

August 23, 2022

Dear U.S. Department of Education,

As a group of higher education leaders and researchers who serve on the National Academies Leadership and Advisory Groups for the [Action Collaborative on Preventing Sexual Harassment in Higher Education](#), we write to share some information and comments on the proposed Title IX rules. The National Academies' Action Collaborative is a group of over 50 academic and research institutions and key stakeholders working toward targeted, collective action on addressing and preventing sexual harassment across all disciplines and among all people in higher education. The Action Collaborative was developed from and is guided by the 2018 National Academies consensus report on [Sexual Harassment of Women](#). This report concludes that system-wide changes to the organizational culture and climate in higher education are needed to prevent and address sexual harassment and provides a roadmap for institutions of higher education to make these changes. Reflecting the research findings and recommendations in this report, the Action Collaborative creates an active space where colleges, universities, and other research and training organizations identify, research, develop, and implement efforts that move beyond basic legal compliance to evidence-based policies and practices for addressing and preventing all forms of sexual harassment and promoting a campus climate of civility and respect.

There are some aspects of the proposed Title IX rules that align well with the research and recommendations from the National Academies consensus report on [Sexual Harassment of Women](#). For instance, the change to use "severe or pervasive" as the definition of a hostile environment is consistent with the research described in our report showing that pervasive gender harassment (sexist hostility and crude behavior) can be as harmful as a single instance of sexual coercion, even though gender harassment is often publicly perceived as being less severe or harmful. The expanded protection in the proposed rules based on sex stereotypes, gender identity, gender expression, and sexual orientation, aligns with research showing that gender diverse communities often experience more harassment than their peers. The additional protections based on pregnancy status and pregnancy-related conditions also align with the research-based and legal definitions cited in our report.

The *Sexual Harassment of Women* report also examined the research on reporting policies and procedures, including mandatory reporting policies where all faculty members and college/university employees are designated as responsible employees except for a select few who are deemed confidential. As noted in the report, these policies and procedures were based on the rationale that they would bring more incidents to the attention of college and university officials, promote the adjudication of a greater number of cases, and compel administrators (e.g., department chairs, deans, etc.) to take allegations in their departments and colleges more seriously. While these are laudable goals that we agree with, the use of universal mandatory reporting policies to achieve these goals raises concerns about harmful effects that such policies have on targets/survivors. According to the report,

“...studies have revealed conflicting evidence on the value of mandatory reporting, including evidence that it may be harmful to targets. Mandatory reporting mechanisms can be harmful because they take control away from targets and put it in the hands of a third party who may not have the target’s health and safety in its best interest. Rather than instituting reporting procedures that can revictimize targets of harassment, institutions could build systems of response that empower those women by providing alternative and less formal means of accessing support services, recording information, and reporting. Institutional responses to sexual harassment could place the target’s needs first, similar to the best practices now in use in response to sexual assault. And to show true commitment to targets, institutions could provide multiple empowering mechanisms of reporting incidents that would give them the agency to bring their complaints forward and without fear of retaliation.”

Since the report was released, the Action Collaborative has continued to pay attention to the research and discussions of mandatory reporting policies. Our 2020 Public Summit included a panel on new research and alternatives to universal mandatory reporting policies and practices that still aim to achieve the goals of taking harassment seriously while decreasing the risk of targets being revictimized by a lack of control in the reporting and notification process. Additionally, higher education institutions that participate in our Action Collaborative have shared policies and practices they have created that focus mandatory reporting requirements on those in significant positions of authority for handling sexual harassment issues (such as senior leaders, administrative staff who work in human resources, academic personnel, compliance, and student conduct), while making other employees, such as instructors, administrators, and staff, responsible for providing support in some capacity to the student. In some cases the policies strongly encourage or require an employee to provide information on a student’s options for confidential and non-confidential resources or to refer a student to confidential options; and in other policies the employee is allowed to speak anonymously with a Title IX office or to speak with the office without sharing the name of the individual student in order to obtain information about resources and options for the student to consider. These presentations and practices are available for you to review:

- 2020 Public Summit [Panel on Finding Common Cause: Centering Survivors in Reporting Policies](#)
- Descriptions of Policy and Practice Changes by Higher Education Institutions, shared through the Action Collaborative:
 - University of Washington, [Informal and Anonymous Reporting](#)
 - University of New Mexico, [Alternative Reporting Policy on Sexual Misconduct](#)
 - Utah State University, [Non-Mandatory Reporting Resources: Non-Designated Employees and Reporting Exceptions for Responsible Employees](#)

We urge you to review these materials as you consider whether the only solutions to the goal of ensuring allegations are taken seriously and adjudicated are for all higher education institutions to follow a universal mandatory reporting requirement or to require employees to tell students only about reporting to the Title IX office.

The 2018 report, as noted above, documents that there are research-based reasons to hesitate in following a universal mandatory reporting process and it also recommends that higher education institutions provide a means of accessing support services without a requirement to formally report to the Title IX office. Based on these parts of the report and from what we have seen during the last four years of the Action Collaborative's work, we believe it would be beneficial to continue allowing space for higher education institutions to revise and research alternative reporting policies and practices in order to find those that achieve the goal of taking sexual harassment seriously while providing support to survivors and reducing or eliminating additional harm to those who experience the harassment. Such an approach would also be more consistent with the other changes described in the proposed Title IX rules, which reflect the goal of reducing the harm that survivors could experience from the Title IX investigation and adjudication process.

Sincerely,

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