Resolution Regarding the U.S. Department of Education’s Proposed Title IX Guidelines
Introduced by Senator Steven Kish | April 23, 2019

WHEREAS, as of 2015, 47.6% of Washington University students reported having experienced sexual harassment at least once during their time as an undergraduate, and

WHEREAS, 22.6% of female undergraduate students and 7.5% of male undergraduate students reported having “nonconsensual penetration or sexual touching involving physical force,” and

WHEREAS, non-heterosexual students are approximately 2.5 times more likely to have reported having “nonconsensual penetration or sexual touching involving physical force” as their heterosexual peers, students with disabilities are approximately 2 times more likely to make such reports as students without disabilities, and Hispanic students are approximately 1.8 times more likely to make such reports as their non-Hispanic peers, and

WHEREAS, undergraduate students collectively prioritized sexual violence over any other campus advocacy issue with 20.8% of responding students identifying sexual violence as a top critical concern at Washington University, and

WHEREAS, the proposed regulation (RIN 1870-AA14) limits the scope of responsibility for institutions of higher education to investigate allegations of relationship and sexual violence to instances which occur within the physical boundaries of college campuses, and

WHEREAS, all complaints of relationship and sexual violence between university students should be allowed to go through the same adjudication system regardless of whether allegations pertain to on-campus or off-campus events, in order to preserve consistency in the process for survivors, and

WHEREAS, the proposed regulation limits the scope of responsibility for institutions to investigate “unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity,” which dangerously narrows the definition of which claims must be investigated, and

1 Washington University Campus Climate Survey, Association of American Universities (AAU), 2015
2 Washington University Campus Climate Survey, Association of American Universities (AAU), 2015
3 Washington University Campus Climate Survey, Association of American Universities (AAU), 2015
4 Student Union Senate Improve WashU Campaign Report, Washington University, 2018
WHEREAS, the proposed regulation would make it impossible for survivors of relationship and sexual violence to request that their perpetrators be removed from their classes or living spaces as interim measures, and

WHEREAS, allowing for the live cross-examination of the complainant in a Title IX investigation, through an advisor or otherwise, threatens the physical and psychological safety of the survivor, and

WHEREAS, being “scared or unsure” of the Title IX process is the second-highest barrier to accessing resources related to instances of relationship and sexual violence for students at Washington University⁵, and the potential for live cross-examination by an advisor or otherwise will surely deter students further from such resources or reporting instances of relationship and sexual violence when they occur, and

WHEREAS, in many cases of relationship and sexual violence, physical evidence often does not exist and can otherwise be extraordinarily physically, mentally, and emotionally burdensome for survivors to maintain, and

WHEREAS, in only 55.6% of Title IX cases at Washington University over the past five years has the respondent been found responsible⁶ and only between 2% and 10% of cases consist of false reports nationally⁷, and

WHEREAS, the “clear and convincing” standard of evidence would undoubtedly result in more survivors of relationship and sexual violence failed by their institutions and left without justice, and

WHEREAS, even if a respondent is found responsible in a Title IX case, the proposed allowance for informal resolution and mediation tactics are dangerous, potentially re-traumatizing, minimizing of the offenses which occured, and a blatant denial of justice to survivors of relationship and sexual violence, therefore be it

RESOLVED, the Department of Education (“the Department”) should continue to allow institutions of higher education to utilize the “preponderance of evidence” standard in Title IX investigations in order to preserve the albeit limited justice survivors of relationship and sexual violence can currently receive, and further

⁵ Student Navigation of Wellness Services Survey, Washington University, 2018
⁶ Title IX Office, Washington University, 2013-18
RESOLVED, the Department should condemn any regulation which recommends or entertains the live cross-examination of the complainant, or any other regulation in which the complainant and respondent within a Title IX case come into direct contact with one another, in order to prioritize and ensure the safety of the survivor, and further

RESOLVED, the Department should support the ability of universities to investigate any Title IX case which it reasonably believes to be within its jurisdiction based upon the impact of the case on its students, regardless of whether allegations stem from on-campus events or otherwise, and further

RESOLVED, the Department should maintain the standard set by the 2011 “Dear Colleague Letter” which delineates that institutions are responsible for investigating conduct that is “sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the school’s program”, and further

RESOLVED, the Department should continue to allow the current standard of discretion to universities to identify and implement appropriate interim measures and accommodations for survivors of relationship and sexual violence with pending Title IX cases, and further

RESOLVED, the Department should condemn any law, regulation, or action which minimizes the experience of any survivor of relationship and sexual violence, carries the potential to re-traumatize any survivor, or in any way, shape, or form, denies actionable justice to survivors, and further

RESOLVED, the Department should consider above all else the safety—physical, mental, and emotional—of the survivors of relationship and sexual violence on college campuses and should make regulations considering the plethora of comments written by universities, college students, and their allies condemning large aspects of the regulations proposed by the Department.

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