FOR IMMEDIATE RELEASE

NAGPS Statement on Proposed Changes to Title IX

The National Association of Graduate and Professional Students (NAGPS) strongly repudiates the proposed changes to Title IX policy as it relates to campus sexual misconduct. Due to the high incidence of sexual misconduct victimization and the overwhelming impact that these traumatic events have on students, it is our position that the Department of Education’s Office for Civil rights is abdicating its responsibilities with the proposed guidelines. The following is a detailed explanation of our position.

Issues of sexual misconduct continue to be a crisis on college campuses across the United States. Empirical data have shown that both undergraduates and graduate students are victimized at frighteningly high rates with some studies showing more than one in every three women as being sexual assault survivors. Overall, data show that there is a higher risk for assault while attending institutions of higher education. What is most unique about data regarding graduate and professional students is that 38% of women and 23% of men in graduate or professional school have been victimized by sexual harassment from members of their institution’s faculty or staff. Given long-established power imbalances in these relationships, this is extremely troubling; research has demonstrated that some of the most impactful traumatic events occur at the hands of those who betray the trust of the victim.

Despite data being available for the past several decades that points to this crisis, it was not before 2011 that the Office of Civil Rights within the U.S. Department of Education took markedly proactive measures to address the problem. It is important to acknowledge that data gathered since 2011 have shown that President Barack Obama’s administration’s guidelines have left IHEs struggling to make consistent policies that protect students from sexual misconduct and protect the institution of liability issues. More specifically, Title IX policies across the United States vary wildly in their responses to accusations demonstrating a definite need for further review of the policy by the Department of Education to address these concerns. However, and most importantly, what the current Office for Civil rights has proposed is counterproductive to this effort not only causing more confusion related to legal standards, but these policies will almost certainly make campuses more unsafe. One of the most troubling aspects of sexual misconduct on college campuses remains the fact that nearly all survivors do

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not want to reveal their victimization to campus authorities; 97.2% do not want campus authorities involved.⁶

The new proposal changes the definition of sexual harassment from “unwelcome conduct of a sexual nature,” to “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.” With virtually all college students demonstrating a fear of reporting their assaults, and with graduate students, in particular, being victimized by faculty members, this higher standard will establish even more roadblocks for survivors seeking all-too-needed post-assault care and make offenders even less responsible for their actions.

Further hindering a survivor's sense of safety in reporting sexual misconduct, IHEs are no longer held to a standard that demands an investigation “if they know or should reasonably know” about possible victimization. Instead, a recently traumatized survivor must report the incident to an authority figure who has the ability to “take corrective action.” On many campuses, this could be limited to one individual. NAGPS strongly believes that survivors should have autonomy in determining who they confide in. Research clearly demonstrates that this is one of the most important steps to a healthier recovery.⁷

Under Secretary Devos’ proposed rules, IHEs are responsible for investigating allegations of sexual misconduct, only if the assault occurs on campus or during a university-sponsored event. Specifically, the proposal would require that the incident take place during an activity or a location that the university has “significant resources to the promotion and oversight” of. This could be an exceedingly problematic policy change for graduate students given how few graduate and professional students reside on campus. Furthermore, graduate and professional students are more likely to travel for conferences and other research-based activities that are could be easily classified as not having significant oversight by the institution.

The policy proposal goes even further to dissuade survivors from coming forward when victimized by sexual assault or sexual harassment by forcing institutions to allow for the direct and live cross-examination by the accused directly to the survivor. The new proposal “requires institutions to provide a live hearing, and to allow the parties’ advisors to cross-examine the other party and witnesses.” The Obama Administration banned this practice specifically because of the traumatic implications this would have on a survivor. While fairness in an adjudication process is of foremost importance, it is important to note that cross-examination does not necessarily seek to establish facts. Rather, it is an opportunity for the body language and demeanor of the alleged victim to be examined during questioning⁸.

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Given the particularly sensitive nature of a sexual misconduct allegation, this is highly unnecessary and would unquestionably deter victims from reporting to campus authorities.

The spirit of Title IX protections is based within the idea that being a victim of sexual misconduct deprives one their right to education under Title IX. Graduate and professional students are being put at a unique risk by this policy proposal exasperating a crisis on campuses across the United States in a clear violation of the spirit of the law.

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