**RE: U.S. Department of Education Proposed Title IX Regulations (Education Amendments of 1972)**

On behalf of the public community and technical colleges in Washington State, I wish to register our concerns about the proposed Title IX Regulations. The colleges in Washington State are committed to protecting our students from sexual assault and to ensuring that anyone subject to penalties under college codes of conduct are afforded constitutional due process of law. While we appreciate that the proposed regulations seek to protect institutions of higher education from unreasonable liability, we are concerned that the regulations are unduly prescriptive and impose unnecessarily burdensome procedural requirements that are not aligned with long established legal standards and Due Process requirements.

The proposed regulations separate the roles of Title IX coordinator, investigator, and decision-maker, requiring that three different individuals play those roles. This would pose a significant staffing challenge to our already short-staffed colleges.

The proposed regulations also create unnecessary and unduly burdensome legal requirements without furthering the interests of due process or Title IX itself. Washington State’s longstanding Administrative Procedures Act ensures constitutional due process guarantees at all public colleges and universities. The proposed rules in the NPRM are so overly prescriptive that it would be difficult for colleges to both comply with the proposed rules and the State APA. This would result in significant burdens on the colleges with no discernable due process benefit to respondents. For example, the proposed rules require a live hearing even when a respondent does not contest an initial finding of responsibility and even where a penalty does not rise to the level of a long-term suspension or expulsion. In contrast, consistent with U.S. Supreme Court precedent, our state APA allows an institution to issue an initial order that is appealable to a full a live hearing in which the decision-maker is separate from the conduct officer initiating charges. The proposed regulations do not appear to allow for such sequencing, even though it may conserve resources while according full due process. Additionally, the requirement to provide parties access to review of evidence before an investigation is complete is overly prescriptive and cumbersome. Parties should be provided access to information in time to prepare an adequate defense in context of the procedures used.

The proposed language in section 106.45(b)(3)(vii) is similarly unnecessary and unduly burdensome; it prohibits a decision-maker from relying on “any statement of a party or witness unless they submit to cross-examination at a hearing.” This language eliminates any consideration of evidence from a Title IX hearing even though that same evidence would be useable in any civil and criminal case. The proposed language would even prevent a decision-maker from relying on a criminal trial transcript as evidence unless the witness also testifies at in the Title IX grievance proceeding. Further, the mandate in the proposed regulations for cross-examination by advisors aligned with the students effectively requires that attorneys be provided to students. This would result in a significant and unnecessary staffing burden on small colleges.

Finally, the same barriers that deter survivors of sexual misconduct from reporting in a legal/criminal context – for example, the requirement for signed complaints and live cross-examination without being able to send questions through a hearing officer – would now essentially be replicated in the college environment, resulting in a significant chilling effect on reporting of sexual misconduct.

Thank you for taking our concerns into consideration.