

January 22, 2019

Kenneth L. Marcus
Assistant Secretary for Civil Rights
Department of Education
400 Maryland Avenue SE
Washington DC 20202

RE: DOCKET #ED-2018-OCR-0064, RIN 1870-AA14, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

Dear Mr. Marcus:

I am writing to you in response to the Department of Education's notice of Proposed Rulemaking to express my strong opposition to the proposed rules relating to sexual harassment as published in the Federal Register on November 29, 2018.

For 40 years, I have conducted research on the problem of peer sexual harassment in K-12 schools. I was one of the initial researchers in the country to recognize the problem of peer sexual harassment beginning in 1978 as the Sex Equity Specialist at the Massachusetts Department of Education. As part of a team of state education employees and school district personnel, we created the first in the nation curriculum on peer sexual harassment (*Who's Hurt and Who's Liable: Sexual Harassment in Massachusetts Schools, 1979, 1981, 1983 & 1986*) as well as undertaking the first survey of the problem, consisting of 200 high school students in MA about their experiences with peer sexual harassment (1980). Since 1992, I have been a senior research scientist at Wellesley College Center for Research on Women (now the Wellesley Centers for Women), with my entire 26 year career focusing on sexual harassment and gender violence in K-12 Schools. I have written dozens of peer reviewed articles, book chapters, law review articles and one book, *Classrooms and Courtrooms: Facing sexual harassment in K-12 schools* (1999). My op-eds on sexual harassment in K-12 schools have been published in *Education Week* (most recently on Oct 3, 2018, but going back to 1992 as well) and in *USA Today* and I have been interviewed and appeared on dozens of television and radio stations discussing the problem of peer sexual harassment in K-12 schools.

Among the many organizations, agencies and foundations who have funded my research have been the US Department of Education, Safe and Drug-Free Schools (1995-1999) as well as over 10 years of funding from the National Institute of Justice (2005-2015). *Shifting Boundaries: Lessons on Relationships for Students in Middle School* was the result of research conducted in middle schools in Greater Cleveland OH suburbs (2005-2007), as well as the New York City middle schools (2008-2010, 2011-2015). This multi-pronged intervention has been heralded in a meta-analysis of 140 interventions on sexual violence conducted by the Centers for Disease Control and Prevention in 2014 for its efficacy on the reduction of sexual violence; *Shifting Boundaries* was one of two interventions out of 140 reviewed which was highlighted by the first White House Report on Ending Campus Sexual Assault (April 30, 2014)

(<https://www.justice.gov/ovw/page/file/905942/download>)

(<http://www.sciencedirect.com/science/article/pii/S1359178914000536>)

as well as listed on the DOJ web site, as a promising practice to reduce sexual harassment and sexual violence in schools.

<https://www.crimesolutions.gov/ProgramDetails.aspx?ID=226>

(2012).

At the invitation of the Senate Judiciary Committee whose members were considering the reauthorization of VAVA, my co-principal investigator Dr. Bruce Taylor of NORC and I briefed the committee staff on our research findings (December 2012). More recent findings from our NIJ funded research showed that 69% of middle school students experienced sexual harassment in schools and 46% admitted perpetration of sexual harassment against other students; these are percentages that exceed national surveys. Yet, when school districts address sexual harassment by implementing our interventions in both the classrooms and through school-wide interventions, these districts were able to reduce the prevalence of sexual harassment. Our interventions saw a 50% drop in few incidents of victimization and perpetration of any dating violence at a 6 month follow up when the students were involved in the building level intervention. With both the classroom and building level interventions, there was a 31% drop in prevalence of victimization of any dating violence at 6 months follow up (Taylor & Stein, 2014). Moreover, as part of our research interventions, schools trained and appointed multiple staff to help students and increased campaigns to draw attention to the problem of sexual harassment, rather than hide or deny its existence.

Moreover, I have served as an expert consultant/witness in about a dozen lawsuits on peer sexual harassment/discrimination including those undertaken by the Education Section of the Civil Rights Division of the US Department of Justice (2000, and 2015). In addition, I have for decades had formal and informal

relationships with staff at OCR offices, both at headquarters and in the regions which have been mutually beneficial as we shared similar concerns. In fact, it was Assistant Secretary Norma Cantu who invited me to a meeting in the mid-1990s to help to develop the first set of guidelines on peer sexual harassment; I was the only non-lawyer in the room of 20-30 or so invited individuals.

Furthermore, I have offered professional development on student-to-student sexual harassment to scores of school district staff around the US, both on site, as well as through their state and national professional associations. From Anchorage, Alaska and Hawaii, to small school districts in South Dakota, Iowa and New Hampshire to the biggest districts in the nation - Los Angeles and New York City, I have worked in depth with multiple school district staff in their efforts to reduce and prevent sexual harassment in schools.

Largely it is from my work with all these school district staff over nearly 40 years of my career first as a middle school teacher (1971-1973), school-based drug and alcohol counselor (1974-1976), as a state worker in the Massachusetts Education Department (1978-1992), and as an educational researcher (1992-current) that informs my strong objections to the proposed regulations. I will offer comments on only a few of the proposed regulations to which I have serious objections.

In particular, I am alarmed about the new proposed regulation about Duty to Respond (rule summary 106.44(a), 106.30) – that schools would be allowed, and in many cases, required to ignore students who report sexual harassment. Schools would not be responsible for addressing sexual harassment even when the school employees knew about the harassment. Under the proposed regulation changes, schools would only be responsible for addressing sexual harassment only when the designated individuals actually knew about the harassment. This proposed regulation would increase mistrust towards school staff as students generally only speak truthfully to those whom they trust and if that trusted staff person was not among those so-called designated receiver of allegations, then the harassment that the student was reporting would be ignored. Most students haven't a clue how to find the Title IX coordinator or even the Superintendent- those individuals are generally located in another building and are beyond the range of a young student; they tend to only know the employees in their actual building. This is a particularly cynical regulation as it would completely undermine efforts to increase school safety and trust, and I urge it to be rejected.

Moreover, the definition of harassment as proposed would only encompass actions that are severe and harmful and actually deny educational opportunities (rule summary 106.30,106.45(b)(3)). Even if a student manages to find the “right”

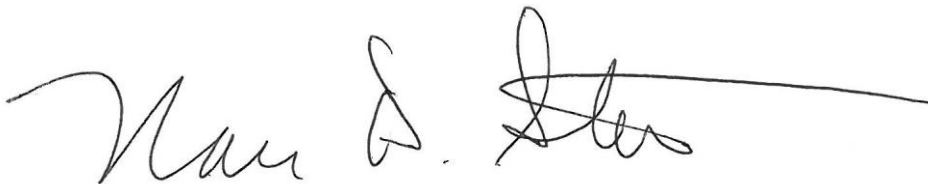
person to report their experiences of harassment, and even if that harassment has taken place within a school program or activity, the school would still be required to ignore a student's Title IX complaint if the harassment hadn't yet reached the point where it was actively harming a student's education. Again, this would undermine a student's trust in school staff – if s/he reports once to a trusted adult yet is rebuffed (as the conduct not yet being severe enough), it is hard to imagine that any child or adolescent would attempt another effort to get help if/when the harassment escalates. I have worked on multiple lawsuits and complaints where this scenario had occurred and the harassment not only lingered but escalated. As harassment is ignored by the adults, the other students are watching and learning a cynical lesson. This amounts to a kind of abandonment of our responsibilities to protect children let alone to provide them with educational opportunity. I am appalled at this proposed regulation which also happens to be in contradiction to the US Supreme Court's definition of sexual harassment.

Another cynical and objectionable proposed regulation is the lack of a timeframe for investigation (rule summary 106.45(b) (1) (v)). Schools live by deadlines – whether it is the school calendar, due dates for homework and fixed grading periods, or studying for high stakes exams with an immovable dates set by the state. To permit a pause or delay in the investigation is at odds with how schools generally operate.

For the reasons that I have detailed above, ED should immediately withdraw its current proposed regulations and instead renew efforts to advance policies that ensure equal educational opportunity for all students, including who experience sexual harassment.

Thank you for the opportunity to comment on the NPRM. Please do not hesitate to contact me at NStein@Wellesley.edu to provide further information. I can be reached at my office at 781.283.2502. I am submitting these comments as an individual, not on behalf of my organization/employer.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Nan D. Stein". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Nan D. Stein, Ed.D.

Senior Research Scientist

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