

To whom it may concern,

The American Society for Biochemistry and Molecular Biology represents over 12,000 active research scientists, the majority of whom operate in an academic environment. Our members include undergraduate and graduate students, postdoctoral trainees, faculty and staff. While we strongly support Title IX and codification of protections against sexual harassment at research institutions, we are concerned that the proposed changes to the Title IX guidelines would have a deleterious effect on the full participation of a diverse community of scientists and hinder the progress of research.

The proposed Title IX regulations include a provision of supportive measures to persons subjected to sexual harassment, which is critical for recovery. These measures are meant to reestablish an environment that is safe and to provide unimpaired access to education. Concurrently, we believe that university investigations into Title IX violations must be fair and objective. While we support these tenets of the proposed regulations, others are of serious concern.

### **Definition of sexual harassment**

The proposed rule would severely limit the definition of sexual harassment by adopting the Cleary Act definition of sexual harassment and assault, and make the process more difficult for complainants. This change would increase the barriers to reporting and allow evasion of institutional responsibility. The Department of Education itself anticipates fewer investigations under this rule change, which could directly and indirectly preclude provision of supportive measures and result in unequal access to education. These possible outcomes are the antithesis of Title IX. To the contrary, the complaint procedures and supportive measures should be more readily available through a transparent process that encourages appropriate reporting. Institutions should not be able to avoid responsibility for deleterious climate and culture.

### **Changing levels of evidence**

Changes in the level of evidence from “preponderance” to “clear and convincing” standards of evidence will further deter appropriate reporting. Sexual harassment is a serious workplace issue and need not rise to the level of a criminal complaint to be harmful to the education of students and the scientific enterprise. The impediments to reporting raised by these proposed changes should be recognized and regulations modified to encourage reporting and resolution of incidents of sexual harassment.

### **Cross examination by the accused**

Introducing a live adversarial cross examination will also deter reporting. While we realize that the proposal to allow the accused to cross examine the accuser is intended to increase due

process, there are already in place mechanisms for the accused to respond to allegations indirectly. Allowing the accused to interact with the accuser, even via each party's advisor, after a report is filed may intimidate targets of harassment and discourage reporting of harassment incidents.

### **Incidents occurring within school-sponsored programs and activities**

The requirement that an offending behavior occur within school-sponsored programs and activities is also unreasonably limiting. Staff, students, other trainees and faculty vital to the research success of universities who live off campus should be protected under Title IX regulations. The protections of trainees and expectations of appropriate behavior should extend beyond school-sponsored boundaries to all professional and educational environments.

The recent NASEM report indicates an unacceptable level of gender discrimination and harassment in academic science and medicine. We endorse the [recommendations in the NASEM report](#) including moving beyond legal compliance to address culture and climate, transparency in the process and response, and support for the survivor. We believe the proposed Title IX changes discussed above are precisely opposite these recommendations.

Thank you for your time. For any questions or comments, please contact Benjamin Corb, ASBMB's Public Affairs Director at [bcorb@asbmb.org](mailto:bcorb@asbmb.org).