January 23, 2019

Transmitted via Federal Register
To: Kenneth Marcus, Assistant Secretary for Civil Rights, U.S. Department of Education
CC: Betsy DeVos, Secretary, U.S. Department of Education
RE: ED-2018-OCR-0064-2029
Comment on the Department of Education (ED) Proposed Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Dear Assistant Secretary Marcus:

With 40,000 members across the world, the Society of Women Engineers (SWE) advocates for public policies that promote equity in research and the classroom, foster excellence and access to quality opportunities in the workforce, and ensure that women and girls graduating high school and college leave with the skills and knowledge that support their professional, academic and personal aspirations.

SWE understands that the Department of Education must work to develop and implement policies that establish safe spaces for students, educators, and researchers to learn, teach, and discover. However, SWE, along with thousands of SWE members, are troubled by this proposed rule that further chills the slow progress in broadening the current pipeline of engineering talent and does not represent the interests of women, who are the majority of college graduates. Further, this proposed rule does not reflect studies that show over half of all women in engineering schools experience sexual harassment. Rather, it undermines the already less-than-adequate protections under Title IX that are critical to the persistence and ultimate success of women and girls in universities and K-12 schools.

More specifically, SWE’s concerns center on two aspects of the proposed rule: first, narrowing the definition of knowledge of sexual harassment raises the barrier to reporting for victims and disproportionately affects women and women of color; two, lessening the burden of adjudicating harassment matters for institutions, while increasing the burden borne by victims, will have a long-term impact on the ability of women to pursue—and secure—justice for sexual harassment experienced.

Under the guidelines used during the Obama administration, the Office of Civil Rights took the view that a college or university must respond when it had “constructive knowledge” of an incident, such as through reports made to employees. The higher bar of “actual knowledge” before a school can be shown to be “deliberately indifferent” may submit victims to further traumatization while waiting to submit a formal complaint just to establish a baseline of “actual knowledge” of reported harassment. Increasing the barriers towards reporting harassment will only decrease the number of reports of harassment that are made, especially since both formal and informal studies show many cases already go unreported for years. It will do nothing to combat the pervasive problem of sexual harassment on college campuses.
Access to the complaint and resolution process should be easier, not harder, and should not encourage knowledge avoidance on behalf of the institution. The goal should not be to help institutions save money by encouraging them to be non-responsive. This goal is inappropriate for the chief regulatory body over higher education in the United States.

Women represent over 57 percent of college graduates, but according to the American Society for Engineering Education (ASEE), only 21.3 percent of the engineering graduates entering the workforce, and less than six percent are underrepresented minority women. Additionally, only 13 percent of all working engineers are women. Since the number of women entering college and the workforce continues to grow, fair and adequate implementation of Title IX is critical to the success of women in engineering and the ultimate strengthening of the engineering workforce.

Title IX should continue to be a tool to identify institutions of higher education that are falling short in the national goal of ensuring that all students—but particularly women and girls—are safe on college campuses and have the same opportunities as their male peers in classrooms, on athletic fields, in research labs, in faculty, coaching and administrator positions, and every other facet of campus life.

Thank you for the opportunity to provide this feedback in the important process of developing formal regulations regarding Title IX. SWE is a long-time advocate for the full and legal implementation of Title IX and works to ensure that women, and those underrepresented in STEM disciplines and fields, have equal access to protections under the law. If you have any questions about these comments, SWE and its members, or the importance of supporting women as engineering faculty and students, please contact Honna George at 312-967-1110.

Respectfully,

Penny Wiring
FY19 President, Society of Women Engineers