or activities” limits the University’s ability to address misconduct which directly affects our community.
- Colleges must use a live hearing with cross-examination. This would create an intimidating, court-like setting that will chill participation in the Title IX complaint process and potentially slow down the adjudication of discrimination claims.
- Colleges must use the same standard of evidence in all internal conduct code processes, even those unrelated to sexual misconduct. This would interfere with the University’s ability to address cases based on the type of conduct and the individuals involved.
- Both parties must have access to all gathered evidence, even if the evidence is not relied upon by the investigator. This unnecessarily broad requirement risks the dissemination or misuse of highly personal information about the parties and goes well beyond what is required for fair notice and an opportunity to respond.

BU is steadfast in its commitment to providing a learning environment that is safe and free of discrimination. In order to align the final Title IX regulations with the goals of ending harassment and discrimination and addressing its effects, we urge you to adopt the recommendations submitted by AICUM prior to promulgating a final rule. Thank you for your consideration.

Sincerely,



Robert A. Brown