MICHIGAN STATE
UNIVERSITY

January 30, 2019

Brittany Bull
U.S. Department of Education
400 Maryland Avenue SW, Room 6E310
Washington, DC 20202

Via Regulations.gov

Re: Docket ID ED–2018–OCR–0064

Dear Ms. Bull,

Michigan State University ("MSU") submits the following commentary to the U.S. Department of Education (the "Department") in response to its call for comments to proposed rules under Title IX of the Education Amendments of 1972. This commentary is supplemental to the collective comments of the Association of American Universities, which MSU supports.

The foundational mission of MSU is education. Whether in the classroom or in the residence hall, individual growth through learning is our institutional goal. To foster an environment where learning can occur, MSU must start by looking out for the safety and wellbeing of its students, faculty and staff.

MSU strongly disagrees with the constraints the Department appears to place on institutions' ability to ensure the safety and wellbeing of their university communities:

- Institutions must not be required to disregard harassment and discrimination just because it occurs off-campus or on a study abroad trip.

- Institutions must be free to set higher standards for how they define sexual harassment.

- Institutions must not be confined by the formalities of signatures on a complaint before they are able to move forward with an investigation of harassment and discrimination.

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• Institutions must not be arbitrarily required to set an evidentiary standard for sexual harassment and discrimination matters which mirrors disparate conduct processes.

In addition, requiring parties to take an adversarial posture does not further the educational mission of institutions and, instead, attempts to turn the academy into the judiciary. While MSU must follow mandates of adversarial cross examination set forth by the U.S. Sixth Circuit Court, MSU does not agree that such requirements should be enforced on a national scale. Alternate processes, such as allowing parties to answer written questions, offer parties an opportunity for questioning one another while respecting their dignity. MSU believes adversarial cross examination will cause undue distress to participating parties—claimants and respondents alike—and will have a chilling effect on claimant participation in the investigation process. Universities should not be forced to adopt court-based processes which interfere with their institutional missions.

Universities have taken great strides to address gender-based harassment and discrimination. In many respects, the proposed rules are a step in the wrong direction.

Sincerely,

Satish Udpa
Acting President