



January 30, 2019

U.S. Department of Education c/o Brittany Bull
400 Maryland Ave. SW, Room 6E310
Washington, DC 20202

Re: Comments on the Department's proposed rule under Title IX

Submitted Electronically at https://www.regulations.gov/document?D=ED_FRDOC_0001-0830

Dear Ms. Bull,

Thank you for the opportunity to comment on the notice of proposed rulemaking (NPRM) to amend Title IX, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, regulations published on November 29, 2018 in the Federal Register. As a university, we encourage students and our entire community to be both aware of and engaged with policy and societal issues which affect them. In that spirit, we have had robust conversations on campus with all of our constituents in response to the NPRM. We are sure individuals and groups associated with GVSU will submit personal comments and we support their right to share thoughts about this and any issue that captures their interest.

First and foremost, GVSU takes seriously our responsibility to care for our students, faculty, and staff in addressing sexual assault and sexual harassment in all of its forms. We will continue to create an environment that is safe and healthy for all our community members and visitors. Importantly, values of community, integrity and inclusiveness underpin our compliance obligations. We are committed to providing due process and equity in the implementation of policies.

As a public institution, the University adheres to legal and policy rules and has a history of responding to such changes by keeping students who are most impacted at the center of our policies and procedures. GVSU has a robust set of resources to support survivors of sexual misconduct and guide any party involved in a complaint. GVSU's commitment to and action in preventing sexual violence is multipronged, focusing on prevention and awareness, education and training, and response. A robust program of resources and personnel is maintained on campus to support these efforts. It includes expanded victim advocacy services and Title IX Office support, student organizations such as It's On Us, advisors for anyone involved in an investigation, and required training on preventing, recognizing, and responding to sexual misconduct and sexual harassment for all University community members. In addition, the University has established strong partnerships with community agencies and organizations to offer extended and external support to our students, faculty, and staff.

In 2018, Michigan public universities underwent significant changes in our application of Title IX related responsibilities as part of a state law change, specifically the *FY19 Omnibus Education Budget Act* (Sec. 245a, Sec. 265b and Sec. 274d). These requirements included new notification standards and reporting requirements. In addition, in November 2018, a U.S. Court of Appeals, 6th Circuit, decision, *Doe v. Baum*, began requiring Michigan public colleges and universities to

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implement the option of a live hearing with cross examination of parties involved in certain sexual misconduct cases. This is similar to the change being proposed in the NPRM. Given the Sixth Circuit requirement, current practice and policies would not be significantly impacted. However, the University does share concerns expressed by our students and others that courts are now requiring a process that so closely mimics that of the criminal justice system. GVSU is already concerned about the underreporting of sexual misconduct by survivors. Additional burdens on the complainant placed by the courts could keep even more survivors from reporting. The NPRM does provide helpful guidance and detail that has been absent in associated judicial rulings, including the use of separate rooms for parties and the upholding of “rape shield” protections and use of advisors in cross-examination.

It is the University’s understanding and interpretation that some of the proposed changes are minimum thresholds and the University maintains its right to extend our own policies beyond the scope of Title IX. That is, the University retains its legal authority to implement University policies and procedures, while also adhering to the provisions of Title IX.

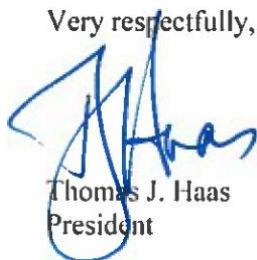
Current University procedures and protocols adhere to the proposed changes in notification, due process protections, and efforts to achieve fairness and reliable outcomes, including: a presumption of innocence throughout the grievance process, with the burden of proof on the school; the use of a decision-maker separate from the Title IX Coordinator or investigator; the use of a preponderance of the evidence standard; assurances that decision-makers are free from bias or conflicts of interest; and equal opportunity for parties to appeal.

Finally, many in the University community have expressed concern for the limited definition of gender, which denies our transgender, gender non-conforming, and intersex community members certain protections. GVSU joins other universities in encouraging the continued and explicit protection of gender identity and gender expression in civil rights law and its interpretation. This is in alignment with State of Michigan executive directives, which extend to public universities. Importantly, our university policies and processes will continue to recognize our community members in alignment with their gender identity, and provide protections against harassment and discrimination.

GVSU has a strong history of dedication to compliance that is guided by University values. These values prioritize the protection and safety of all our community members while ensuring fairness and integrity in our actions. This dedication is steadfast. In addition, GVSU has invested heavily in the training and education of campus experts. These, now, nationally recognized experts will continue to guide our University processes in ways that respect any changes in regulation or law and maintain as much consistency as possible with our current evidence-based, best practices.

Thank you for the opportunity to provide comment on the NPRM. We appreciate the Secretary and staff of the Office of Civil Rights (OCR) working to provide formal regulations and clarity on Title IX.

Very respectfully,



Thomas J. Haas
President