



## Transcript of Title IX Public Hearing Notice of Language Assistance

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U.S. DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

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PUBLIC HEARING ON TITLE IX

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TUESDAY  
JUNE 8, 2021

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Virtual Public Hearing on Title IX of the  
Education Amendments of 1972, at 9:00 a.m. EDT.

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P-R-O-C-E-E-D-I-N-G-S

(9:01 a.m.)

SUZANNE GOLDBERG: Welcome. I am Suzanne Goldberg, Acting Assistant Secretary for Civil Rights in the Department of Education. I am so pleased to welcome you to this virtual public hearing on Title IX of the Education Amendments of 1972.

The Office for Civil Rights is hosting this hearing to hear from you: students, educators, and other members of the public about your experiences, insights, and expertise on Title IX, which prohibits sex discrimination in education programs and activities that receive federal financial assistance. I also want to thank all of you who have submitted written comments and all of you who will be sending in your written comments by the end of this hearing week.

As you may know, our mission in the Office for Civil Rights is to ensure equal access to education and to promote educational

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excellence through vigorous enforcement of civil rights.

We do this by sharing information with the public; by providing guidance for schools and educators; enforcing civil rights laws that prohibit discrimination based on race, color, national origin, sex, age, and disability; and with the civil rights data collection, the CRDC, an extraordinary national data collection on civil rights and access to opportunity in our nation's pre-K through 12th grade public schools. Please see OCR's website for more on the CRDC, on how to file a discrimination complaint, and many resources for you.

This hearing is part of our work in fulfilling two of President Biden's executive orders: on guaranteeing an educational environment free from discrimination on the basis of sex, including sexual orientation and gender identity, and on preventing and combating discrimination on the basis of gender identity or sexual orientation.

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This hearing is also central to our commitment in the Department of Education to be informed by students, educators, and others with interest and expertise in Title IX and the work we do. The comments we receive will help us determine what changes to the Title IX regulations and other actions may be necessary to fulfill the executive orders and OCR's mission.

We have three main topics. First is on steps the Department of Education can take to ensure that schools are providing students with educational environments free from sex discrimination in the form of sexual harassment, which encompasses sexual assault and other forms of sexual violence. This includes ensuring that schools are providing appropriate support for students who have experienced sexual violence.

Second, and related, is on how the Department can continue to ensure that schools provide for the fair, prompt, and equitable resolution of reports of sexual harassment and other sex discrimination cognizant of the

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sensitive issues that are often involved.

Third, on the Department's role in addressing discrimination based on sexual orientation and gender identity. These are all critically important as sex discrimination in all forms can disrupt and derail students' opportunities to learn, participate, and thrive in and outside of the classroom. In this hearing, and in all our efforts, we are eager to hear and learn from your diverse experiences, expertise, and insight.

A moment on logistics. Each person making a live comment will have up to three minutes. If you registered, please check your registration email for details. If you have tech difficulties, write to [special.events@ed.gov](mailto:special.events@ed.gov). We have American Sign Language interpretation throughout the hearing. Please also see the hearing webpage for closed captioning instructions and for a link to submit a written comment.

In closing my remarks and in opening

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this hearing, I thank you for your interest and participation in this first-ever virtual public hearing on Title IX. On behalf of all of us in the Department of Education, I am grateful for your commitment to the essential and profoundly important work of ensuring equal educational opportunities for all of our nation's students. Thank you for being here.

MODERATOR: Our first commenter will be Jesse B. followed by Abigail C. Jesse, please unmute your mic.

JESSEE B.: Thank you. Here I am. My name is Jesse. I serve as a Title IX coordinator. My comments today will be primarily as a practitioner or someone who has facilitated and coordinated a number of investigations under the previous administration and the current administration.

My comments that I will share today offer an affirmation, criticism, request for flexibility, and request for modification. An affirmation -- I want to affirm the affirmation

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of the assumption of non-responsibility and reviewing the directly-related evidence by the complainant/respondent. These are two steps that have moved the process along well.

My criticism is around the live hearings. For some participants the live hearing is more anxiety producing than valuable for new information. Of the live hearings that I've conducted, very few have yielded relevant or new information that cannot be otherwise obtained through a single interview or an email communication with the participant or the investigator.

Many times, the questions that are asked by advisors are often leading. There are too many questions wrapped into one question, a statement that actually isn't a question, or simply irrelevant. Lastly, we do not train decision-makers to criticize a motion or physical responses during the live hearing.

I'd like to request more flexibility which will influence the promptness of an

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investigation. We need a mechanism to excuse witnesses from the live hearing if neither the complainant nor respondent wants to cross-examine the witness. Additionally, we need a mechanism to avoid the live hearing if the complainant or respondent do not want to cross-examine one another or the witnesses.

Lastly, we need more flexibility if there's an opportunity between -- if there's an investigation between students and an employee and the facts determined the allegation can be resolved through an informal resolution. I believe that those making some of those flexibility changes will add to some of the timeliness and the promptness of an investigation.

Lastly, I would like to request a modification. I believe that the directly-related evidence should be given to the participants at the same time that the investigator's report should be given. That way the participants can review what the

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investigators have discerned as the directly-related evidence, but also the all-available evidence so that they can make additions if they want to rather than providing the directly-related evidence first.

In the end, my hope is primarily to increase the promptness of investigations. I believe that we have good processes in place for fair and equitable, but the primary criticism that I hear has to do with timing. If we could reduce that timing through some of these changes, that would be greatly appreciated. Thank you.

MODERATOR: Thank you.

Next up is Abigail C. followed by Abigail T.

ABIGAIL C.: Hello. I'm Abigail C. I'm a student, a graduate student, and I am interning in the Title IX office so mainly coming from a student perspective. I wanted to just quickly touch on some off-campus things.

I know a lot of institutions like -- so sorry -- provide like lists of off-campus

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housing that they support or are working with. In doing that, that's part of an institution and what they are doing.

Right now, under the current Title IX, we cannot do off-campus occurrences. If you're promoting, say, an apartment building or something like that, I think that personally it's still something -- a part that the university is doing that should be part of us keeping students safe.

Additionally, thinking about things that happen outside the United States in school-sponsored programs such as study abroad, I know my institution happily pushes students to do study abroad and if we're heavily pushing that and not protecting them outside of the United States, even though they are still in a school-sponsored program such as study abroad, I think that is a huge problem and should be modified.

I understand if there are some instances that we can't do off-campus occurrences, but things like study abroad and

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that the university is pushing for I think should be modified so that we can, because it's creating a problem where there's half of a case instead of a full case and a lot of student cases. Thank you.

MODERATOR: Thank you.

Next up is Abigail T. followed by Micah S.

ABIGAIL T.: Hi. Is this working?

MODERATOR: Yes, it is.

ABIGAIL T.: Okay. Hi, I'm Abigail T. and I am a freshman at Fredonia. I had to approach our Title IX director as I had a teacher that was doing inappropriate things to me. Our Title IX director was very rude and unhelpful. I wanted to be here to ask that we hire someone that is in the place to help students and not to try to push them away and victim blame them as this person did.

She was trying to tell me that unless the other six girls that this teacher was harassing came forward, she could not do anything

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about it. I only had three options which were to go to court, to have a no contact order, or to drop the whole situation.

I didn't want to drop the situation. She made court sound like it was way too stressful and traumatizing so I didn't do that. I was only left with a no contact order which I didn't feel protected by. I bumped into this teacher on campus as well and I still didn't feel safe even though I know he couldn't talk to me.

I feel that we need to have someone that is trying to help their students and make them feel supported. This person basically did not do that. She sent me back to one of the people that had to create my no contact order instead of trying to help me think of a different situation to go by.

She kind of just pushed me away which, as a freshman, made me think that at the school I'm not supported and that this whole staff at this place was not going to help me in any sort of situation. I'm hoping for a change in that.

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Thank you.

MODERATOR: Thank you. Next up is Micah S. followed by Kamaria P.

MICAH S.: Hi.

MODERATOR: Okay, you're good.

MICAH S.: Okay, thank you. Yes, I'm Micah Spencer. I'm a recent graduate from American University currently seeking to enter graduate school there. I just want to say while there are certainly things you can disagree with the past administration on, one of the good things I do want to see kept in place is the protections for due process for students who are accused of Title IX violations.

In my experience, like I've known students who have been accused of a Title IX violation just for, like, complimenting another student on, like, "Oh, your hair looks so pretty today." Or, "Oh, that's a really nice dress you're wearing." I just don't think that's what any of us would agree that Title IX was actually designed for, like giving another student a

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compliment.

So that, and I also wanted to say that I think that another reason why the due process changes should be left in place and not repealed is that there's been something like over 200 lawsuits against universities by students about not being granted due process during a Title IX proceeding.

In the long run all these lawsuits are just going to drive up the cost of education for everybody. I just want to voice that while you can definitely disagree with the Trump Administration on some things, I do believe the due process rights implemented for the Title IX process, and the right to face the person that's accusing you of the Title IX violation, should be kept in place. Okay, thank you.

MODERATOR: Thank you.

Next up is Kamaria P.

KAMARIA P.: Hello. Can you hear me?

MODERATOR: Yes. Thank you.

KAMARIA P.: Thank you. Thank you for

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the opportunity to speak on this important issue. My name is Kamaria Porter. I'm a Ph.D. researcher at the University of Michigan. I have been studying sexual assault policies and prevention on campus since 2015. I'm also a survivor of sexual assault.

Today I want to speak with you about the ways the 2020 regulations harm and further silence Black women survivors on campus. For my dissertation research, I interviewed 41 Black women and non-binary survivors about their decision-making processes on whether to report sexual assault.

Many of the Black women I have talked to experienced sexual assaults off-campus. As other researchers have found at predominately white campuses, spaces for socializing are dominated by white students. Students marginalized by race, gender identity, and sexuality often venture off-campus to find inclusive social support. The 2020 regulations narrow the scope of reports that could be

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investigated by Title IX, meaning the Black women that I talk to who were assaulted off-campus could not even seek that resource.

Secondly, I want to address supportive measures. Many of the supportive measures mentioned in the 2020 regulations are focused on accused students, but we should not neglect the needs, especially the academic and resilient needs, of survivors.

The Black women survivors that I talked to had trouble securing counseling resources, getting academic course releases, and even taking leave if their mental health or PTSD symptoms were too overwhelming. We need to respond robustly with supportive measures that ensure that survivors stay in school and reach their academic goals.

Lastly, in our study of campus sexual assault policies, we found that schools that are serving our students that are marginalized by race and class had less comprehensive consent definitions, meaning that the students that I

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talked to didn't really know their school's position on what was acceptable for consent.

We need to make sure that all schools have comprehensive consent definitions so that all students, whether they are Black or queer, know what healthy sexuality is and are operating under the protection of their universities. Thank you very much.

MODERATOR: We'll be back in a few with more commenters.

(There was a brief break between speakers at this time.)

MODERATOR: Christine A. you're next. Looks like we had some technical difficulties. We'll try to reconnect with Christine. We'll be right back.

(There was a brief break between speakers at this time.)

MODERATOR: Christine, please unmute your mic and you can begin. Christine, it sounds like you're good to go.

CHRISTINE A.: Can you all hear me?

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MODERATOR: Yes, we can.

CHRISTINE A.: Oh, great. Thank you so much. Thank you for taking the time to listen today. I just wanted to say that please know for everyone that you hear today, there are many, many, many stories that go unheard.

Today I wish to share a small part of my story and comment on the changes made to Title IX regarding informal reports which, as a survivor, I now regard as indispensable to creating a safe environment for students. They are the infamous canary in the coal mine of a serial campus predator and should be treated as such.

My name is Christine and I am a graduate student and teaching assistant at Ohio University. In 2015, the first semester of my Ph.D. I was sexually assaulted along with another graduate student at a get-together arranged by my professor of English studies at a local bar near campus.

Much of my assault occurred in public

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in clear view of my fellow graduate students. At the time, I recall being humiliated and I recall wanting to disappear because I was too afraid to say anything to the man who would assign me an official grade in only a few days.

In retrospect, I realize that in a perverse way I was lucky. I had witnessed so many victims of this kind of violence suffer because their assault occurred after someone offered them a ride home, or after they were taken into a room alone, or after a professor closed the door to their office.

It is precisely because of the private violence of sexual assault that so many victims do not come forward, or do not feel that they have enough evidence to file an official report, that the informal complaint process is so vital. As such, investigators should be allowed to initiate a formal investigation when multiple informal complaints arise against a single respondent.

Over the course of investigating my

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abuser, my Title IX investigator found multiple incidents of sexual misconduct and harassment dating back to 2003. Some of the incidents were reported but never rose to the level of formal complaint. Despite these incidents, my abuser was not formally investigated until I, along with another brave woman, filed official complaints.

My life forever changed when I was assaulted as a direct result of filing a formal complaint. In the investigation process I endured public humiliation when my entire department gained access to the findings of fact, which found my complaint substantiated. The faculty member with whom I most wanted to study publicly stated he did not believe me. I was diagnosed with PTSD and still suffer from those symptoms today.

MODERATOR: Thank you. We'll be back in a few with the next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Ceciel Z., you're up next.

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Please unmute your mic.

Ceciel is having a little technical difficulty. She'll be back in a minute.

(There was a brief break between speakers at this time.)

MODERATOR: Okay, we're ready for you Ceciel. Go ahead.

CECIEL Z.: Can you hear me?

MODERATOR: Yes, we can. Thank you.

CECIEL Z.: Thank you. Hello, everyone. My name is Ceciel and I'm a rising senior at a large public university in the Midwest. Thank you for the opportunity for me to provide a comment.

So, first, we are here because Title IX was created to ensure a safe and equitable space for education for everyone. To start, I would like to first address the insufficient sexual education from K to 12th grade, as well as consent training when I first arrived at college.

However, a mandatory workshop is not enough to allow us to learn the real-life

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scenario of consent. In order to prevent gender-based violence and sexual harm in the first place, schools must be more equipped by learning the root cause of harm and how to treat each other with respect.

Next, the final rule on Title IX released in May of 2020 gave a green light to mediation. However, prominent peacemakers and restorative justice practitioners have long been wanting the power dynamics involved in gender-based violence, especially sexual assault cases which we need to pay more attention to.

Guidance needs to be made, such as mediation should be explicitly banned from recurring behaviors. It is essential that reports are adequately addressed when brought forward with options that are both survivor-centered and trauma-informed.

Lastly, I would also like to address the balance of support and resources in the satellite campus that my university has. While the main campus has a security center, the others

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don't, and the reports generate from their coordinators, who were late in every form of communication when the students needed them the most.

As a result, there should be more professional mental health and support specifically allocated to support both claimants and respondents, regardless of campus size, so that both the claimants and respondents could be supported in the process if they come from a socially disadvantaged economic background.

Thank you for all your time and attention in listening to this comment.

MODERATOR: Thank you.

Deborah M., you are up next. Deborah, please unmute your mic and you may begin.

DEBORAH M.: Hello. My name is Deborah M. I'm a graduate student at Cal Poly San Luis Obispo. I'm also a student advisor and a practicing attorney. During my time working with Title IX complainants, I've seen a need for OCR to develop a procedural due process complaint

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system that's expedited and that is separate from the substantive due process complaint procedures.

This is because my clients and advisees cannot wait 18 to two years for -- sorry, 18 months to two years -- for an OCR investigation to determine whether or not they can even have a complaint opened. I've had a school in the CSU system refuse to open complaints that were valid because the interim director of Title IX, who was also the ADA compliance coordinator, didn't know the law.

My client's advisees and personal health information was recognized against her and released to the respondent by this person and the general counsel of the CSU. The complaints were delayed. They weren't opened. We couldn't report it to the OCR because of the fact of my client having PTSD and needing to still be able to go to school.

The outside investigators that are employed are not neutral. When the school feels there's liability potentially for themselves,

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they will circle the wagons and they will not afford due process to the student. They know the student is in an inferior power situation.

There has to be more than a statement that retaliation is prohibited. There have to be teeth in the law which protects student complainants from having their documents "lost" by the Title IX office, inside the Title IX office, by having complaints not opened.

FERPA. You complain to FERPA, they don't get back to you. We complained a year ago. There was a prior settlement at the same CSU in March 2018. I called the OCR attorney in San Francisco to open a pattern and practice investigation because the things that were happening to my advisee client had also happened in this earlier settlement.

They told me they had no standing to go back to the same school that was doing the same things that were settled in the settlement agreement in March 2018 that apparently had never been enforced by the OCR. Like, these things

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have to change. If the OCR is going to do something meaningful, it needs to be done procedurally.

It needs to have staff to man this, to do procedural due process for students because students do not have equal bargaining power, especially students at schools where there's a lot of first-generation students that don't have the ability to hire attorneys or to get volunteers like me to help them. Thank you very much for your time.

MODERATOR: Thank you.

Up next is Alison H. followed by Daniel M.

ALISON H.: Hello and thanks for having me. My name is Allie and I'm a current college student and I went through a tough time with this process when I was in high school. I'm still healing, so I join the many students testifying here today about survival and necessity to ensure that this process builds us up instead of tearing us down.

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I experienced sexual violence long before I even encountered the Title IX process. I internalized so much self blame and doubt. The Title IX process has the capability to either reinforce or discourage that invalidation and there's no doubt in my mind that the previous regulations further inhibit the survivor's ability to believe themselves and, consequently heal. We must do better.

Firstly, the previous regulations neglected evidence on the frequency of claims reported and data from the National Sexual Violence Research Center that only between 2 percent and 10 percent of sexual violence claims are false.

In a society still treated by violence and victim blaming, these regulations contributed to the gaslighting of survivors. I would ask that all subsequent Title IX regulations believe the complainants and operate from this truth.

This includes lowering the evidence standard, abolishing the live hearing component,

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and creating more avenues for complainants to seek interim safety measures. These practices will undoubtedly create more avenues for complainants to seek the support that they need.

Secondly, the DeVos regulations neglect the wide array of violence that pervades our schools alienating many individuals. I ask that this definition of sexual harassment is expanded to include all forms of sexual and dating violence beyond definitions of pervasiveness with physicality. I also ask that this jurisdiction encompasses the diversity of settings where students may experience sexual violence, including all campuses. Title IX should be for everyone.

For reporting procedures, I also ask that OCR consider and act upon the growingly-evident need for advancing support options on college campuses. An inherently limited aspect of not only DeVos' Title IX regulations, but all regulations before, is its preoccupation with reporting impunity processes. Ninety percent of

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students do not report their experiences, even before Secretary DeVos' chilling effect.

Irrespective of the Title IX uses, students often need and deserve a more diverse array of anti-violence resources to access and consider. This need is both independent of Title IX as well as coincides with and succeeds the process.

Because of this, I encourage the Department to specifically outline and potentially require more expansive supportive measures such as academic accommodations and confidential support as a key component to Title IX compliance. These measures are also critical to ensuring nondiscrimination and ensuring that people can pursue their education freely. Thank you so much.

MODERATOR: Thank you.

Daniel M., you're up.

DANIEL M.: Good morning. My name is Daniel Maher-Gurniak and I'm a rising senior student at Ramapo College, New Jersey. I am the

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secretary of Governmental Affairs within the Student Government Association. Thank you for the opportunity to speak today and for holding this week's session regarding such important issues in educational environments today.

In my remarks I will include several proposals for the new regulations in which some are required by previous mandates, and others are not. They are as follows: Educational environments must be free from sexual violence and misconduct. All parties of a sexual assault or misconduct accusation must have access to a fair and impartial hearing. The process should equally protect accused students and their accusers.

Title IX must also protect students from all unwelcome conduct of a sexual nature that denies them equal access to education. This is true regardless of where the conduct occurred. Restricting Title IX to the physical boundaries of a campus harms students who are increasingly learning virtually and socializing online.

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Students on both sides of a sexual assault or misconduct accusation may have an advisor present when speaking to a judicial committee and/or at the filing of their complaint. Supportive measures in the form of free counseling should be available for anyone who is a victim regardless of complaint status.

I, once again, appreciate the opportunity to speak today and look forward to fair, equitable implementation of Title IX policies to protect all students in any and every educational environment. Thank you again.

MODERATOR: Thank you.

We'll be back in 10 minutes with more commenters.

(There was a brief break between speakers at this time.)

MODERATOR: Kateeka, just unmute your mic. You're ready to go.

KATEEKA H.: Good morning. My name is Kateeka Harris and I represent the Association for Student Conduct Administration, also known as

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ASCA. Our national organization serves campus professionals who investigate and adjudicate violations of college or university policies.

I would like to address our comments from three different perspectives. They are access, equity, and education. First, the goal of any regulation should be to ensure equal access to the process and provide clear guidance for those responsible for administration and compliance. Yet, since the inception of these new regulations, many of our members have reported that students are experiencing even more difficulty accessing the Title IX process.

For example, limiting who can file a formal complaint and requiring complainant's signature has limited access to the Title IX process. In addition, the elevated role of the chosen advisor of complex investigative and hearing requirements have lengthened an already long and difficult process.

Any additional changes to the regulations should prioritize making it easier

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for students to report their experiences while also providing an accessible process for resolving complaints.

Second, these regulations have a disparate impact on our students and have created an inequity within our disciplinary procedures by requiring two different -- two very different processes for behaviors that violate institutional policy.

For example, the role and use of the advisor in cross-examination for Title IX policy violations is not the same for non-Title IX policy violations. Furthermore, when advisors for both parties are not both attorneys or do not have the same training or experience, they cannot equitably advise the student and engage in cross-examination. These unfunded mandates create an inherent imbalance to the students, to the process, and among colleges and universities.

Third, ASCA strongly supports student-centered conduct processes that provide equal rights and fairness to all parties

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involved. We seek policies and processes that treat all students with care, concern, honor, and dignity and we want processes that are fundamentally rooted in education.

Student conduct was, and still is, designed to be educational, non-adversarial, and ultimately to aid students with changing negative behaviors. Students should be able to utilize appropriate persons for guidance and support. However, we continue to support the practice of students actively engaging in our educational processes and speaking for themselves.

In conclusion, we believe that students have a right to education free from all forms of discrimination, harassment, and we want regulations that both engage individuals, or encourage individuals to report experiences and require institutions to provide fair and impartial proceedings for all parties.

On behalf of our membership, the association urges the Department of Education to review the 2020 final rule with the intent of

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creating balanced regulations that are accessible, equitable, and educational as we are seeing first-hand the disproportionate impact of these regulations on all students.

MODERATOR: Thank you.

Next up is Twannetta W. followed by Barry J.

TWANNETTA W.: Thank you for allowing me to speak today. My comment is regarding the sexual harassment potentials that our students face and just really from a gender perspective. It's widely known that PE programs in high school sports tend to accommodate and nurture males in sports. When a female student does not have the same physical advantages of guys, they are often not taken seriously.

My question is how do we foster inclusiveness in sports regardless of gender and ensure girls feel comfortable to try and participate and compete at the highest level possible?

In addition, Black girls -- women of

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color are often targeted for their clothing in schools due to advanced mature figures. This is something that is widely known and understood. When compared to their female white counterparts. When there are predominant sports like cheerleading and sports that do promote and foster clothing that could be viewed as sexually explicit, that does create a double standard.

So my concern and hope is that we are able to not only address the disparity that we see between women of color within the school system being targeted for wearing clothes that just merely fit their body, versus allowing students to wear revealing clothing in the midst of participating in programs like cheerleading.

Again, that does -- if we're looking at creating an environment of safety for our children, it should also span not only what they wear as part of their normal wardrobe, but for any sports that they are participating in as well. Those are my comments. Thank you for the time to speak today.

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MODERATOR: Thank you.

Next up is Barry J. Barry, if you unmute your mic, we're ready to go.

BARRY J.: My name is Barry Jacobson. Can you hear me now?

MODERATOR: Yes, we can. Thank you.

BARRY J.: Thank you. In practicing criminal-related law from all three sides of the bench for over 30 years in New York, it is clear that due process and the rule of law be afforded any type of accused in any form anywhere as the cornerstone of the American system of jurisprudence in the heart of the American soul.

In late 2015 New York adopted and codified the procedural guidelines of the federal Title IX regulations then in effect verbatim. Imagine my shock to learn that on college campuses, which are relied on to instill in our future leaders the principles of justice, young men are being persecuted by witch hunts and Star Chamber tribunals in a process that would make Hitler, Stalin, and Mao proud.

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Individuals never charged with or convicted of any crime are being labeled rapist and stigmatized as sexual predators in an effort to re-engineer social behavior by bureaucrats with their own political agendas trying to cash in on a \$300 million prize.

These political prisoners are now barred from future educational opportunities that would be available to even a convicted felon but without being afforded basic due process protections we would mandate many other tribunals.

Adding to this travesty of justice is the fact that these judges are not impartial legal professionals but college laymen with their own political agendas. Such legally untrained adjudicators demand that basic elementary due process protections, such as the right to competent counsel in an adversarial process, discovery confrontation and cross-examination, and an impartial tribunal is not replaced by an accusatory process where one is guilty until

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proven innocent.

The tribunals only rule is to guarantee a pre-determined result through an alleged educational approach that allows for one administrator to be the accuser, investigator, prosecutor, judge, and jury without the safeguards built into the American judicial system.

The due process reforms enacted in the previous administration recognize and address these shortcomings. We must seek to ensure that those who do commit the crimes these regulations seek to address are judged by impartial professionals in a competent judicial system established to protect the rights of all authorities without financial and political conflicts of interest.

Because of the serious consequences that flow from these inquisitions, they must be administered through a full exploration of the facts and circumstances in each matter with the rights of the accused fully protected.

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Adjudication by "layman's peoples courts" while politically correct allow for such shadow judiciaries that have no place in our democratic society and certainly not on the campuses which will produce our future leaders. Thank you.

MODERATOR: Thank you.

Next up is Denise M.

DENISE M.: Good morning. Thank you for the opportunity to provide feedback on the Title IX regulations. I'm Denise Marshall, CEO for the Council of Parent Attorneys and Advocates. COPAA is a national network of parents, family members, advocates, attorneys, and related professionals who work to protect the civil rights and secure excellence in education for students with disabilities.

We come from all walks of life and across the country. What unites us is the belief that every child can learn and the convictions do what it takes so they have what they need to learn. Sadly, all too often students with disabilities are harassed, bullied, and assaulted

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in schools.

A child who is scared and traumatized cannot learn. The negative effects of sexual violence and the victimization of students, including students with disabilities, are well documented. Unfortunately, some disabilities may also put students at higher risk for crimes like sexual assault or abuse.

As the Department undertakes a review of federal Title IX regulations, we urge you to replace the regulations promulgated by the last administration with rules that are consistent with Title IX.

As we stated last year in a joint lawsuit against Secretary DeVos, the current regulations take unreasonable departures, long-standing ed policy and practice, and create an arbitrary, capricious, and insufficiently explained double standard encouraging institutions to ignore sexual harassment and assault they could not ignore if the same alleged harassment were based on race, national origin,

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or disability.

The regulations also fail to address the alarming evidence presented during the comment period about the impact these provisions would have on survivors of sexual harassment, assault, and their education. COPAA's written testimony includes much more detail but I wish to share three important recommendations with you today.

We took the current definition of sexual harassment and redefined it to include conduct that would be recognized as harassment if based on race, national origin, or disability. Reject the numerous unlawful provisions of the current regulations that create barriers to student reporting such as requiring a higher standard of proof and requirements that erroneously reduce the obligation of schools including colleges and universities to respond to reports of sexual harassment and sexual assault.

Finally, address the full scope of the impact of sexual harassment and sexual assault by

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providing clarity around the important statutory and civil rights that apply due to the unique circumstances of a student with a disability who is a party in a Title IX complaint.

In conclusion, please continue to engage with COPAA, civil rights partners, and special education partners, and all impacted stakeholders to develop regulations that support the rights of students with disabilities. Thank you for the opportunity to comment today.

MODERATOR: Next up is Riya M. Riya, please unmute your mic.

RIYA M.: Thank you, moderator. My name is Riya Master and I'm the External Affairs Vice President for the associated students of the University of California. I'm here today to speak on behalf of the 40,000 students at the University of California, Berkeley, and support fellow students at universities across the United States.

We firmly believe that the 2020 amendments to the Title IX regulations in the

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post-secondary educational environment are unacceptable. The 2020 amendments allow for live cross-examination of the accuser which can be deeply traumatic and prevent survivors from coming forward. This puts a stark emotional burden on the accuser and creates an avenue for further harassment.

The Rape Abuse and Incest National Network states that approximately 80 percent of sexual assault cases involving a female college student go unreported. This number is disturbingly high and will likely worsen with the continuation of the cross-examination policy.

In the 2018 to 2019 school year, a total of 409 cases were reported to the Office of Prevention of Harassment and Discrimination at UC Berkeley, but only 25 investigations were completed. That means that 94 percent of reported cases went unresolved.

It's such a shockingly large number of cases that could not move forward under the previous guidelines. It is terrifying to

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consider how many survivors will be left without resources under the 2020 amendments which require a much stricter standard of evidence.

The 2020 amendments require a legal definition of sexual harassment as actions that are severe, pervasive, and objectively offensive. This definition is highly reductive and a regressive understanding of sexual harassment. Sexual harassment is any unwelcomed sexual advance. It does not need to be severe, pervasive, and objectively offensive for an individual to feel uncomfortable and/or unsafe.

The 2020 amendments have made it even harder for survivors of sexual assault to navigate the legal system. The Rape Abuse and Incest National Network states that 23.1 percent of undergraduate females, and 5.4 percent of males, experience sexual assault. This is a crisis and it's killing your students.

As a woman on a college campus, I fear for my safety every day. That's a reality for millions of students and I'm here today to put a

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voice to their struggle. We will not let our rights be taken away.

On behalf of the Associate Students of the University of California we urge the Department of Education to immediately remove the option for live cross-examination, return to the previous standard of sexual harassment, and engage in more preventative and restorative justice measures. Thank you.

MODERATOR: Thank you. We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Gregory J., you are up next. Please unmute your mic and you are ready to go.

GREGORY J.: Can you hear me?

MODERATOR: Yes, we can. Thank you.

GREGORY J.: Great. Good morning. My name is Gregory Josefchuk and I'm speaking to you in my capacity as president of the Carolina Chapter of the National Coalition for Men, the

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oldest men's human rights organization in America. We advocate on behalf of men who have been discriminated against on the basis of sex.

In regards to Title IX related cases, we have worked with over 100 students and their families as they navigated a biased college disciplinary system that prior to the 2020 Title IX regulations was largely incapable of providing a fair and equitable process to accused students whenever a school investigated a sexual misconduct complaint.

In the time remaining, I will make four points that we wish for OCR to consider and they are:

(1) In university Title IX misconduct proceedings, due process is not the enemy, but don't rely on my word, rely on those of the court. Appellate courts have upheld due process rights for student plaintiffs in 23 cases, a clear indication that courts are serious about requiring due process protections in Title IX related sexual misconduct hearings. I will be

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happy to provide a listing of those cases if OCR wants me to.

(2) Cross-examination is indispensable for determining the credibility of witnesses, especially in cases where other forms of evidence are unavailable. This position has received support from federal courts which have rules that some form of cross-examination is required to protect the due process rights of students. This rule needs to remain in full effect.

(3) While we fully support the 2020 Title IX regulation definitions for sexual harassment and actual knowledge which greatly aids schools in the meaning of these terms, one of the more problematic areas that schools are struggling with is that of consent. OCR should modify the existing regulations to prevent a school from using affirmative consent as part of its code of conduct.

We believe an affirmative consent standard would be contrary to the 2020 rules

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requirement that schools afford respondents a presumption of innocence as it would unfairly shift the burden of proof to a respondent accused of sexual misconduct to prove himself or herself innocent.

(4) OCR needs to refrain from over-reach in trying to pull these students' behaviors off-campus. The 2020 regulations rightfully hold schools responsible for harassment that occurs within their program. We urge OCR to leave it within those boundaries. NCFM Carolinas looks forward to continuing this dialogue with OCR and we thank you for this opportunity for our public comments. Thank you.

MODERATOR: Thank you. We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Bailey A., you're up next.

Looks like Bailey is having some technical difficulties. We'll try again in a minute.

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(There was a brief break between speakers at this time.)

MODERATOR: Greg J., you're up next.

Okay, we are done for this hearing. The next hearing will begin at 11:00 a.m.

(There was a brief break between speakers at this time.)

MODERATOR: -- Amber B, followed by KC J.

AMBER B.: Good morning. I appreciate the opportunity to comment on these Title IX regulations, on this, in this platform. I'm Dr. Amber Blair, Director of Student Engagement and Grant Initiatives for the Louisiana Community and Technical College System of the PhD and Public Policy and Social Issues.

I serve the system, which is comprised of 12 colleges. And my comments today focus on concerns that are specific to community colleges and smaller institutions of higher education.

While we recognize the importance of all the rules now required in the regulations to

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adjudicate Title IX cases in higher education environments, the current regulatory standards present challenges in this regard for many of our community and technical colleges, in terms of staffing and funding. All of our colleges are nonresidential, we do not have Greek Life, and many of our colleges have small rural campuses with limited staff.

Prior to the 2020 regulations many of our smaller colleges and institutions used a single investigator model to adjudicate Title IX cases out of necessity forced by a small campus staff.

The regulations now prohibit this model, and rather establish minimum trained Title IX team of at least one Title IX coordinator, one investigator, one hearing officer/decision-maker, two advisors trained in cross-examination procedures, and one appeal officer.

These standards turn our colleges into many courtrooms that require frequent, robust, and very often costly training. Our smaller

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colleges are such that Title IX responsibilities are very often an addendum to their job descriptions.

Our hope is that the OCR will consider all kinds of institutions in its revisions of the 2020 regulations. Thank you.

MODERATOR: Thank you. KC J, you're up, followed by Kevin H. KC, please unmute your mic.

KC J.: My name is KC Johnson, and I'm a professor at Brooklyn College. My recent research has focused on lawsuits filed by students accused in Title IX disciplinary matters.

These cases, which proliferated after 2013, helped expose the shortcomings of the pre 2020 system, as multifaceted pressure, including from the Federal Government, led to increasing numbers of factually dubious findings of responsibility.

Colleges and universities could and should have responded courageously to this record

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by developing fairer Title IX procedures themselves. But absent court rulings requiring them to do so they proved almost entirely unwilling.

As a result, the previous administration issued regulations addressing problems the court cases revealed, none more important than ensuring that accused students, through a lawyer or advocate, have an opportunity to cross-examine adverse witnesses.

The university leaders used the comment period for the regulations to criticize the more robust procedural protections. But since the rule's implementation all sides have benefitted.

The new procedures have made it far less likely that wrongly accused students be found responsible, survivors have obtained more reliable results, and universities have been less likely to face lawsuits from accused students.

Indeed, lawsuits involving post August incidents have dropped to a trickle.

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Since the current regulations draw so closely from relevant court decisions, universities that implement them in good faith have little to fear.

One exception, however, exists to this pattern. Since August many colleges have created a two-tiered sexual misconduct system in which only students accused of an on campus event receive the full array of procedural protections provided by the regulation.

Nothing in the rule, of course, requires this. This voluntary adoption of a more administratively burdensome approach is all the more puzzling in light of some of yesterday's testimony suggesting that fair procedures are simply too burdensome for colleges to implement, suggesting that university protests on this front ought not to be taken at face value.

That universities have exploited a loophole in the regulations to deny fair procedures to as many accused students as possible, even at the risk of inviting more lawsuits, provides a compelling, if unintentional

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demonstration of why the regulation's procedural protections are so important.

Without the federal government ensuring the allegations of sexual misconduct are fairly adjudicated the record of the last decade suggests that universities will not do so on their own.

Finally, I hope that this week's sessions aren't designed as an end run around the APA if the administration goes ahead and proposes a new rule to revive policies from a bygone era.

We need not return to a system in which too often wrongly accused students had to rely on litigation to address improper findings of responsibility issued after dubious Title IX procedures. Thank you.

MODERATOR: Thank you. Next up is Kevin H, followed by Julie W. Kevin, please unmute your mic, and you'll be good to go. Looks like Kevin's having some technical difficulties. We're going to move to Julie W. Julie, please unmute your mic and begin speaking.

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JULIE W.: Good morning. My name's Julie Williams, Dean of Students from Iowa Lakes Community College. And I'm a Title IX investigator.

For the sake of time, Dr. Blair covered everything that I had to cover. We are a small rural community college with limited staff. And, Dr. Blair, thank you. I couldn't have said it better myself.

MODERATOR: Thank you. Heidi L, you're up next. And Kevin H, we'll try you again after Heidi.

HEIDI L.: Greetings, and thank you for holding these hearings. My name is Heidi Howkins Lockwood. I'm a full time, tenured professor of philosophy.

I want to speak about the impact of the new regulations on cases in which a faculty or staff member is accused of sexual misconduct.

First, some quick background. I received my PhD from one institution in 2009. But originally started working on the PhD at another

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institution.

I left the first university in 1991, after I was sexually assaulted by my primary advisor. It took me more than a decade to recover from that violence.

And when I returned to academia in the 2000s I thought my experience had been unique, and I had just been unfortunate. Oh, how wrong I was.

Between 2008 and 2013 five members of the faculty in my department, a third of the department, were accused of serious sexual harassment or misconduct. I was aware of these cases because as a slightly older than average grad student I had undergrads coming to me for advice.

Faculty predators have a way of gravitating to departments where they won't be challenged, and to universities where they won't face repercussions for sexual misconduct.

I should point out too that this impacts all students, not just women. Not just

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because it creates an unprofessional environment rife with back room quid pro quo offers, and boozy, intimate (audio interference) dinners, but because students who aren't objects of the professor's sexual desire, including male students, don't have access to those same quid pro quo perks.

In the years since 2013 I have worked with Title IX advocates, and survivors of faculty sexual misconduct in more than 70 universities and schools across the country. As I think about the impact of the DeVos final rule in the context of these cases, I shudder.

First, almost all faculty sexual misconduct occurs off-campus, in faculty homes, at conferences, at summer institutes, and at athletic events hosted by another institution, in the case of coaches.

Surely, students who are harassed by a university or school employee in an off-campus setting should be entitled to file a complaint.

Second, faculty have far more power

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than students do. And that power is largely unchecked and unregulated. Grades are subjective. Faculty often support each other. And retaliation is often extremely subtle.

It requires Herculean push to file a complaint against a faculty member, even under the Obama Title IX rules. To add cross-examination to that is unthinkable.

Would you file a complaint if you had to face your faculty after? I wouldn't. And I can't in good faith advise any student to do so. Thank you.

MODERATOR: Thank you. Next up is Kevin H, followed by Amy C. Kevin, if you could try unmuting your mic, and then begin speaking. Looks like Kevin's still having some technical difficulties. We're going to go back to Amy C, due to a small technical delay. Amy, please unmute your mic, and you may begin.

AMY C.: My name is Amy Cannava. And I'm a nationally certified school psychologist, and the Chair of the National Association of

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School Psychologist's LGBTQIA Youth Committee.

I stand here before you as a representative of both NASP and the Human Rights Campaign's Project Drive, of which NASP is a proud member.

I am also a nationally recognized expert in LGBTQIA youth, and someone who has experienced repeated discrimination in employment as queer woman.

As such I am honored by the opportunity to speak to you today about the importance of strengthening Title IX.

The Department of Education is charged with ensuring a free and appropriate public education for all students. Without needed protections, which guarantee the safety and freedom from harassment and discrimination the DOE is failing to provide faith for the nation's LGBTQIA youth.

Title IX must be strengthened to ensure that all students are protected physically and psychologically, so that they able to learn.

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NASP has a longstanding commitment to advocating for the rights of the most marginalized, minoritized members of our society.

We recognize that the civil rights of transgender students are protected as part of the U.S. public school's obligations under Title IX.

On June 15th, 2020, Bostock v. Clayton County affirmed that the Title VII of the Civil Rights Act of 1964 also protects persons on the basis of sexual orientation and gender identity.

The DOE and DOJ has ruled that sex protections apply to gender identity. And that, as a result, have the responsibility to provide a safe and a non-discriminatory environment for all students, including transgender students.

This includes honoring a person's right to question, express, and (audio interference) their gender identity when necessary to well-being. In fact, affirming a young person's gender identity can be life changing, and at times life-saving.

Rejecting or refuting a young person's

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gender identity increases the risk of suicidality by 50 percent. It's really not that hard.

When Alexander wants to be called Alex in school, no one bats an eyelash. So, why the uproar here surrounding a young person's chosen name? It's not an accommodation, just an allowance. You're simply allowing young people to be who they are, and who they have always been.

As a school psychologist I am ethically obligated to ensure that all youth are able to develop and express their personal identity in a school climate that is safe, accepting, and respectful of all persons, and free from intimidation, harassment, violence, and abuse.

In 2020 there were more than 178 anti-trans bills circulating through state legislators. In these states most colleges were faced with the predicament of following a state and local ordinances which expect them to out students to parents, and would deny a student's identity, whether to avoid imprisonment or

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prosecution.

If they follow the state's blatant discrimination laws they risk losing their license to practice, due to violating ethical and professional standards, and risk endangering a student's life.

My students depend on me to hear them and to protect them. I am depending on you to provide the needed legal guidance on Title IX that allows me to continue saving children's lives.

MODERATOR: Thank you. Next up is Colleen M, followed by Aine M.

COLLEEN M.: Okay. Sorry about that. Can you hear me?

MODERATOR: Yes, we can. Thank you.

COLLEEN M.: Thank you. Hi. My name is Colleen McDaniel. I'm a doctoral candidate, and a sexual violence researcher, activist, and survivor. Today I want to highlight two issues that I hope to see addressed by the Title IX regulations.

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The first is the unintended harm of universal mandated reporting. And the second is the unique risk of violence that graduate students face.

In October of 2017 I was raped by a residential assistant in my dorm at my undergraduate university. I did not report, because it was my university's policy that any and all information shared by a survivor be reported to the Title IX coordinator.

As an activist on campus I worried that if people knew I was a survivor they would just see me as angry, and not take me seriously. As a Catholic I feared that my family might find out that I had engaged in sexual activity before marriage.

As a queer person under the bisexual umbrella I already did not have full trust in institutions of higher education to protect me, and worried that stereotypes about my sexual being hypersexual would work against me.

As a dedicated student I feared that

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reporting would slow my progress in working towards two majors. Further, the man who raped me and I had mutual friends, and he was employed by the university. How could I report to an institution that hired people like him?

My concerns are valid and common. But I know that others face fears of more severe consequences than my own. And I am concerned about the potential harms they may encounter at the hands of universal mandated reporting.

Instead, I ask the Department of Education to consider and support a bill in which all survivors have full access to and knowledge of university resources.

Under mandated support policies only certain positions in the university are required to share reports with the Title IX office, there are trauma informed and cultural competent confidential resources and advocates, and training is required for all university employees on how to respond to survivors in a non-blaming, non-shaming way.

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Second, the Department of Education must directly address the unique risks that graduate students face. We work directly under advisors who act as mentors, not just in our programs, but in our fields at large.

Our advisors and faculty members have the power to influence the completion of our course work, our ability to publish, our chances of being hired, and our reputations as workers.

This power dynamic can be highly toxic and incredibly dangerous. Because of our contradictory positions as both educators and students we are often overlooked by universities.

The Department of Education can introduce bans on faculty/student relationships, as well as require resources and prevention efforts that are tailored towards graduate students and faculty members.

All policies, requirements, and recommendations must keep survivors at every level of the university at its center. Thank you.

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MODERATOR: Thank you. Aine M, you're up next. Aine, please unmute your mic and begin speaking.

AINE M.: Hello. I'm, my name is Aine McCarthy. I'm a campus advocate. And I work at a university that has put a lot of effort in the last year into developing the new hearing process, to stay in compliance with the new Title IX regulations.

And the students that we serve are often women, but also men, and other people on campus that experience sexual and dating violence, stalking, harassment, and other forms of discrimination.

And with staying in compliance with these new regs we've seen an overall decrease in funding for victim support, as it's all gone towards the new process.

And it's not that the advocates like us have all the answers for how the new regs would look. But we want to see more options, as we used to have for anonymous reporting, and also

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room to explore things like restorative justice.

The previous administration, as we know, showed little concern for how sexual harassment and trauma affect students' educational experiences. And the new, the DeVos regulations reflect that.

We would love to see sexual harassment defined clearly as unwelcome sexual conduct. We want to see institutions effectively respond to take action, and eliminate, to really prevent sex based harassment, with a strengthening of Title IX.

And we want to see restorative justice and other alternatives to traditional student discipline be included, as long as the participation is truly voluntary, and all parties are able and aware that they can terminate the alternative resolution at any time, and those facilitating it are adequately trained to do so.

We would also love to see robust protections against retaliation, which right now is virtually meaningless. And to see retaliation

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defined as disciplining complainants for collateral conduct violations that must also be disclosed in order to report sexual harassment, dating violence, and stalking.

Disciplining complainants for false reports, disciplining complainants for prohibited sexual conduct in school, based on the school's conclusion that the reported sexual harassment was instead welcomed sexual contact.

Disciplining a victim for charges, charges that the school knew or should have known, or brought by a third party. Thank you.

MODERATOR: Thank you. Kevin H, if you'd like to try again. Kevin, looks like you're still having technical difficulties. If you could check the chat session, we will attempt to assist you.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Beth L. Please unmute your mic and begin speaking.

BETH L.: My name is Beth Lorenz. I'm

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a retired attorney. And as Co-Chair of the Intake Committee of FACE I've interviewed hundreds of accused students. In my personal capacity I've also served as a pro bono advisor to dozens of respondents.

I feel frustrated when I hear people say that male students would have nothing to worry about if they would just stop sexually assaulting girls.

Many of the students who reach out to FACE are fierce advocates for women, and have supported campuses cracking down on sexual misconduct.

They were stunned when they found themselves facing a false allegation, and surprised to learn how difficult it was to defend themselves in a campus proceeding.

I am personally aware of wrongful allegations motivated by unhappy breakups, unrequited romantic interests, boyfriends, or conservative parents finding out about sexual encounters.

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I am also aware of allegations against minority students that are tinged with racial bias, international students that are tainted by a cultural misunderstanding, and students on the autistic spectrum, because female students find their awkward attempts to socialize creepy.

When I hear journalists and legislators argue that the regulations are rolling back protections for female students, and protecting rapists on campus, I wonder if they have actually read them.

The regulations are consistent with a process designed to elicit and reach findings based on fact. It should not be controversial to presume that a student is not responsible until the evidence is evaluated, to provide them with a notice of the specific allegation, or to treat them equitably during the process.

And in light of the seriousness of the allegations and sanctions, it should not be controversial to require a hearing and cross-examination, so that decision-makers can assess

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the credibility of both parties before making a determination.

In closing, I would like to describe the experience of one student, to illustrate the importance of having a process that's designed to protect all students.

FACE was contacted by the father of a male student, a Black male student, against whom allegations were fabricated by a white female student.

First the student was removed from his basketball team. His coach assumed he knew about it, and was guilty of unspecified allegations against him.

Next, campus security came to his room to search for gun without explanation. Later he was issued a notice of suspension, and escorted from campus. They offered to drop him off at a homeless shelter.

The student had still not been contacted by the Title IX officer, or provided any information about the complaint, and went to

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the Dean for help. But the Dean said he couldn't do anything.

Finally, the student took it upon himself to contact the Title IX office. And only then was he informed of the serious fabricated allegations against him.

The student immediately wrote down what actually happened in his interactions with the accuser, laundry, food, homework, and pointed out the video camera footage and witnesses, including her roommate, who could corroborate his account, and directly refute the fabricated allegation.

The complaint was ultimately dropped. But by that time the student felt betrayed by his coach, unsupported the administration, targeted by a white female student, and unsafe as a Black male student on campus. He packed up and went home.

When I spoke to him the following year he had not yet enrolled in a new school. Had the Title IX regulations been in place at that time

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this student would likely have stayed in college and graduated by now. Thank you.

MODERATOR: Thank you. We will be back with the next commenter in a few.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Isabella K. Isabella, please unmute your mic and begin speaking.

ISABELLA K.: Hi. My name is Isabella. Last year I graduated from Harvard University. And in my final year at Harvard I became a survivor of date rape. I had never had sex before.

The trauma I experienced as a result of my rape severely diminished my ability to access education. I moved rooms. I delayed final exams. I requested an extension on my senior thesis because I got flashbacks when I tried to study.

I even declined a prestigious master's program that would have let me take classes at

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one of Harvard's grad schools, partly because I couldn't handle being physically close to that university.

I filed my Title IX complaint in March 2020. And at the time of my filing the Department had not yet published the final Trump rule.

And after that point I spent countless hours tearfully describing my trauma to Harvard's Title IX office, listening to witness statements, and speaking with lawyers, all via Zoom.

But one day my lawyers informed me that the new Trump rule might require Harvard to dismiss my complaint. Or if it was not dismissed the Trump rule would require me to attend a live hearing that would include cross-examination.

I recognize some attorneys believe that this is a good process. But let me tell you as a rape survivor it is not.

In preparation for today I looked back on some of the emotional writing I did last summer. And every day that my Title IX investigation was in limbo I feared the

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Department would legally require my school to dismiss it. I did not feel like a student. I felt like a liability.

At that time in my life I thought being healed meant crying only 20 times per day. Being cross-examined at a live hearing by a manipulative attorney would have been traumatic.

The potential for a direct live hearing honestly still frightens me over a year and a half after the assault. I walk down the street scanning strangers' faces, because I fear running into my assailant.

Please understand that the live hearing and cross-examination requirements deter victims from pursuing justice.

And luckily Harvard created a non-Title IX policy that allowed me to continue my case without going through a live hearing with cross-examination.

But many schools do not have the non-Title IX policy. And if I had attended one of those schools instead I might have withdrawn my

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complaint.

I want to be clear that even though my complaint was investigated I still did not receive justice. My investigators consistently discredited me in ways that are too painful to recount, even though I named a total of ten witnesses, and my respondent only named one. Even though I presented evidence of my respondent admitting to me that the assault was not mutual. Even though another survivor anonymously named my assailant as her own.

But Harvard's investigative team doctored my quotes in their draft report, and ultimately found my assailant not responsible.

In my Title IX process I learned universities protected themselves, not survivors. If I had a better policy from Harvard than other students who were dismissed or cross-examined under Trump's rule, and I still face insurmountable obstacles, then how is any survivor supposed to get the support that they need?

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I urge the Department's new Title IX rule to restore Title IX protections for all students at all schools to protect us instead of punishing us when we ask for help, and to ensure a fair process that makes it worth it for us to come forward at all. Thank you.

MODERATOR: Thank you. Be back in a few minutes with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Sarah N. Sarah, please unmute your mic, and you'll be ready to go.

SARAH N.: Good afternoon. And thank you to Secretary Cardona, and all those from the Department who have made these public hearings happen.

My name is Sarah Nesbitt. I am a policy and advocacy organizer with Know Your IX, a survivor of intimate partner violence on campus, and a recent, as of three weeks ago, graduate of Georgetown Law.

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You have all heard, and will continue to hear a lot of personal stories of students who have struggled to learn in the face of sexual misconduct, as well as students who have dealt with the stress of being investigated by their school for sexual misconduct.

At a fundamental level these perspectives may seem to daily clash, especially in light of media depictions of complainant and respondent interests as mutually exclusive.

But I want to take a moment to zoom out of it, and focus on five main ways that the parties on different sides of a Title IX investigation actually have many interests that do align, and to recommend that the Department act decisively to protect all parties in those arenas.

First, the Department should mandate clear and prompt notice of school policies and procedures related to sexual misconduct, which means having clear policies about what constitutes prohibited sexual misconduct, a

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carefully delineated reporting and investigation process, and prompt and unambiguous notice to all involved parties of their rights and their obligations, including deadlines, descriptions of the charges, and possible outcomes.

Second, the Department should prohibit bias at any step in the reporting and investigation processes. Investigators and decision-makers should be adequately trained and vetted for conflicts of interest. And should engage in a fact intensive inquiry devoid of undue outside influence, including a school's fear of subsequent litigation.

Third, the Department should promote investigative and decision-making models that contain the checks and balances needed to ensure both procedural and substantive fairness.

Dual and multiple investigator models, and panel style decision-making, for instance, are common models that provide complainants and respondents alike with the safeguards needed to protect against an erroneous

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determination.

Fourth, the Department should require schools to provide parties with equitable, meaningful accommodations. This includes measures to ensure a person's safety, to provide emotional and logistical support, and to make it possible for students to continue to learn while participating in a sexual misconduct investigation.

And finally, the Department should make clear that it holds schools to the same expectations of equity and fairness in sexual misconduct investigations as it does in all other investigations pursuant to education civil rights.

Complainants and respondents alike should not feel like they're subject to a different level of scrutiny in a sexual misconduct investigation than in any other civil rights investigation.

It seems the Department must adopt uniform procedural guidelines for investigating

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all student civil right violations, and hold decision-makers and parties to the same bar of honesty, fairness, and equity.

As the Department hears about the different ways in which sexual misconduct investigations have affected peoples' lives, I implore the Department of Education to maintain sight of these five major ways in which all parties' interests align. Thank you.

MODERATOR: Thank you. We'll have our next commenter in a few moments.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Sarah B. Please unmute your mic, and you may begin speaking.

SARAH B.: Hello. Can you hear me?

MODERATOR: Yes, we can hear you. Thank you.

SARAH B.: Excellent. Hello. My name is Sarah Barrett. And I am the Director of Training and Education for Clery Center, a

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national non-profit founded by the Clery family after the brutal rape and murder of Jean Clery in 1986.

We offer unique insight on campus safety legislation. For the past 30 years we have worked closely with lawmakers and institutions to meet evolving compliance standards.

Current Title IX regulations impair the ability of institutions to comply with the Clery Act, and undermine their shared goals. The Title IX regulations corrupt the Clery Act's advisor of choice requirement, which under Clery provides the complainant or respondent support, guidance, or advice.

The Clery Act allows campuses to restrict the function of the advisor of choice in disciplinary proceedings. But they may not restrict whom one can ask to serve in this role.

By requiring advisors to conduct cross-examination the Title IX regulations remove an institution's ability to limit an advisor's

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participation. This is expressly advised against by the Department of Education within the preamble to the Clery Act, and highlights an inherent conflict in the function of an advisor of choice.

The advisor can be anyone of their choosing, a parent, a roommate, or even an attorney. Title IX's requirement for advisors of choice to perform cross-examination now makes them active participants in disciplinary proceedings. This expectation has limited who is willing, able, and appropriate to serve in this role.

In another direct conflict with the Clery Act, Title IX regulations are limited to only students participating in education programs or activities within the United States.

By not providing clear boundaries around how off-campus behavior falls within an institution's programs and activities the regulations create inconsistency in how institutions address these violations in their

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communities.

As a result, campuses have policies that address offenses to meet Clery Act requirements, but are independent of the Title IX process, even though addressing the same behavior.

It is in direct opposition to the stated goals of the Title IX regulations, which was to streamline processes to create more efficient systems.

Clery Center will continue working with campuses to address these areas of concern within their policies and procedures. And is also submitting written comment to provide more comprehensive feedback and recommendations.

However, legislators must support survivors by advocating for change to the disingenuous Title IX regulations, and correct the harmful misalignment of Title IX and the Clery Act. Thank you for your time.

MODERATOR: Next up is Theresa M.

THERESA M.: Am I --

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MODERATOR: Theresa, please unmute your mic.

THERESA M.: Can you hear me?

MODERATOR: We can hear you now. Great. You may begin.

THERESA M.: My name is Theresa Manning of the National Association of Scholars, author of its report on campus Title IX practice, titled, "Dear Colleague."

I'm here to urge you to keep the due process protections of the new Title IX rule, especially the provisions on live hearings and cross-examination.

Last year I visited the Title IX offices of several state universities in Virginia, New York, and Iowa. And that also with partner offices such as Student Health and Women's Centers, and Diversity Offices.

Overwhelmingly the professional background of staff was in Women's Studies and Gender Studies. Only one of the 56 administrators I surveyed had real legal

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experience in a court of law where accusations or wrongdoing are handled formally and carefully, to protect both the accuser and the accused.

Despite this, Title IX officials before the new rule routinely acted as judge, jury, and police for allegations of actual crimes on campus, such as sexual assault and rape.

Worse, proceedings did not have basic due process for those accused, such as the rights to see evidence, to confront accusers, and to cross-examine witnesses, even when they appeared on paper in school policies.

In real court these rights are guaranteed by real lawyers, who know their importance and how to safeguard them. Their experience shows that these tools, especially like hearings and questioning, are most effective at discovering what really happened in any given case.

Pressure to get tough on campus sexual assaults rules often presumed guilt. As one Government lawyer observed, the college was going

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to find against the male no matter what.

Today Title IX experts actually admit that claims of campus sexual misconduct are baseless in 30 to 50 percent of cases.

Every office I visited also seemed not only aware, but accepting of its role as the campus sex police. This role has resulted from school policies which define Title IX offenses well beyond what any agency or court has authorized, such that any minor dating mishap can become a Title IX complaint.

In fact, staff seemed unconcerned with real sex discrimination. Instead, they promote a hookup culture of transient sexual encounters where misunderstandings are guaranteed, and where investigations can then railroad male students or staff, creating a new kind of sex discrimination in the form of denying due process rights to men.

Hundreds of courts have ruled against schools for these violations, a legal development worth the close attention of OCR.

As long as we have Title IX offices

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with ideological staff, inexperienced in protecting due process, and biased against those accused, schools need the due process requirements of the new rule, which I urge you to preserve. Thank you.

MODERATOR: Thank you. We'll be right back with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Susan D. Susan, you can begin speaking.

SUSAN D.: I came in as a guest.

MODERATOR: We can hear you. You may begin speaking.

SUSAN D.: I came in as a guest. And would I be addressing the entire group?

MODERATOR: Yes. You're being broadcast live to anybody that's listening.

SUSAN D.: Okay. So, I worked at Yale University for 13 years. And I supported Title IX programming, and was retaliated for doing so.

I saw harm, systemic harm at the

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university. And I am supportive of the new proposals from the Biden Administration, and from the Department of Ed, and from other Title IX advocates. Thank you.

MODERATOR: Thank you for your comments. And next up -- Actually we're going to pause for a few minutes for the next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Good afternoon, folks. We are going to end this session. And we will return at 1:30 p.m.

(There was a brief break between speakers at this time.)

MODERATOR: Good afternoon, everyone. Joseph S., you are up followed by Lara B.

JOSEPH S.: Thank you, Joseph Storch for SUNY. As a nation, we've spent the past ten years with the Title IX pendulum swinging back and forth. Millions of college students have enrolled in a world in which we collectively have not yet sufficiently addressed harassment and

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violence.

Reasonable minds can differ on the details, but there is wide agreement on a system that takes violence and harassment seriously and addresses it meaningfully, protecting those impacted by ensuring a fair and equitable process. Trauma informed investigations are not inconsistent with due process. Importantly, developing standards for the long term will open doors for preventing crimes and violations before they occur.

The Department should return to the balanced approach prescribed by Congress in the 2013 VAWA amendments Clery and defined in the Department's 2014 regulations, equitable rights in the process, presence of an advisor of choice but with reasonable limits on participation, notice, and an opportunity to be meaningfully heard, maintenance of an educational process not a quasi-court proceeding.

The Department should return to the path Congress established in VAWA. The

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Department should also return to the status quo ante of Title IX and Title VII for employees. The 2020 provisions followed decades old Title VII rules for employment-based reports into this complicated Title IX process and led to deep confusion, making it difficult to take meaningful action in many employment situations. This means more suffering in silence.

Further, the requirement that all parties and witnesses fully submit to cross-examination, all of their statements be permanently erased, is one not found in any criminal or civil process. It silences students and witnesses unnecessarily and should be abandoned as a public policy mistake.

Higher ed developed a meaningful opportunity to test evidence, cross-examination through the hearing officer or panel. Constitutional experts in multiple federal and state courts bless this as meeting due and fair process requirements. Yet the final rule barred it for public and private colleges alike, based

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on a two to one decision in the Sixth Circuit that applies to only four states.

OCR should return flexibility to colleges to implement direct or trauma-based cross based on what is best for students and the law of their federal circuit.

Our LGBTQIA students are impacted by elevated rates of sexual and inter-personal violence, yet the 2020 Title IX rule specifically excluded them from protections. We strongly urge the Department to follow the Title VII reasoning in Bostock and share these protections with these students.

Finally, we urge the Department to write balanced rules that stand the test of time. The last ten years, and especially the last year, have seen Title IX requirements change markedly. This is good for no one. When its civil rights pendulum swings so wildly, it's hard for students to grab hold of its protection.

My hope is that the Department can craft a set of regulations that are fair, forward

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thinking, and provide a meaningful process with flexibility built in for implementation. This will be a great thing that the Department could do for our students. Thank you.

MODERATOR: Thank you. Lara B, you are up next.

LARA B.: Thank you for the opportunity to speak. I hope everyone can hear me. Thank you for the opportunity to speak. I am here today in my capacity as a law professor. I run a racial justice clinic, and part of what we do is represent students of color from underserved and marginalized groups who have been accused of Title IX violations and stand to lose their education.

I am speaking in favor of the aspects of the 2020 regulations that restore some semblance of a fair process to these proceedings. Prior to those regulations, which dismantled the single investigator system in which one investigator played detective, prosecutor, judge, jury, and executioner, that system

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essentially was a kangaroo court minus the court part.

Because there was no hearing, there was no opportunity for the allegations to be tested, there was no ability to see exculpatory evidence or even any evidence that the single investigator didn't deem worth turning over.

In addition to that single investigator model which now, in the state of California, is not constitutional, there were other severe problems in this process.

And I think that the due process aspects of the 2020 regs are important and need to stand, including the ability to cross-examine, which I understand has become a flash point in this debate but is fundamentally crucial to getting to the truth of what actually happened in allegations that can be somewhat murky and, in some cases, unprovable or untrue.

And I'd like to give you an example of that, several examples of that. My clients in the racial justice clinic are overwhelmingly

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Black men. In addition to facing these allegations, they also face tremendous retaliation, racial retaliation on campus.

They face things like having rapist posters plastered all over campus and being afraid for their lives. One of my clients was sent a Venmo demanding that he provide reparations. He is Black. The person asking for reparations was not.

The other thing that I think is very important to understand about this is it's not really appropriate to say, well, we can sort of dispense with these due-process protections, because it's not a carceral situation. No one's going to prison.

When you separate someone from their education, and label them a Title IX sex offender, that's the end of their education. And many of my clients unfortunately end up in the criminal justice system as a result.

Finally, I want to make a plea to the OCR, and that is to collect data on race. I think

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it is incredibly important that we do this. I don't know why we do not do this in the college and university context when we do do it in the elementary school and high school context. It is vital to know how Title IX is being applied.

In my anecdotal experience, it's applied in a racially discriminatory manner. I would like to see the Department do the very important work of gathering data so that that belief of mine and others can be tested. Thank you.

MODERATOR: Thank you. Next up is Laura D, followed by Konrad J.

LAURA D.: All right. In the midst of a global pandemic, the Department of Education and the Department's Office for Civil Rights determined that May 2020 was a good time to release new Title IX regulations with implementation and full compliance of those regulations to be implemented by August 14th of 2020.

This left little time for institutions

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to review or revise their policies and procedures, gather important input from valuable stakeholders, such as our students we serve, and train all the necessary individuals, not to mention understanding the complexity of the regulations ourselves as Title IX coordinators.

If it took OCR a year and a half to review all the comments on the issue, how is it reasonable to give three months for colleges and universities, for example, to be in compliance, and again, during a global pandemic, when most were just trying to get from one day to another with their students.

While the impact was felt on the institutional level, our students were even more impacted. I now have to tell a complainant that if they make a formal complaint that they will now have to face a cross-examination of questions by the alleged respondent's advisor who may or may not be an attorney. I have heard from students that have expressed not wanting to report to law enforcement because they didn't

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want to be, quote, on trial.

The option for an informal resolution is available, and we are allowed to dismiss and adjudicate under different processes, but that may mean, if the allegations are substantiated, a lesser disciplinary action.

Again, given the brief time for them to be in compliance, it has left many institutions scrambling, especially if they were using a preponderance of evidence with the decision-maker model.

There has been some good that has come out of the regulations. Respondents' rights were further clarified, and it forced institutions to look closely at their policies and procedures. It allowed for that informal resolution which, for some, may be a good option for them.

For others, the regulation seemed to re-traumatize our victims over again. And after they tell their story to an investigator, they have to now then be further traumatized when cross-examining occurs.

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The regulations also restrict what can be pursued under Title IX regulations. So a sexual assault that occurs, for example, on campus may be different procedure than that of a sexual assault occurring at an off-campus, not a university-controlled site. This again creates confusion and discord among students who share similar experiences.

My hope is that these regulations will be reviewed intensely and refined to balance the rights of all parties involved. Thank you.

MODERATOR: Thank you. Next up is Konrad J followed by Sydney O.

KONRAD J.: Good afternoon. This is Konrad Jarzyna from Pennsylvania Coalition Against Rape. My comment is more specific to a particular rule known as the hearsay rule which states that if a party or a witness does not submit to cross-examination at a live hearing the decision-maker must not rely on any statement of the party or witness in reaching a determination regarding responsibility.

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This rule, while it's intended to assure the due process rights of the parties, in practice, under specific facts or circumstances it just fails.

To give you a more specific example, when you have a complainant who was sexually assaulted, college students, and it happened while he or she was under influence of drugs or alcohol and does not have any recollection of the incident, and files a complaint which is followed by investigation, then during the investigation the respondent, on numerous occasions, admits to having a sexual intercourse with them, Complainant, later on when it comes to the hearing, decides that he or she will not testify, will not submit to cross-examination.

And under those circumstances, despite the numerous admissions throughout the investigation, as I understand this rule, and I checked with many people, none of those admissions would come in.

And the complaining party faces the

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possibility that she or he cannot meet the burden of proof and even show that there was a sexual encounter. Because, again, the victim has no recollection of what had taken place other than maybe a general feeling that something happened and there are some circumstances that suggest it.

So I would respectfully ask the Department to provide more guidance to the schools and practitioners with regard to this rule and maybe, in the long term, to create some exceptions that are on par with the hearsay exceptions that we see in practice, especially if there's an admission or a statement against interest, et cetera.

That would be my comment, and I appreciate your time again and your consideration. Thank you very much.

MODERATOR: Thank you. Next up is Sydney O, followed by Patricia H.

SYDNEY O.: Can you hear me okay? Okay, I think we're good. Hi, my name is Sydney Ovitt. I just graduated from the University of

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Vermont a couple of weeks ago. I run a survivor advocacy organization, and I'm also a survivor myself.

I was sexually assaulted my freshman year of college during the red zone, which is like those first couple of months of college, as you probably know, when over 50 percent of sexual assaults happen on campus.

I eventually reported to the Title IX Office at the University of Vermont and felt extremely re-traumatized by that process. Although this was before new Title IX regulations were in place, a lot of the same issues, I think they stay.

Sorry, I reported in February a couple of months after my assault. My investigator asked me extremely inappropriate questions, shamed me for having been drunk, and showed no signs of understanding the different trauma responses that survivors can have.

My investigation took over four months which was already a very heavy load, a heavy

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burden. The lack of communication from the office only made this process more unbearable for me.

I have had support from my teachers, but not from my school. I received none of the supports that my school was supposed to have given me. I've heard countless MeToos shouted in the dark from my university and other college students, because they don't feel that the Title IX system is going to support them.

I've talked to many survivors that, like, know what their options are but don't want to report to Title IX because they've heard how awful and re-traumatizing it's been for the people that have done it.

And that breaks my heart, because I think that all survivors deserve justice, and I think we need a system that balances the needs of both parties in that situation. I would also love to see, like, restorative justice have a focus. If that could be something that would be reviewed, I think that would be great.

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Yes, I think this was mentioned before, but usually marginalized groups of people face higher rates of sexual violence. And at least at my university we have two investigators, and they're both older white women. And that can be another thing that draws people away from reporting.

I hope that as you continue to hear testimony and review the regulations, that you will center survivor voices and experiences in your review, especially those with marginalized communities.

I appreciate you all listening and taking the time to hear everyone's testimony. Thank you.

MODERATOR: Thank you. Next up is Patricia H.

PATRICIA H.: Good afternoon. My name is Patricia Hamill. I'm an attorney at Conrad O'Brien where I chair the firm's Title IX practice and have represented more than 200 college students and faculty members, mostly

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respondents, involved in Title IX proceedings.

I do not approach these issues as a partisan. Rather as an attorney, and based on my experience, I believe it is essential that these processes be fair, given their profound and lasting impact.

I testify today out of concern that the Department will roll back many of the gains made and protections implemented by the 2020 regulations. Any action the Department takes must comply with existing law.

To that end, parties in Title IX proceedings must receive, at the least, full and fair notice, a thorough and impartial investigation, and impartial decision-makers. Those critical of the current regulations do not, in general, challenge these basic fairness requirements, and they must be retained.

Similarly, clear provisions allowing informal resolution should be preserved. Not every complaint should lead to a hearing. The main points of divergence among practitioners

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involve the scope of covered conduct under Title IX and the requirement of live hearings with cross-examination.

I agree that the Department should consider the provisions regarding covered conduct. In response to the 2020 regulations, many schools adopted two-track systems providing the legally mandated procedural protections, in some cases involving alleged sexual misconduct but not in others. That is unfair, confusing, and unworkable.

Any proceeding that could result in a respondent being deprived of access to a school's educational programs or activities should provide the basic procedural protections required by the current regulations.

Additionally, given the enormous stakes in any Title IX proceeding, it is essential to preserve live hearings and cross-examinations which are already legally required in many jurisdictions.

I strongly support allowing the

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parties' advisors to conduct the cross-examinations subject to safeguards to ensure fairness and respectful questioning. The evidence does not support the concerns of some that complainants be harassed or deterred from reporting because of live hearings with cross-examination.

There is one key area where the 2020 regulations should be modified or clarified. The exclusion of prior statements by parties who do not submit to cross-examination is not workable and contradicts well established evidentiary rules.

Decision-makers should be allowed to rely on statements that are not being offered for their truth, including statements that could themselves be part of a sexual harassment claim or a relevant issue such as consent and capacity.

Decision-makers should also be allowed to rely in either party's prior admissions and statements against interest. Thank you very much for your consideration.

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MODERATOR: Thank you. We'll be right back with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Emma L. Emma, please unmute your mic, and you may begin.

EMMA L.: Good afternoon. My name is Emma Love, and I'm a rising senior at Gettysburg College. I am the co-founder of Survivors at Gettysburg, a student activist organization advocating for better policies addressing sexual misconduct on my campus.

I am also a policy coordinator for the University Survivors Movement, a coalition for student activists from college and university campuses across the country who are fighting for change in how institutions and higher education respond to cases of sexual violence.

As a sexual assault survivor myself who went through the Title IX formal procedure at Gettysburg College, I have first-hand experience as to how re-traumatizing this process is for

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survivors and the impact of this harm in regards to physical safety, mental well-being, and academic performance.

The issues I observed during my own investigation keep coming up in other stories I've heard from fellow survivors throughout the course of my advocacy work. Betsy DeVos changed a Title IX rule that requires specific disciplinary procedures for sexual harassment that dissuade reporting, are unfair to complainants, and unnecessarily burdensome.

The changes to the Title IX rule only further sweep cases of sexual misconduct under the rug by requiring schools to ignore many reports of sexual harassment and to use uniquely burdensome procedures for sexual harassment that aren't required for any other type of student or staff misconduct like non-sexual assault. These changes make it even more difficult for survivors of sexual violence to come forward with their stories.

Before the DeVos rules, the Department

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has long stood for the fairness of school discipline procedures for all involved parties. Yet the new regulations require disciplinary procedures for sexual harassment, and sexual harassment alone, and are uniquely hostile to Complainants. This includes being cross-examined, cross-examined by the rapist's advisor who may or may not be an attorney, and asking insensitive questions that place blame on the complainant.

In addition, the DeVos regulations impose detailed and burdensome procedural requirements on all educational institutions for addressing sexual harassment regardless of school type, size, location, and resources that are available. But schools vary tremendously in these characteristics. And there's no one size fits all model that works for every educational institution and every educational program.

The Department should instead outline general requirements for fairness, like standard timelines, equality mandate, as they did in

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previous guidance. For example, the Department should require that schools' disciplinary procedures be fair and allow both parties the same procedural rights.

The Department should also require that schools use a preponderance of evidence standard in returning responsibility for sexual harassment and other forms of sex-based harassment rather than leaving that choice up to each individual school.

This standard is used in civil rights lawsuits and by the OCR in its own enforcement actions. And the Department should not dictate the specific details of how schools must investigate sexual harassment, dating violence, domestic violence, and stalking, or other forms of sex-based harassment.

So I'm having a little bit of technical difficulties here.

I am requesting that the administration consider this recommendation to restore and strengthen Title IX protections

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against sexual harassment for students. The Department should take all necessary steps to ensure that survivors are supported throughout the Title IX process.

Thank you for your time and your consideration.

MODERATOR: Thank you. We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Commenter V8L. Please unmute your mic and feel free to start speaking.

COMMENTER V8L: Can you hear me?

MODERATOR: Yes, we can hear you.

COMMENTER V8L: They say the road to hell is paved with good intentions. My respondent student is a long hauler with nine years in navigating campus Title IX. He's lost nearly everything important to him. The journey we still face promises to take most of the rest.

But revered as a noble cause, the 2011

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"Dear Colleague" letter firmly reminded schools of their obligation under Title IX to provide education and its benefits to all students, complainants and respondents alike, free from sex-based discrimination.

Mob voice and politics intersected with good intention. Confusion, pressure, and fear grew. And Title IX's protection became the weapon. Flawed processes barricaded institutions and administrators from government. Students were left to navigate hell alone. Good intention was abandoned. Choices made and decisions reached guaranteed fair and equal treatment for no one.

For thousands like my family, the road's journey requires an every-human-for-oneself strategy to survive an inhumane process. A presumption of innocence, the constitutional concept taught in grade school, did not, strikingly, apply at school.

My student's experience with campus Title IX revealed fundamentally unfair processes,

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including processes implemented that did not align with published school policies, those of which were often revised while kept from the students involved.

Multiple adjudications of the same allegation, one after the other under separate school policy, commonly known as double, even triple jeopardy. The inability to defend oneself before unbiased hearing panelists with all pertinent evidence considered. An opportunity to question indirectly each student. Processes based on political narrative rather than truth. Falsification of student records by schools to protect school interests. To remain unheard, dismissed, over provable concerns of unfair practices, harassment, and stalking of a respondent with no action taken. To experience a finding of non-responsibility which, from that day forward, does not provide for an education free from discrimination and unencumbered from wrongful restraint.

In that year, my child spent most days

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on the floor of his dorm bathroom in the fetal position, shower running to muffle his cries. At 20 he attempted to take his life.

Once my student described his life's view as a cup filled to brim. Today he is left with permanent brain damage as a direct result of what the road to hell inflicted on him as an adolescent college freshman.

No human should be made to suffer this way again. We must solidify Title IX reform with current regulations guaranteeing fair and equal treatment of every student, required school compliance without political narrative. Thank you.

MODERATOR: Thank you. Next up is Joy M.

JOY M.: Thank you for hosting this hearing and gathering input from a wide variety of stakeholders. My name is Joy Mosley, and I'm the director of Government Relations for the Council for Christian Colleges and Universities, the CCCU.

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We are a higher education association representing 190 institutions, 520,000 current students, and about 3.6 million alumni. Our colleges represent over 35 different denominations and some are non-denominational.

After hearing from campuses, I want to focus my remarks on three areas of the Title IX regulations, the religious exemption, the informal resolution, and the courtroom-like process including the live hearing requirement.

First, I want to stress the importance of the religious exemption for allowing institutions to live out their sincerely held religious beliefs which are constitutionally and statutorily protected.

It is carefully crafted to only exempt religious institutions from compliance with those specific parts of the statute and regulations that are inconsistent with their religious beliefs.

The statute does not require an institution to seek prior approval from the

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Department of Education in order to claim the exemption. However, that was only clarified for the first time, though it had been the case all along, in the August 2020 regulations.

Removing that clarification would only create confusion for schools, because removing that clarity might make it seem like institutions should get prior approval even though that is not statutorily required. I ask that you keep the clarification in the new regulations.

Second, institutions have appreciated the flexibility to have an informal resolution process where appropriate. Rather than going through a courtroom-like procedure, an informal process can allow for a restorative approach which may be the best fit for particular circumstances. I ask that you keep the ability to have an informal process in the new regulations.

Lastly, the courtroom-like process and the live hearing in particular do not suit an

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educational institution. I have heard from schools that the live hearing requirement has had a chilling effect on those willing to come forward with reports.

Students who have legitimate claims under Title IX are not coming forward, because they fear being re-traumatized with the live hearing and cross-examination. We want a fair process for all students involved in these complaints. But a fair process does not require turning colleges into courtrooms.

If students fear coming forward there is no fair process. I ask that you remove the live hearing requirement and work to ensure institutions have flexibility to resolve complaints in a timely and fair way without being overly prescriptive and judicial.

The CCCU will be submitting written comments that go into more detail, and we look forward to working with the Department of Education on these new regulations. Thank you.

MODERATOR: Thank you. Next up is Ria

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T followed by Ryan T.

RIA T.: Good afternoon, my name is Ria Tabacco Mar. And I'm the director of the ACLU Women's Rights Project. My testimony today will be limited to addressing discrimination based on sexual orientation and gender identity. My colleague, Sandra Park, will address additional topics.

We at the ACLU strongly urge the Department to issue new regulations to ensure that LGBTQ students have the same freedom to learn and to thrive at school as their peers.

The need for the Department to issue clear and express regulations could not be more urgent. At least nine states now ban transgender girls and women from scholastic athletics. In the past year alone, at least 34 states have considered bills to outright ban trans gender girls and women from scholastic athletics at every grade level, from college down to kindergarten.

We have two core recommendations for

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any new regulations addressing LGBTQ discrimination. First, we urge the Department to recognize expressly that discrimination based on a person's sexual orientation, gender identity, gender non-conformity, or transgender status is discrimination on the basis of sex under Title IX and its implementing regulations.

This conclusion follows from the reasoning of the Supreme Court, the Departments of Justice, and Health and Human Services, and the words of the statute itself. The Supreme Court held in Bostock v. Clayton County that when an employer discriminates against a person because of their sexual orientation or transgender status, the employer necessarily and intentionally discriminates against that individual in part because of sex.

The same reasoning must apply to other federal statutes that similarly prohibit discrimination based on a person's sex, as the Departments of Justice and Health and Human Services have already recognized. That includes

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Title IX.

Second, we believe it is critical for the Department to make clear that schools cannot, cannot discriminate against transgender students by excluding them from school restrooms, locker rooms, or athletic programming that match their gender.

Under existing regulations, schools may choose to provide separate restrooms, locker rooms, and athletic programming for girls and boys. It's important for any new regulations to make clear that schools' freedom to offer separate facilities is not a license to discriminate against transgender students and the provision of those facilities.

In other words, there is no basis in Title IX or its implementing regulations for excluding transgender students from facilities or programming consistent with their gender. In fact, it would violate Title IX to do so, as the Fourth, Seventh, and Eleventh Circuit have already held.

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Thank you for the opportunity to testify today.

MODERATOR: Thank you. Next up is Ryan T, followed by Angelina C.

RYAN T.: My name is Ryan Thompson, and I submit these comments on behalf of myself and my law firm, Thompson Esq., PLLC.

The last year I have compared the 2020 Title IX regs to an experimental airplane that not only was never test flown but was never even put through the flight simulator.

The current regs were written with the clear incomprehension as to the realities that schools are confronted with and how these regs would translate into real life.

Though likely never intended to do so, the regs' writers created an odd bifurcated conduct system at most higher ed institutions where sexual violence or harassment between students on campus must be handled differently from sexual violence or harassment between students across the street at a house party, for

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example.

The regs, while rightfully mandating equal treatment and instilling due process protections for both parties, something that many of us practitioners had been engaged in for years as best practices, overly prescriptive and often arbitrarily rules have created quasi-courtrooms where gamesmanship and attorney tactics can overcome actual evidence.

And as a former Title IX coordinator and now an attorney often engaged almost exclusively in Title IX and civil rights work with schools, I have seen this gamesmanship up close.

As a hearing officer, I have actually had attorneys tell me that their plan is to ask a party or witness a question that they will refuse to answer so that, as a result of the regs, all their previous statements and evidence will then be eradicated from the record.

These procedural oddities, like OCR's all or nothing cross-examination mandate, and the

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treatment of non-responsive witness testimony, do not exist in any modern legal system that I'm aware of, created as if an experiment in some law school clinic.

They take us further away from assessing these cases on the actual facts and evidence, and they make these lengthy Title IX adjudications into legal contests where money and attorney strategy can trump the truth.

Already we have seen the time it takes these cases to be resolved become lengthier. And this time continues to grow as delay tactics can make smart strategy under the current regs because of their prohibitions against many interim actions and temporary degree or transcript holds.

While I believe some level of cross-examination or some procedural equivalent is wise to ensure fundamental fairness, I wonder if this mechanism can be built into robust investigation interviews rather than live hearings. If, however, we do want to continue to operate a live

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hearing model, I implore you to remove the procedural oddities mentioned previously as well as consider the following.

As a hearing officer, I don't need to approve every single relevant question. Just put the onus on us to step in and stop a non-relevant question. And it looks like my time is up, so thank you very much.

MODERATOR: Thank you. Next up is Angelina C.

ANGELINA C.: Hi, everyone. My name is Angelina Cantelli. I am a junior attending Louisiana State University, and I'm also the president of Tigers Against Sexual Assault which is an on-campus student coalition to advocate for survivors and educate the community on preventing sexual violence.

Over the last year, my university has been the subject of many national media reports about the institution's failure to properly report allegations of sexual violence. Time and time again, media sources such as USA Today have

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shown that my institution has chosen to protect student athletes over survivors and engage in extreme victim blaming.

However, no employees have been terminated as a result of their actions at LSU. And throughout this year, I've organized multiple on-campus protests and heard countless stories from survivors who feel silenced by our university.

It's hard to believe that things are getting better, quote, unquote. We haven't seen real substantial change. This year has opened my eyes greatly to the need for active accountability between higher education institutions and the federal government.

While Title IX may not be a, quote, unquote, enforceable document, the laws and regulations that are laid out in this document were blatantly disregarded at my institution. And it would be naive to think that this isn't happening at institutions everywhere.

Furthermore, the federal Title IX

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changes that came out during the previous administration perpetuated (audio interference) and often encouraged people who are bad actors and want to engage in victim blaming that they were correct to believe those things.

Things like changing the evidence standard to clear and convincing, from prominent to average, or removing the 60-day timeline, only allows those who want to misuse their power to harm and silence survivors to continue doing it.

So in the future, I ask for a few small changes such as the removal of mediation as a process when dealing with Title IX cases, bringing back the preponderance of evidence standards for all institutions, reinstating 60-day timelines for every investigation so that survivors don't have to relive their trauma through a dragged out process, changing the definition of sexual harassment to simply be creating a hostile learning environment than to be clear and pervasive, and lastly, returning to the language a responsible employee rather than

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an official with authority.

I've seen the danger and the damage that these changes can do to students on campus, and survivors, or allies, and just a normal student. It creates deep pain for us to see these things done at a federal level. And so I have faith in this administration to bring back belief in survivors as the first most priority. And I look forward to seeing the future changes in Title IX.

Thank you for allowing me to be here today.

MODERATOR: Next up is Sandra P.

SANDRA P.: My name is Sandra Park, and I'm a senior staff attorney at the ACLU Women's Rights Project. As the Department considers its next steps in implementing Title IX, it is essential that the Department require that recipient institutions take sexual harassment and assault reports seriously and do so through processes that are fair to both those who report sexual harassment assault and those

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who face disciplinary action based on such reports.

The ACLU is equally committed to rights of students to be free from sex discrimination and to the rights of students to fair processes when facing disciplinary action by educational institutions.

First, the Department should issue new regulations to safeguard our nation's schools from sex discrimination, including sexual harassment and violence. The ACLU recommends that new regulations broadly define harassment prohibited under Title IX, as well as recipients' obligations to address it, consistent with the ways the Department has interpreted other civil rights laws.

We also recommend that new regulations restore the approach the Department used prior to 2020 on several key points. Ensure that recipients are obligated to address sexual harassment that limits, not only denies, students' equal educational opportunities.

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Require that an institution act if it knows or reasonably should have known about the harassment, and if it has authority over the respondent, regardless of where the incident took place, when the incident may deny or limit access to the institutions program or activities.

And require that institutions remedy hostile educational environments created by sexual harassment.

These provisions, in our view, are completely consistent with the First Amendment as they direct educational institutions to respond to harassment, a form of discrimination that is not protected speech.

Second, any new regulations issued by the Department must ensure fair, prompt, and equitable resolution of reports of sexual harassment and assault.

Fair process in this context is important so that neither students who face disciplinary action nor students who report sexual harassment or assault, lose access to

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education because of bias, unjust outcomes, or an inability to be heard.

Fair process is necessary at any level of education and must be tailored to the age of the students involved. At a minimum, fair process for students of all ages requires notice and a meaningful opportunity to be heard.

In higher education where serious sanctions, including suspension, dismissal or adverse statements on a student record may be imposed, disciplinary proceedings should include written notice of the allegations and evidence compiled in the investigation, an opportunity to submit a written response, a hearing before a neutral decision-maker, an opportunity to testify, present evidence, and cross-examine witnesses, written notice of final decisions, and a right of appeal to all parties.

The rules should provide that the preponderance of the evidence standard governs whenever students' access to education is implicated on both side of the matter.

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I refer the Department to our fuller written comments that we will submit for more details on both these points. Thank you.

MODERATOR: Thank you. We'll be right back with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Laurie C. Laurie, please unmute your mic and feel free to start talking.

LAURIE C.: Hi, can you hear me?

MODERATOR: Yes, we can.

LAURIE C.: Hi, thank you so much for having me speak. I just wanted to state that, as a mental health counselor, boys develop mental needs for play and kinesthetic learning at all ages, including up through high school is crucial. And it has traditionally been ignored in school, especially since the 1990s.

And I find that this is developmentally inappropriate. It's even egregious neglect, especially considering the

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epidemic of boys being diagnosed with ADHD and medicated.

A lot of that is simply because their need to move is so intrinsic to who they are and to their development. And that is being stifled. So I am asking that that, please, be considered a basic necessity for boys at all ages.

Also, there's a great deal of negativity in school today, especially in the last decade, towards boys. They are disciplined for developmentally appropriate behavior, and they're shamed for being male by teachers who have certain political affiliations.

Also our young adult boys, our older adolescent boys in colleges, are experiencing shaming as well politically. And this is a double-edged sword, because they're also denied routinely due process in sexual assault complaints under Title IX, even as they don't receive adequate education about themselves as boys being vulnerable to sexual assault victimization.

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This issue is so severe that more and more parents are home schooling and even having their sons take online classes as a way to avoid this. So we can't speak about Title IX without addressing these very real and even sexist actions against our boys and young men.

And again, I am saying this as a professional. I've worked in early childhood education. And as a mental health counselor I've worked with kids all the way up to college age. And most of the complaints and the referrals that we get from schools involve boys.

And almost all of it is developmentally appropriate behavior being misconstrued as a disability or disorder when really children, boys, need to move. They need to play, they need to use their whole body in learning.

Also many boys are coming from abusive homes where they're suffering developmental trauma. And this trauma causes them to act out in a way that is often misunderstood by teachers.

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Thank you very much.

MODERATOR: Thank you. We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Heidi G. When you're ready, please unmute your mic and begin speaking.

Heidi, can you unmute your mic?

HEIDI G.: Yes, I think I have unmuted now. Can you hear me?

MODERATOR: We can hear you. Thank you.

HEIDI G.: Super, thank you. Good afternoon, my name is Heidi Goldstein. Today I speak as the adult advisor to BHS Stop Harassing, a grass roots student organization founded in 2014 in Berkeley, California, with a mission to change the culture of sexual harassment in the Berkeley unified schools through education, survivor support, and activism.

I'm also the parent of a student

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survivor who was assaulted at school. As a result of the experience, I tendered a complaint to the OCR in 2015 which initiated an investigation into the school district for allowing students to be subjected to a hostile environment on the basis of sex.

Through this, and my work since 2014 as a member of the district's Sexual Harassment Advisory Committee, I have a wealth of experience and good insight into the elements of the Title IX regulations that should be improved.

I suggest OCR focus on three key elements to improve protections and outcomes for K-12 students. First, require LEAs to accept and acknowledge an independent Title IX advocate as a minor child claimant's representative.

Today Title IX is a complicated, quasi-criminal process. School districts often engage counsel to manage claims and don't adequately explain the Title IX processes to complainants, including their obligations for student safety and protection from retaliation.

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It's difficult to maintain truth and confidentiality. News gets out, and students choose sides. The social retaliation is fierce and unrelenting. A student may not choose to share their predicament with parents or guardians. With an independent advocate, the student complainant has access to a knowledgeable resource able to help them navigate the process, stay safe, stay in school, and provide informed options.

Second, provide extensive dear colleague style guidance to clarify how Title IX processes interact with FERPA, Section 504, and individual education plan, IEP, overlays when a Title IX complaint has been made.

It's not uncommon for school administrators to disallow or bury Title IX complaints citing, incorrectly, superseding 504 or IEP requirements, or refuse to discuss the status of the case citing FERPA limitations.

These shields are frequently misapplied, whether by intention or ignorance,

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and leave K-12 complainants vulnerable and uninformed on important matters that adversely affect their safety and access to school resources.

Third, change the 180-day incident reporting interval to include a more generous period of time. K-12 students need more time to come forward. Shame, confusion, embarrassment, and the complicated, difficult way of navigating the Title IX processes, often poorly explained or publicized by LEAs, all introduce significant delays in K-12 reporting.

Title IX regulations with more generous intervals, mindful of the impediments that exist in bringing forward such claims, will enable all students in the US to have their complaints addressed and resolved in a respectful way. Thank you.

MODERATOR: Thank you. Next up is Fatima S followed by Howard K.

FATIMA S.: Hello, can you hear me?

MODERATOR: Yes, we can hear you,

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thanks.

FATIMA S.: Hi, my name is Fatima M. Smith. I am a survivor advocate, prevention educator. And I want to speak to the fact that the current Title IX law is disproportionately impacting Black and Brown students, particularly those that identify as Black women and Black-trans women.

I'm a survivor and also a mother, unapologetically Black, and identify as a woman whose passion and work are dedicated to ending sexual and intimate partner violence. Yet I continue to feel as my identities are not valued.

While reading the 2000-plus page document, I struggled to get through it without repeatedly wondering what about Black survivors, and will this impact them?

The current structure is calling for a system that most HBCUs, historically Black colleges and universities, those smaller, less funded universities do not have the person power, the financial or institutional infrastructure to

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support.

Research shows that intimate partner violence and sexual violence disproportionately impacts Black communities, yet policy systems and resources cater to White middle class women. The new Title IX rules are yet another example of society's inability to acknowledge the intersections of sexual violence and racial trauma.

While Betsy DeVos hung her hat on what she considers due process, we must remember that due process does not look the same for everyone, let alone a Black survivor on a college campus, especially a Black trans woman.

Working with survivors at different universities has underscored that one's Blackness and experience with sexual trauma are viewed as separate identities.

The Title IX rule reminds us that sexual assault is damaging, but it's also the response that has the lasting impact. Right now, this law will provide a hall pass to skip out on

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being responsive to students who experience sexual and intimate partner violence on and off-campus.

And I'm asking that we reconsider having off-campus be eliminated and changing who is a mandated reporter. It should not be a matter of when or who I tell my truth to, it should just matter that it happened.

Under this new rule, there's a burden, an extra burden of knowing who and when to share one's experience, as well as trying to mentally prepare for cross-examination.

There is a concern that transgender students who will be misgendered, intentionally or unintentionally, by a respondent advisor during cross-examination, or the pressure to have to come out in order to avoid being misgendered.

The current Title IX laws are damaging to survivors but particularly Black and Brown survivors. And as we continue to unpack this, I really caution us to have Black and Brown voices, particularly those with trans identities, at the

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table making these decisions. Thank you.

MODERATOR: Thank you. Next up is Howard K, followed by Andrew S.

HOWARD K.: Under the Obama Administration, the Department failed to effectively respond to claims that the Department's guidance and actions were biased against respondents based on sex. This simply was not true. Rather, it was how some schools interpreted and applied the guidance that arguably did so.

However, by failing to effectively respond to such claims, the Department allowed a narrative to develop that, for instance, an OCR investigation could be evidence of gender bias.

The new regulations should make it clear that they are intended to prevent gender-based discrimination against both complainants and respondents. And the regulations shouldn't go beyond that. It is not the Department's place to establish requirements for due process or to make sure that schools' procedures are fair and

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balanced based on a status as a complainant or a respondent.

Again, the regulations should only include provisions to ensure that both parties are not discriminated against based on gender. And we need the schools to make sure that their procedures comply with federal, state, or contractual requirements regarding due process, and that any failures by a school to comply with those requirements is due to the school's actions, not to OCR's regulations.

Finally, consider the not uncommon situation in which a number of people in a particular program, department, sports team, or club each make comments of a sexual nature towards the few women in the program, department, et cetera.

None of the conduct would be sufficiently severe, persistent, and objectively offensive to warrant discipline against any particular individual. So the complaint process required by 106.45, fixed as it is on determining

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whether an individual's conduct is sexual harassment, wouldn't apply.

However, the cumulative impact of the conduct could well be sufficient to create a hostile environment and have just as serious consequences for the targets as that created by sexual harassment as defined by the regulations.

Yet it is by no means clear that the regulations would recognize this as a form of discrimination covered by the general Title IX grievance procedures required by 106.8(c), possibly leaving the targets of the conduct with no internal recourse against the program or department or against the educational institution itself.

I therefore urge the Department to develop a definition of sexual harassment in the new regulations that includes this sort of cumulative misconduct and to make it clear that it must be covered by the educational institution's grievance procedures. Thank you.

MODERATOR: Next up is Ashtin M.

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Correction, next up is --

ASHTIN M.: Hi, I'm sorry.

MODERATOR: You can go ahead, we'll go to Andrew after you. Thank you.

ASHTIN M.: Okay, thank you. My name is Ashtin Markowski. I am from Seattle, I currently live in Utah where I graduated from Brigham Young University in December of 2020. I'm a plaintiff in the Religious Exemption Accountability Project lawsuit.

I originally went to BYU because I wanted a religious education. I also didn't even admit to myself that I was lesbian until I had just under a year left, so it wasn't worth the time and money to transfer. However, I also didn't realize the toll that staying at BYU would take on my mental health.

Around the time that I realized I was gay, I decided to cut my hair short and instantly felt so much more at peace with myself. I was working in an on-campus job and was fired about a month after I cut my hair.

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Even though I was willing to grow it out to keep my job, I was told that my haircut was extremely distracting, and not feminine enough, and that they were not willing to work with me to stay. This was extremely discouraging to me, because I knew other girls who were straight and had short hair who were allowed to continue to work there.

When I talked to my BYU student congregation leader as I was figuring out my sexual orientation, he questioned if I had a sex addiction for liking girls and required me to set goals and intentions to resist what he called the temptation of same sex attraction and then started mini-conversion therapy.

In my classes at BYU, I was taught that gay people who do not stay celibate will not get to highest level of heaven. Engagement and marriage were heavily encouraged at BYU, and something is assumed to be wrong with you if you don't date. But there is no space for LGBTQ+ students to date.

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BYU does not allow any LGBTQ+ or ally group to be an official BYU club or meet on campus. Not only can BYU students be expelled for being gay, but the school lacks support for its queer students' general well-being. BYU also does not interfere homophobic demonstrations on campus but is quick to expel students for being in a loving, same gender relationship.

My experience at BYU was nothing short of traumatic and each day was filled with anxiety due to my fear of being kicked out for being gay. Like many LGBTQ+ students, I did not feel comfortable or safe being out on campus because of its homophobic atmosphere and belief that heteronormative relationships are superior. These examples are just a few of many experiences at BYU that have been harmful to me and other students.

Religious universities need to be held accountable for the harm they have caused and continue to cause students like me. My hope is that the Department of Education will narrow the

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scope of religious exemptions so that less discrimination occurs. Thank you.

MODERATOR: Thank you. Next up is Andrew S.

(Pause.)

MODERATOR: Andrew, please unmute your mic.

ANDREW S.: Sorry, thank you. Can you hear me now?

MODERATOR: We can hear you. Thank you.

ANDREW S.: Okay, thank you. Sorry about that. My name is Andrew Smiler. I have a Master's Degree in Clinical Psychology from Towson University and a Doctoral Degree in Developmental Psychology from the University of New Hampshire.

For the last 30 years I've worked with and studied boys, men, and masculinity. During that time, I've been honored to serve as the Board Chair of MaleSurvivor.org and as president of the Society for the Psychological Study of Men and

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Masculinity.

I'm also the author of several books addressing normative aspects of male sexual development as well as the lives of boys and men more broadly.

Over the years, I've worked with scores of boys and men who have been sexually assaulted and raped, typically during childhood or their early adolescent years but sometimes at older ages, including the college years.

The CDC tells us this is a fairly common experience with approximately one in six boys and men being subject to such incidents during their life. That one in six number comes from the same CDC study identifying one in four girls and women as victims of sexual assault and rape.

Now while the sexual assault and rape are more commonly perpetrated against women, we encourage the committee to remember that men, gay, bi, trans, and straight, are all victims too. We want to ensure that equal protections

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are provided to victims of all genders, not only those who are statistically more likely to be victimized during this time.

We'd also like the committee to give serious and extended consideration to Title IX guidance about how such cases are handled by institutions of higher education.

Now, I am particularly concerned because of two concurrent beliefs held by the general public, the public that includes many judicial affairs officers who respond to complaints about sexual misconduct, as well as other members of a university's population who may serve on judicial hearing boards. Such boards are used in cases of sexual assault.

And I will remind the committee that typically a student, you know, may be found responsible or accountable if there is a preponderance of the evidence, typically 51 percent or more, that points in that direction.

Procedurally, Title IX, in my understanding, allows universities to require

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students to defend themselves when they choose to break university rules and allows universities to prevent any type of cross-examination or dialogue about what occurred between the claimants.

And I'd like you to take a moment to consider your image of men in general, and in particular, your image of men who are accused of sexual misconduct, especially here in 2021. And for the last few decades the average American has tended to believe that any man accused of sexual misconduct is likely guilty, even if the evidence doesn't reach the level, quote, unquote, beyond a reasonable doubt.

Over the last several years, we've also been encouraged and trained to believe the victim. As a therapist, I do believe my clients and believe the victims. As a friend, I believe people I know when they tell me when they've been sexually assaulted or raped.

But I do not believe that decision-makers can automatically or should automatically believe the victim. I believe that policy must

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be designed and implemented to ensure fairness to all involved parties, regardless of their gender, regardless of the stereotypes they may fit. Thank you.

(There was a brief break between speakers at this time.)

MODERATOR: Our next commenter is Alexis B. Feel free to unmute your mic and begin talking.

ALEXIS B.: Okay thank you. All right, when you are a survivor or a victim of sexual assault, you already feel violated. You have lost the control that you did have prior to that assault.

Most crimes against people are prosecuted or discussed with the victim in mind. However, more often than not, sexual assault victims are forced to relive the trauma, relive the feelings of shame, guilt, embarrassment or just not knowing the extent of what happened to them.

Our society has treated sexual assault

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as a victim problem -- how much were they drinking, what were they wearing, why were they out -- instead of putting the blame on the person committing the assault.

The Title IX changes that started in August of 2020 continue to perpetuate the victim blaming culture. When more protections and concessions are made for a perpetrator than a victim, why would victims want to come forward?

I asked victims that I had worked with prior to the role changes that had filed complaints with Title IX, what would you do now.

Overwhelmingly, the answer was, I wouldn't have reported. They then asked, why report when a victim feels like it is done against the educational system?

Why report when the victim knows that they will have to face and be questioned by the person that took their control?

Why report when, to victims, they're the ones having problems with their education or they're the ones having issues with class

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changes, changes up in routine and the route they even have to walk to and from classes or to dorms?

Why report when the perpetrator has more rights than the victim?

Why report when it could take a year or more to get a ruling after the perpetrator has left or graduated, oftentimes?

Since August of 2020, even in my small rural county, multiple reports that would have been covered under the old guidelines are no longer covered by the new guidelines.

Please consider the fact that anyone can be a victim -- someone you know someone in your family, friend, circle -- and that all victims deserve the opportunity to be heard and not punished because of what happened to them.

Consider the fact that sexual assault is already a notoriously hard to prove crime in the criminal justice system. And sometimes the only justice that these victims may get is coming from Title IX. Thank you.

MODERATOR: Thank you. We'll be back

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in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: This concludes this session. The next session will begin at 3:30.

(There was a brief break between speakers at this time.)

MODERATOR: Good afternoon. We're going to begin the session with Emily M. followed by Stephen E.

EMILY M.: My name is Emily Martin, and I'm Vice President for Education and Workplace Justice at the National Women's Law Center which was founded in 1972, the year Title IX became law.

We have also sought to make Title IX's promise of gender equality in schools a reality.

The 2020 DeVos Sexual Harassment Rule was a profound distortion of Title IX. Rather than addressing the barriers that leave students experiencing harassment not to seek help, the rule heightens those barriers.

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Rather than pushing schools to take steps to prevent harassment and address problems before they become crises, the rule pushes schools to abandon early interventions.

Under the DeVos Rule, schools are required to use uniquely complainant-hostile procedures for investigating sexual harassment complaints.

These processes are not required for any other type of student or staff misconduct -- not for a punch in the face, not for use of racial slurs, not for other types of sex discrimination.

The rule, thus, singles out sexual harassment complainants as uniquely untrustworthy. It relies on and reinforces the ancient toxic myth that women and girls often lie about having been sexually assaulted and it discourages sexual assault survivors from seeking help.

The DeVos Rule also prohibits schools from addressing sexual harassment unless the harassment is severe, pervasive and objectively

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offensive, unless it happens on campus or during a school activity and in higher ed, unless one of only a few high-level decision-makers actually know about the harassment.

While schools were told they could still address harassment that didn't meet these tests if they did so under so-called non-Title IX policies, this distinction is largely incoherent.

It makes no sense to parse student complaints and school responses into Title IX sexual harassment and non-Title IX sexual harassment.

So not surprisingly, many schools are simply ignoring harassment that falls short of the rule's standard. As a result, schools are not addressing sexual harassment until it becomes so serious it's poisoned the student's ability to succeed in school.

We need the Department of Education to turn the page on this misguided approach by restoring longstanding department standards for addressing harassment, by robustly protecting

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student survivors from retaliation and by setting basis safeguards for fair disciplinary procedures while preserving flexibility for schools.

These changes will help shift cultures to prevent harassment in the first place, promote accountability and healing and provide fair, unbiased solutions to help ensure safety and equality for all students.

We also ask the Department to affirm LGBTQ students' rights including equal access to sports, bathrooms and locker rooms. Thank you so much for giving me the opportunity to speak to you today.

MODERATOR: Thank you. Next up is Stephen E. followed by commenter XCT.

STEPHEN E.: Good afternoon. I first wanted to express my gratitude to the Department for its transparency in seeking comments related to this regulatory planning agenda.

I'll keep my comments really short. Just had a couple of things here. I represent a middle-sized private liberal arts university in

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Oklahoma.

Our experience has been that since the Department's implementation of its August 2020 significant amendment of the regulations, the number of students on our campus that have actually filed formal written complaints with potential Title IX violations has dropped precipitously.

For the three years prior, our little university received and investigated, on average, about eight formal complaints each academic year.

My assumption that this drop is related to the implementation of the live hearing with required cross-examination of the complainant by an advisor or other person of the other party's choosing.

Complainants are simply unwilling to file a formal written complaint with that kind of process in front of them. My concern for our students is that this cross-examination presents a significant chilling effect in employee and student reports where informal resolution is

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simply not allowed.

The Department's 2020 regulatory amendments are largely unworkable on smaller to middle-sized university campuses where almost all of the Title IX team members are volunteers with little to no legal background.

We would specifically ask the Department to closely examine the requirements for cross-examination during a live hearing, the impact that this quasi-judicial process has nationally on the number of formal written complaints.

And we would encourage you to remove that requirement. And that's my comment. Thank you very much.

MODERATOR: Thank you. Next up is Commenter XCT followed by Cynthia M.

COMMENTER XCT: Hello and thank you for giving me the opportunity to speak at this public hearing.

I am a parent whose child experienced sexual harassment while a college student. This

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sounds very clinical and polite, but for us it was a raw and terrible experience.

If you'll allow me to blunt, this is a more accurate and principled description. While a university student, our daughter was picked on because of her sex.

Over a period of two years, she was stalked, she was harassed and then she was sexually assaulted at her college apartment.

As important as this is, our daughter is not alone in these experiences. These crimes happen to a large number of students. Do we not have an obligation to protect our children?

In 1780 John Adams wrote in the Massachusetts Constitution, Article 30, that our country is government of laws, not men. I believe that the laws we write reflect our aspirations as a free and just people.

We depend on laws to keep our children safe. We depend on laws to prevent a person being targeted because of who they are. And we depend on laws to be a deterrent for those who prey on

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the vulnerable.

As you correct the laws, I ask that you keep in mind our obligations to protect our children. Thank you.

MODERATOR: Thank you. Next up is Cynthia M. Followed by Lara K.

CYNTHIA M.: Aloha. I'm Cynthia Monteleone, a world champion sprinter, mother and middle and high school coach.

Here in Hawaii we have a tradition of honoring those that have come before us. In our family, we honor Patsy Mink, a strong woman from my home island of Maui who pioneered equality for women in sports.

Mink broke boundaries by being the first Asian American to serve in Congress. Her passion for equal opportunity led her to spearhead passage of Title IX in 1972 which allowed me to run in college on scholarship, a hope that my daughter holds as well.

Mink said she had a special burden to bear to speak for all women in the country. This

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is something I have been relating to quite a bit lately as an athlete, mom and coach.

You see, in 2018, I had the experience of raising a biological male identifying as a female. When I raised questions as to the fairness of this athlete racing in the female category, I was told I would get answers, but three years later I'm still waiting.

My daughter, two years later, lined up against a biological male identifying as a female in her very first high school race. The athlete had just changed from being a male volleyball athlete to identifying as a female track athlete.

My daughter trained for two years for this first race. This transgender athlete trained for track for two weeks. My daughter lost her first high school race. She came in second to the transgender athlete.

As an athlete, I speak up for my fellow teammates. As a mom, I speak up for my daughter. As a coach, I speak up for my middle and high school girls whom I teach the life lesson to:

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hard work pays off.

How can I continue to teach this and all of the wonderful responsibility and accountability lessons that come with that when, quite literally, average boys can change their identity and beat the top female in the competition? The lesson falls apart.

Science confirms that even after hormone treatment and surgery, males identifying as females still hold an athletic advantage over biological females.

Male hearts are larger. They have more muscle stem cells and smaller hip structure. In aging athletes, male hearts grow larger as female hearts shrink.

Are officials making trans athletes have heart transplants as well? Of course not. I have a compassion for everyone involved in this matter, having witnessed it. This has happened to a mother and a daughter now.

Let us put politics aside and stop polarizing this issue. Let us think about the

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actual humans involved on a daily basis, like myself and my daughter and many more and find a solution that does unravel the legend of passing names.

Let us not transgender athletes from competing in sports altogether but also, let us not give them opportunities that ban girls from scholarships, a spot on the podium, life lessons or just a first place win in a small town race.

I ask the Department to uphold Title IX protections for women and girls based on biological sex. Mahalo and aloha.

MODERATOR: Thank you. Next up is Lara K.

LARA K.: Hello. Sexual harassment starts young. Imagine this. You're a girl in fourth grade, ten years old. You love going outside to play at recess, but not on Fridays because Fridays at your school are slap ass Fridays.

That's when a bunch of boys chase girls around the playground and slap their bottoms.

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They make comments about the girls' bodies and laugh at them.

It's scary, painful and humiliating. You don't want to tell an adult about it because you might get in trouble or get taunted further. You find yourself getting anxious about it which makes it harder for you to focus in class.

You get stomachaches and stay home from school a lot more. You eventually work up the courage to tell the recess monitor and they say, oh, boys will be boys, and tell you to be flattered because it means the boys like you.

Also, they question whether you did something to attract that type of attention, so you learn to suffer in silence. Then you fall behind in class and your grades drop.

This is not just a story. Slap ass Fridays are real thing that I heard about from girls directly. I'm Lara Kaufmann and I'm the National Director of Public Policy for Girls, Inc.

Across the country our local affiliates partner with schools and others in

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their communities to provide the mentoring relationships, safe spaces and evidence-based programming that are proven to help girls succeed.

Girls have told us that sexual harassment and violence are top concerns for them. Given the time constraints, I will share just a few of our recommendations for the revised regulations. The rest you can find in our written comments.

One, the Department should require schools to address sex-based harassment they knew or should have known about. In the example I shared, the school had actual notice of the misconduct and didn't do anything.

Even if the girl had not told an adult, those monitoring the playground likely knew or, with the exercise of reasonable care, should have known what was happening and could have taken steps to stop it.

Number two, the Department should reinstate a well-established principle that school officials should respond to all sexual

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harassment in a timely manner and not wait until the misconduct continues and escalates to the point where a student suffers tangible academic harm.

Number three, the Department should make it clear that punishing a student who comes forward to report sexual harassment is unlawful retaliation, even if something comes out in the complaint or investigation that would otherwise violate the student code of conduct, like alcohol or drug use, skipping class or sexual contact on school grounds.

And it's retaliatory to punish a student for making a false report solely because the school credits the respondent's version of the facts or thinks that there's insufficient evidence to find them responsible.

Sexual harassment is already under-reported. Students need to feel comfortable coming forward for support if we are going to create safe school environments. Thank you.

MODERATOR: Thank you. We'll be back

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in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Joseph R. Feel free to unmute your mic and begin speaking. Thank you. Unmute yourself.

JOSEPH R.: Okay, yes. Can you hear me?

MODERATOR: We can hear you now. Thank you.

JOSEPH R.: Okay, I'm sorry. I was having technical difficulties. Let me preface my statement with anything. Could you please repeat it?

MODERATOR: No, you are free to begin.

JOSEPH R.: Okay. So I have three minutes to go. And I just want to say that I oppose the Biden administration's change to the Title IX, the new Title IX OCR policy.

And particularly and more specific, I stand against the possible appointment of Ms. Lhamon, for obvious reasons why.

In the previous Obama administration,

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she was effective in implementing a very destructive policy in changing Title IX. And specifically in regards to the way it causes a university's response to accusations of sexual assault and harassment.

My name is Joseph Roberts, as we all know, and I am a survivor in the wake of that bad policy and I would like to share briefly how that bad policy has affected me.

My story has been published. I met with the previous Secretary of Education, Betsy DeVos. And since my time is limited, I just want to talk about the disparaging effects that that policy has had and, if re-implemented, will have on the mental health of those affected by it.

I've been diagnosed with post-traumatic stress. I've been prescribed medication. I am currently matriculating my way through law school. So all is not lost.

But, as I said, in the wake of the previous administration -- I'm sorry, the two previous administrations, the Obama

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administration, the former administration.

The Trump administration currently fixed it. Myself and several organizations that I've worked with -- SAVE is one of them, FACE is another -- we've done the most that we can to implement it and reversing these changes would be very harmful.

That's all I have to share due to the limited amount of time, but I'd be more than willing to take any questions. Okay, it looks like I have a minute left.

I will continue to talk about how -- what can be done to make the policy more fair. I feel like the single adjudicator model is bad. The -- what is it, the mental center?

PARTICIPANT: The trauma --

JOSEPH R.: Yes, the trauma-informed investigation, it does not work. It's inefficient. And the only thing I can ask is that this administration do two things.

One, reject the appointment of Catherine Lhamon and, two, keep the change in the

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amended proposals to the Title IX OCR regulations from the Trump administration. Thank you.

MODERATOR: Thank you. Be right back with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: For those waiting to speak, if you could open your chat, we have a question for one of you. And until then, next up is Erin B. Please unmute your mic and feel free to start talking.

ERIN B.: Hi. My name is Erin Bergen and I'm just going to move to a different side of my house.

I am talking because I read all 2,033 last summer and was pretty horrified. I saw a lot of the work that my comrades and colleagues did to push for providers of evidence. I saw a lot of that get erased as some optional things.

And I also -- the complaint that I put in my school after I was assaulted wouldn't have gone through at this point because I used the

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hostile environment as a way to push my case through.

And I still ended up having to drop out of school just because they weren't taking my concerns and my safety seriously. So what I did was -- so I work currently -- sorry, I just got home from school.

I work currently with survivors of sexual violence, when I'm not teaching second grade. And a lot of them are worried about what it's going to mean for them going forward.

A lot of them are confused about what it really means when you enter college and you're not quite 18 or what it means when you're, you know, taking community college classes when you're a high schooler or, you know, what those different things mean and what those different things can look like.

And it's really concerning for them and it's really concerning for us because schools don't -- I mean, they have -- they had to change their policies so suddenly and so strictly, and

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it's been really hard for them.

A lot of schools have policies that they don't know how to implement fully. And it's not sustainable. And it's not going to work here with survivors. It's not going to work for people who are going to have to drop out of school, and that's not fair.

It's taking away the equal access to education which is the fundamental Title IX right, is that we're trying to protect. I'm going to yield my last minute. Thank you so much for listening.

MODERATOR: Thank you. We'll be right back with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Commenter SW4.

COMMENTER SW4: Hello. I would like to spend my time today addressing all of us who've been survivors and survivors of multiple perpetrator sexual assault, also known as MPSA.

In the fall of 2020, I was the

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complainant in two separate hearings against the individuals who sexually assaulted me together. As an LGBT survivor, MPSA, my university didn't understand the complexities of the violence I faced nor were there individual relations to ensure that investigators, panelists and decision-makers were trained and unbiased.

My university touts itself as being one of the most LGBT-friendly schools in the south. But it fails to protect us from the harm.

My lived experience cannot be found within the constricting code of conduct that my campus uses for Title IX investigations nor can it be found within the posted training materials or student resources.

My university wants to call itself a safe haven without doing the necessary work to give LGBT students a truly equitable experience.

I believe that with a new rule there could be mandated changes to ensure that equitable experience is achieved.

Additionally, with the new Title IX

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rule, we cannot treat multiple perpetrator sexual assault cases as though they're single perpetrator cases.

MPSA is more likely to involve perpetrators who are under the age of 21 and victims also tend to be adolescents, meaning that high schools and universities must have a way to fully and adequately address these cases.

As far as I'm aware right now, I think the only mention of MPSA is to say that some situations can be consolidated. I think that that must be extended.

First to that, always in MPSA, there is a heightened risk for retaliation and intimidation because of the number of respondents involved.

We need a rule that addresses the necessity of consolidating cases so an extra burden is not placed on the complainant during investigations, hearings and appeals processes.

During the two hearings against my assaulters, my university refused to consolidate

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the cases, leaving me with two hearings.

The two respondents as well as witnesses were able to communicate with one another and unfairly utilized the week between the first and second hearing to alter their statements to their advantage.

Partially because of this, one of my assaulters was found responsible while the other was not, even though the decision-maker was the same person. In a process that is fair to survivors in an MPSA, this should not happen.

As we move toward a new Title IX rule, we must not forget to include those survivors whose experiences fall outside of the norms and stereotypes and narrow procedures that universities place over us. Thank you for your time.

MODERATOR: Thank you, be right back with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Lizette T. Feel

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free to unmute your mic and begin speaking.

LIZETTE T.: Hello. My name is Lizette Trujillo. My pronouns are she, her, ella. I'm speaking to you all today from Tucson, Arizona. And I am the mother of a 13-year-old transgender son as well as a member of the Human Rights Campaign, Parents for Transgender Equality Council.

I am a first generation Chicana who was the first in my family to graduate from college. From a young age, my father instilled in me the importance of education and I understood that the barriers the he and many other Mexican Americans face could be overcome when you have access to higher education.

He constantly reminded me that a higher education would not only open doors for me that I might not otherwise be able to access but that it would ensure that I would not struggle in the same ways he had on his own path to success.

When I became a mother I believed and instilled those same values onto my child. I

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never imagined that my own child would potentially face discrimination, be refused access to public accommodations and not be allowed to participate in extracurricular activities, such as sports, because of his gender identity.

These were the experiences of my father and the generation that came before us and, yet, this is the reality of many transgender students.

Fortunately, my husband and I have the flexibility to drive our child to the best school district in our area, which is an hour away depending on traffic. The sacrifice of time and gas is worth it, though, because our son was able to safely socially transition and the district policy allowed him access to the bathroom that matches his gender identity and he is able to participate in clubs and sports.

He is given every opportunity that his cis peers are given and he is thriving. The school reassured me that my child's privacy was protected under FERPA and that he would be protected under Title IX.

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But I understand that not all schools interpret these regulations the same. It is so important to note that because of the school's safe and inclusive policies my son has enjoyed going to school and has many friends.

He is like any other boy his age. He loves Minecraft, riding his skateboard, playing the drums and he loves to play basketball. Being able to have a well-rounded academic experience is vital to the development of any child.

And for transgender students it is also important that they feel safe and affirmed. This is easily accomplished when you center the safety and privacy of the transgender student using their name and pronoun while not limiting their access to public resources.

And accommodations are key to creating an inclusive and safe environment. I have been able to see this firsthand through my own child's experience.

This does not mean that my child has not faced bullying or discrimination. It just

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means that my child's schools -- I apologize. It just means that the school's policies or efforts have not been the cause of this.

Safe and welcoming schools create healthy, happy and smart kids who grow up to become healthy, happy citizens who help build thriving communities.

It is a win for us all. And I hope that the Department of Education will consider creating policies that will make all schools a place where transgender youth can dream, learn and grow.

MODERATOR: Thank you. Next up is Richard L.

RICHARD L.: Can you hear me?

MODERATOR: I can hear you now.

RICHARD L.: Okay, do I begin?

MODERATOR: Yes, you may begin now. The timer is starting now.

RICHARD L.: My son was in his senior year at a prestigious private liberal arts college. He was set to graduate, then on to dental

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school.

He excelled the previous three years so much so that the school used his photo in advertising to attract high school applicants.

In his last semester, a female student files an accusation of non-consensual sex with the Title IX administrator. The incident happened three and a half years earlier, in their freshman year.

There were no witnesses, no evidence, no police involvement. After a superficial investigation by the school's law firm and a faculty Title IX hearing, my son was suspended for the next three semesters, just 12 days before graduation.

We appealed. The school denied our appeal and imposed additional penalties to the suspension. His and our lives have forever been altered.

And as you know, Title IX findings of guilt must be disclosed. My son has been unable to find another college to accept him. Unable to

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complete his degree, his dreams of dental school are over.

He went from a bright future to seasonal and part-time work at FedEx. He is on medication now for PTSD.

We are in the process of suing the school just to get the degree he earned. So far our legal costs have exceeded \$100,000. If you lack the financial means, you have no legal recourse.

The Title IX system has been broken since the 2011 Dear Colleague letter. It serves neither the respondents or claimants. It has not decreased sexual assault on the campus.

Betsy did her best to restore fairness and balance with the changes she made. I fear if Catherine is confirmed, she will do as she did in 2011, circumvent the legislative process to broaden the definition of sexual assault and further eliminate due process for respondents.

My suggestions to improve the broken Title IX system: one, raise the level of guilt

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from preponderance of evidence to clear and convincing.

Number two, investigators must be independent, impartial with absolutely no ties to the school.

Number three, permit cross-examination; let counsel for claimants and respondents speak.

Number four, all accusations must be reported to the police.

Number five, eliminate alcohol on campus.

Having the Title IX finding of guilt on your record has lifelong consequences. In many ways, it's worse than a felony conviction. It must be disclosed. Any future educational is ended. Possibility of employment with federal, state, military, law enforcement is over.

If you do get into a health profession school, obtaining licensure is impossible after you check the box. This is a terrible ordeal for any young man to deal with.

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Minority men of color are disproportionately affected by Title IX. Can you imagine the hurdles they will face?

I've asked Catherine, DOE OCR many times through many avenues, how can you justify the social warrior agenda where results in loss of due process, civil rights, educational pursuits?

MODERATOR: Thank you. We'll be back in a moment with the next comment.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Julie D. Feel free to unmute your mic and begin speaking.

JULIE D.: Good afternoon. This is Julie Donelon with Metropolitan Organization to Counter Sexual Assault. MOCSA is the only independent rape crisis center serving the Greater Kansas City Metropolitan Tri-state area.

MOCSA's mission is to improve the lives of those impacted by sexual abuse and assault and to prevent sexual violence in our community. We

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work with over 20 local colleges and universities and more than 30 public and private school districts in the area.

In 2019 we provided education and prevention about sexual violence to more than 65,000 members in our community. More than a third of the survivors we serve are under the age of 25, most of them are students.

We regularly support survivors and families who are navigating the Title IX investigation. We have seen firsthand the far-reaching negative impacts the changes and the regulations have had on student survivors in limiting their equal access to education by creating additional barriers to safety.

Today I will address two main areas of concern, the impact on student survivors and recommendations for alternative guidelines.

The first concern is changing to the definition of sexual harassment. The new narrow definition of sexual harassment requires the victim of harassment or violence to prove that

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their experience was so severe and pervasive and objectively offensive that it effectively denies a person equal access to the recipient's education program activity.

The narrow definition hinders schools' ability to adequately respond to students' reports. Based on this definition, some Title IX coordinators in our community believe that they cannot investigate unless the harassment continues and becomes worse.

This puts student survivors in a state of panic, feeling unsafe especially when harassment comes from an educator or classmate, that they must continue taking a class where they're being in school with.

We believe that the standard definition of sexual harassment from the 2011 Department of Education Dear Colleague Letter better allows students to adequately respond to sexual harassment and violence in a prompt and preventative manner.

This definition states that harassment

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creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school program.

The second concern are the changes to the standard of evidence and hearing process. Schools are not institutions within the criminal justice system. Yet these new guidelines attempt to move educational institutions in this direction without providing the resource and expertise therein.

Survivors deserve to have a system within their school that ensures their safety and the safety of other students. The purpose of this type of investigation is to maintain safety and allow all students to continue accessing education after experiencing violence.

By changing regulations to mirror the criminal justice system, survivors face increased barriers to safety and schools are unable to hold perpetrators accountable and puts other students at risk.

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Title IX regulation should be the same for -- the same standard of evidence, sexual misconduct.

MODERATOR: Thank you. Be right back with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Jo Q. Feel free to unmute your mic and begin speaking.

JO Q.: My name is Jo Quest-Neubert. I live and teach in Cambridge, Massachusetts. I'm speaking today as a public school teacher of the past 18 years, a transgender person, an advisor to a middle school GSA and the parent of a gender expansive child.

In order to ensure that schools are safe and inclusive places for trans and gender expansive youth, we need federal level policies protecting the rights of students of all ages to be addressed by their chosen names and pronouns regardless of parent or guardian consent.

Many state laws require parent or

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guardian consent to change students' legal names. A federal level policy requiring student -- school and district student information systems to have preferred name or nickname fields that populate the student names in other educational technology platforms is a critical step towards ensuring that all transgender and gender expansive students are referred to by the names that reflect and affirm their identities.

Transgender and gender expansive young people are an extremely vulnerable population and are at high risk for suicidality and substance abuse.

According to 2017 research from the University of Texas at Austin, transgender adolescents are twice as likely to have suicidal thoughts as the general population and they are up to four times as likely to engage in substance use.

However, with support, outcomes for trans students increase dramatically. More recent research shows that having even one context in

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which a chosen name could be used was associated with a 29 percent decrease in suicidal thoughts.

This finding aligns with research from a Trevor project which shows that just one accepting adult can reduce the risk of a suicide attempt by 40 percent.

While trans and gender expansive young people need and deserve acceptance and support from their parents and guardians, it is the moral imperative of schools to provide that support whether or not families can.

Therefore, schools must be places where students' chosen names are used in order to provide the affirmation and safety they need to learn and grow.

We need federal level policies that support the use of chosen names including mandate that student information systems include a preferred name or a nickname field in which students can supply their chosen name and which would populate the display name for other school-based educational technology platforms.

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It is critical that this opportunity is available to students of all ages and grade levels and without parent or guardian consent precisely because it is those students who would not get parent or guardian consent who are most at risk if their identities are not honored in school.

A federal mandate for preferred name fields in student information systems is an opportunity to protect and support some of our most vulnerable students. Thank you.

MODERATOR: Thank you. Mark S., you're up next. Feel free to unmute your mic and begin speaking.

MARK S.: Hello. This is Mark S. Can you hear me?

MODERATOR: Yes, we can hear you.

MARK S.: Okay, thank you. So my name is Mark. I am in San Francisco, California. I work with a nonprofit organization called the Global Initiative for Boys and Men.

And I've also been, through that work,

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working with other nonprofits including one called SAVEservices.org which has been -- this whole idea of campaign for due process and the presumption of innocence for college students is extremely, extremely important.

It's something we feel very strongly about, so I just want to keep this very high level and get my comments on the record.

I just feel that due process is something that our country was founded upon. And what we have seen in the 2010 sort of number of cases on college campus where college students were accused of a crime were, in fact, not given their due process and kicked out of school.

And if you can imagine how hard that would be for somebody. You know, their parents probably started saving for college when they were babies. They work all those years in school. They get to college and then they get kicked out of college without any due process whatsoever.

And so I think the regulations around instilling due process and the presumption of

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innocence is so important for our college students. And to just look at the gender aspect of this a little bit, there have been a number of lawsuits filed against colleges and universities.

It's typically the people who are -- the people suing were male students. We know that colleges and universities have become majority female. They're now approximately 60 percent of graduates are female; 40 percent of graduates are male.

So there's a huge slant already against men and male students at the college level. And now this is just one more thing. If they think they're going to go to college and they're, oh, boy, if somebody accuses me of something my life could be ruined and there's nothing I can do about it.

I mean, that just makes it even harder for our boys and young men who are trying to get ahead in life. So I just would really stress that we need to have very strict due process and we need to make sure that everyone is taken seriously

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at all sides of a serious accusation.

We're talking about some serious issues, they can be accused, and the person who makes the accusation should absolutely be taken 100 percent seriously. But a student who is on the receiving side of that should also have the right to be taken seriously.

And in the last ten years, we've seen a number of students who weren't and it's costed colleges and universities a heck of a lot of money.

So the fact that all those lawsuits went through, including one student who couldn't talk about how much money he wanted -- he showed himself on Facebook with a really expensive sports car -- shows you that there's a lot of money involved in this.

So anyway, that is my statement. Thank you for listening.

MODERATOR: Thank you. We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at

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this time.)

MODERATOR: Next up is Amy B. Please go ahead and unmute your mic.

AMY B.: Can you hear me? Sorry.

MODERATOR: Yes, we can. Go ahead.

AMY B.: Okay. Okay, my name is Amy Bogost. I'm an attorney that represents victims of sensitive crimes. I also teach Title IX and train and try to recruit pro bono attorneys.

I also train and teach at tribal colleges and universities throughout the country. I have represented several students in K-12 and in universities and colleges.

The one thing that I have heard constantly from all of these survivors is that no matter how old they are, they tell me that I know -- if I knew how bad this process was, I would have never gone through this.

This is both before and after the implementation of the new rules. Now it is even worse. I have heard from many of the college Title IX offices that victims are not even coming

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forward.

There is fear of the unknown and through many claimant surveys around campuses we know that not much has changed. In fact, it has gotten worse.

This is in spite of the fact that we know that when a victim or survivor comes forward, it is always better, for purposes of mental health and their ability to not drop out.

However, many times when I have represented victims in higher education, the accommodations and the Title IX offices has made it so inadequate for these victims that they do drop out and many of them end up in the hospital with mental illnesses that come from being a survivor.

These DeVos Rules were implemented in record time, and they're very troubling. One of the worst issues is the need for cross-examination.

When this was first implemented many of the colleges and universities had no idea what

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the term advocate meant. And still, so many do not understand this term.

Some of the larger institutions are hiring lawyers to act as advocates. Many small institutions cannot even hire more staff and advocates. These are adding a huge expense to schools that are unnecessary.

More importantly, to traumatize victims by forcing cross-examination is not even the purpose of Title IX. The essence of Title IX is for gender equality, similar to the other civil rights laws that were implemented in the Civil Rights Act of 1964.

But of particular concern is the current bar to consider any information provided by witness unless the witness appears at hearing and submits to cross-examination.

It is imperative that we make Title IX accessible. However, more importantly, we need to have more education on prevention of sexual assault, sexual harassment and gender equality. There must be education to further the goal of

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Title IX.

Instead of spending money on advocates for cross-examination, we need to put those resources in education, training, prevention, have faculty, staff, students and administrators truly understand what this law is.

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Many times higher education is all about trying to be adverse to litigation and in doing everything they can to prevent potential litigation instead of educating those that truly need this education of what Title IX even is and to make Title IX offices and administrators more accessible for the student survivors that need Title IX administrators to help them through this challenging time. Thank you.

MODERATOR: Thank you. We'll be back in a moment with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: This concludes the public hearing for today. The next public hearing will begin at 11:00 a.m.

(Whereupon, the above-entitled matter went off the record at 5:01 p.m.)

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