



January 30, 2019

Dear Assistant Secretary for Civil Rights Kenneth Marcus,

The North Dakota Student Association (NDSA) represents the voice of North Dakota's 45,000 public college and university students. As an authority on student welfare in the state of North Dakota, NDSA advocates on issues of higher education in support of enhancing the student experience.

With the high goals NDSA aims to achieve, we actively educate ourselves on current topics that will impact students on a wide variety of levels. With this in mind, NDSA has discussed the proposed changes to Title IX and prepared its official opinion.

The Department of Education has proposed changes to the regulations of Title IX of the Education Amendments Act of 1972. After much deliberation at NDSA's General Assembly meeting on January 19, 2019, NDSA has approved an official resolution, NDSA-12-1819, entitled "A Resolution Urging Action on Title IX." This resolution articulates the rationale for our position on these changes. It also recognizes fairness and equality for the wellbeing of the students of North Dakota and how the changes as stated are beginning to tip the scales of balance in an unjustified manner. The Assembly agreed to urge the Department of Education to make the following changes to the proposed amendments.

The potential requirement for North Dakota's campuses to provide a live hearing, as well as cross-examination of the parties involved, are not conducive to protecting the wellbeing of students. This concern is paired with the potential cost of providing separate rooms for the two parties, which will both require compatibility for a live hearing. This is a pressing issue facing educational institutions in the state of North Dakota. The issue is that there are no parameters for grant opportunities or federal funding to address the issues of staffing and technological training. The North Dakota University System has experienced a 17-percent reduction to its state-appropriated funding over the last two biennia, and currently faces a proposed additional five-percent reduction for the 2019-2021 biennium. Accommodating this new mandate would create an undue burden for North Dakota's colleges and universities. NDSA requests the Department of Education to revisit our concerns and consider providing a solution.

Additionally, NDSA is concerned about potential violations of students' privacy rights guaranteed in the Health Insurance Portability and Accountability Act (HIPAA) and the Family Educational Rights and Privacy Act (FERPA). Access to a student's physical, mental, and academic performance should not be submitted as evidence for the purposes of a Title IX hearing. Due to every student having a right to privacy guaranteed under HIPAA and FERPA, NDSA urges the Department of Education to reconsider the need for both parties to receive records of a student's physical, mental, and academic performance to be submitted as evidence.



The new definition of “sexual harassment” provides ambiguous loopholes allowing interpretation of key words, such as “severe,” “pervasive,” and “objectively offensive,” which would also require new leaps of responsibility on the reporting party to prove.

The new jurisdiction of cases reported will be limited to the institution’s “education program or activity.” Such a restriction will alleviate the institution of liability to investigate, unless the reported instance has a direct link to the institution. With this new narrowing of scope, survivors of sexual assault will become increasingly discouraged from reporting the Title IX infractions.

The change under section 106.30 states that misconduct will only be held responsible if the institution has “actual knowledge” of the possible negligence. This implies that the standard of attention and awareness of warning signs will no longer have a place in the institution’s requirements. NDSA urges the Department of Education to reevaluate the responsibilities of institutions and propose a different standard that is neither vague nor neglectful of warning signs of sexual misconduct. Preserving the rights of students and their ability to succeed in everyday endeavors is crucial on an institutional level. Therefore, NDSA insists that the Department of Education embolden language in Title IX requiring the investigation of any sexual misconduct between individuals associated with the institution without strict regard to the physical and financial jurisdiction of the institution outlined in 106.44(a).

These changes may have disastrous implications to the students it is supposed to protect. NDSA urges the Department of Education to denounce the proposed section 106.45(b)(3)(vii).

The North Dakota Student Association thanks the Department of Education for the opportunity to comment on the proposed changes to Title IX. NDSA’s primary directive is the wellbeing of North Dakota’s 45,000 public college and university students. We respectfully request the Department of Education to consider our comment, as these proposed changes bear substantial implications for students across the state of North Dakota and the United States of America.

Respectfully submitted,

A handwritten signature in blue ink that reads "Jared M. Melville". The signature is fluid and cursive, with a long horizontal stroke at the bottom.

Jared M. Melville
President of the North Dakota Student Association