To whom it may concern:

Students Against Sexual Assault (SASA) is a nonprofit and student organization of the Santa Barbara County dedicated to the elimination of sexual assault and sexual harassment on the University of California, Santa Barbara and the Santa Barbara City College campuses and their surrounding communities. In this comment, we address the many issues we have identified with the Department of Education's proposed changes to the Title IX regulations. We believe the proposed changes to the following discussed sections would be detrimental to the safety of college students nationwide. We ask that the Department of Education greatly consider the outlined criticisms and adjust the proposal in accordance with the benefit of all students in mind.

On narrowing the definition of sexual harassment [Section 106.44(e)(1)) & requiring the dismissal of formal complaints that do not meet the standards of the new definition (Section 106.45(b)(3)]:

Section 106.44(e)(1) of the proposed Title IX amendments would unjustly narrow the definition of sexual harassment to instances of "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" (our emphasis). The language used in this amendment excludes unwelcome sexual misconduct that successfully meets one or two of the requirements, but not all three simultaneously— suggesting that these offenses are not serious enough to warrant action on the part of the recipient and denying survivors of such misconduct equal access to education. This proposal would ignore and delegitimize survivors who have experienced isolated incidents of severe sexual harassment or have been subject to pervasive misconduct that may not be considered 'severe' or 'objectively offensive' enough that it denies them education. Moreover, proposed Section 106.45(b)(3) would require the dismissal of all instances of sexual harassment that do not meet the proposed ignorant and narrow definition of sexual harassment. In other words, the proposed definition would require the recipient to ignore many instances of sexual harassment simply because they do not meet all three requirements. Thus, even more survivors' voices will remain unheard. Moreover, if implemented, the proposal would require that the reported instance of sexual harassment be "objectively offensive" in order to qualify for a Title IX investigation. The determination of what is considered to be "objective," however, inherently calls for a subjective analysis— allowing for inconsistencies both internally and between other Title IX offices. The proposed "objectively offensive" stipulation should not be considered a factor in determining whether an action constitutes as sexual harassment.

On narrowing the recipient's jurisdiction to enforce Title IX compliance [Sections 106.44(a) & 106.8(d)]:

The Department of Education's proposed Section 106.44(a) would significantly narrow the recipient's jurisdictional powers to enforce Title IX compliance. If implemented, the recipient would only be responsible for instances of sexual assault and harassment that occur within its "education program or activity"and locations "where the recipient owned the premises; exercised oversight, supervision, or discipline; or funded, sponsored, promoted, or

endorsed the event or circumstance." This proposal, however, blatantly disregards any instances of sexual assault and sexual harassment which take place outside of the proposed 'jurisdiction' but occurs between students, staff, and/or faculty. It inaccurately assumes that instances of sexual assault and sexual harassment that occur outside of the proposed jurisdiction do not deny a survivor equal access to education and, thus, is not the responsibility of the recipient to enforce Title IX compliance. Instances of sexual assault and sexual harassment may jeopardize the safety and the comfort of the survivor and other students, faculty, and staff affiliated with the recipient, regardless of the locational origin of the offense. In order to ensure equal access to education, recipients must be provided with the authority to pursue instances of sexual assault and sexual harassment that occur outside the proposed jurisdiction but affect the lives of those affiliated with the recipient. Moreover, proposed Section 106.8(d) suggests that "the policy and grievance procedures described in this section need not apply to persons outside the United States"— ultimately denying survivors in study abroad programs equal access to the recipient's "education program or activity" by denying them Title IX protections. Because these individuals— regardless of residence— remain affiliated with the recipient, the institution ought to be given the authority to ensure these individuals are equally protected under the Title IX regulations.

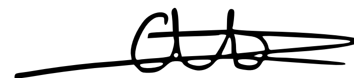
On proposing a recipient-centered grievance procedure [Sections 106.44(a), 106.45(b)(3)(vii), 106.45(b)(3)(vi)), 106.5(b)(3)(viii), & 106.45(b)(5)]:

The proposed grievance standards of the Title IX proposal are recipient-centered and could threaten a survivor's willingness to report an incident of sexual assault or sexual harassment. According to the proposed Section 106.44(a), only "actual knowledge [of sexual assault and sexual harassment] ... triggers the recipient's duty to respond," in which "actual knowledge" is defined "as notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient." This definition of "actual knowledge," however, does not identify which specific individuals have the authority to institute corrective measures. Additionally, the text specifies that those with the "mere ability or obligation to report," such as mandatory reporters, do *not* have such authority— narrowing the scope of individuals a survivor can report to for an allegation to be considered a formal complaint. Therefore, this proposed change simultaneously limits and leaves ambiguous the list of individuals whose knowledge of a report would constitute the "actual knowledge" that "triggers the recipient's duty to respond." Further, proposed Section 106.5(b)(3)(vii) would replace the single investigator model with the 'live hearing model.' These changes would drastically jeopardize the complainant's equal access to a safe working and learning environment by creating an unwelcome and potentially traumatizing 'justice' procedure. By replacing the single-investigator model with the live-hearing model, the proposed amendments allow for the cross examination of complaints by the respondent's advisor or attorney. Moreover, proposed Section 106.45(b)(3)(vi) of the grievance procedures would eliminate the chair's ability to rephrase or prohibit questions on behalf of the respondent's advisor/attorney and directed towards

the complainant that refer to “specific incidents of the complaint’s sexual behavior with respect to the responded and is offered to prove consent.” Limiting the chair’s authority would allow for a subjective analysis of what qualifies as “offered to prove consent” and, thus, runs the risk of reaffirming harmful and inaccurate stereotypes regarding assumed forms of ‘consent’— such as clothing choice, alcohol consumption, prior sexual relations, and so on. Moreover, proposed Section 106.5(b)(3)(viii) would require that all evidence submitted to the investigator must made be equally available to the respondent and the respondent’s advisor or attorney. The ability for the latter individuals to see the complainant’s personal, mental, and health medical records is a clear invasion of privacy and could drastically discourage survivors from reporting and/or deter survivors from providing all necessary and available evidence needed in order for a comprehensive decision to be made. This process could expose extremely personal information about the complainant which is only relevant to the investigator and the decision maker. Further, proposed Section 106.45(b)(5) would deny a complainant the right to request sanctions against the respondent during the appeal process. Even if the respondent is found not responsible, a particular sanction against the respondent, such as a no-contact order, may be necessary in order to preserve the complainant’s equal access to education. Thus, this proposed change threatens the ability for complainants to protect themselves and possibly jeopardizes a complainant’s equal access to education.

Lastly, we are appalled by the Department of Education’s decision to begin the sixty-day comment period during a time at which student mobilization and student voices could not be exercised to their full potential. This deliberate abuse of power as a mechanism to silence student voices and push potentially detrimental Title IX regulation changes through the system is disheartening and morally suspect.

Sincerely,



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