



July 21, 2020

Dear Board of Regents of the University System of Georgia,

The Student Government Associations (SGA) of the University System of Georgia colleges and universities stand with survivors of sexual misconduct. As representatives of Georgia students, it is our duty to express our desire for Georgia colleges and universities to hold themselves to a higher standard than the Department of Education (DOE) requires with its recent amendments to Title IX.

We, as students, would be wrong to ignore the presence of positive change within these reforms. Title IX now explicitly covers sexual misconduct that occurs in fraternity and sorority housing and requires increased visibility of the Title IX Coordinator on college campuses.¹ Additionally, the new classification of stalking, domestic violence, and dating violence as acts of sexual harassment marks a step forward in addressing and preventing sexual misconduct on college campuses.²

That being said, changes to Title IX also strip survivors of several crucial protections. By narrowing the scope of complaints that colleges are required to investigate by changing the definition of sexual harassment to “unwelcome conduct” that is “so severe, pervasive, and objectively offensive that it effectively denies a person equal access to education,” all students who experience sexual harassment are not protected.³ Such a narrow definition of sexual harassment binds universities’ hands in their ability to take action against students who prevent their peers from receiving equal access to our quality Georgia public educations. We therefore ask that the University System of Georgia guides its colleges and universities to address sexual misconduct claims even if they do not fit the high standard of “severe” or “pervasive” and continue to use the definition of sexual harassment defined in the ‘Dear Colleague’ Letter.⁴

Moreover, under the new reforms, colleges are not required to handle cases of sexual misconduct that occur outside the United States or outside a school program or activity.⁵ This will result in cases of sexual misconduct that occur on study abroad programs and in off-campus apartments not being investigated. However, under the Title IX Final Rule, colleges remain free to adopt disciplinary systems to address sexual misconduct committed outside the United States,⁶ and can offer supportive measures to students who report sexual harassment that occurred off-campus, as well as outside a school program or activity.⁷ We ask that the University System of Georgia compels its colleges and universities to investigate all claims that involve enrolled students, both on and off campus.

To address the presumption of innocence aspect of the changes, these Title IX reforms now allow colleges and universities to choose between two different evidentiary standards:



“preponderance of evidence” and “clear and convincing.”⁸ In many cases of sexual misconduct, these offenses occur in private places such as residence halls, residential housing, and fraternity housing, and without substantial quantities of documented evidence.⁹ This is evident by the fact that in 35.3 percent of incidents involving penetration among women who had consumed alcohol, the survivor was passed out or asleep for at least part of the incident of her rape.¹⁰ Consequently, a clear and convincing evidentiary standard inordinately disadvantages complainants, establishing the need for a preponderance of evidence standard. Furthermore, a preponderance of evidence standard aligns schools’ treatment of sexual misconduct complaints with similar civil rights statutes and more generally with courts’ handling of civil cases.¹¹ Both Title VI of the Civil Rights Act of 1964 which prohibits race discrimination by educational institutions and Title VII of the Civil Rights Act of 1964 which prohibits discrimination in employment, use a preponderance of the evidence standard.¹² The clear and convincing evidentiary standard would be inconsistent with the standard of proof established for violations of the civil rights laws and may guarantee the accused innocence, which is why we ask the University System of Georgia to establish preponderance of evidence as the evidentiary standard for our colleges and universities.

Title IX reforms aim to address the previous existence of a de-facto college court system created in previous Title IX reforms. The DOE seeks to fix these problematic pseudo-courts by creating the guarantee of a cross-examination of the survivor. In allowing survivors to be cross-examined by their alleged abusers--or a representative of them--the DOE is refusing to acknowledge the traumatic nature of reliving an assault in a series of questioning in front of their abuser. Such an environment poses a significant threat of intimidating survivors to not pursue formal Title IX investigations.¹³ According to a 2018-2019 annual report from the the University of Michigan at Ann Arbor, where cross-examination of survivors began in 2018, since 2018, fewer students chose to pursue formal Title IX investigations and there was a significant increase in requests for an “Adaptable Resolution” or informal resolution that issues no punishments to the accused.¹⁴ The report states on page eighteen, “some Claimants who wanted University action taken in response to their concerns also expressed hesitation about pursuing an Investigative Resolution in light of the addition of a hearing and direct cross-examination under the Interim Policy.”¹⁵ In a reform ultimately aimed at allowing survivors of sexual misconduct to lead fulfilling, productive college careers and receive the education they earned with admittance, a cross-examination undermines the mental well-being of survivors and creates further trauma for survivors. Consequently, we ask the USG to establish guidelines for these mandatory cross-examinations that would allow for such reviews to be conducted in a manner that is tactful, respectful, and safe for survivors’ mental health.



Mental health issues are already incredibly prevalent on college campuses, and both the administrations and SGAs are committed to an ongoing fight to alleviate them, and to do better by our fellow students throughout all of Georgia.

We recognize that Title IX is a substantial body of legislation, as are the changes to it. However, we still implore you to allow USG colleges and universities to hold themselves to a higher standard with regard to Title IX, especially when it comes to handling allegations of sexual assault. Our aim is to clearly delineate between strict Title IX rules and guidelines which leave room for USG interpretation. For every rule that is open to interpretation, we exhort USG to establish a survivor-focused justice-seeking process. This, we believe, will allow both the administrations and SGAs to better advocate for and protect survivors of sexual misconduct and continue to make our campus a safe place for everyone.

Sincerely,

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¹*E.g.*, Department of Education. *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* (May 19, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>

² *E.g.*, *id.* at p.11

³ *Id.* at p.8

⁴ *Id.*

⁵ *E.g.*, *id.* at p.174

⁶ *E.g.*, *id.* at p.181

⁷ *E.g.*, *id.* at p.175

⁸ *Id.* at p.28

⁹ *E.g.*, Association of American Universities. *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct* (Jan. 17, 2020), [https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20%20and%20appendices%201-7_\(01-16-2020_FINAL\).pdf](https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20%20and%20appendices%201-7_(01-16-2020_FINAL).pdf)

¹⁰ *E.g.*, *id.* at p.78

¹¹ *E.g.*, National Women’s Law Center. *Letter to the Office for Civil Rights Regarding the Preponderance of the Evidence Standard* (Feb. 8, 2012), https://nwlc.org/wp-content/uploads/2015/08/nwlc_ltr_to_ocr_re_prep_of_evidence_std_2_8_12_2.pdf

¹² *E.g.*, Feminist Law Professors. *Title IX & the Preponderance of the Evidence: A White Paper* (2016), <http://www.feministlawprofessors.com/wp-content/uploads/2016/08/Title-IX-Preponderance-White-Paper-signed-10.3.16.pdf>

¹³ *E.g.*, University of Michigan. *Annual Report Regarding Student Sexual & Gender-Based Misconduct & Other Forms of Interpersonal Violence July 2018 - June 2019* (Nov. 11, 2019), <https://studentsexualmisconductpolicy.umich.edu/files/smp/FY-2019.pdf>

¹⁴ *Id.* at p.7

¹⁵ *Id.* at p.18