January 17, 2019

Department of Education,

Please accept these comments on docket no. ED-2018-OCR-0064.

As the President of the University of Wyoming, a public land-grant institution and the only public university serving the residents of Wyoming, I am committed to supporting sexual assault prevention and creating a safe and supportive campus. There are concerns among our University community regarding the proposed changes to Title IX regulations made by the Secretary of Education. Our primary concerns are as follows. We appreciate your attention and response to our concerns.

**Concern #1: Costs and benefits of implementation.**

Through thoughtful review of how to implement said changes, it is clear that at the University of Wyoming, implementing the guidance as currently proposed will come with a significant cost in human resources, policy and process adjustments. Such costs will only be amplified if there is a short timeline for implementation. While we believe that removing the Title IX coordinator from investigations is a good practice, doing so will necessitate the hiring of additional personnel to take on the investigative duties currently held by our Title IX coordinator. Additionally, the expectation that the university is required to provide advisors that are “aligned with” (106.45(b)(3)) the parties involved if they are unable to secure an advisor would add additional expenses. The University of Wyoming currently provides process advisors to any involved party, but such advisors are neutral, providing information to allow the parties to best understand and navigate our investigation and adjudication process. Finding advisors that are “aligned with” the parties would almost certainly require the University of Wyoming to contract with third party entities, such as private attorneys, who will advocate for rather than neutrally advise a party involved in an investigation and adjudication process, and such contracting will require an annual funding line that we currently do not consider in our annual budgeting.

We strongly suggest that advisors not be required to be “aligned with” parties, but rather be required to be knowledgeable of university processes and unbiased in their advice to parties. This will not preclude parties securing their own advisors outside of those provided by the University of Wyoming. We further suggest that the Department of Education allow at least 12 months for full implementation of new Title IX rules and regulations. We also urge the Department of Education to consider cost estimations from institutions who will be covered by the new regulation, to get a better understanding of the real costs of implementation of this guidance.
Concern #2: Proposed Section §§ 106.30, 106.45(b)(3): Changes to the scope of jurisdiction:
Since 2011, the University of Wyoming has responded to students who have experienced sexual misconduct during study abroad opportunities. Many of these students had to cut short their learning opportunity, losing out on the credits they should have received, and questioning whether they should invest in any future global opportunities. The University of Wyoming includes the growth of global perspectives as a key goal in our current strategic plan, and that growth includes increased participation by students in study abroad opportunities. We must be able to support students who experience sexual misconduct while studying abroad if we are to graduate students capable of competing in a global market.

Additionally, the University of Wyoming is a significant part of the Laramie and Wyoming communities. The majority of our undergraduate and graduate students live in private residences off campus, and our most recent sexual misconduct climate survey shows that 80% of our students who experienced sexual assault were assaulted off campus. Should the university not respond to off-campus incidents, it communicates indifference on the part of the institution and ignores the impact of these experiences on a student’s ability to succeed in the classroom. Further, the limitation on jurisdiction runs counter to other student conduct issues we take seriously, including alcohol infractions and other criminal behavior, and communicates to the University of Wyoming community that sexual misconduct is less serious than these other student conduct issues. We also believe that a clear limitation on jurisdiction will push sexual misconduct perpetration off campus, as perpetrators learn that incidents that occur off campus will not be investigated or adjudicated by the institution.

We believe that the University of Wyoming should have the discretion to determine whether or not to extend jurisdiction over sexual misconduct reports to off campus and international locations.

Concern #3: Proposed Section § 106.45(b)(3)(vi)-(vii)) The requirement for live hearings for all faculty, staff, and student complaints:
This would require schools to establish live cross-examination, where an accused student’s representative would be able to directly question a victim in real time. This change would require participation by both the complainant and respondent and could discourage reporting. The University of Wyoming is very concerned about students who experience violence feeling safe enough to come forward and discuss their concerns with an official of the University. Our most recent sexual misconduct climate survey shows that less than 10% of our students report to a University official. We believe that the University of Wyoming should be increasing reporting, not decreasing. We believe the University of Wyoming should have the discretion to impose reasonable guidelines on live questioning and cross-examination in a conduct hearing, including the ability to moderate questions through a neutral hearing officer or by video conference rather than allowing direct cross-examination.

Ultimately, each point noted above stands alone as a significant concern. The collective impact of the changes also may result in students being less willing to engage in reporting and support
resources. We firmly believe that students need a safe environment in which to learn, and that the University of Wyoming has an obligation to do its best to support and maintain that environment.

The current proposed guidance as written significantly limits our institution’s ability to create the type of learning environment that ensures academic success for all students. As the only public university in the state of Wyoming, we also have an obligation to graduate students who know how to engage respectfully and civilly in their communities and future educational and work environments. The proposed guidance as written limits our ability to hold students accountable when their behavior does not meet our, or society’s, expectations, which will prevent us from providing a full and holistic education to all of our students. The Department of Education and all educational institutions are to provide structures and operations that support the comprehensive needs of learners. The proposed changes seem to dismiss essential safety concerns associated with the higher education learning environment.

Sincerely,

Laurie S. Nichols
President