

THE FACULTY VOICE

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The Faculty Voice
0305 Marie Mount Hall
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College Park, MD 20742-4451

College Park Colors: Inside and Out



Kay Theater, The Clarice. Photo credit: John T. Consoli/University of Maryland

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It is time to review Mandatory-Minimum Sentences

By Alexander Williams, Jr.
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Judge Alexander Williams, Jr. Center
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University of Maryland, College Park
College of Behavior & Social Sciences.



Photo Credit: The Judge Alexander Williams, Jr. Center for Education, Justice & Ethics

Judge Williams is a retired United States District Court Judge for the District of Maryland and served two terms as the elected States Attorney for Prince George's County, Maryland.

Among the challenges this country faces as a nation are massive incarceration, racial disparities and the need for criminal justice reform. While the exercise of unfettered discretion by the various stakeholders in criminal justice must be examined, and the urgency of repairing police-community relationships is of critical importance, federal and state legislators and executives must review and rethink the impact of mandatory-minimum penalties and their contribution to massive incarceration.

In a rebuke and reversal of the Obama administration's approach of avoiding triggering mandatory minimum sentences when charging some low-level, non-violent drug offenders, and in an effort to return to the days of stiff and severe sentencing policies initiated in the 1980s and 1990s to address the war on drugs, Attorney General Jeff Sessions [several weeks after his appointment] announced a new policy. He directed federal prosecutors to "charge and pursue the most serious, readily provable offences" including enforcing and seeking mandatory-minimum sentences and

penalties on drug trafficking criminal defendants. This inflexible and hardnose perspective to sentencing is unwise, ineffective and unfair.

Historically, federal mandatory penalties were rare until the passing of the Boggs Act of 1951 and the Narcotics Control Act of 1956. These laws were reactionary to drug use following World War II. Boggs provided harsher sentencing to repeat offenders, while the Narcotics Control law included a harsh mandatory minimum of 5 to 20 years on first time offenders of marijuana export. The rationale for these early versions of mandatory minimum sentences was to punish repeat offenders, to send a clear message of tough consequences to those engaging in drug trafficking, and to reduce recidivism. In 1970 during the passing of the Comprehensive Drug Abuse Prevention Act, known to some as the DARE law, Congressman George H.W. Bush then called for reform of mandatory drug laws to only impact career criminals, stating "contrary to what one might imagine, however, this will result in better justice and more appropriate sentences". Fourteen years later in 1984 pursuant to President Ronald Reagan's war on drugs, the Comprehensive Crime Control Act and Sentencing Reform Act was enacted which abolished parole, returned harsh sentencing for

drug possession, and created the U.S. Sentencing Commission-- directing this Commission to develop mandatory federal sentencing guidelines.

In June of 1986 [right on this campus] tragedy struck as Maryland Terps basketball star, Len Bias, died from a powder cocaine overdose while celebrating his selection as the number one college draft pick by the Boston Celtics of the NBA. In acts of sensationalism and demagoguery that followed the death of Bias, members of the law enforcement community, members of Congress and others [in the absence of any moral, empirical, or medical expertise] convinced the American public that: the crack epidemic was a frightening and widespread phenomenon; was more addictive than power cocaine; would lead to the increase in guns and violence; posed threats to children; would have long term effects on "crack babies"; and because of the low cost of crack cocaine, made it more available to young people and more prevalent for consumption and distribution in "crack houses." As a result of this hysteria and with the election season approaching that fall of 1986, Congress enacted [with little debate] the Anti-Drug Abuse Act of 1986 which created mandatory minimum sentences, including the 100-1 crack-powder disparity. The Sentencing Commission then adopted

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An Independent Faculty Newspaper

Edited at College Park by and for all faculty members in the University System of Maryland

Changes to Title IX Guidance on Campus Sexual Violence

By Laura L. Dunn, Esq.
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On October 16, 2017, the President of the University of Maryland Baltimore (UMB), Dr. Jay A. Perman, announced the university’s ongoing commitment to “preventing sexual assault and other forms of sex- and gender-based misconduct” despite recent actions by the U.S. Department of Education’s Office for Civil Rights (OCR).¹ Specifically, on September 22, 2017, Education Secretary Betsy DeVos announced that OCR would roll back crucial Obama-era guidance protecting victims of campus sexual violence by rescinding the 2011 Title IX guidance (hereinafter the “2011 DCL”),² and the 2014 Title IX guidance (hereinafter the “2014 Q&A Guidance”).³ The letter from Acting Assistant Secretary for Civil Rights, Candice Jackson, claimed that these OCR guidance materials were rescinded for “impos[ing] new mandates related to the procedures by which educational institutions investigate, adjudicate, and resolve allegations of student-on-student sexual misconduct.” While OCR

stated that educational institutions could still rely upon the 2001 Title IX guidance (hereinafter the “2001 Revised Guidance”),⁴ it also went on to announce the release of a new interim guidance (hereinafter the “2017 Interim Guidance”).⁵ This 2017 Interim Guidance conflicts in crucial areas with the 2001 Revised Guidance, which went through notice and comment,⁶ as well as with implementing regulations for Title IX.⁷ While the Department has promised a new notice and comment period to develop new permanent Title IX guidance, which presumably would allow resolution of such disagreement and other concerns, it has yet to provide any such announcement in the Federal Register thus leaving several questions unanswered about future enforcement of Title IX under the Trump administration.

This article will provide a brief history of the federal civil rights statute known as Title IX and its regulatory enforcement scheme as it relates to campus-level proceedings. It will also critique the 2017 Interim Guidance in light of the 2001 Revised Guidance and existing regulations to question whether the Department is using its civil rights enforcement powers to

protect those victimized by sexual misconduct, as it is mandated to do by Congress.⁸ Finally, it will suggest ways that various institutions can resist this civil rights rollback to ensure protection of all students seeking access to education free from a sexually hostile environment.

I. Brief History of Title IX⁹

A. Title IX the Statute

During the summer of 1970, Congress held a special hearing through the House Subcommittee on Education to discuss the issue of institutions denying women access to and opportunities within educational institutions on the basis of their sex.¹⁰ These Congressional efforts led to the passage of Title IX in the Higher Education Amendments of 1972,¹¹ which President Richard Nixon signed into federal law on June 23, 1972.¹² Subsequently codified as 20 U.S.C. §§ 1681 *et seq.*, Title IX states in relevant part that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program

or activity receiving Federal financial assistance[.]”¹³ Modeled after the Civil Rights Act of 1964, Title IX requires educational institutions that receive federal funding to ensure access to education free of sex discrimination.¹⁴ Subsequent Supreme Court jurisprudence on sex discrimination has held it includes sexual harassment that is “sufficiently severe or pervasive,”¹⁵ which includes instances of sexual abuse and violence.¹⁶ Title IX therefore prohibits federal recipients from discriminating on the basis of sex by failing to address sexual harassment and sexual violence within educational settings upon actual notice.¹⁷

B. Title IX Implementing Regulation

To assist educational institutions in complying with Title IX, the U.S. Department of Health, Education and Welfare (HEW)¹⁸ announced a rule-making process to develop implementing regulations for the civil rights statute in 1974.¹⁹ By June, HEW distributed its draft of proposed regulations to start off a five-month public comment period, which ended in October 1974.²⁰ By the end of the pub-

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Comprehensive Sexual Assault Prevention

By Steve Petkas
Associate Director, VPSA-RL
Chair, Joint President/Senate
Sexual Assault Prevention Task
Force

In the eight years since the Department of Education’s Office of Civil Rights set forth updated guidance on post-secondary institutions’ compliance with Title IX, universities and colleges across the nation have continued to labor to meet the requirements, and over 300 complaints are currently under investigation by DOE OCR at 229 post-secondary institutions. Subsequent federal requirements under the Violence Against Women and Clery Acts have addressed additional compliance and prevention efforts.

In October, 2016, University of Maryland President Wallace Loh and University Senate Chair Jordan Goodman charged a Joint Presidential/University Senate Task Force with the development of recommendations for a comprehensive strategy for sexual assault prevention, consisting of actions that could be realistically implemented. The charge directed the task force to concentrate on sexual assault, a subset of the larger spectrum of sexual misconduct.

On April 19th, the task force submitted its report and recommendations to the University Senate. The Task Force Report, which was accepted by the Senate and approved by President Loh, put forth recommendations for actions in five broad areas: programming, communication, coordination, implementation, and evaluation/assessment. The full report can be found at <https://go.umd.edu/cco>.

What constitutes a comprehensive prevention strategy?

The task force members examined current prevention efforts at twenty peer institutions including all members of the Big Ten. We learned that univer-

sities with strong prevention efforts do a number of things:

- They employ a combination of on-line and in-person training for students that is sequenced and compounding in content.
- They address a range of topics in student training that include university policies, reporting procedures, campus resources, consent, risk reduction, bystander intervention communication in sexual situations, healthy relationships, and the role of alcohol and drugs in facilitating sexual assault.
- They situate their prevention messaging in the context of an affirmative theme such as wellness, healthy relationships, mutual respect and care, or personal safety.
- They provide targeted training for high-risk and/or high-need groups such as fraternity and sorority chapters, athletes, international students, graduate students, and LGBTQ community members.
- They establish accountability for completion of compulsory training through registration blocks.
- They assess the impact of prevention efforts in at least two levels of assessment: outcome assessments of individual training programs, and long term changes in student knowledge, attitudes, behaviors, and victimization through climate assessments.
- They utilize a communications strategy that employs affirmative and intuitive themes and achieves consistent messaging by all campus agencies and all levels of campus leadership.
- They include informational/awareness campaigns as part of communications strategies that incorporate publications, email and social media messaging, and visible campus-wide events.
- They construct centralized on-line website/hubs that offer comprehensive information and functional links to the campus community that include

prevention themes, campus resource information, links for all applicable policies and procedures, links for reporting assaults, updated program and event calendars, and links for campus agencies and stakeholder groups.

- They establish campus-wide, cross-divisional task forces or collaborative teams that orchestrate messaging and awareness campaigns, prevention training and programs, and review outcome and climate assessments in order to make continuing improvements in prevention efforts.
- They incorporate academic administrators and faculty in prevention efforts to insure that all faculty are versed in prevention efforts, awareness messaging and support resources, and include sexual assault awareness and prevention in relevant curricula.

For the task force members, our inquiries with peer universities produced two broad revelations with respect to prevention activities. First, we were impressed with the creativity and deliberation illustrated in prevention programming and practices. We saw a number of very strong examples at peer institutions that proved instructive.

Second, and perhaps more important, we learned that very few peer institutions have adopted comprehensive strategies incorporating activities in all the categories of effort listed above. This second revelation became an influential element in the task force’s deliberations and recommendations.

Silos versus Synergy

Many universities contain multiple campus offices that are involved in sexual assault prevention. The membership in the sixteen member task force reflected such a multiplicity, incorporating representation from academic administration, athletics, campus police, faculty, fraternity and

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Sexual Assault Prevention

sorority life, legal counsel, residence life, student conduct, Title IX office, university communications, victim advocacy and support, graduate and undergraduate students. In reviewing current campus prevention efforts we learned that (1) a substantial number of efforts were currently in place, and (2) most of the existing programs were not known among many of the task force members other than those in the offices that provided them.

The discovery of multiple agencies pursuing a range of efforts was not necessarily surprising. For example, the victim advocacy and support office, located in the health center, had existed for decades, while the current Title IX office came into being only in 2014. Campus police, Title IX, student conduct, fraternity and sorority life, and resident life were all involved in prevention efforts. But the upshot of the multiplicity of independent actors was a problem. Our engagements in campus forums revealed that no individual could recite the sum of the parts, much less benefit from a campus-wide effort that produced something greater than that sum.

Further, we found evidence of redundancy in prevention efforts, including awareness publications and student training programs. Title IX, victim advocacy and support, fraternity and sorority life, and athletics all provided prevention training. Common elements were evident in some of the prevention efforts, such as bystander intervention, but efforts to assess effectiveness varied widely.

Faculty and staff who work at large universities learn to accept and accommodate complexity, bureaucracy, and functional silos. We incorporate these realities into systems thinking and plan accordingly. But on occasion we come to grips with how challenged a large institution is to comprehensively organize itself around a central thrust of messaging and education.

Concerns among task force members about the lack of synergy in prevention efforts were heightened as the result of our engagements with the campus community. In the course of the task force’s work, we held a campus-wide open forum, a graduate student forum, consulted with multiple campus agencies, and sought feedback from student and campus leadership at assemblies of the University Senate, the Student Government Association, and the Residence Hall Association. In these engagements, we learned of things that strongly influenced our recommendations:

- Despite multiple and intentional efforts on the part of the university over years, students who were moved to participate in campus forums time and again demonstrated their lack of knowledge of some of the most basic elements of campus resources and policy. These were students who arguably cared about the issue greatly, yet they had not availed themselves, or received with the most fundamental resource and policy information.
- Students’ questions, comments and grievances displayed astonishing distortions and misinterpretations of university practices in their behalf. This highlighted the lack of consistent messaging conveying university values and commitments of effort and resources toward students’ welfare and safety.

The task force members walked away from these engagements with great concerns for our students at the misimpressions they shared about the depth of care and commitments to their welfare in the university at large. The significant level of current prevention efforts on campus that we had learned about via task force deliberations was invisible to these students.

The charge we were given was wise and timely. It confined the focus to sexual assault and it called for a comprehensive strategy. Such a strategy must bring about synergy among all the campus players involved in prevention efforts. What we learned from students reinforced our thinking about the need for cross-divisional coordination in existing programs and collaboration on the creation of additional necessary efforts.

Challenges

Confronting silos of organization as described above was one of the larger challenges in finding our way to workable recommendations. We were not charged to start from scratch and construct the perfect organizational structure to effect institution-wide prevention program. Such an effort would require revising organizational structures across divisions.

Another challenge that we encountered was accommodating the passion in the campus community on the topic of sexual assault. Student activism on the College Park campus in this arena has been heightened in recent years. During the course of the task force’s work, controversy arose over several related issues. An initiative by the Student Government Association calling for a mandatory student fee supporting the Title IX Office gained notice in national media. The gender and identity politics of the national presidential campaigns and student reactions to Donald Trump’s election propelled passions to ever greater heights.

The intensely personal nature of sexual assault cannot be overstated, and the level of sensitivity of the topic is inestimable. With these realities in mind, the task force embarked on multiple methods of seeking feedback and input. Stakeholders could join in the various forums, they could provide anonymous comment via a task force website, or could meet with the chair individually. All of these avenues of input were utilized by members of the campus community.

In our public engagements on the campus, task force members dedicated themselves to engaging community members with care and empathy. Knowing the level of passion on the campus, we felt that any perceptions of an adversarial air to our forums would seriously impede our goal of understanding our community members’ views. We dedicated ourselves to refraining from explaining or defending existing campus practices, choosing instead to inquire consistently on thinking that would lend to a successful comprehensive prevention strategy. The members of the campus—students, staff, faculty, and in some cases parents—met us in kind, impressing us with their earnest thinking, authenticity and civility.

Passions concerning the charge interacted with dilemmas presented by

choices in student training program content. The need to provide risk reduction training arose from both our peer institution inquiries and our examination of federally recognized best practices. Among risk reduction strategies, addressing the role of alcohol in facilitating sexual assault is a primary element. But taking up the risks associated with drinking is perceived by many as victim blaming. Addressing the role of alcohol in sexual assault in a fashion that minimizes the stigmatization of victims is crucial.

A second dilemma was the choice between a combination of risk reduction and protective strategies (such as bystander intervention) versus programs aimed at perpetration reduction. The latter would address the power dynamics of sexual assault, serial sexual predation, and the impact of “rape culture.” Advocates for perpetration reduction as an emphasis in prevention training were particularly vocal. Our examination of both federal best practices and current research on the effectiveness of prevention programs led us to recommend the combination of risk reduction and protective strategies instead of perpetration reduction, since the literature indicates that the latter is of mixed success in comparison to the former.

Student leaders on the College Park campus have consistently called for required in-person training in recent years. Some have advocated for annual in-person training for all members of the campus each year. Both the logistical and human resource demands of in-person training are considerable. The task force recommended a dramatic expansion of compulsory in-person bystander intervention training for all freshmen and transfer students in the course of their first year. All other in-person training programs in our recommendations for undergraduate and graduate students, or faculty and staff, are voluntary, although mandatory online training was recommended for each group. We remained mindful of the fact that our charge called for recommendations that could be realistically implemented.

The stark divergence in needs and experiences of undergraduate versus graduate students became apparent in the forums we conducted. The focus of our charge on sexual assault within the larger spectrum of sexual misconduct more closely conformed to the needs of undergraduates. Graduate students presented a more complex picture of needs. Situations that graduate students expressed concerns over fell almost exclusively in the realm of sexual harassment. Many graduate students are both students and graduate assistants—research, teaching, or administrative—who interact with students. Finally, many graduate students experience the campus solely via their college or program, which in many cases limits the transmission of policy and resource information in comparison to undergraduates.

Highlights of Recommendations

The reader is referred to the link above for a detailed examination of the task force recommendations. Our charge was to recommend a comprehensive prevention strategy which

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could be realistically achieved. The task force members used the insights gained from our research with peer institutions and federal best practices to guide the scope of the recommendations, which include:

- For first-year students, two required online training modules prior to enrollment addressing campus policies and alcohol, a presentation addressing multiple elements of campus safety during summer orientation, and a required in-person training presentation on bystander intervention to be completed during the first year.
 - One required online training module each year for second and third year students that address healthy relationships, consent, and the role of alcohol in sexual assault.
 - Required training for student leaders in recognized student groups addressing constructive group climates, the role of alcohol, and options for reporting assaults.
 - Maintenance and improved assessment of existing training programs for athletes and members of fraternities and sororities.
 - Improved orientation of international students.
 - Enhanced online training for graduate students and specialized online training for research, teaching and administrative assistants that addresses their dual roles.
 - Creation of a cross-divisional collaborative body, the Sexual Assault Prevention Committee, consisting of representatives from many of the stakeholders that were included in the task force, to carry out the task force recommendations on a multi-year time frame.
 - Appoint a staff member with primary responsibility for prevention on the campus who would chair the Sexual Assault Prevention Committee.
 - Creation of a centralized website/hub providing single source information on all applicable policies and procedures, campus resources, program/training information and calendars, and links for complaints.
 - Creation of an overarching, intuitive, and affirmative thematic message serving as the context for all programming.
 - Construct an awareness campaign which includes campus-wide events, print publications, social media outreach, annual resource messages for faculty and staff, and tool-kits for student-driven programming.
 - Require deans to formulate action plans outlining how information distribution will occur throughout the colleges concerning policy, procedures, resources and prevention programming.
 - Conduct outcome-based assessments of all prevention programs, and assess changes in norms, beliefs, and victimization via climate surveys.
- Additional recommendations can be found in the task force report. Our examinations of programs at peer institutions led us to conclude that as sound as many of the examples we found were, few universities have adopted truly comprehensive strategies in sexual assault prevention.

Role of Faculty

Sexual assault prevention requires the involvement of every campus member. It is not solely a student affairs undertaking. Faculty have im-

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College Park Colors: Inside and Out



Main Admin Building: All pictures courtesy of John T. Consoli/University of Maryland

By Steven W. Hurtt
School of Architecture

Colors must fit together as pieces in a puzzle or cogs in a wheel.
-- Hans Hofmann, artist

Athletics gets it. Students get it. Our graphic designers get it. Apparel companies get it. Even most architects seem to get it: the use of the Maryland State flag colors: red/white-black/gold. What’s with building interiors on our UMCP campus?

On much of the campus, whether you are outside or inside buildings, our State and school colors remind you of



Comcast Center

where you are: they affirm identity.

At a subtle level, the colors shared by the exteriors of our campus buildings contribute to that unique sense of place. Irrespective of architectural style, there are those color-material and place constants: pervasive red brick; off-white limestone, white columns, white entry doors, white window trim; black painted metal stair railings, guardrails, and ornamental work and golden bronze trim pieces like Testudo’s nose; broad slate roofs which shade from dark grey to black while avoiding purple, orange or scarlet tones; and recent buildings with rooftop mechanical units and housings that are painted slate grey to match.

Variety? Look closely at the “red” brick and you find forty different color variations on “red” ranging from pink to dark brown and many that are of a richly variegated mix.

It is jarring when major parts of a building go awry of the basic four colors: blue tinted windows in Building #224, the Atlantic Building; green

spandrel panels below the windows of Kim Engineering. Was someone thumbing a nose at us, or were they just not paying attention? Whatever circumstances made for these aberrations on building exteriors, they are nothing compared to the array of non-Maryland colors found in our building interiors. Suddenly you are in a different world, in the worst cases it seems you’ve been transported to another college or university.

Some colors are so strongly identified with certain schools that in a college environment they are synonymous with that other place: the blue and white of Duke, Penn State and Yale; the Orange-men/women of Syracuse; the distinctive orange and purplish maroon of Virginia Tech; the orange and blue of Illinois; the Scarlet Knights of Rutgers; the scarlet and grey of Ohio State; and Harvard Crimson. Step into some office suites on campus and it is if you are in one of those other places, not Maryland.

Why? It can’t be because you can’t extract enough variety from our State and school colors. Most schools have only two colors to play with, but we have four. Lessons in and near infinity of design variations can be seen in a number of obvious examples.

Undergraduates and alums sport “our school” colors, but the combinations vary, different colors dominate at different times and for different reasons. Variety also exists in clothing styles just as it does in campus building styles.

All Maryland’s athletic uniforms conform to the use of those four basic colors. But here again there is wide variety. Uniforms have changed over time. The simplicity of years past has, of late, yielded to quite exotic effects, a collage of shapes and patterns, but the four colors never vary, while almost everything else does.

What of our campus graphics? Any of the graphic paraphernalia that is issued by and about the campus, the materials that identify or celebrate UMCP, are based on the red/white-black/gold palette. But there is plenty of room for design variety and creative application: all those different fonts, and there is still plenty of room for design composition through deployment of any combination of those four colors in any proportion and combination of shapes. And that is before you get to variations in font style and type and layout and overlays of matt and sheen and types of stock, it goes on and on.

State schools logically adopt the heraldry of their state flags. At UMCP, we have both readily identifiable shapes

and four strong colors associated with them. All four colors work well together in nearly any combination. When it comes to architectural interiors, to interior design, the opportunities for variety expand exponentially beyond those of athletics and graphics. With interior finishes, you also have variations in texture, material, and most particularly, the saturation level of the colors themselves: providing a range that extends from vibrant and intense to restrained and muted.

Go into either Cole Field House or the new Arena and the colors are blaringly heraldic: heavily saturated red/white-black/gold is everywhere, “Go Terps!”

Enter the Main Administration building and you find the restrained, muted version: Classical woodwork painted a glossy white against pale yellow walls, sumptuous chairs covered in a rich yellow-gold fabric; cherry wood furnishings: tasteful, subtle, nothing discordant, nothing to suggest that you are in a different university.

If the new Arena and Main Administration establish the two ends on a spectrum of possibilities, the range between those ends ought to seem both obvious and compelling. Elsewhere, the same colors but of different hues and quantities work their magic.

Walk through the Smith Business School, Kim Engineering, Knight Journalism, or CSPAC and variations on shades of red/white-black/gold keep you at home. Multi-color terrazzo floors predominantly use “our” colors, and variations on the palette show up in anything of wood and most paint and stain colors. Most recently, on wandering through the new Edward St. John Learning and Teaching Center, I was pleased to see a predominance of the Maryland colors as well.

But then there are the aberrations. On a construction-in-progress tour of the new James A. Clark building the other day, a building about which there is a great deal to admire, when it comes to colors, there is a lot of white with some strong accent colors. One accent color seems to mark pathways though multiple open lab spaces, a good orientation graphic, but the color is orange! Really, wide bands of orange, at Maryland?

In the same building, most of the big round concrete columns are left in their natural off-white burnished state, but one of them, central in the building and honoring graduate, inventor, and donor Robert E. Fischell, is painted a vibrant blue. Blue? Red or gold to highlight that single honorific column would have done nicely. But this is only to point to a recent example, and



Maryland State Flag.
Source: Wikimedia Commons

there are many others. Why?

The control of colors on building interiors seems to be the purview of many, largely dependent on rank and authority, to whom are given no fixed parameters.

When buildings are new and have disinterested donors, the professional architects and interior designers typically make initial color and material selections. These extend from the most durable items such as natural materials unlikely to receive paint to the far less durable furnishings: carpets, tables, chairs, curtains, light fixtures and so on.

But I’ve also experienced willful donors, deans, and others. Little in the way of rational argument dissuades them from imposing their point of view. The reality is that anyone with some authority or opportunity, donors, presidents, vice presidents, deans, chairs, or anyone to whom they divest their authority from administrative assistants to friends and family members, spouses or suppliers and contractors, can determine interior design choices of all kinds.

Facilities Management staff, who are usually the most professionally qualified in these matters, are easily ignored. They provide technical review the complexities of code compliance, durability, and so forth; they are tested and licensed by the State in such matters. They are also schooled and practiced in aesthetic matters as well. But three things limit their ability to apply that knowledge: job definition, authority, and cost.

They are a “service” group; their job definition shifts authority to those they “serve.” Authority: people with power tend to exercise it, whether they are qualified to do so or not. Cost: someone has to pay for the service, thus “others” can offer the service for “free:” those administrative assistants, friends, relatives, spouses, and suppliers. The opportunities for this random sample of people to impose their “taste” is enormous. Interiors get lots of wear and tear, need replacement or just updating, and changes in administration offer special opportunities.

So, wander around campus into and



Chincoteague Hall

College Park Colors

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Knight Hall

out of buildings and office suites and it is sometimes, whoa, where are we? The nearly infinite palette of red/white-black/gold is nowhere in evidence. Personal tastes, whether blandly conservative to hyped fashion trends, are manifest. Why? We aim to please. Someone has been given the opportunity to play interior decorator. The rule of the day appears to be deviation from rather than adherence to a standard.

A standard? Is there one? If so, it

is only customary. Standards and guidelines come about when things that have been customary but unregulated are violated to the extent that concern is expressed, “There ought to be a law!” I heard that when there was a change in the color scheme of the flowers making the “M” on Campus Drive from red and white to blue and yellow and this happened, innocently enough, coincident with the weekend of the Maryland-Michigan football game, ob-



Tydings Hall

jections were raised. Whoops. What might be done to avoid the proliferation of the random aberrations that detract from our identity, or brand, our sense of place? What is done when customary practice is subverted? Best practices establish clear standards, a set of guidelines, and a robust set of examples as a basis for discouraging worst cases and encouraging the best, including creative interpretation. Examples might start with one of the most important buildings in the history of architecture that happens to share the colors of our state flag rendered in marble and granite, the Pantheon in Rome. Best practices would also include more immediate examples such as the black and gold of the Recital Hall at The Clarice. Establishing a standard would be a big step toward keeping the invaders like the Blue Devils, the Syracuse Orangemen, and the purveyors of Harvard Crimson at bay. Wouldn't it make sense to follow the lead of athletics and the graphic designers in this regard? We are directed far more rigidly from above in other matters of identity, the use of the logo among the most rigid of examples. It would not be hard to do. Dr. Loh could command it. Better yet, he could approve a recommendation from Facilities Council, the University Senate, or the Provost and or any of the Vice Presidents, most particularly the Vice President of Administration who oversees Facilities Management and Planning. It does not seem that something like this can bubble up from below. But directed from above, a standard could be mandated, the necessary guidelines studied and approved, the inspiring examples gathered, a hundred or so across a full spectrum of styles and applications from traditional to modern, from brash to restrained.



Physical Sciences Building

It would be marvelous to enlist our alumni to the cause. A number of them have professional expertise to offer: artists, photographers, interior designers, and architects. As much effort is put into affirming the identity of the University of Maryland in so many other ways, isn't it perfectly logical to affirm our identity in this manner as well?



Kim Building

Sexual Assault Prevention

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portant roles to play in prevention. The following are suggestions for actions that faculty might undertake:

- In your first class session, speak to sexual assault prevention as a priority on campus in which everyone needs to be involved. You are in a position to speak to students when they are sober, serious, and attentive. You can encourage participation in bystander intervention training, and help students conceive of situations in which bystander action could make the difference in a student's life and success at the university.
- Equip yourself with information on campus resources—especially the difference between confidential and non-confidential reporting options—as well as basic information on reporting procedures and your obligations as a responsible university employee.
- Maintain the ability to inform any student about required campus training programs, and where relevant online information about all campus resources can be found.
- Participate in optional training offered by the University human resources, victim assistance, or Title IX office on your campus. Prepare yourself to respond in support of victims. Many assaults come to light as the result of student requests for academic

accommodation in assignments and examinations.

- Look at ways that sexual assault awareness might be incorporated into your curriculum if possible.
- Never make light of the issue of sexual assault. Always assume you have survivors in your classroom.

Impact for Faculty

The main focus of the task force's charge was sexual assault, which is a subset of the wider realm of sexual misconduct. Accordingly the task force's examinations of prevention programs, assessments of climate and victimization, and resulting recommendations addressed sexual assault prevention. Faculty are less likely than students to be victims or sexual assault, and those who experience sexual misconduct are more likely to encounter sexual harassment, either as a victim, or as a support to another faculty member who is victimized. Because of this, faculty experiences are more akin to that of graduate students than undergraduates.

Faculty at College Park who experience sexual harassment have access to many of the same resources as students. The importance of all faculty members maintaining current knowl-

edge concerning campus resources cannot be overstated, in the interest of acting in support of all members of the campus who may experience victimization.

As part of its recommendations, the task force reaffirmed the University's commitment to providing online training for faculty on University policy, resources, and reporting obligations, and to improve the information provided to new faculty and staff during orientation programs. Task force members agreed that faculty and staff are in uniquely influential positions to lead among their peers in sexual assault prevention efforts, and to engage and support students in both prevention as well as efforts ensuring that victims are referred to support resources available on the campus.

Continuing the Journey

The members of the campus which we engaged earnestly conveyed their desire for a community in which no one's academic and social pursuits are derailed by sexual assault. At present, this effort is a journey with an uncertain destination requiring commitment, continuity of effort, and collaboration across the campus. Sexual assault is such an impediment to our mission that prevention demands

nothing less. The task force members put forth recommendations that outline a path of prevention that is comprehensive and will be pursued over a multi-year implementation effort.

A university culture that values respect, mutual responsibility, and safety as foundations to academic excellence will be inimical to attitudes perpetuating sexual assault. These values must be emphatically and repeatedly expressed. Consider the comparison of the ubiquity of messaging on campuses nowadays emphasizing sustainability to that addressing the values and commitments supporting sexual assault prevention. I submit that on many campuses, the comparison is telling.

Among the factors that propel culture change are the ubiquity and consistency of messaging in a community concerning its values, and those priorities that will not be compromised. Faculty can join other members of the university in stating in multiple and frequent ways that sexual assault will not be tolerated, that every campus member has a role and a responsibility in prevention, that resources for support and education are readily available, and that these efforts must be sustained until we reach the day in which no students are victimized.

Mandatory-Minimum Sentences

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the 100-1 disparity which provided: 5 grams of crack cocaine carried a mandatory 5 year prison sentence while 500 grams powder cocaine carried the same mandatory minimum 5 year sentence. It rose to 10 years with 50 grams of crack cocaine and 500 grams (or .5 kilograms) of power cocaine.

Finally, in 1994 President Bill Clinton (who later expressed some misgivings about portions of the bill) signed the Violent Crime Control and Law Enforcement Act which provided funding to states adopting “truth in sentencing laws.” The Act also inter alia established mandatory life sentences for persons convicted of a third violent felony. Several Supreme Court cases have provided federal judges more discretion to deviate from the mandatory guideline sentencing, and Congress in 2010 enacted the Fair Sentencing Act which reduced the crack-cocaine 100-1 ratio down to 18-1 and repealed the 5 year mandatory sentence for simple possession of crack cocaine. However, the net effect of the thirty year (or so) war on drugs and its application of mandatory minimum sentences has, unfortunately, led to massive incarceration.

I offer several reasons for the review of and paring back (where appropriate) of legislative enactments and policies requiring mandatory minimum sentences. First, mandatory minimum sentences have removed the discretion of judges to take into consideration, as part of determining the appropriate sentence:

the defendant’s background; the level of culpability and degree of participation; any mitigating circumstances surrounding the crime; or factors unique to the defendant. Mandatory minimum sentences shift judicial discretion over to the prosecutors who are invested with the discretion (largely unreviewable and often arbitrary with little trappings of transparency) to charge outside of the statutory minimum and reward those

Second, mandatory minimum sentences essentially extract guilty pleas as they impose a chilling effect upon the right of the accused to request and demand a trial. Defendants and their attorneys, who believe they have a meritorious defense and prefer putting the prosecution to the task of proving guilt beyond a reasonable doubt, understand the reality and risk of going to trial, getting convicted and then being subject to an enhanced penalty or having a stiff mandatory minimum sentence imposed by a judge whose hands are tied.

Third, there are no accurate data and studies that confirm that mandatory minimum sentences are effective to deter crime and prevent recidivism. For sure, the Federal Government and the States have felt the fiscal costs and financial strain associated with massive incarceration, and admittedly, there is evidence that violent crime has decreased in some jurisdictions over certain periods of time; yet, there are no definitive studies confirming any meaningful correlation between mandatory minimum sen-

tences, deterrence, reduction of crime, and the enhancement of public safety.

Fourth and by far the most compelling reason against mandatory minimum sentences is that it has promoted disparities and has had a discriminatory effect upon African Americans and people of color. The 100 to 1 sentencing ratio for drug defendants under the federal system significantly contributed to the racial disparity. In contrast to Whites who favored snorting (soft) powder cocaine, African American sellers, to increase profits, cooked the cocaine by adding baking soda to stretch it, turning it into a “rock/hard form allowing their customers to use a pipe to smoke it. African Americans defendants, therefore, bore the brunt of the mandatory minimum sentencing 100 to 1 scheme. The data reflected that African Americans who were convicted (of crack) were imprisoned under mandatory minimums while Whites who were convicted (of powder) generally received probation. Many have been perplexed at the unconvincing disparity for two forms of the same drug.

Fifth, mandatory minimum penalties and similar state statutes such as “three strikes and you are out” (on balance), particularly in drug cases, are: overly punitive and unduly harsh; are imposed on low level drug dealers; and often result in unfair and nonsensical results reflecting little relevance to the purpose and intent of punishment. Moreover, there is a mound of examples of persons serv-

ing life sentences for non-violent offenses. Many of these individuals received life sentences as a result of being determined under federal sentencing policies to be “career offenders” because of having been convicted of 2 or more crimes early on in their young adult life.

The good news here in Maryland is that as of October 1, 2017, under the Justice Reinvestment Act enacted by the Maryland General Assembly and signed into law in 2016 by Governor Larry Hogan, there is some relief to those sentenced to mandatory minimum sentences. Approximately 500 persons incarcerated around the state (over 80 percent of them sentenced to mandatory minimum sentence between 2013 and 2014 are African-Americans) will be eligible to seek sentence reductions.

This is a step in the right direction and, hopefully, the criminal justice reform which is taking place in Maryland will encourage other states and the federal system to review mandatory minimum sentences, to reduce massive incarceration [without, of course, sacrificing public safety], and to address racial disparities in sentencing. Finally, in lieu of exacerbating massive incarceration through mandatory minimum sentences, the federal and state correctional institutions should place more emphasis on developing more re-entry programs and on committing more resources to assist returning citizens with making a successful transition back to the community.

Changes to Title IX Guidance

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lic comment period, the proposed regulations received nearly 10,000 comments.²¹ In response to this overwhelming feedback, HEW stated: “Such a broad public reaction is healthy and reflects the fact that we undertook our responsibilities with a commitment to face the difficult and controversial issues inherent in the law.”²² In reviewing the public comments, HEW noted that “much of the discrimination against women in education exists unconsciously and through practices long enshrined in tradition.”²³ Consequently, HEW designed implementing regulations that would require schools to unpack such sex-based biases to work internally to correct them. Specifically, HEW announced that “during the next year those in education begin a searching self-examination to identify any discriminatory policies or practices which may exist within their institutions.”²⁴ Beyond spurring internal change to ensure compliance, the Department sought to preserve federal resources by limiting agency involvement in addressing noncompliance by requiring federal recipients to amend their discriminatory practices in light of the institution’s unique culture, practices, and traditions.²⁵

The Department published the final implementing regulations for Title IX in the Federal Register on June 4, 1975.²⁶ While HEW itself no longer exists, the U.S. Department of Education adopted these implementing regulations into 34 C.F.R. Pt. 106. The regulations included 34 C.F.R. § 106.8, which require recipients to designate a responsible employee to ensure compliance with Title IX and oversee the “prompt and equitable”

grievance process required for students and employees to provide complaints, which must be investigated and resolved by the institution. Several subsequent OCR guidance materials have arisen from this provision to clarify the contours of such a campus-level grievance process that forces schools to self-examine conduct occurring on campus to create a sexually hostile environment impeding access to education for those victimized.

II. Critique of the 2017 Interim Guidance under Title IX

Starting in 1997, OCR issued guidance on Title IX’s prohibition against sexual harassment to improve institutional compliance with this aspect of the federal civil rights requirements as it related to campus-level grievance procedures.²⁷ In 2001, OCR revised this guidance given recent U.S. Supreme Court rulings clarifying civil liability standards from the Department’s administrative enforcement.²⁸ Under the Obama administration, OCR issued the 2011 DCL specifically to ensure federal recipients were addressing sexual violence, which is a sufficiently severe form of sexual harassment even if only a single instance to trigger Title IX’s protections.²⁹ OCR determined this new guidance necessary to simply “explain[] that the requirements of Title IX pertaining to sexual harassment also cover sexual violence.”³⁰ The 2014 Q&A Guidance reconfirmed this ongoing need for clarification by noting that the 2011 DCL “[p]rovides guidance on the unique concerns that arise in sexual violence cases, such as a school’s independent respon-

sibility under Title IX to investigate (apart from any separate criminal investigation by local police) and address sexual violence.”³¹ While civil courts had been addressing sexual violence as a civil rights violation under Title IX for decades,³² some educational institutions had not. Instead, some schools had come to improperly rely upon criminal investigations and proceedings that applied differential statutory definitions and evidentiary standards instead of addressing the issue under Title IX, which creates an independent obligations to investigate and resolve the civil right violation.³³ This should have been clear per the 2001 Revised Guidance, which states in relevant part:

“In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.”

Given that it remained unclear per the practice of schools, OCR issued the 2011 DCL to clarify the definition of sexual violence,³⁴ as a severe form of sexual harassment, and provide instruction on the appropriate evidentiary standard for civil rights violations: a preponderance of the evidence.³⁵ Specifically, OCR noted that recipients that were applying higher

standards were “inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX.”³⁶

Despite the importance of clarifying for educational institutions that the criminal system response does not address civil rights violations under Title IX, the Trump administration has challenged this requirement by rescinding these arguments, as contained in the 2011 DCL and the 2014 Q&A Guidance. Instead, it has replaced such guidance with contradictory stances noted in the 2017 Interim Guidance, which states in relevant part: “The findings of fact and conclusions should be reached by applying either a preponderance of the evidence standard or a clear and convincing evidence standard.”³⁷ While OCR goes on to attempt a justification for this stance,³⁸ the footnote provided only cites one lower court decision that is in no way binding and fails to address the contradiction of this stance with the equity requirement noted as justification for the position taken in the 2011 DCL. This equity requirement is not just contained in guidance, it is actually part of Title IX’s implementing regulations regarding the obligation for recipients to provide a grievance procedure in the first place.³⁹ This standard is then repeatedly cited in all guidance materials, including the 2001 Revised Guidance.⁴⁰

This change in the standard of evidence is hardly the only reform to Title IX proposed by the Trump administration. Other inconsistencies contained in the 2017 Interim Guidance include a one-sided appeal option, which can be provided to accused perpetrators and not complainants.⁴¹ This again

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Changes to Title IX Guidance

seemingly violates the equity requirement at the heart of Title IX. While the 2001 Revised Guidance barely touches on appeals,⁴² because this procedure is not required under Title IX, the 2011 DCL clarified that any proffered appeal process must be provided equitably to both parties.⁴³ The 2014 Q&A guidance also went on to reiterate this requirement along with examples of procedures considered to be best practices for limiting appeal grounds and ensuring a fair process for both parties.⁴⁴

As a final matter, the Department arguably exceeded its scope of authority under Title IX when it required schools to “consider[] the impact of separating a student from her or his education” upon issuing sanctions for perpetrators of sexual misconduct.⁴⁵ Protection of perpetrators is not within the scope of Title IX per the language of the statute, which protects persons who experience sex-based discrimination only.⁴⁶ In other words, Title IX protects the victims of sex discrimination rather than the perpetrators of that precise discrimination. Per long standing case law, this sex discrimination includes instances of sexual harassment and violence, referred to as “sexual misconduct” in the 2017 Interim Guidance.⁴⁷ While Sec. Jackson’s letter suggests there has been significant legal criticism of Obama-era guidance for allegedly adding “new requirements” under Title IX, she seems not to be concerned about the criticisms that she has done the same with her poorly formulated interim guidance.

III. Resisting Title IX Rollback under Trump

While UMB President Perman stated that the university’s ongoing commitment to addressing sexual violence “stand[s] independent of past and present OCR guidance,”⁴⁸ it is important to recognize the civil right battle happening across the board under the Trump administration.⁴⁹ Title IX protections for victims and survivors are being rolled back while the civil right is also being flipped on its head in the 2017 Interim Guidance to protect perpetrators of discrimination, harassment, and violence.⁵⁰ It is important to resist this toxic political climate that makes a mockery of civil rights protections by holding the line and promoting safe campuses for all students by eradicating sexually hostile environments.

UMB has already taken the lead by holding firmly to its values of “civility, diversity, and accountability,”⁵¹ which are furthered through compliance with Title IX. Many other educational institutions are still exploring what the guidance rescission and interim guidance efforts mean for their campus-level grievance procedures, thus UMB standing by its current policies is a model for standing by Title IX protections for survivors.⁵² During this challenging time, institutions seeking to comply can keep protections in place for survivors while navigating the legal minefield created by the Trump administration through reliance on Title IX’s statutory language, relevant case law, and its implementing regulations. This is more advisable than relying on the 2017 Interim Guidance, as legal challenges have already arise and will likely continue to arise.⁵³ In addition to reliance on established legal pre-

cedent, and the 2001 Revised Guidance, educational institutions may look to the American Law Institution and the National Center for Campus Public Safety for more information on best practices to keep campuses safe.

Beyond institution-led initiatives to counter-act the rollback, ongoing campus activism led by students, survivors, and advocates are critically needed. On October 19, 2017, a student- and survivor-led National Vigil occurred outside the U.S. Department of Education to push back against the Department’s efforts to curtail rights of survivors under Title IX.⁵⁴ It is important to remember that these campus-level actions were instrumental in spurring Obama-era federal guidance and enforcement actions.⁵⁵ By uniting with student leaders and advocates on our campus, we can all work together to advance civil rights protections for victims of sexual harassment and violence under Title IX once again. I am proud that UMB is leading the way on institutional-led efforts and hope more faculty with campus-led initiatives at this critical time in our nation’s history.

Endnotes

1. Letter from Dr. Jay A. Perman, UMB President, to the UMB Community (Oct. 16, 2017) (on file with the author).

2. U.S. Dep’t of Educ., OCR, Dear Colleague Letter (2011) [hereinafter “2011 DCL”], available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

3. U.S. Dep’t of Educ., OCR, Questions and Answers on Title IX and Sexual Violence (2014) [hereinafter “2014 Q&A Guidance”], available at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

4. U.S. Dep’t of Educ., OCR, Revised Sexual Harassment Guidance: Harassment of Students by Employees, Other Students, and Third Parties [hereinafter “2001 Revised Guidance”], available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.

5. U.S. Dep’t of Educ., OCR, Q&A on Campus Sexual Misconduct (2017) [hereinafter “2017 Interim Guidance”], available at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>.

6. See generally Part II.

7. See *infra* Part II, Section B.

8. See 20 U.S.C. § 1682.

9. See Hannah R. Leisman, SurvJustice, Why Campuses Handle Sexual Assault Claims: Title IX Implementing Regulation 34 C.F.R. § 106.8, A White Paper (forthcoming) (on file with the author).

10. U.S. DEPT OF JUSTICE (DOJ), TITLE IX LEGAL MANUAL: SYNOPSIS OF PURPOSE OF TITLE IX, LEGISLATIVE HISTORY, AND REGULATIONS (2001), available at <https://www.justice.gov/crt/title-ix>.

11. Pub. L. No. 92 318, 86 Stat. 373 (June 23, 1972).

12. Pres. Richard Nixon, Statement on Signing the Education Amendments of 1972, THE AMERICAN PRESIDENCY PROJECT (June 23, 1972), available at <http://www.presidency.ucsb.edu/ws/?pid=3473>.

13. 20 U.S.C. § 1681(a).

14. DOJ, *supra* note 8.

15. Meritor Sav. Bank v. Vinson, 477 U.S. 57, 64–67 (1989) (internal citation omitted).

16. See Vinson, 477 U.S. at 66-67 (internal citation omitted); see also Jennings v. Univ. of N. Carolina, 444 F.3d 255, 268, 274 n.12 (4th Cir. 2006), reh’g granted, 482 F.3d 686 (2007) (en banc) (decided on other grounds), cert. denied, 552 U.S. 887 (2007).

17. See Franklin v. Gwinnett Cnty. Pub. Schs., 503 U.S. 60, 75 (1992); see also

Gebser v. Lago Vista Independ. Sch. Dist., 524 U.S. 274 (1998); Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629 (1999).

18. In 1979, HEW split into two new departments: the U.S. Department of Education (ED) and the Department of Health and Human Services (DHHS).

19. Sex-Discrimination, 39 Fed. Reg. 22107, 22227 (June 20, 1974); see also Implementing Title IX: The HEW Regulations, 124 U. PENN. L.R. 806, 806 n.6 (1976) [hereinafter “Implementing Title IX”], available at http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4993&context=penn_law_review.

20. *Id.*

21. Implementing Title IX, *supra* note 6 at 807.

22. Statement by Carl W. Weinberger, Sec. of Health, Educ. and Welfare, HEW NEWS (June 3, 1975) at 2 [hereinafter HEW NEWS].

23. HEW News, *supra* note 17, at 2.

24. *Id.*

25. See HEW News, *supra* note 17, at 5-6.

26. 40 Fed. Reg. 24128 § 86.1-86.9 (June 4, 1975).

27. U.S. Dep’t of Educ., OCR, Sexual Harassment Guidance: Harassment of Students by Employees, Other Students, and Third Parties (1997), available at <https://www2.ed.gov/about/offices/list/ocr/docs/sexhar01.html>.

28. See 2001 Revised Guidance at i-iii (noting amendments due to Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629 (1999). Subsequent guidance materials on sexual harassment also arose in 2006 and 2008 respectively. See U.S. Dep’t of Educ., OCR, Dear Colleague Letter (2006), available at <https://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.pdf>; U.S. Dep’t of Educ., OCR, Sexual Harassment: It’s Not Academic (2008), available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>.

29. See *supra* note 15.

30. 2011 DCL at 1.

31. 2014 Guidance at 1.

32. See e.g. Davis., 526 U.S. at 634 (noting the alleged perpetrator of the sexual harassment pleaded guilty to sexual battery against the plaintiff).

33. 2001 Guidance at 21; see also 2011 DCL at 4, 9–10; 2014 Q&A at 26.

34. See 2011 DCL at 1–2 (“Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.”); see also 2014 Q&A at 1.

35. See 2011 DCL at 10–11 (“In addressing complaints filed with OCR under Title IX, OCR reviews a school’s procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints. The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e et seq. Like Title IX, Title VII prohibits discrimination on the basis of sex. OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. . . . OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings. . . . Thus, in order for a school’s grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or

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violence occurred).”); see also 2014 Q&A at 14.

36. See 2011 DCL at 11.

37. 2017 Interim Guidance at 5 (Question 8) (emphasis added).

38. See *id.* at 5 n. 19 (alleging that the “The standard of evidence for evaluating a claim of sexual misconduct should be consistent with the standard the school applies in other student misconduct cases” with citation to one lower court decision within the federal system as applied to a private college).

39. 34 C.F.R. § 106.8(b) (“Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.”).

40. See e.g. 2001 Guidance at 14.

41. 2017 Guidance at 7 (Question 11).

42. The only statement on appeals in the 2001 Guidance is that “[m]any schools also provide an opportunity to appeal the findings or remedy, or both.” *Id.* at 20.

43. 2011 DCL at 12 (“OCR also recommends that schools provide an appeals process. If a school provides for appeal of the findings or remedy, it must do so for both parties.”).

44. See 2014 Q&A at 37-38.

45. 2017 Guidance at 6 (Question 9).

46. See *supra* note 12.

47. See *supra* note 16.

48. See *supra* note 1.

49. See e.g. Moriah Balingit, DeVos rescinds 72 guidance documents outlining rights for students with disabilities, Chicago Tribune (Oct. 21, 2017), available at <http://www.chicagotribune.com/news/nationworld/politics/ct-devos-disabled-students-20171021-story.html>; Laura Jarrett, Sessions says civil rights law doesn’t protect transgender workers, CNN (Oct. 5, 2017), available at <http://www.cnn.com/2017/10/05/politics/jeff-sessions-transgender-title-vii/index.html>; Jessica Huseman & Annie Waldman, Trump Administration Quietly Rolls Back Civil Rights Efforts Across Federal Government (June 15, 2017), available at <https://www.propublica.org/article/trump-administration-rolls-back-civil-rights-efforts-federal-government>;

50. As noted in the preceding paragraph, the 2017 Interim Guidance does seek to extend protections to those found responsible for violating Title IX’s prohibitions against sexual misconduct under Question 9. See *supra*, n. 44.

51. See *supra*, n. 1.

52. *Id.*

53. See, e.g., Equal Means Equal, et al., v. U.S. Dep’t of Educ., et al., No. 1:17-cv-12043-MLW (D. Mass. Oct. 19, 1997), available at <https://www.courthousenews.com/wp-content/uploads/2017/10/devos-ma.pdf>.

54. Andrew Kreighbaum, Supporting Survivors, INSIDE HIGHER EDUCATION (Oct. 20, 2017) <https://www.insidehighered.com/news/2017/10/20/advocates-hold-vigil-education-department-survivors-campus-assaults>; Caitlin Centner, Vigil held at Berea College for survivors of sexual assault, WKYT (Oct. 19, 2017), available at <http://www.wkyt.com/content/news/Vigil-held-at-Berea-College-for-survivors-of-sexual-assault-451748043.html>; Grace Lynn Keller, Sister Vigil for Assault Victims Held at UI, THE DAILY IOWAN (Oct. 17, 2017) http://daily-iowan.com/2017/10/17/_trashed-18/.

55. See e.g. Juliet Eilperin, Biden and Obama rewrite the rulebook on college sexual assaults, Washington Post (July 3, 2016), available at https://www.washingtonpost.com/politics/biden-and-obama-rewrite-the-rulebook-on-college-sexual-assaults/2016/07/03/0773302e-3654-11e6-a254-2b336e293a3c_story.html.

Images: Our People, Our Land, Our Images

The Albin O. Kuhn Library Gallery at UMBC is presenting an exhibition with the above title, January 29 through March 18, Veronica Passalacqua, curator at the C.N. Gorman Museum of the University of California, Davis, as guest curator.

From the circular:
Opportunities to view indigenous peoples through the eyes of indigenous photographers are rare and recent. This photographic exhibition, with 51 historical and contemporary photographs, features the work of 26 indigenous artists from North America, Peru, Iraq, and New Zea-

land. The exhibition is distinctive in its historical reach, including newly discovered 19th-century trailblazers, members of the next generation of emerging photographers, and well established contemporary practitioners.
Our People, Our Land, Our Images has been carefully constructed as a

first person, indigenous account—this curatorial approach is reflected in the choices of photographers and their subjects, the catalogue essayists, and thoughtfully designed exhibition collateral. Reflecting contemporary trends, the photographs vary in style, from straightforward documentary accounts to aestheti-

cally altered images combining overlays and collage. They stand united, however, in how they convey their makers' connections to the land, community, and traditions. Artists' statements, which appear in the catalogue and on the gallery walls, convey the plurality of the indigenous voices and their concerns.



Lee Marmon, Laguna Pueblo (b. 1925), Laguna Eagle Dancers, 1962, Black-and-white print



Aimee Ratana, Ngai Tuhoe/Ngati Haka Patuheuheu/Ngati Raka (b. 1978), Image 1 from the series Pukuwaitia, 2006, C-type print



Erica Lord, Athabaskan/Inupiaq (b. 1978), Untitled (I Tan to Look More Native) from the series Tanning Project, 2006 Inkjet C-print



Will Wilson, Dine:Auto Immune Response #4



Peña Bonita, Apache/Seminole (b.1948), Skywalker, 2006, Color print



Larry McNeil, Tlingit (b. 1955) Yéil, 2006 Digital print



Sama Alshaibi, Iraqi/Palestinian (b. 1973), Olives from Gaza: The Bitter Dream, 2004 Digital print



Shan Goshorn, Cherokee (b. 1957) Pawnee Woman in Field from the series Earth Renewal c. 2002, Hand-tinted, double-exposed, black-and-white photograph



Shelley Niro, Mohawk (b. 1954) GIRLS 2006, Digital print