Dear Mr. Marcus:

I am a Professor of Psychiatry at Harvard Medical School and the author of a book, *Trauma and Recovery*,¹ which is considered a fundamental text for understanding psychological trauma. I am a founder of the Victims of Violence Program in the Department of Psychiatry at Cambridge Health Alliance, a teaching hospital of Harvard Medical School, where for over 30 years I have trained post-graduate students in the mental health disciplines how to promote healing in traumatized people.

On behalf of the 902 undersigned mental health professionals and trauma specialists, I am submitting this joint comment letter in response to the Department of Education’s Notice of Proposed Rulemaking (“NPRM” or “proposed rules”) to express our strong opposition to the Department’s proposal to amend rules implementing Title IX of the Education Amendment Act of 1972 (Title IX) as published in the Federal Register on November 29, 2018.

Based on our experience in treating survivors of sexual assault and harassment, it is our opinion that many of the new proposed rules will cause increased harm to students who report sexual harassment, including sexual assault, to their schools, and will discourage students who have been victimized from coming forward. The net effect of the new proposed rules will be to reinforce the shaming and silencing of victims, which has long prevailed in our society, and to worsen the problem of sex discrimination in education.

Incidents of sexual assault and harassment are extremely common. National epidemiological studies conducted by the Department of Justice² and the CDC³ have repeatedly documented the fact that roughly 20-25% of women have been sexually assaulted, most commonly by men they know. Young women ages 18-25, that is, women of college age, are at the highest risk.⁴

Although under Title IX, schools are required to respond to acts of sexual violence that impact students’ access to education, in practice, many schools utterly fail to protect victims or hold perpetrators accountable. Many victims who dare to complain still encounter dismissive, shaming, or frankly punitive attitudes from authority figures. Many perpetrators can still reasonably expect tolerance, if not frank encouragement, for their behavior from authority figures and from their peers. Understanding this reality, victims of sexual assault and harassment are generally reluctant to come forward. In a recent study of rape on college campuses, only 8% of sexual assaults were reported to police.\(^5\)

Acts of sexual assault and harassment are assertions of raw power, intended to demonstrate total dominance over victims and to remind them to know their place. These acts degrade victims in the eyes of others so that they will be publicly stigmatized and scorned should they dare to complain. People who have been subjected to these assaults experience terror, helplessness and profound humiliation. Sexual assaults, because of their gratuitous cruelty, are among the most harmful of traumatic experiences.\(^6\)

The response of the survivor’s community--family, peers, and especially authority figures--is of immense importance in determining the course of recovery. Survivors who are met with compassion and support usually recover well; such support repairs the survivor’s trust in other people.\(^7\) On the other hand, survivors who are met with indifference or blame from authority figures will predictably suffer increased symptoms of post-traumatic stress and depression, as they will feel abandoned and betrayed by their community.\(^8\)

Authority figures in schools are therefore in a position of great social responsibility. Given the prevalence of sexual assault and harassment and the vulnerability of teenage and college age women, it is incumbent on school authorities to develop pro-active measures of intervention based on an understanding of the social realities of sexual assault and the psychology of people who have been traumatized. These proposed rules seem to disregard both the seriousness of the problem of sexual harassment and assault, and the profound harm to victims that results.

In particular, the following rules would exacerbate psychological harms to victims:

**Rule 106.30:** This proposed rule unfairly limits the supportive measures that schools could offer in order to help survivors in the aftermath of trauma. Following sexual assault and harassment, survivors often suffer from intrusive, overwhelming flashback memories of the event, as well as nightmares, insomnia, and pervasive feelings of terror. Any reminder of the event, such as encountering the perpetrator in a dormitory or classroom, provokes these symptoms, which interfere with the student’s ability to concentrate on her studies and participate in campus life.

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It is incumbent on the school to take active measures to protect the survivor, including measures that may inconvenience the accused perpetrator. It is neither unreasonable nor excessively harsh to ask the accused to make some accommodations to stay away from the survivor, such as changing classes or transferring to a new dormitory. However, there is no justification for a “mutual” no-contact order, which presumes that both parties are equally in need of protection from one another.

Rule 106.45(b)(1)(iv): This rule requires schools to presume at the outset that the accused perpetrator is not responsible. This means in effect the school is required to presume that the complaining victim is lying, reinforcing sexist rape myths, and prejudging the institutional response in favor of the accused perpetrator. In reality, false complaints of sexual assault are exceedingly rare, while false denials and claims of innocence are commonplace.

The presumption of innocence is appropriate in criminal proceedings, where the liberty of the accused is at stake, in order to protect the accused individual against the overweening power of the state. It is not appropriate in matters of educational discipline, where what is at stake is the privilege of the accused to be part of an educational community. It is certainly not appropriate as applied to gender-based violence, where perpetrators currently enjoy what amounts to impunity. This rule would continue to foster impunity for perpetrators. By implementing rules that give undue advantage to perpetrators, schools would humiliate and re-traumatize survivors of sexual assault and harassment and perpetuate sex discrimination.

Rule 106.45(b)(3)(vi-vii): This rule requires students who file formal Title IX complaints to submit to cross-examination in a “live hearing” by the accused student’s “advisor of choice.” For survivors of sexual assault and harassment, this means being subjected to hostile attacks on their credibility and public shaming at a time, following a traumatic event, when they may feel most vulnerable. It also means being forced to relive their traumatic experiences in excruciating detail, a situation almost guaranteed to aggravate their symptoms of post-traumatic stress. For these reasons, a requirement for live cross-examination is likely to cause serious to harm victims who complain and to deter even more victims from coming forward.

Rule 106.45(b)(6): This rule would allow schools to use an “informal resolution process,” such as mediation, for resolving complaints. Survivors of campus sexual assault and harassment, faced with the prospect of an extremely hostile and re-traumatizing process for investigation of formal complaints, are at high risk of being pressured to consent to mediation as a less forbidding option. Mediation, however, is never appropriate in situations of sexual violence and harassment, because it is a method of resolving disputes based on the presumption that both parties are equally responsible for the problem. To apply mediation to complaints of gender-based violence and harassment is to perpetuate sexist prejudices that blame the victim. This option can only result in further humiliation of the victim.

In sum, these proposed rules will perpetuate sex discrimination in schools, by preventing schools from taking reasonable measures to protect and care for survivors of sexual assault, and by adding to the burden of trauma for survivors who have the courage to come forward. Rather than implementing these proposed rules, the Department of Education should redirect its

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attention to enforcement of existing Title IX requirements that schools respond with care and diligence to the problems of campus sexual assault and harassment.

Thank you for the opportunity to submit comments on the NPRM.

Sincerely,

Judith L. Herman, M.D.
Professor of Psychiatry (Part Time)
Harvard Medical School

Joined by,

Abbe Blum, Ph.D., Saybrook University
Abby Adis
Abby Seixas, LMHC
Abigail Love, M.D. MPH, Cambridge Health Alliance
Adam MacDonald, LMSW
Adam Maughan, B.S., University of Tennessee
Adele D’Ari, Ed.D., Washington Falls Psychotherapy
Adina Kleiman, Ph.D., Private Practice
Adriana Reyes
Ainhoa Indurain, LPC, Chicago Children's Advocacy Center
Alan Groveman, Ph.D., Chester Psychological Services, LLC
Albert Everling, M.A.
Alessandro Piselli, Ph.D., Boston College
Alex Pirie, Immigrant Service Providers Group/Health
Alexander Colts, MSW, M.P.H., Cambridge Health Alliance
Alexandra Altman, LICSW
Alexandra Dimant, LCSW
Alexandra R. Kaufman, Psy.D.
Alexandra Zelin, Ph.D.
Alexis D. Brooks, M.D.
Alexis Truslow, LMHC
Alicia M. Flanagan, MSW, LICSW
Alisa Garner, MA
Alisa Greco, LMHC
Alisa Young, M.A., LPC
Alison Curdt, Psy.D.
Alison Segal, Ph.D., Healthy Behaviors of Westchester
Allison Miller, Ph.D.
Allison Shapre, LCMHC, AMHCA
Alysha Warren, MA
Alyson Morse Katzman, Safe Havens Interfaith Partnership Against Domestic Violence
Alyssa Iannuccilli, LMHC
Alyssa LoGrasso, MSW Student
Amanda Cutler, LCSW, M.A.
Amy Blake, LCSW
Amy H. Eden, LICSW
Amy Itzkovitz, LICSW
Amy K. Friedman, Ph.D.
Amy K. Keisling, ACSW, LCSW, BCD
Amy Leach, LCSW, NASW
Amy McCollom, MSW
Amy Present, LMHC
Andrea Carusona, LMHC
Andrea Cole, Ph.D.
Andrea Corn, Psy.D.
Andrea Gordon, M.D., Cambridge Health Alliance
Andrea L. Bross, Ph.D., South Shore Counseling & Psychological Services
Andrea Singer, M.A., The New School for Social Research
Andrea Werner Insoft
Angela Radan, Ph.D., Cambridge Health Alliance
Angie Rush, LCSW
Anita P. Sharma, Political Asylum Immigration Representation (PAIR) Project
Ann Dercole
Ann Marie Madigan, M.D.
Anna Campion, Ph.D.
Anna Kharaz, LMHC
Anna Rabkina, M.D., Cambridge Health Alliance
Anna Stothart, Psy.D, LMHC
Annabel Gill, LCSW, Cambridge Health Alliance
Anne Hernandez, Boston Public Schools
Anne Huhman, MSW
Anne P. DePrince, Ph.D., University of Denver
Anne R. Tavel, Ph.D., Private Practice
Anner Eliot, Ph.D.
Annie Drehkoff, M.S., CCLS, Chicago Children's Advocacy Center
Annie Kawalski, LCSW
Archana Varma, M.D.
Arielle Scoglio, M.P.H., Veterans Health Administration
Ashley Wilkins, LSW, Chicago Children's Advocacy Center
Asli Baykal, Ph.D., LCSW
Associate Professor Carolyn Quadrio, School of Psychiatry, University of New South Wales, Sydney, Australia
Audrey A. Wagner, Ph.D.
Aviva Bock, CCMHC, LMHC
Barbara D'Arthenay, LICSW
Barbara Finn, Ph.D., ABPP, FAGPA, Stanford Dept. of Psychiatry
Barbara Hamm, Psy.D., Harvard Medical School
Barbara J. Saltzstein, MSW, LICSW, Private Practice
Barbara Shapiro, M.D., Psychoanalytic Center of Philadelphia; University of Pennsylvania School of Medicine
Barbara Suter, Ph.D., NYU Postdoctoral Program in Psychoanalysis and Psychotherapy
Barbara Turk, Psy.D.
Barbara W. Burkart, LMHC, Private Practitioner
Bernard Epstein, LCSW
Bernasha Anderson, Ph.D., American University
Beth Carlson, Ph.D., L.P., Augsburg University
Beth Davenport, LICSW
Beth E. Molnar, Sc.D., Northeastern University
Beth Levine, LCSW-C
Beth Marx, LCSW, Boston Medical Center
Beth Rontal, LICSW
Beth Sperber Richie, Ph.D., Trauma Psychologist
Denise Krouse, MC, LMHC, MDFT
Denise Lensky, Ph.D., Private Practice
Deslonde Parkinson, LMHC
Diane Girdwroy Caspe, M.S., LCSW
Diane W. Johnson, LCMHC, Psychotherapist, LCMHC
Dianne Turenne, LCMHC
Dina del Amo, Psy.D.
Diya Kallivayalil, Ph.D.
Donald R. Watson II, M.A. MFT, Community Counseling Centers of Chicago
Donna Hawx, Ph.D., Association for Women in Psychology
Donna M. Van Kirk, Ed.D., Psychologist, Psychologists of Northwest Arkansas
Donna Newman-Bluestein, BC-DMT, LMHC
Dorothy Kresz, MBA, LCSW, WCSPP
Dr. Evelyn Goodman
Dr. Jessica Tartaro
Dr. Joyce Maguire Pavao, Pavao Consulting and Coaching
Dr. Lisa Roth
Dr. Nuri A. Hammett
Dr. Patricia L. Parnernow, Psychologist
Dr. Ruth M. Lull, APA, MPA
Dr. Susan Kavaler-Adler, Executive Director of the Object Relations Institute
Dwight Dugan, LCSW
Ed Semansky, J.D., M.A.
Eden Brenner
Edward Yeats, Ph.D.
Eileen Chodos
Eileen M. Dunn, PsyD, Washington Baltimore Center for Psychoanalysis, Private Practice
Eileen M. Russell, Ph.D., AEDP Institute
Elaine Rodino, Ph.D., Private Practice
Eleanor B. Krolian, LCSW, Private Practice
Eleanor Roffman, Ed.D., Lesley University
Eleanor Vohryzek, LMFT
Eline Potoski, LCSW, Arbor Counseling LLC
Eliot Gelwan, M.D., Emerson Behavioral Health
Elisa Elkin-Cleary, LICSW
Elizabeth Ellis Waingrow, MSW, LICSW, NASW
Elisheva Dan, Ph.D., Mass. Institute for Psychoanalysis
Elissa Levine, LCSW-C, LICSW
Elissa Q. White
Elizabeth Buckley, LICSW
Elizabeth Camlin, LCSWC
Elizabeth Cohen, Ph.D.
Elizabeth Cohn Stuntz, LCSW
Elizabeth de Bethune
Elizabeth G. Brenner, LICSW, Therapy Training Boston
Elizabeth Glaeser
Elizabeth Grace Burkhart, LICSW, Private Practice
Elizabeth L. Bennett, Ed.D., Private Practice
Elizabeth L. Vitale, MSN, Psy.D., Psychotherapy Partners, LLC
Elizabeth M. Stern, LICSW, Private Practice
Elizabeth Malaret
Elizabeth Mooers, LICSW
Elizabeth Parsons, Psy.D., Dept. of Psychiatry, Harvard Medical School
Elizabeth Philbert, RN, Cambridge Health Alliance
Elizabeth Rider, M.Ed., Vanderbilt University
Elizabeth Robinette Wade
Elizabeth Southwell, BA
Elizabeth Stahler, LICSW, College Counseling
Elizabeth Zoob, LICSW, Women’s Mental Health Collective
Ella Pcsok, Ph.D.
Ellen Goldsmith, LICSW
Ellen Nasper, Ph.D., Yale University School of Medicine
Ellen Rome, LICSW
Ellen Somberg, Psy.D.
Ellen V. Garbuny, LSW
Elliot Spengler, M.A., University of Tennessee, Knoxville
Emily Aber, LCSW
Emily K. Fitton, LCSW
Emily Schatzow, M.Ed.
Emma Chaitin
Erica S. Nazzaro, LICSW
Erika L. Francis-Ranier, Ph.D.
Erin Hetzel, LICSW
Erin Ramsey, LCSW, Center for Violence Prevention and Recovery at Beth Israel Deaconess Medical Center
Estelle B. Freedman, Stanford University
Estelle Disch, Ph.D., Boston Associates to Stop Treatment Abuse and University of Massachusetts Boston
Esther Rothblum, Ph.D., San Diego State University
Eugenia Monroy-Advis LCSW
Evan Imber-Black, Ph.D., American Family Therapy Academy
Eve K. Lesses, LICSW
Eve N. Bogdanove, MSW, LICSW
Evelyn Gladu, LMHC
Faye Fiore, LMFT
Federica Latta, Ph.D.
Fernando Gonzalez III, Chicago Children's Advocacy Center
Frances Rekrut, Ph.D.
Francine G. Rosenfeld, MSW
Francine Ronis, LPC
Gabel Viera, LCSW
Gabrielle Cavallacci, LICSW
Gail B. Shulman, LMHC, Somerville/Cambridge Outpatient Clinic (Riverside Community Care)
Gail Charpentier, LMHC, Gail Charpentier, LMHC, Psychotherapy
Gail Fries, MSW, LICSW
Geraldine M. Gamble, RN, MSN, Veterans Administration, Retired
Ghislain Boulanger, Ph.D.
Gianine D. Rosenblum, Ph.D.
Gilberto Gamba, Cambridge Health Alliance
Ginger Ryan, LICSW
Ginna Donovan, Ph.D., Women's Mental Health Collective
Gladys Valdez, Ph.D.
Gloria Acosta, LICSW, Cambridge Health Alliance
Goldie Eder, LICSW, BCD, Harvard Medical School and Smith College School for Social Work
Grace Chem, Ph.D., LMFT
Greta Jankauskaite, M.A.
Greta Spoering, LICSW, Emerson College, Healing & Advocacy Collective
Gretchen Kurdziel Adams, M.A., Cambridge Health Alliance
Gretchen Pauley, LICSW
Hannah Miller, LICSW, Cambridge Health Alliance
Harlene Goldschmidt, Ph.D.
Helen Youngju Kim, M.A., UC Berkeley Counseling & Psychological Services
Helene Lieb, Ed.D., American Psychological Association
Hemda Arad, Ph.D, IARPP Member
Hilary Sherry, The Menninger Clinic
Hillary Halpern, M.S., N.C. State University Counseling Center
Holly Aldrich, LICSW
Holly Clause, LCMHC, Private Practice
Holly Friedman Housman, Cambridge Health Alliance
Hope Williams, LCSW, American Indian Health Service of Chicago
Howard H. Covitz, Ph.D., ABPP, Private Practice
Ina Harizanova, Psy. D.
Inge S. Hoffmann, Department of Psychiatry, Cambridge Hospital, Harvard University Medical School
Ingrid Avison, MSW Candidate, The Center for Hope and Healing and Salem State University
Irna Gadd, LCSW
Isabel Peixoto, LCSW
Isabelle Lorans, LCSW, SEP
J. Patricia Thatcher, MSW, LICSW, The LifeWorks Center, Cambridge, Ma
J. Wesley Boyd, M.D., Ph.D., Cambridge Health Alliance/Harvard Medical School Center for Bioethics
Jack D. Haden, LCSW
Jack Nowicki, LCSW, Jack Nowicki's Collaborative Counseling, Consulting, & Training
Jacob A. Palm, Ph.D.
Jacquelin Alden Baker Ellery, Mental Health Therapist in Private Practice
Jacqueline Botwinick, LCSW
Jaime Francisco Matorras, LMHC
Jaine Darwin, Psy.D., ABPP, Harvard Medical School
Jaleesa Pirtle, Chicago Children's Advocacy Center
James A. Chu, Harvard Medical School
James Stewart Lang, M.D., Cambridge Health Alliance
Jamie Steele, LMFT
Jane M Brodwyn, Psy.D.
Jane MacDonald, Ph.D.
Jane Tucker, Ph.D., New York University Postdoctoral Program in Psychotherapy and Psychoanalysis
Jane W. Bloomgarden, Ph.D., WCSPP
Janet Russo, LICSW, LADC-I
Janet S. Mazziotti, LICSW
Janette Dingee
Janice Furlong, MSW, LICSW, Boston University School of Social Work
Janice Muhr, Ph.D., Psychotherapy Action Network
Janice Waters, M.S., LCPC, Chicago Children's Advocacy Center
Javier Andres Vargas
Jayme A. Shorin, LICSW, Victims of Violence Program, Cambridge Health Alliance
Jean Esther Williams, MSW
Jean Walbridge, ACSW, LCSW
Jeanie Barnard, LCSW
Jeanne Marecek, Ph.D.
Jeff Ruser, M.A.
Jen Johnson, CNM
Jenna Caggiano, LMHC, R-DMT
Jenna Gilmore, M.A., University of Tennessee
Jennifer Bakalar, Ph.D.
Jennifer Brady, University of Maryland, College Park
Jennifer Clemons, LCSW, LCAS
Jennifer Heneberry, LICSW
Jennifer Hoult, J.D.
Jennifer J. Freyd, Ph.D., Professor of Psychology, U. of Oregon
Jennifer M. Gomez, Ph.D., Wayne State University
Jennifer Markell, LICSW, Private Practice
Jennifer O'Keeffe, Ph.D.
Jennifer Tattersall, LCSW
Jenny Abrams, M.D.
Jenny Berz, Ph.D.
Jenny Otero, The Center for Hope and Healing, Inc.
Jerald Kay, M.D.
Jessica Gold, M.D., M.S., Washington University in St Louis
Jessica Hammann
Jessica Lutkenhouse, Psy.D.
Jessica Roberto
Jessica Salgado, MSW
Jessica Slatus, LCSW
Jessie Weisstein, LCSW
Jill Cermele, Drew University
Jill Gentile, Ph.D., NYU Postdoctoral Program in Psychotherapy and Psychoanalysis
Jill Jackson, LICSW, Private Practice
Jill Pedrick, LICSW, Pedrick Counseling, and Spaulding Rehab Hospital
Jill Salberg, Ph.D., ABPP, NYU Postdoctoral Program in Psychotherapy and Psychoanalysis
Jo Ellen Boskind, LICSW, Private Practice
Jo Oppenheimer, Psychologist, American Psychologist Association
Jo-Anne Bachorowsk, Ph.D., Vanderbilt University
Jo-Anne Ochalla, LICSW, Center for Violence Prevention and Recovery
Joan Copperman, Ph.D.
Joan Fiorello, Ph.D.
Joan M. Cook, Ph.D., Yale University
Joan O'Connell, LICSW
Joan Saperstan
Joan Wolkin, Ph.D.
Joanne Simiola
Jody Porter, LCSW, Westchester Chapter, NYSSCSW
John C. House, Ph.D.
John Drollinger
John Heil, Doct. Arts, Psychology, Psychological Health Roanoke
Jon Reeves, Ph.D., Boston University
Jordan Thibodeaux, Ph.D., Arkansas Tech University
Joseph Berlin, LCSW, Cambridge Health Alliance
Josephine A. Bottone, LICSW
Joset Navach Munro, LICSW, BCD, NESTTD, NASW, ISTSS
Josue Fernandez, M.D., Cambridge Health Alliance
Joyce Heyman, LPC
Joyce Slochower, Ph.D., NYU Post Doctoral Program
Judith A. Tribbett, M.A.
Judith Beavan, MSW
Judith C. Powell, Ph.D.
Judith C. Simon, MSW., Ph.D.
Judith D. Ferlise, M.A., LPC, Private Practice
Judith Flaxman, Ph.D., Director of Psychological Services, Center for Multimodal Treatment
Judith Goodman, LICSW, AEDP
Judith Jordan, American Psychological Association
Judith Silvan, LICSW, LCSW, Certified AEDP Therapist & Supervisor
Judy Hu, LMHC
Julia Blencowe, MSW
Julia Broussard, MSW, LCSW
Julia Matison, LCSW, Chicago Children's Advocacy Center
Julia Rothenberg
Julia Strehlow, MSW, LCSW, Chicago Children's Advocacy Center
Julian C. Ernst, LCSW, Cambridge Health Alliance
Julianne Bloch
Julianne Gaut, LCSW
Julie Goschalk, LICSW
Julie Harmon, Ph.D.
Julie Heim Jackson, Ph.D., Private Practice
Julie Leavitt, D.Min., Lesley University
June Siegel, MSW, LCSW, Private Practice
Kara Swedlow, Ph.D., Psychoanalytic Institute of Northern California
Karen Adler, M.D.
Karen Pando-Mars
Karen Pierce, M.D.
Karen Rosica, Psy.D., Faculty University of Colorado Health Sciences
Karen Tompkins
Karen W. Saakvitne, Ph.D., Smith School for Social Work
Karen Zilberstein, LICSW
Karol Maybury, Ph.D., University of Maine, Farmington
Kate Glazer, LCSW, Institute for Psychoanalytic Research and Training
Kate Halliday, LCSW
Kate Lingren, LSW, Boston College School of Social Work, Private Practice
Kate Scherzo, Ph.D.
Kate Shirley, M.A.
Kate Washton, LCSW, Westchester Center for the Study of Psychoanalysis and Psychotherapy
Kate Zona, Ph.D., Cambridge Health Alliance
Kate Zuby, M.S., UC Berkeley Counseling & Psychological Services
Katharine Esty, Ph.D., LICSW
Kathe Miller, M.D., Harvard Medical School
Katherine A. Lenger, M.A.
Katherine Campbell, LCSW
Katherine Jones, Ph.D.
Katherine Shraga, Psy.D.
Kathleen Bedford
Kathleen DeZenzo, LICSW
Kathleen J. Coutu, MSW, LICSW
Kathleen O'Donnell, Ph.D., Hines Veterans Hospital
Kathleen U. Evans, MSN, APRN,PMH/CNS/BC, Johns Hopkins Bayview Medical Center, Community Psychiatry
Kathryn Ackerman, M.D., M.P.H., Boston Children's Hospital, Harvard Medical School
Kathryn Becker-Blease, Oregon State University
Kathryn Gambach, LCSW
Kathryn White, Ph.D.
Kathy Calderon, LCPC, C4
Katie Gentile, John Jay College of Criminal Justice
Katy Cording, Psy.D.
Katy Dirks, M.Ed.
Katy Irving, LCSW, Chicago Children's Advocacy Center
Katya Zinn, It's On Us Lesley
Kayla DeCant, M.Ed
Kayla Weiner, Ph.D.
Kelliann Burke
Kelly Champion, Cadeus Behavioral Health
Kelly Hurst, Ph.D.
Kelly Perry
Kelly Wells, LCSW-C
Kendahl M. Shortway, Psy.D., Kean University
Kenneth Feiner
Kerry A. Sheehan
Kerry Rollins, MSW
Kevin Krumvieda, Ph.D.
Kevin M. Fry, M.A., The University of Tennessee, Knoxville
Kevin Montgomery, Graduate Student
Kijai Corbett, MSW, Cambridge Health Alliance
Kim Fightmaster, MSCP
Kim Neal J.D., MSW
Kim Novak, LCSW
Kimberly Kilfoyle, M.D., Cambridge Health Alliance
Kimberly M. McClung, RN, Cambridge Health Alliance
Kimberly Welch, LMHC
Kirsten Carraway, Ph.D.
Kirsten Meisinger, M.D., MHCDS, Cambridge Health Alliance
Kristin B. Powell, Ph.D., New Peaks Neuropsychology
Kristin Hoffner, Arizona State University
Kristina L. Vadas, MSW, LCSW
Kristine Panik, M.D., University of California, Berkeley
Kristy M. Keefe, Psy.D., Western Illinois University
Kurt M. Hanus, M.A.Ed., LCPC
Kylie O'Rourke, Pathways for Change
Lara Jirmanus, M.D., MPH, Cambridge Health Alliance and Harvard FXB Center for Health and Human Rights
Latifat Cabirou, M.S.
Laura Cotton, LICSW, Cambridge Health Alliance
Laura L. Adery, M.A., Vanderbilt University
Laura Matlack, Psy.D.
Laura S. Brown, Ph.D.
Laure Kowalski
Laurel Xu, Cambridge Health Alliance
Lauren Baker
Lauren Fougere
Lauren Hamrick, M.A.
Lauren Millerd, LCSW
Lawrence D. Blum, M.D., Clinical Faculty, University of Pennsylvania
Lawrence G. Rosenberg, Ph.D., Cambridge Health Alliance/ Harvard Medical School
Leda Adams, LMHC
Leena Kulkarni, HSPH
Leigh Howard, LCSW
Lénie Torregrossa, M.S., Vanderbilt University
Leslie Baker, LICSW
Leticia St. Remy, Parenting Journey
Leticia Y. Flores, Ph.D., University of Tennessee
Lillian Fox MSW, LICSW, National Association of Social Workers-Mass. Chapter
Lin Reicher, Ed.D., Clinical Psychologist, Private Practice
Linda A Standle, LMHC
Linda Dolph, ATR, LMHC
Linda Hershman, LMFT, Couples and Family Wellness Center
Linda L. Michaels, Psy.D., MBA, Psychotherapy Action Network
Linda M. Hill, M.S., LMCSW
Linda M. Ludwig, Ph.D.
Linda McEwen, M.A.
Linda Monahan, Ph.D.
Linda Rakoff, LICSW
Linda Story Stephenson, LICSW, Fenway Health
Linda Ware, LICSW
Lindsey Sanborn, Harvard Graduate School of Education
Linwood Small, Ph.D., Columbia College of South Carolina
Lior Givon, Cambridge Health Alliance
Lisa Alber, LICSW
Lisa Barondes, MSW
Lisa Elswit, MSSW, LCSW
Lisa Etzel, M.A.
Lisa Fusaro, Psy.D.
Lisa Makstein, LCSW-C, LICSW
Lisa Martin, LCSW-R, CASAC
Lisa Najavits, Ph.D.
Lisa Ness, Psy.D.
Lisa Sussman, Ph.D.
Liz Mongillo-Herman, Ph.D., Women's Center for Psychotherapy
Lizbeth Roemer, Ph.D.
Lizbeth K. Garcia-Bravo, Ph.D.
Lizzette I Potthoff, LCSW, LCAS
Lori Allen, Ph.D., Oregon Mind Body Institute
Lori Miller-Freitas, LICSW, NASW
Lori Reineke, Ph.D.
Lotte Smith-Hansen, Ph.D., Clinical Psychologist
Louise D Bickman, Ph.D., ABPP
Louise Newman, M.D., University of Melbourne
Luanne Grossman, Psy.D., Massachusetts Institute for Psychoanalysis
Luisa Ehrich, LCSW
Lynn Crook, M.Ed., Investigative journalist
Lynn Groff Loomis, M.Ed., LPC
Lynn Passy, Ph.D., NYU Postdoctoral Program in Psychoanalysis and Psychotherapy
Lynne C. Bishop, LMHC
Lynne Layton, Ph.D., Harvard Medical School
Lynne M. Gaby, M.D., George Washington University School of Medicine, Department of Psychiatry
Magali Flores, Harvard T.H. Chan School of Public Health
Maggie Jarmolowski, LICSW
Mala Chin
Mana Kheang, The Center for Hope and Healing
Marcia Taylor, M.S.Ed., MSW
Margaret Barris, LCSW-C, Barris Counseling
Margaret M. Spier, Ph.D.
Marge Coffey, MSW
Margit Winckler, Ph.D.
Marguerite Hamel-Nardozzi, LICSW
Maria Minkova
Mariam Rahmani
Marianne K. Fougere
Marie Weinstein, Ph.D.
Marilyn Hajer, LICSW
Marilyn Krantz LCSWR, NYS Society of Clinical Social Workers
Marilyn Marks, LICSW
Marilyn Unger-Riepe, LICSW
Marion B. Houghton, Ed.S., LMFT, Center for Psychotherapy and Psychoanalysis of NJ
Marisa L. Whitley, M.A., Department of Psychology, University of Tennessee
Maritza Cristina Pachano, Parenting Journey
Marjorie A Bosk, Ph.D., Clinical Child Psychologist
Marjorie Perkins, M.A.
Mark D. Norton, LICSW
Mark Finn, Ph.D.
Marla Somova, Ph.D.
Marla Zipin, Ph. D.
Marla Zucker, Ph.D., Boston University
Marlena E. Rupp, Psy.D.
Marlene Heald, ACSW, LCSW
Marriah C. Kalil, M.S., LMFT
Marsha Frankel, LICSW
Marsha Heiman, Ph.D.
Marsha Morris, Ph.D.
Marshall S. Harth, Ph.D., Ramapo College of New Jersey
Marta Bobinski, The Center for Hope and Healing Inc.
Martha Mendes, CSW, CASUDC
Martha Temple, Psy.D., Division 39 of the APA
Martin H. Williams, Ph.D., Williams Forensic Mental Health Services
Martita Lopez, Ph.D., Licensed Clinical Psychologist PLLC
Mary A. Waterstreet, Ph.D.
Mary Ann C. Holtz, LMHC
Mary C. Burke, Ph.D., Carlow University
Mary Calabrese
Mary Eldridge, MSW, CAPSW, CA
Mary Mahoney-Smith, Cambridge Health Alliance
Mary R. Harvey, Ph.D., Violence Transformed, Public Health Advocacy Institute at Northeastern University School of Law, Victims of Violence Program, The Cambridge Health Alliance, Department of Psychiatry, Harvard Medical School
Mary Valmas, Ph.D., Department of Psychiatry, Harvard Medical School
Maryann Parrott, LCMHC, LMFT, CAS, M.P. Counseling • Psychotherapy
Maryrose C. Coiner, Ph.D.
Matt Cerne, LMHC, LRC, M.Ed., MBA, Emerson Hospital
Maureen Clancy
Maureen J. Hudak, Psy.D., APA, NJPA, ISSTD
Maureen T. Kaye, MFT
Phyllis L. Sloate Ph.D., FIPA, BCPsa
Priscilla House, LCSW
Prium Deshmukh, M.D., Cambridge Health Alliance
Professor Nicola Gavey, University of Auckland
Rachel B. Singer, LCSW-C, The Mindful Heart LLC
Rachel Carretta, M.A., University of Tennessee
Rachel Dash, MSW, LICSW
Rachel Hathaway, M.D., Harvard Medical School, Cambridge Health Alliance
Rachel Isaacson, M.P.H.
Rachel Maskin, University of Tennessee, Knoxville
Rachel Vogel, M.D., Cambridge Health Alliance
Rachel Woehr, Chicago Children's Advocacy Center
Rachel Z Ritvo M.D.
Ramie Lipelis, LICSW, Private Practice
Rana Gordon, Ph.D.
Randi Taylor, Ph.D.
Raquel Carrera, LCPC, NCC
Rashika J. Rentie, Ph.D.
Raul Martinez, Ph.D.
Rebecca E. Rosenblum, Private Practice, Boston Area Trauma Recovery Network (TRN)
Rebecca Goldberg, LCSW
Rebecca L. Schacht, Ph.D., University of Maryland, Baltimore County
Rebecca Rogers, M.D., Cambridge Health Alliance
Rebekah Rollston, M.D., M.P.H., Cambridge Health Alliance
Renana Yanai-Anter, LICSW
Renee Cammarata Hamilton, MSW, MPA, Cambridge Health Alliance, Department of Community Health Improvement
Renee Mikorski, M.S., Psychologist
Rev. Jennifer L. Paty, Amy Blake LCSW, Imago Maine and C4 Couples
Rev. Jory Agate, M.Div., LMHC
Revital Silver
Rhiannon Reaves, LCPC, Chicago Children's Advocacy Center
Richa Gawande, Ph.D., Center for Mindfulness and Compassion, Cambridge Health Alliance
Richard B. Pazol, Psy.D.
Richard J. Ross, M.D., Ph.D., Professor of Psychiatry at the Perelman School of Medicine
Richard M. Waugaman, M.D., Georgetown University School of Medicine
Richard Maisel, Ph.D.
Rina Bernardez, MSW, Cambridge Health Alliance
Rob Drinkwater, Ph.D., CHA, Harvard Medical School
Robert B. Staples, Psy.D.
Robert E. Smith, LPN. MM
Robert Fox, Job Stress Solutions
Robert F. Marlin, M.D., Ph.D., M.P.H., Harvard Medical School, Cambridge Health Alliance
Robert R Gerlits, MSW
Roberta Rachel Omin, LCSW
Robin C. Hollister, Psy.D., Private Practice
Robin G. Freedman, M.A., LPC, R.G. Freedman Counseling Serviceslease Select
Robin Tracy, CMHC
Robyn Katz Adelman, M.A. LMHC
Rochelle Sokoll, MSW, LICSW
Romell Washington, LCSW, Crime Victims Treatment Center-NYC
Ronald Molin, Ph.D. Licensed Psychologist
Rosa Maria Rigol, Ph.D.
Rosalie Lipfert, Smith College
Rose Milano, LCSW, American Indian Health Service of Chicago
Rosie McMahan, M. Ed., ACS, Optimistic Options
Ruth Fallenbaum, Ph.D.
Sabrina Herman, LICSW
Sacha Emerson, LICSW
Sam Lipschultz, LCSW, Cambridge Health Alliance
Samantha Sanderson Brown, Psy.D.
Samuel B. Rogers, Ph.D., Psychological Health - Roanoke
Sandra Dixon, Psy.D.
Sandra Dorros, LICSW
Sandra Katz, LICSW
Sandra M. DeJong, M.D.
Sandra Miller, RN, LCSW, LMFT
Sandra Shapiro, Ph.D., National Institute for the Psychotherapies, NYC., Retired
Sarah Banks Freilich, Ph.D.
Sarah Canale, M.D., Cambridge Health Alliance
Sarah Nunez, LCSW, M.S.
Sarah Piontkowski, Ph.D.
Sarah R. Lowe, Ph.D.
Sarah Roos, M.A., Chicago Children's Advocacy Center
Sarah Swetberg, M.Ed, FNP-BC
Sariya Idriss, MSW, Cambridge Health Alliance and Boston University
Scott M. Banford, LCSW
Scott Pytluk, Ph.D., ABPP
Sean Daughtry
Sean J. McGlew, Psy.D., L.P., Cambridge Health Alliance
Seana Scopa, RN, Cambridge Health Alliance
Sebastian Mitchell Barr, Ph.D., Cambridge Health Alliance, Harvard Medical School
Seth Grossman, Psy.D.
Shana Perrucci, Ph.D.
Shannon R. Gamble, LMHC
Shari Yacouby
Sharon C. Broder
Sharon C. Wilsnack, Ph.D., University of North Dakota School of Medicine & Health Sciences
Sharon Chirban, Ph.D., Harvard Medical School, Boston Children’s Hospital
Sharon Risch, Ph.D.
Sharon Schwartz, LICSW, EMDRIA Certified Consultant
Sharon Smith
Sheetal Patel, Ph.D.
Sheila DeMelle, LICSW, Private Practice
Shelby Ortega, Ph.D.
Shelley Hartz, MSN, CS
Shelley Rattet, Ph.D., Brookline Community Mental Health Center
Sheri Gold, LCSW
Sheryl Knopf, LICSW
Shin Shin Tang, Ph.D., Oregon Mind Body Institute
Shirley Tung, LCSW
Sidney Miller, LCSW, Ph.D.
Skye Haberman
Smita Chirayath, RN
Sohee Park, Ph.D., Vanderbilt University
Soledad Vera, Ph.D.
Sondra Malling, LCPC, BC-DMT, Mt. Sinai Hospital
Sonja Linn, Ph.D.
Sophie Glikson Cahen
Stefanie Krantz, J.D., CHC
Stephani Morgan, LMSW
Stephanie Baird, EMDR Trauma Psychotherapist
Stephanie Cazeau, The Center for Hope and Healing
Stephanie Kors, M.A., University of Tennessee
Stephanie Lechich, M.A., APA
Stephanie M. Slye, Psy.D.
Stephanie Randazzo, PMHNP-BC
Stephen Frantz, PA-C, Cambridge Health Alliance
Stephen Kerzner, M.D.
Stephen Portuges, Ph.D., Journal of the American Psychoanalytic Association
Stephen Slaten, Ph.D.
Stephen Soldz, Ph.D., Boston Graduate School of Psychoanalysis
Stephen W. Dolat, Cambridge Health Alliance
Steve Lindberg, Cosmo Specialty Fibers
Steve Milan, LCSW
Steven D. Hollon, Ph.D., Vanderbilt University
Sue Grand, Ph.D., NYU
Sue Schmitz, LMHC, ATR, Lahey Health Behavioral Services
Sue Snyder Pederson, LCSW SEP
Sue Soler, LCSW-C
Sujatha Subramanian, Ph.D., IPTAR
Summer Jackson, LCSW, UC Berkeley
Susan Aeschbach, LICSW, National Association of Social Workers
Susan Blank, LPC, NCC
Susan Broner, LICSW
Susan Deane-Miller
Susan E Sprung, MSW, LICSW
Susan H Gere, Lesley University
Susan Hale Zeichner, Psy.D.
Susan Jocelyn, Ph.D.
Susan L. Perry, LICSW
Susan Morrissey MSN RN, Cambridge Health Alliance
Susan O’Doherty, Ph.D.
Susan Perkins, Ph.D.
Susan Pollock, LADC II
Susan Ryan, Psy.D.
Susan Schwartz, Psy.D.
Susan White
Suzan Wolpow, LMHC, LRC
Suzanne Burger, Psy.D.
Suzanne Eagan Beverly, LMHC, BC-DMT, Psychotherapist
Suzanne McKenna, Ph.D.
Suzanne S. Borstein, Ph.D.
Sydney Thorn, LICSW
T.Furness-Ullrich, Psy.D.
T.G. Dodson
Talya Rabina, Psy.D.
Tamar Naor, LMHC, Private Practice
Tamara Pincus, LICSW, Tamara Pincus & Associates