



NEW JERSEY

Association of State Colleges and Universities

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**NJASCU Testimony Senate Bill No. 779
Requires Institutions of Higher Education to Use Procedures in Response to Allegations
of Sexual Harassment that are Consistent with Certain Federal Guidance and to Report
Incidence of Sexual Assault**

**Senate Higher Education Committee
December 6, 2018**

The New Jersey Association of State Colleges and Universities supports the intent of this legislation, which is to address sexual violence on campus. In light of the new proposed federal regulations on Title IX, that are currently in the public comment period, however, we have a problem with the language in this bill.

This legislation attempts to codify current U.S. Department of Education guidance on Title IX into New Jersey law. The proposed regulations not only narrow the scope of the institution's response to claims of sexual harassment and violence, but also significantly change the procedures to investigate and adjudicate complaints under Title IX. Even though the state has the power to make laws that are more expansive than federal laws, this power is limited only to situations where the state laws do not conflict with the federal mandate. In this case, if the proposed regulations are adopted and implemented, and the bill becomes law, the institutions will be operating under directly conflicting standards and procedures. This is not only unworkable for the institution but also unfair to both the accuser and the accused, who should be able to rely on a clearly articulated process for claims of this nature. Moreover, if the institution uses a standard and a process different from the federal regulations, the institution undoubtedly would be subject to liability and potential legal action from the parties.

We submit that any legislation to address this issue is premature. Until the US Department of Education adopts new regulations, it is unknown how much they will differ from the current Title IX guidance. At that time, we are willing to work with the sponsor to address concerns about any changes to the standard and procedures used in Title IX cases and to ensure that Title IX claims are appropriately handled by our institutions.

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