



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
May 14, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila, Kate Harrison, Sophie Hahn,
and Susan Wengraf

Subject: Opposition to Revision of Title IX Sexual Harassment and Assault
Regulations Proposed by U.S. Department of Education, Secretary
Betsy DeVos

RECOMMENDATION

Adopt a resolution opposing the proposed revisions of Title IX regulations on gender and sex-based discrimination as proposed by Secretary DeVos of the United States Department of Education.

FINANCIAL IMPLICATIONS

None.

CURRENT SITUATION AND ITS EFFECTS

Current Title IX regulations pertaining to gender and sex-based discrimination provide greater protections to victims than the proposed new regulations offered by U.S. Department of Education. The effect of imposing higher standards of proof while reducing the protections now afforded to victims at institutions of higher learning such as the University of California, Berkeley will be detrimental to students and their communities locally in Berkeley, and nationwide.

BACKGROUND

In November 2018, U.S. Department of Education released proposed revisions to Title IX regulations that would roll back longstanding civil rights protections that are currently available by substantially reducing schools' obligation to respond to claims of sexual assault and harassment, which are forms of sex discrimination. The proposed rules limit what constitutes harassment to a narrower definition, namely "unwelcome conduct that is severe, pervasive and objectively offensive." It even forbids schools from investigating complaints that do not meet this exceedingly high standard. Therefore, a school could not investigate a threat of rape (severe, but not pervasive), or repeated harassment (pervasive, but not severe). Under the proposed regulations, schools can also require

that sexual assault and harassment be proven by “clear and convincing evidence,” a higher standard than is generally used in civil cases. Moreover, the regulations also require live cross-examination in sexual harassment proceedings that could deter victims from coming forward and introduces potential economic disparity to the process in that one party may have more means to hire a skilled attorney, placing him/her at an advantage. The regulations change the confidentiality rules in ways that also may chill victims’ willingness to report offenders.

ENVIRONMENTAL IMPACT

None.

CONTACT PERSON

Councilmember Cheryl Davila

510.981.7120

Link to Proposed Regulations:

<https://www.ed.gov/news/press-releases/secretary-devos-proposed-title-ix-rule-provides-clarity-schools-support-survivors-and-due-process-rights-all>

RESOLUTION NO. XXXX

Opposition to Revision of Title IX Sexual Harassment and Assault Regulations Proposed by U.S. Department of Education, Secretary Betsy DeVos

WHEREAS, the City of Berkeley (City) prohibits harassment on the basis of sex, race, age, religion, color, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, pregnancy, sexual orientation, gender, gender identity, gender expression, military and veteran status, and any other classifications protected by state or federal law; and

WHEREAS, all City employees are guaranteed the right to a work place free of hostility and intimidation based on any of the above-referenced protected classifications; and

WHEREAS, the City will neither tolerate nor condone harassment of employees by managers, supervisors, co-workers, elected/appointed officials, or persons with whom the City has a business, service, or professional relationship; and

WHEREAS, any employee, applicant, elected/appointed official, contract worker, intern or volunteer, who believes he or she has been harassed or retaliated against in violation of this policy are encouraged to promptly report the incident and the individuals involved, because complaints of harassment, and retaliation are most effectively addressed at the earliest possible stage, the City of Berkeley encourages early reporting of concerns or complaints along with thorough unbiased investigation; and

WHEREAS, the U.S. Department of Education has proposed revision to Title IX regulations pertaining to gender and sex-based discrimination that are antithetical to the City's policies and approach to such discriminatory behavior; and

WHEREAS, the proposed revisions narrow the definitions of such discriminatory behavior at institutions of higher learning that will tend to weaken enforceability of the protections from sexual harassment and assault, and

WHEREAS, revisions that reduce confidentiality of victim's reports, require cross-examination and a higher burden of proof that has the likely potential to deter reporting by victims;

BE IT NOW, RESOLVED, that the Berkeley Mayor and City Council are on record as opposing the implementation of the U.S. Department of Education's proposed revisions to Title IX gender and sex-based discrimination protections which are currently in effect and which offer greater protections to victims of sexual harassment, discrimination and assault than the proposed regulations would provide.

