

Dear Congressman,

We are writing as advocates very concerned about the proposed Title IX regulation changes, which are pending as of this writing.

Areas of concern include:

- OFF-CAMPUS/ONLINE: Schools should not be required to ignore harassment that occurs outside of a school activity, including most off-campus and online harassment, (*§§ 106.30, 106.45(b)(3)*)
- DEFINITION OF HARASSMENT: Schools should not be required to ignore harassment until it becomes both severe and pervasive. (*§§ 106.30, 106.45(b)(3)*)
- DELIBERATE INDIFFERENCE: Schools should not be allowed to consistently cause harm to survivors through their investigative process as long as the school follows various procedures in place, regardless of how those procedures fail to help or harm survivors. (*§§ 106.44(a), (b)(1)-(4)*)
- PRESUMPTION OF NO HARASSMENT: Schools should not be required to send in written documentation to victims that there is an assumption that no harassment occurred. (*§ 106.45(b)(1)(iv)*)
- STANDARD OF PROOF: Schools should not be required to use an inappropriate and more demanding standard of proof to investigate sexual harassment. (*§ 106.45(b)(4)(i)*)
- CROSS-EXAMINATION: Survivors in college and graduate school should not be required to submit to live cross-examination by their perpetrator's advisor of choice. (*§ 106.45(b)(3)(vi)-(vii)*)

It is interesting to note that defenders of the proposed regulations have portrayed due process as diametrically opposed to survivor rights and overall school safety, but we do not believe this is or has to be the case. We support both due process for all, including responding students, and the critical need for resources and accommodations for all, including reporting students.

We believe that you are in a unique position, as an elected representative in New York State, to raise awareness that regulations and/or legislation can protect the rights of the accused without revictimizing victims. New York State's Enough is Enough Law has done just that – balanced the rights of the accused with essential support for victims, and this law has broad bipartisan support and was passed unanimously by the New York State Senate with only four votes against in the New York State Assembly. The law was developed as a multidisciplinary effort, involving college administrators, lawmakers from both sides of the aisle, law enforcement, advocates, and students.

New York's Enough is Enough Law provides substantial protections for victims while establishing a fair and just process for those accused of sexual assault. Specifically, New York's Law ensures the following rights for students accused of sexual assault:

- Notice to an accused student describing the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions;
- An opportunity to offer evidence during an investigation and to present evidence and testimony at a hearing, where appropriate, and have access to a full and fair record of any such hearing;
- Access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest. Any rights provided to a reporting individual must be similarly provided to a respondent;
- Throughout proceedings involving an accusation of sexual assault, the accused student has the right to be accompanied by an advisor of choice who may assist and advise the student throughout the judicial or conduct process;
- Accused students have a right to a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made;
- Accused students have a right to an investigation and process that is fair, impartial and provides a meaningful opportunity to be heard, and that is not conducted by individuals with a conflict of interest.

We firmly believe that the Enough is Enough model and its subsequent success in New York State demonstrates that it is possible, and therefore preferable, to ensure due process without jeopardizing essential protections for victims. We ask that you use your voice as a representative of New York to call upon federal officials to ensure that national law and regulations protect victims while ensuring a fair process for accused students. You can use the success of New York's Enough is Enough law to make the case, noting the bi-partisan multi-disciplinary support that ensured the law's enactment.

We welcome the opportunity to discuss this with you further and to partner with you to raise awareness about these critical concerns.

Sincerely,