



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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WEDNESDAY
JUNE 9, 2021

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Virtual Public Hearing on Title IX of the
Education Amendments of 1972, at 11:00 a.m. EDT.

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

(11:00 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 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.

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 and 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 supports 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 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 of 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 e-mail for details. If you have tech difficulties, write to special.events@ed.gov. We have American Sign Language interpretation throughout the hearing.

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Please also see the hearing web page for closed captioning instructions and for a link to submit a written comment.

In closing my remarks and in opening 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: Thank you, Suzanne. The first commenter will be Garry A., followed by Tracey V.

GARRY A.: Good morning. I appreciate the opportunity to provide comments during this hearing. My name is Garry. I have been in higher education for more than three decades. For the past 15 years, I worked primarily with student conduct and Title IX. Today I would like to

provide three thoughts related to Title IX guidelines and any impending adjustments.

The requirement for college universities to conduct live hearings to review alleged Title IX violations in some instances, and some situations, is understood to be the most appropriate means to review facts of allegations.

However, a one-method-for-all situation is not always best. To require participants to participate in a live hearing, regardless of their mental state or respect to the violence suffered, may not be in the best interests of the participants or search for truth.

It is apparent, such a requirement has a potential do more harm than good, as opposed to requirement of a live hearing. It is hoped the outcome of this review will provide college universities the ability to create hearing options where the participant may choose which review process is best for them and their search

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for justice.

Secondly, direct cross-examination is a difficult element in educational process and campus hearing. While campus individuals may be trained in processes related to Title IX, campus individuals are not equipped to manage courtroom-type procedures in a manner that assures justice, as opposed to required cross-examination.

It is hoped this committee will create flexibilities in regulations which will provide college universities opportunities to create campus processes where participants can share information in a format that protects them from humiliation, trauma, and injustice.

The two previous administrations, through the course of their presentation of Title IX guidance, failed to adequately structure campus processes in the best interests of students or campus individuals. In addition, continuous changes in the federal guidance based on political positions is not fair to anyone.

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It is hoped this review will eliminate party affiliation from consideration, and put forth guidance that is designed to create safe campus environments, notwithstanding the beliefs of any one particular group or association. I thank you for this opportunity. Thank you for your time.

MODERATOR: Thank you. Next up is Tracey V., followed by Stephanie F.

TRACEY V.: Good morning, and thank you to the staff of the Department of Education for hosting this public hearing on Title IX and campus sexual assault.

My name is Tracey Vitchers, and I am the executive director of It's On Us, the nation's largest campus sexual assault prevention program, garnered in a network of hundreds of college campus chapters engaging in peer-to-peer prevention programming.

Over the last four years, our students and staff at It's On Us have watched the

Department of Ed, under Secretary DeVos, engage in regulatory changes that systemically gutted the rights of student survivors and left our nation's college and university campuses unsafe for all.

Therefore, we urge the Department of Education to replace the harmful Title IX regulations put in place by the last administration, with rules consistent with the legacy and true purpose of Title IX and the goals of the Biden administration, to truly guarantee an educational environment free from discrimination on the basis of sex, including sexual orientation or gender identity.

I would like to call out five areas within the existing rule that must be urgently replaced. This is by no means a comprehensive list of areas that must be addressed, but given the time constraints, they are the ones we've chosen to prioritize for our time here today. The remainder of our comments will be submitted

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as part of our written statement.

First and foremost, the Department should amend the definition of sexual harassment to one that is more inclusive of the types of harassment and violence students can and have experienced on campus.

The definition must include sexual harassment, intimate partner violence, domestic violence, sex-based stalking, sexual assault, rape, and harassment based on sexual orientation, gender identity, gender expression, parental status, pregnancy, childbirth, termination of pregnancy, or related conditions.

Second, the Department should make schools responsible for investigating all incidents of sexual harassment for whom the harassment creates a hostile environment. Schools should be required to address that space of harassment that may create a hostile environment in their program or activity, and is therefore actionable sex-based harassment,

regardless of where it has occurred.

Third, the Department should require schools to handle complaints within a prompt and equitable timeline. Under the DeVos-era guidance and regulations, schools have dragged out investigations for unreasonable periods of time, and in some cases, one or both parties have graduated or dropped out before a resolution was found, and this is unacceptable.

Fourth, the Department should eliminate the option for schools to choose between evidentiary standards for adjudication of sexual harassment complaints under Title IX. Schools should be required to use solely the preponderance of evidence standard, the standard that is used in all other student misconduct cases.

Fifth, the Department should eliminate and prohibit the use of live cross-examination Title IX hearings. Under the DeVos regulations, student survivors have dropped their

cases, because they did not want to undergo live cross, as it would've added simply to their trauma.

It's On Us believes that any cross-examination process to be conducted by a neutral third party who receives questions from one or both parties in writing, and grants flexibility to allow for any inquiries to be conducted either through written questioning or -- written question-and-answer or verbal questioning conducted solely by that neutral third party, without the other parties involved.

Again, this is not a complete list of the recommendations we will put forward. We look forward to submitting our written statement with the exhaustive list of our suggestions in the coming days. Thank you all.

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

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

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

GILLIAN C.: Hello. Can you hear me?

MODERATOR: Yes, we can hear you. You may begin.

GILLIAN C.: Okay. Thank you very much. Hello, and thank you for the opportunity to speak today. My name is Gillian, and I'm a campus advocate in the CSU system. There are many points I'd like to speak to, but given my limited time, I will focus on two.

Under the new regulations, colleges must allow live cross-examination by the representative of each party's choosing. This means survivors can be cross-examined by their rapist's partners, friends, fraternity brothers or sorority sisters, or, most likely, a lawyer.

This greatly increases the risk of re-traumatization. It is completely unnecessary and frankly abhorrent. A neutral hearing officer is

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fully capable of asking questions of both parties and facilitating the portion of the hearing where parties submit questions to each other.

This policy also creates a challenge for campus advocates, who are often the most well-informed, experienced support system available to survivors going through a hearing.

Prior to the new regs, advocates served as hearing advisors. Most of us are extremely knowledgeable and able to guide survivors through the entire hearing process.

However, asking us to cross-examine respondents is outside of the scope of our services, and is deeply problematic. Every advocate I know is uncomfortable with doing this, and as a result, has stepped back from the hearing advisor role.

This means survivors will be forced to find another advisor, someone they likely do not know, and they will either have to pay, such as a lawyer, or they'll have to choose from an

approved list from their Title IX office.

They will have to tell their story yet again to an entirely new person, and that person representing them may lack experience and knowledge regarding the process.

Again, there's no reason these cross-examinations need to happen, when neutral hearing advisors are willing and able to ask questions of both parties and ensure they each get a fair opportunity to submit questions. Please remove this horrible addition to the regulations.

The second thing I'd like to mention is that you must require schools to handle complaints of sexual harassment within a prompt and equitable timeline.

The new regs allow schools to drag students through lengthy and burdensome investigations without reason. The final rule removes the previous 60-day requirement for investigations without providing an alternative.

Prior to previous guidance, schools

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frequently drew investigations out for months or even a full year. Schools forced survivors to undergo an unnecessarily lengthy, traumatic process that often led them to dropping out of the investigation or out of school entirely.

Neither survivors nor respondents deserve to have an unnecessarily long investigation disrupt their education and consume their entire college experience. Lengthy investigations have now become the norm in the Title IX context, and these delays often result in harm to the educational prospects of complainants and respondents.

Survivors faced with extremely lengthy timelines that further disenfranchise students who had reported sexual violence to their school, because sharing an environment with their perpetrators made learning exceedingly difficult and burdensome.

With the DeVos regulations allowing schools to disregard a reasonably prompt

timeline, recipients who are already inclined to drag out investigation --

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: Stephanie F.? Stephanie F., you're up next. Feel free to unmute your mic and begin when you're ready.

STEPHANIE F.: Hi. I apologize. I was just able to join, and so -- am I supposed to introduce myself?

MODERATOR: This is your three minutes. It begins now. You're ready to go.

(Pause.)

MODERATOR: Stephanie, you are ready to go. You may begin.

STEPHANIE F.: Okay. Yes. So I'm not really sure what I'm supposed to be saying. I was just able to get in.

MODERATOR: Are you just trying to

listen to the hearing, Stephanie?

STEPHANIE F.: Yes, for right now, because I was just able to be connected to you. I don't know why, but I just was able to get in.

MODERATOR: So open up your chat window, and we'll tell you what to do next. Thank you.

STEPHANIE F.: Thank you.

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

MODERATOR: Jen E., you're up next. Please unmute your mic, and when you're ready to speak, you may begin.

JEN E.: Good morning. Thank you so much for the opportunity to speak. My name is Jen Euell, and I'm the director of the Student Advocacy Resource Center at the University of Montana. We provide support counseling and advocacy to any students who have experienced identity-based harm at UM, including survivors of sexual assault.

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You may have heard of the University of Montana, as our challenges responding to sexual assault have been immortalized in John Krakauer's book, *Missoula: Rape and the Justice System in a College Town*.

This is an issue we know well and have long experience working to prevent and respond to on our campus. In our experience over the last school year, we found some benefits, and significant challenges, with the new guidance to universities on handling Title IX.

First, we found that having a group of people consider evidence and determine guilt and consequences does seem to have -- to be both more fair to the complainants and respondents, and less vulnerable to criticism. That is the one positive outcome of the changes.

However, in our experience, the live hearing process has not only been retraumatizing to our clients, it has actually inflicted new trauma, as they've been forced to hear new

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details of the assaults they've experienced from the mouths of the alleged perpetrators.

As we know, many survivors of sexual assault are either under the influence of alcohol or drugs, or may have been drugged by their assailants. These survivors, in particular, are at risk of experiencing new trauma in a Title IX hearing, as they become aware of the details of the crimes for the first time.

The trauma inflicted is compounded by inappropriate and victim-blaming questioning throughout the process. These types of questions are hard to prevent or control, as it's unclear how much power the university and their representatives have to control the language and the questioning of the respondents' chosen representatives in the process.

And of course, the respondent's representative holds the ace card in many ways, as one of their goals is simply to delay any potential finding. And if the hearing must be

rescheduled because the representation has been banned from the hearing, the process will certainly be seriously delayed.

This brings me to one of the primary issues with the process. The length of time it takes to investigate and complete the hearing process is both painful and arduous for survivors, as they continue to see their respondent going to class and living their lives, seemingly with no consequences for their actions.

This is in direct opposition to Title IX's goal of ensuring equal access to education. We would urge consideration of a process that gathers evidence in a timely and equitable fashion, and does not require a live hearing. We believe the evidence can be gathered and questions answered through video or written process, reducing the trauma to the survivor.

Overall, as we look to create the best process to reach Title IX's goals, we urge the administration to center the voices of diverse

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survivors of sexual harassment on campus, and the creation of a new, more timely and equitable process. Thank you.

MODERATOR: Thank you. Next up is Robert B. Robert, feel free to unmute your mic and begin speaking.

ROBERT B.: All right. Are you able to hear me now?

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

ROBERT B.: Thank you. Yes, I'm Robert C. Bannister, Jr. I'm the Title IX coordinator with the Marion Community Schools in Marion, Indiana. And I appreciate the invitation -- opportunity to offer some public comments today, concerning the possible modifications to the current federal Title IX sexual harassment grievance procedures, which were adopted in or about August 20th -- pardon me -- August 14th of 2020.

Briefly stated, I recommend that the

administration consider modifying or otherwise changing the current procedures by, first and foremost, providing school districts with funding to acquire legal services and experienced investigators and clerical staff, when formal investigations are required.

Secondly, provide forms and templates, and clarify the process, especially the filing, the process, the order in which things should be filed and retained.

Three is otherwise provide funding for district staff for training of Title IX coordinators, investigators, to ensure thorough understanding and compliance with the procedures.

When a formal complaint is filed, modify the procedures to compel the complainant and respondent to participate in investigative interviews, in order to acquire sufficient information necessary to render a decision.

The policy is currently silent regarding this matter. Principal parties do not

need to participate in the interview process currently. Otherwise, it would appear that the districts would merely fill a role of collecting valuable information from the complainant's and respondent's attorneys, which could possibly be used against the district during litigation.

Currently the procedure places the burden of proof exclusively upon the school district. Please consider a reciprocal or shared burden.

It is also recommended that the principal parties be compelled to share any information or evidence, which the districts -- which they may have collected through their attorneys, throughout that interviewing process.

Also, modify the two separate ten-day investigative reports, and summary reports, that are required to be sent to the principal parties within the required 35-day deadline determination period. It is currently both redundant and burdensome.

After the school district has become aware of a formal complaint and commenced their investigation, consider the feasibility of handing off the initial investigation, and bringing investigative information to the state Department of Education for a more extensive investigation, and determination within input, of course, from all parties, including the district.

The current procedure imposes an immense burden, financial burdens and budget burdens, upon the district, due to unplanned man-hours and legal costs that are associated. Thank you for allowing me to offer my comments today on behalf of my school district. Thank you.

MODERATOR: Thank you. Next up is Mary H.

MARY H.: Hello. Can you see me? Am I good? Okay.

MODERATOR: You're good.

MARY H.: All right. Thank you so much for having me. I'm here on behalf of Save

Women's Sports. My name is Mary Higgins. I'm a former elite athlete. I raced the Women's Tour de France for the U.S. National team. I'm a three-time Olympic qualifier, nine-time state road champion, U.S. National champion, with eight podium places in cycling.

I've trained and raced since 1982, while working full-time. I've been hit by two cars. I've suffered numerous broken bones, injuries, and surgeries, pursuing my career as a cyclist.

Women's sports have always suffered, but never has an issue of having boys and men competing as girls and women been as destructive -- and will continue to completely destroy women's sports. The effects are so devastating that I have seen women's teams quit racing, many women are quitting racing.

Men are winning women's national championships, world championships. They're crushing biological women and girls, competitors,

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in their own sports. Men are taking world records, crushing women's national records. And they are taking girls' and women's scholarships. Without banning men from women's competitions, there will soon be no women's sports.

Boys and men are faster, stronger. They're built for strength. Nothing will ever change that. Boys are born with 20 percent larger lungs, blood volume, bones, hearts. You can't change biology. Women have more body fat. We have to contend with monthly cycles. There are so many differences.

Also, men are more dangerous. They're inherently more aggressive, stronger, and take more risks. They are simply not women.

I am personally begging you to protect females before more girls and women get physically hurt, emotionally devastated, and quit competing altogether. Imagine you taking all the risks, training, suffering, sacrificing, only to know you've already lost a race before it even

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begins. Thank you.

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

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

MODERATOR: Morning, Laura. You're up next. Feel free to unmute your mic and begin speaking.

LAURA K.: My name is Laura Knittig. I'm a victim-survivor of sexual assault. The Title IX investigation process was one of the most traumatic experiences of my life. It should not have to be that way. There must be systematic changes that make the process more trauma-informed and student-focused.

The way this can happen is by providing resources for victim-survivors and complainants while at the same time, giving a fair and equal investigation.

First, in order to make the process more trauma-informed, investigators and those who

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work in Title IX office should be required by law to receive more training on how to communicate with those who have been affected by trauma.

Furthermore, in order to have more language-informed investigations, there should be language and procedures put in place that teach investigators how to recognize signs of trauma and what their effects may be in the investigation.

They also need to receive briefings on the community and culture of the university or school that they are working at. While I was an undergraduate student, I was sexually assaulted by the president of a Greek fraternity, and my investigator had no idea how Greek life was structured, even though most sexual assaults at universities stem from this culture.

Throughout the process, Title IX investigators must clarify their definition of a word with those reporting, in order to avoid them from misusing a term, which can lead to

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inaccuracies in the report. During my investigation, I misused the word incapacitated, to which -- I was then ruled as an unreliable source in my own investigation.

I also believe that complainants and respondents should have the right to choose if their interviews are recorded, in order to avoid misquotations and improper notes. When reading my final investigation report, I was so misquoted that I couldn't bear the idea of having to go through discussing my assault again in front of a review panel.

I felt stupid and wrong, because I didn't understand what I could and could not say in my investigation. I felt like everything I thought helped did not help, because no one told me how the process worked or what I needed to say to be more convincing.

That goes into my next point of making the process more student-focused. There needs to be more Title IX training for students and

faculty at campuses that teach them about their rights and processes.

Title IX needs to provide easily-accessible resources that translates the process into shorter and more comprehensible language that even non-native speakers can understand. They also need to clarify that any and all Title IX offices are non-confidential.

I should not have to go through investigation to learn all the things I was never taught properly at my Title IX training at orientation.

Lastly, in order to make the process more student-focused, there should be a required Title IX student advisory board, especially at universities, that examine and evaluate the equity and fairness of their campus's Title IX office.

Students and those who experience discrimination, harassment, and assault, deserve a voice all the time, not just during public

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hearings like this.

There needs to be systematic changes to stop these problems from happening, but it starts by listening to students and victim-survivors and allocating more government funding to this problem. 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: Good afternoon. Next up is Courtney B. Courtney, feel free to unmute your mic, and begin speaking when you're ready.

COURTNEY B.: Thank you. My name is Courtney Bullard. I'm a 20-year practicing education lawyer and owner of Institutional Compliance Solutions, a legal and consulting company that works exclusively in the area of Title IX compliance for K-12 and higher ed.

My team has had the privilege of training thousands of higher ed and K-12

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administrators since the release of the regulations in May, as well as walking with them daily through implementation of the regulations. In addition, we have a team member married to a K-12 administrator with Title IX responsibilities.

There's no question that the regulations have had the most impact on K-12. We've sought feedback from our clients and community partners from some of the largest districts to some of the smallest, across 38 states.

Overall, we want to offer feedback that is a view from the ground, from those doing the work. We have four main comments, although we have many more we will put in our written submission.

The first two comments reflect that, in short, K-12 does not have the infrastructure to absorb the formal requirements of the regs. They are not staffed and resourced to do the work

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in the manner prescribed, where it takes at least three people working on every case, while those same administrators are being pulled away from endless other responsibilities.

We are working with administrators who absolutely want to do the right thing, and are putting their best efforts forward, but are facing significant difficulty in doing the work in the manner prescribed.

The notice requirements and lengthy investigative process with its review periods restrict K-12 administrators from being able to act swiftly to address safety concerns or resolve a matter in student-on-student cases. Allowing some type of review would still provide the necessary procedural safeguards while shortening the investigative process.

Second, the Q-and-A is similarly ill-suited for the K-12 environment and unwieldy in practice. It is overly complicated and unnecessarily time-consuming for administrators

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who are already adhering to safeguards and manifestation and expulsion hearings. Moreover, the regulations do not adequately address overlapping or contradictory federal and state laws.

Next, our clients and partners would like to see the option of informal resolution remain. K-12 is adept at informally resolving matters, and this option has been very effective.

Finally, we suggest that any revisions keep the mandated training for the Title IX team. It is no secret that historically, K-12 is behind higher ed in its Title IX compliance efforts.

The mandated training has provided the much-needed attention and funding -- although more is needed -- by leadership to ensure districts are not only meeting their obligations, but also fully supporting those who are asked to do this important work. Federal funding is also necessary to support this mandate.

In closing, our emphasis is that the

voices of administrators need to be included in this process both for K-12 and higher ed. And it is apparent that they were not included, especially for K-12, in the drafting of the regs.

The higher ed and K-12 space are completely different, and therefore need tailored considerations and treatment in revisiting the regulations. If the process does not work in practice, then there will be additional barriers to reporting, and ultimately, an inability to effectively address and respond to sexual harassment. 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: Good afternoon. Next up is Conrad M.

Conrad, when you're ready, please unmute your mic and begin speaking.

Conrad, you can unmute your mic at

this time, and begin speaking.

CONRAD M.: Oh, okay. Am I unmuted?

MODERATOR: I can hear you now. Thank you. You may begin.

CONRAD M.: Good. Okay. Well, my son was accused in 2014. This was something that was very new to us, when a lot of this began, with the colleges. So the college -- it was in -- at the colleges, too. My son was in college.

The young lady who accused him met with him two weeks after they had slept together, and informed him that she did not feel that she had given him consent. He was floored, devastated. Didn't understand what that really meant.

Quite honestly, I didn't either. We sat with him. He told us the story. Basically, my wife and I came to the conclusion that, if the story he told us was accurate, this was probably not any big deal, not something that we hadn't heard of or experienced ourselves in college.

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My son was kicked off -- he was a wrestler, was kicked off the wrestling team at his college immediately. There was a hearing set. He was allowed to bring an attorney, so we hired an attorney. Attorney didn't really know any -- too much about this.

Went to the hearing. The school had brought in a professor at the university who acted as -- I forget what her -- the name was called, but basically a judge. And she concluded, after hearing all the evidence and hearing both sides, that both of them had basically been irresponsible, and therefore she was holding them both responsible, equally.

And that was kind of the end of it, and we figured everybody had learned a lesson, and we'd move on. Two weeks later, the same person, the same professor, changed her mind. No evidence, no new evidence, nothing. Just completely changed her mind and found my son responsible.

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But at this point, I figured something's going on. So I was a college coach, so I was in the collegiate system. I couldn't get any administrator at the university my son attended to meet with me, so I went there and I snuck, literally snuck into the AD's office.

And I've got a minute left, so I'm just going to tell you quickly what the AD told me, privately, in that meeting. He said, C.D., we feel horrible for your son. Feel horrible for your family. But our hands are tied. There's nothing we can do. The government has tied our hands.

There are a lot of feminist groups out there that are aware of this specific situation, and if we don't hold your son responsible for this, the OCR will come in here, they'll investigate us. We could lose our federal funding.

So I looked at him and said, so let me get this straight. You're going to throw my

son under a bus, even though you don't agree with what's being done? And he just stared at me and basically said, there's nothing we can do.

So my plea to you is, please don't create this situation all over again, where these schools feel like they have to remove these kids. Due process. Rights.

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: Good afternoon. This concludes this morning's session. Next session will begin at 1:00 p.m.

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

MODERATOR: Good afternoon again. We have one late attendee. We are going to go ahead and open back up so they can have their three minutes to comment. Sareen L., you are up. Please unmute your mic and feel free to start

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talking.

SAREEN L.: Oh, thank you so much. So the Title IX regulations which went into effect last year lacked guidance on prevention and education. The institutional efforts of campuses to create a climate that prevents discrimination and harassment based on sex is critical to reducing perpetration and victimization.

Although I'm joining today as a private citizen, I do work on a college campus. My comment is to implore the Department of Education to include evidence-based strategies to prevent sexual harassment, as well as guidance on prevention education programs, robust and accessible victim services, in any revisions that are made to the Title IX regulations. That's all I have to say.

MODERATOR: Thank you.

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

MODERATOR: Good afternoon. This

concludes the 11:00 to 1:00 p.m. session. The next session begins at 1:00 p.m.

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

MODERATOR: Good afternoon. Welcome to the hearing. Next up is Lexxus A., followed by Jeff P. Lexxus, if you want to unmute your mic and begin speaking. Thank you.

LEXXUS A.: Hi, everybody. I hope you're having a beautiful evening. My name is Lexxus Andrews, and I'm a recent graduate from Nichols College, Class of 2020. I'm currently in my master's program for the Institute for Women's Leadership, where I'm a graduate assistant.

What I've noticed that we've missed is that we've been missing a formal emotional support for people who need to report. The biggest barrier is feeling isolated and alone. We need to formalize a person's first step in reporting, to meet with an advocate. That way they feel more comfortable going through the

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entire process.

Along with this, regardless of findings of the investigation, there should be ongoing support for anyone who has reported. Just because a person is not found in violation does not mean that the incident did not occur.

So ensuring that all schools keep, and make sure that they put money towards, emotional support for these students, and that they have to put this emotional support out there, I think, will be great for us as a community, and not just kind of leave them on their own, just because they're not found in violation. Thank you for your time today. Hope you all have a great day.

MODERATOR: Thank you, Lexxus. Next up is Jeff P., followed by Kathryn H.

(Pause.)

MODERATOR: Jeff, please unmute your mic and begin speaking.

JEFF P.: My name is Jeff Peed, and I'm speaking to the U.S. Department of

Education's Office on Civil Rights, for the purpose of improving enforcement of Title IX of the Education Amendments of 1972.

There are important issues we need to be aware of as you conduct your review of the Title IX regulations. First, I believe that education's best served as a state and local matter, and should be protected by law from a federal one-size-fits-all policy.

Politics has no place in the kindergarten-through-12 education, especially when ideas are forced on parents and students from the federal level.

Second, when thinking about Title IX, there should be major considerations given to parents and guardians about their rights. Parents and guardians are the primary teachers and deciders of their children's education. They send their children to school to learn, and do not necessarily consent to controversial topics such as queer theory or sex outside of marriage

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being taught.

It's the parents' role to teach their children about these -- their bodies and the joys of heterosexual, monogamous sex in marriage. Schools teaching otherwise without the parents' consent is a violation of public trust and parental rights.

Understandably, children with the questions about their sexual identity should be referred back to their parents and faith leaders for guidance, so that they can assess the situation as their beliefs dictate.

Additionally, Title IX protections for girls' sports are important, and must be honored based on sexual biology and not gender identity. Males and females need to compete separately, due to issues of fairness, risk of physical injury, and privacy. Protecting women's and girls' rights to sports does not stop transgender athletes from competing in sports on teams that align with their biological sex.

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I appreciate your willingness to think seriously about these things and allowing them to guide your actions as you review Title IX. Thanks.

MODERATOR: Thank you. Next up is Kathryn H., followed by Steven W.

Kathryn, go ahead and unmute your mic and begin speaking.

KATHRYN H.: I'm Dr. Kathryn Holland, a professor and research expert on sexual violence, and I urge the OCR to address mandatory reporting policies for sexual violence in higher ed. Most schools require nearly all employees to report any instance of sexual violence they learn about, to the Title IX office, even if the survivor does not want to report.

Reporting is essential when a survivor wants and consents to the report, but these policies have led to harmful practices. An erroneous assumption is that when an employee learns about sexual violence, the survivor

intentionally disclosed with the goal of reporting to the university or receiving specific supportive measures.

However, employees learn about sexual violence in many ways. Often the survivor is not seeking any formal actions from the institution. Students reveal experiences of violence during class discussions and assignments.

I teach about sexual violence, and some students disclose, as a way to reflect on and connect to the course material. And these are beneficial educational experiences, giving students a chance to learn more about sexual violence and how it affects people's lives.

Do I tell my students that they must not discuss violence unless they want me to report? Do I simply stop educating students about sexual violence to avoid such situations? How do I reconcile reporting requirements with the fact that I am bound by FERPA to protect my students' privacy?

Employees may also learn about violence that survivors reveal during activist events, like Take Back the Night, or on social media, such as using hashtag-MeToo. The intent of such disclosures is to empower survivors and promote public awareness. Requiring employees to report violence they learn about in these ways discourages them from participating in antiviolenace activism, and silences survivors.

Faculty are also being required to report violence they learn about in their research. I study the implementation and effectiveness of formal support systems for college sexual assault survivors, such as reasons why survivors choose not to report, and how reporting systems can be improved.

During the 2018 notice and comment period, commenters who were arguing for survivors' rights cited my research to support their comments. I've also served as an expert witness for survivors in Title IX litigation. If

I and other researchers are unable to protect participants' privacy, this will obstruct essential research on sexual violence.

A staff member at a community college in Oregon recently filed a lawsuit after her supervisor learned about and then reported her 30-year-old rape, that she asked them not to report.

These examples that I talked about today demonstrate that any mandatory reporting policy must include clear exemptions, when a reporter will not need to make a report, including information that is learned in academic coursework, at public awareness events, in social media posts, in IRB-approved human subject research, and violence that occurred prior to enrollment or employment. Thank you for your time today.

MODERATOR: Thank you. Next up is Stephen W., followed by Stephannie G. Stephen, feel free to unmute your mic and begin speaking.

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STEPHEN W.: Hi, there. My name is Stephen Webber. I'm an advisor for Title IX. I started my own small organization with the pursuit of advising students and being able to provide free resources. It's called T9 Advising.

And today I want to talk about just the main thing, which is an active advisor. So this was something that was proposed in the 2020 final rule, and it's something that really needs to stay.

I mean, a lot of universities kind of get around it by pushing their hearings to different departments and then not allowing advisors to actually help their students.

The amount of times I've sat in a room advising a student and they're just unable to speak, because just of how nervous they are, and just the situations going on -- it's really helpless for an advisor to sit there and watch a student go through that.

And on top of that, most of the time,

when we have to ask questions to the other side of the argument, you have to whisper it in the ear of your student, because they're the only ones allowed to talk. So this terrible game of telephone you have to play, just to get the hearing process done, that really needs to be reformed.

So the second part is also clear definitions. So the 2020 final rule also put in the definition for sexual harassment. I really enjoy that. I think we need to expand these definitions.

I think the Department of Education should focus on defining consent next. And if you don't like the definition that the previous administration came up with, by all means, change it.

But having a set standard is really important, because as an advisor who advises at different universities, I have to learn what the new definitions are every time I go and advise a

student. So it's just -- it's not very effective, and a lot of these definitions are -- they don't protect students very well.

So the next thing is to really show reports to students. A lot of universities conceal what the opposite side has said, so that's something that needs to be addressed. I think there needs to be more transparency.

And then, last couple things, just a promotion of local assistance. I've worked about -- a lot of the resources I give out are local assistance, and some universities aren't very good at that. So if I -- you know, not to name any names, but one university actually sent students to a website that was entirely in French. So, definitely need to focus on that.

So if you have any other questions or would like to reach out to me, I'm at T9Advising@gmail.com. I've written works about this, I've advised on cases, and I can talk about how the universities have incentive structure to

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deal out suspensions instead of other forms of punishment. So thank you for your time.

MODERATOR: Thank you. Next up is Stephannie G., followed by Cara B. Stephannie, please unmute and begin speaking.

STEPHANNIE G.: Hello?

MODERATOR: We can hear you. You may begin.

STEPHANNIE G.: Oh, great. Great. I am the Title IX coordinator at a public institution. I have three points I'd like to make. First, students were already reluctant to report sexual harassment allegations where there's a power differential, such as a complaint against a professor or a staff member.

When faced with a live hearing and the possibility of cross-examination by a professor's advisor, our students now refuse to file formal complaints. As the Title IX coordinator, under the new regs, I have the ability to file the formal complaint, but the case goes nowhere if

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the complainant refuses to participate for fear of the live hearing.

So sexually harassing behavior goes unchecked, because no action that could be perceived as disciplinary may be posed until such time as the respondent has been found responsible at the conclusion of a grievance hearing, which doesn't happen.

The second point I'd like to make is, excluding off-campus locations from Title IX jurisdiction is highly problematic, especially when most of the upperclassmen reside in off-campus housing.

It makes little sense that a sexual assault committed on campus is subject to the Title IX sexual harassment grievance process, but a sexual assault possibly committed across the street from campus, in off-campus housing, or in an -- or in an adjacent campus bar or restaurant, has the possibility of being handled differently.

My third comment is, as an

investigator, these hearings should be conducted without -- or these investigations should be conducted without a presumption of responsibility or not responsibility on the part of the respondent.

When I speak with both parties, I try to present the visual, I have two empty buckets on each side. And as I receive information, and corroborate that information, I fill my buckets. And so there's no presumption either way. Thank you.

MODERATOR: Okay. Thank you. Next up is Cara B., followed by Patti M. Cara, feel free to unmute your mic and begin speaking.

CARA B.: Hello. My name is Cara Tuttle Bell. And today I'm speaking as a volunteer board member of Stop Sexual Assault in Schools, a nonprofit organization created by parents and a survivor, which is focused on preventing sexual misconduct in the K-to-12 environment.

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I'm also coming to you today with over 15 years' experience working in higher education. I lead a college campus-based advocacy center which opened in in 2014, and has navigated the Title IX guidance and legal changes since the 2011 colleague letter, through the Obama-era White House task force to protect students from sexual assault, and now through the 2020 Title IX changes.

I speak from my experience working with over 1,000 student survivors, and as an education professional engaged in both compliance and student affairs.

From that lens, I urge you to -- from the 2020 regulations' definition of sexual harassment, so that students will not have to endure severe or repeated harassment before schools believe that they must take action.

Please consider the educational context and nature of these harms. And for consistency, consider using the definition from

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employment sex discrimination law.

Considering that many schools were already failing to address the wide range of sexual misconduct occurring in the educational environment, this narrowing of the definition of sexual harassment has further enabled schools to ignore sexist, harmful and escalating behaviors, that they must learn to sufficiently address, and could use your help in doing so, in order to ensure safety and equity for all students.

No school administrator should feel pressured to dismiss a complaint because it is not clear that a student has suffered enough. I urge you to require and incentivize schools to require developmentally-appropriate bystander intervention, consent education, and healthy relationships education throughout the elementary and secondary education years.

Current public education standards fail American students at preparing them for social, romantic, and sexual interactions,

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resulting in college prevention and health staff trying to catch up as quickly as possible with their incoming first-year students to try to prevent and reduce sexual harassment and assault in higher education, when all citizens, on- and off- and around our various campuses, would benefit from comprehensive sexual education which includes consent, boundary-setting, and healthy relationships dynamics being introduced to adolescents and children long before they reach young adulthood.

Whether our K-through-12 attend college or enter the workforce, this preparation will help address gender and sexual harassment across communities and industries.

Please remove the requirement or option for live hearings, which are unnecessary and unfamiliar in an educational and employment context, and inappropriately likened student conduct and civil rights policies and procedures to criminal matters and procedures.

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As it's been consistently demonstrated and emphasized, the increasingly legalistic and adversarial nature of schools' procedures, the very steps required to enter student protection, subject students and families to unnecessary trauma and harm. It's entirely possible to offer due process to respondents without these requirements. Thank you.

MODERATOR: Thanks. Thank you. Next up is Patti M.

(Pause.)

MODERATOR: Looks like Patti's having some technical difficulties. We're going to move on to Meg B. Meg, please unmute your microphone and begin speaking.

MEG B.: Sorry. I'm actually early for my segment, and I'm not fully prepared. Can I cycle to the end of the line?

MODERATOR: Absolutely. Patti, looks like you're back on. If you can unmute your mic, you may begin speaking.

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(Pause.)

MODERATOR: Patti, please unmute your mic and begin speaking, and also, open up your chat, because if you're having technical difficulties, we'll attempt to assist through the chat function.

We'll be back in a few moments with our next commenter.

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

MODERATOR: Patti, we're ready for you, if you can unmute.

(No response.)

MODERATOR: Looks like Patti's still trying to get her microphone to work, so we're going to move on to Chelsea G. Chelsea, at this time, if you unmute your mic, you may begin.

CHELSEA G.: Hi. My name is Chelsea Gray. I'm a graduate student at George Mason University, and I was raped by another graduate student. And I wanted to bury the incident, but

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we worked in the same very isolated research facility. So I reported it to the Title IX office, in order to receive safety accommodations.

Under the current Title IX rules, George Mason can -- and I believe would have ignored my safety needs entirely, because I was raped off-campus.

Under the new Title IX rules, had my assailant refused to attend the hearing, the text messages sent from his phone admitting guilt the night of the assault, and begging for forgiveness, would not have been admissible.

The DeVos Title IX rules need to be repealed immediately. They make campuses unsafe by giving assailants an easy way to avoid sanctions. Just don't show up to a hearing, or just assault someone off-campus, which I don't think makes an equitable or safe campus.

And this is not really to say that the old timeline method was better. Despite very

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simple facts in my case, it took a full academic year for the Title IX investigation to conclude. I'm not sure what they were doing, but it was not investigating.

The Title IX process was so traumatizing that I seriously considered suicide. My grades suffered, and I considered dropping out. It has pushed back my academic and professional career by years. Even suspended, my assailant has suffered no professional consequences, and he used his suspension time to publish scientific papers.

I was repeatedly mistreated by university officials who did not take my needs or safety into account at all, and who repeatedly violated both university and federal law, with no accountability. And I believe this was in favor of him, because he had a lawyer and I did not. So they thought he would be more litigious than I would.

itle IX needs a serious overhaul, with

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an emphasis on accountability and transparency in institutions. Universities should be required to publish the average length of investigation time, and the findings and sanctions given in sexual misconduct hearings.

Universities consistently underreport sexual misconduct, and only sexual misconduct, and therefore should be required to publish regular climate surveys in order to understand the rate of both reported and unreported assaults, to give an accurate sense of campus safety.

And preponderance of evidence is the standard used for underage drinking and illegal drug use, and therefore should also be used for sexual misconduct. So please overhaul Title IX, and protect survivors. Thank you for your time.

MODERATOR: Thank you. Patti, can you please try unmuting your mic again?

(No response.)

MODERATOR: We're going to move on to

the next speaker. Joanna, you are up next.
Please unmute your microphone and begin speaking.

(No response.)

MODERATOR: Joanna, if you can, please
unmute your mic and begin speaking.

(No response.)

MODERATOR: It appears Joanna may be
having some technical difficulties. Joanna,
please open up your chat, and we'll see if we can
help you. In the meantime, let's try Patti again.
Patti, if you can unmute your mic, please begin
speaking.

(No response.)

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

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

MODERATOR: Good afternoon. Patti, if
you can unmute your mic and begin speaking?

(No response.)

MODERATOR: Next up is Meg B. Meg,

when you're ready, unmute, and you may begin speaking.

MEG B.: Thank you so much. My name is Meg Bossong. I am one of the founding leadership council members of the Campus Advocacy and Prevention Professionals Association. I'm also the director of sexual assault prevention and response at a small private liberal arts college, though I'm speaking on my own behalf, and my institution will comment for itself.

I have been a professional in the field of sexual violence prevention and response, and in higher education, in particular, for over ten years. I wanted to offer three specific comments for your consideration.

The first is that, as you review the rules that were issued by the DeVos administration, informal resolution requires more guidance and more framework than what exists in the current rules.

There is vibrant research- and

experience-informed practice for utilizing transformative and restorative justice practices with intimate violence. But throughout the last four to five years, we are consistently seeing a backsliding into the practice of mediation, as well as the use of informal resolution to inappropriately skirt institutions' educational civil rights obligations.

Second, as both commenters in both formal rulemaking and in this phase have said, the use of cross-examination and quasi-criminal hearings is inappropriate for an educational civil rights process.

First, I want to point out that it is a procedural requirement that sets aside this category of discriminatory behavior in higher education from both the same category of behavior in K-12 settings, as well as in Title VII employment settings, and from other discriminatory behaviors in higher education.

Second, it has had its intended

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effect, which is to create a process that is so onerous, hostile, and drawn out that when people have experienced -- who have experienced discrimination and counter it, they withdraw from trying to claim the rights that are granted under Title IX.

In my experience, even in a pandemic year, while my office saw the same number of students inquire about their options for accountability, every single person withdrew from engaging with the institutional process when they were presented with the new investigation and hearing model, as required by the rules, even as we were adjudicating four to ten cases a year in prior years.

A number of recipients are effectively fact-finding, making credibility determinations, and holding accountability processes that do not require adversarial cross-examination.

Finally, to move somewhat more broadly beyond the issue of intimate violence, as other

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commenters have no doubt pointed out, this review of Title IX needs to bring it into alignment with the Bostock ruling and Title VII, to make clear that the protections extended in employment setting apply in educational ones, as well, moving beyond biological sex as the basis for protection from discrimination. Thank you for your consideration.

MODERATOR: Thank you. Next up is Patti M. Patti, you can try to unmute your mic and begin speaking.

(No response.)

MODERATOR: Next up is Mary T. Mary, if you're ready, please unmute your mic and begin speaking.

MARY T.: Good afternoon, and thank you for providing us the opportunity to comment on this very important topic. I currently serve as the Title IX coordinator of a public school system, and I am concerned with the inability to address conduct that occurs outside of the

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confines of one of our programs or activities, under the new regulations. This has created a few issues, in my experience, in dealing with the new regulations.

Also concerned with the new definition of sexual harassment under the new regulations. The requirement to be severe, pervasive, and objectively offensive filters out a lot of incidents that we are not able to address under the new regulations, under our revised Title IX policy.

I think that both of these have a chilling effect on reporting, and effectively tie the hands of the Title IX office in addressing these incidents under Title IX and under our newly revised policies that are in compliance with the regulations that were released last year.

Again, thank you very much for the opportunity to comment and participate in this important process. This concludes my comment.

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: Good afternoon. If anybody's waiting to speak, please open up your chat, so we can communicate with you.

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

MODERATOR: Next up is Guadalupe A. Please open your mic, and you may begin speaking.

GUADALUPE A.: Okay. Good afternoon. My name is Guadalupe Arellanes Castro. My pronouns are she/her/hers. And I am one of UC Title IX's student advisory board members. I greatly appreciate your invitation for comments today.

I first joined the Title IX student advisory board because I believe in the law's role in ensuring that schools are providing students with educational environments free from

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sex-based discrimination.

Between adapting to new Title IX rules put forward by the previous Presidential administrations, Department of Education reforms, and finding ways to reach and work with students during the COVID-19 pandemic, educational spaces have faced a novel academic year.

As a Title IX student advisory board member, a PhD student, and a university instructor, I have witnessed the combined impacts of social, cultural, and legal forces on whether complainants feel safe enough to come forward, so that they can access resources, understand their options for potential redress, and make informed decisions about how to go forward.

Today, there are still far too many barriers to students reporting to and trusting in the Title IX process. Race, ethnicity, sexual orientation, and gender identity have always affected the handling of sexual violence cases.

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But intersectionality has not been front-and-center of these conversations for colleges.

The effects of anti-survivor, anti-trans, or otherwise xenophobic legislation and the rhetoric that accompanies it is often seen in classrooms and schools across the country, where students combat discrimination, fear, and harassment.

To file a claim, students who may already be experiencing trauma and a plethora of emotions, as a result of the harm they have experienced, must navigate a complicated investigatory process, often with little to no knowledge of how the Title IX process works or what their rights are. This confusion is exacerbated when requirements are in constant flux.

The newest regulations imposed a one-size-fits-all process, modeled on the courtroom. Schools, however, are not courts, and such a judicialized process has been discouraging for

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students, who understandably fear live hearings with cross-examination by attorneys permitted, not because of their credibility or culpability, but rather because of how retraumatizing processes like these can be.

As you consider improvements to these regulations, I want to remind us all of the goals put forward earlier this week by Suzanne Taylor, systemwide Title IX director for the University of California system, to provide schools flexibility and to create policies that align with their institutional values, to ensure the regulations will withstand future administration changes, so schools have the chance to build best practices on top of the foundations the law provides.

As I end, I want to thank you for giving students like myself a voice here. While I speak as an individual, my statements have been informed by countless conversation --

MODERATOR: Thank you. We'll be back

in a few moments with our next presenter.

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

PATTI M.: Hello, this is Patti Meyer. Did you want me to begin?

Moderator: You may begin, Patti. Thank you.

PATTI M.: Sure. Thanks to Patrick for the workaround. I worked in -- I've worked in higher education since 1985, and in the early days of trying to help, and every year that I have been a student services professional, or later, as a professor in the classroom, I have had students come to me who are dealing with sexual harassment and/or sexual assault.

Things have changed a lot since 1985, and I was alarmed to learn about -- alarmed to learn about the changes made in Title IX. Many speakers have very succinctly named the concern about having educational institutions act as courtrooms. We're good at lots of things in

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higher ed. This might not be our strength.

The other block that existed before these rules were changed was the difficulty for someone who has undergone the chronic stress of being stalked or sexually harassed.

And I've dealt with men and women who have had perpetrators who were faculty, staff, students, who were men and/or women, and it's a pervasive problem that has to do with the way power rolls around in institutions.

Making the rule that cross-examination should happen would only make it difficult for everyone involved. And it's alarming that this law and these --

MODERATOR: Patti, we can't hear you anymore.

PATTI M.: Okay.

MODERATOR: We can hear you now. Please continue.

PATTI M.: Okay. Sure. So this is a little, I guess, recent historical perspective.

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It was hard enough to support people who had been assaulted -- it was even hard to support assaulters and harassers in an educational setting. But this is going to make it even harder. Thanks for your hard work, and for giving me the opportunity. Good work, Patrick.

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 Christina Z. When you're ready, Christina, unmute your microphone. You may begin speaking.

(No response.)

MODERATOR: Christina, you're all set. You may begin speaking.

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

MODERATOR: Christina, go ahead and try again. Unmute your mic and begin speaking.

(There was a brief break between

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speakers at this time.)

MODERATOR: Christina, go ahead and try again. Unmute your mic and begin speaking.

CHRISTINA Z.: Can you hear me now?

MODERATOR: Yes, we can. You may begin.

CHRISTINA Z.: Great. Thank you. My name is Christian Zuba, and I'm an attorney at the Chicago Alliance Against Sexual Exploitation, or CAASE, where I focus on providing representation to student survivors of sexual harm.

In my work, I've seen firsthand how the 2020 Title IX regulations harm survivors and make it more difficult for them to both come forward to seek help, and to access their education.

There are several ways the Department of Education can improve Title IX regulations to increase both protection for students and fairness in the process.

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The Department should revise its definition of sexual harassment to include unwelcome sexual conduct, as the 2020 definition unjustifiably requires schools to limit which victims of sexual harm can be provided with assistance under Title IX.

The Department should require schools to respond to all sex-based harassment that is serious enough to interfere with a student's ability to participate in or benefit from a school program or activity, regardless of where it occurred.

As we at CAASE have seen repeatedly, many instances of sexual harm take place outside of school, and the location of the incident does not determine the effects it will have on the student's ability to access their education. Survivors should be supported, and their school should adequately respond to their reports of harm, regardless of where it took place.

Schools should be required to respond

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to harassment that they know, or should have known, about, as well as any sex-based harassment by employees that occurs in the context of their responsibilities to provide aid, benefits, or services within the institution's program or activity.

In order to protect students and uphold campus safety, the Department should eliminate the actual knowledge requirement mandated by the 2020 regulations. Schools should not be permitted to ignore sexual harassment simply because a student did not properly inform the correct employee.

Schools should also be required to offer supportive measures to the complainant as soon as possible. The Department should specify the school should provide reasonable supportive measures, regardless of where or when the harm took place and who perpetrated it, if the effects of that harm are interfering with the student's ability to access their education.

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Some students struggle in school as a result of sexual harm they experienced previously, or unrelated to their school community. The student is experiencing an interference with their ability to participate in or benefit from their education program as a result of the harm they experienced. Schools should provide them support to preserve their access to their education.

Finally, the Department should eliminate the rule that prevents schools from considering past statements by those unavailable for cross-examination.

In CAASE's experience, witnesses are sometimes unavailable, unresponsive, or unwilling to submit to cross-examination. It is unfair to require schools to disregard those witnesses' previous interviews or statements in those circumstances, especially as there is no subpoena power in these cases. Thank you for your consideration of our recommendations.

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MODERATOR: Thank you. Next up is Annie H. Annie, feel free to unmute your mic and begin speaking.

ANNIE H.: Thank you so much. Good afternoon. My name is Annie Hightower. I am the director of law and policy at the Idaho Coalition against Sexual and Domestic Violence. I was the Title IX coordinator at Boise State University from 2013 to '17.

At the Idaho Coalition, I provide civil legal services for survivors of sexual violence, ages 11 to 24. Because of the age range I serve, nearly every case involves working with schools to ensure compliance with Title IX and advocating for approaches that allow my clients to continue their education.

One of the biggest and most long-term detrimental consequences I see amongst my clients is that they drop out of school after experiencing sexual violence because schools don't provide adequate support, they don't

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understand their obligations to respond to reports of sexual violence, or, since the enactment of the new Title IX regulations, they've put in place overly-complicated grievance processes that essentially require students to build their own case to prove what happened to them, and often subject those student to horrifying cross-examination processes.

Through my work with students and schools, I've seen the following negative impacts of the new regulations. At the college level, I've not had one case proceed through the grievance process. Students either choose not to proceed with their complaint when they discover they will be subjected to a live hearing and cross-examination, or after informal resolution processes inevitably fall through.

Schools should be allowed to use investigatory models that are already in use in most civil rights matters to assess if a policy violation occurred or not.

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By not allowing institutions of higher education to do so, the Title IX regulations make processes more burdensome for reporters of sexual violence, and then further reporters are less credible than those in other types of matters, an assumption that is deeply rooted in gender bias against women and trans and gender non-conforming folks.

In the same vein, the impact of requiring schools to find that conduct is sufficient severe, pervasive, and objectively offensive cannot be overlooked. Again, this sets up the scenario in which reporters of sexual violence engage in processes that are more complicated and burdensome than for other civil rights processes.

Finally, schools have been put in the situation of creating different processes to govern the same conduct, depending on where the conduct occurred. For example, an assault that occurs in campus housing may be treated

differently than one that occurs across the street, even though the impact is the same.

These processes are confusing and make no sense to people who have experienced sexual violence. If the purpose of Title IX is to ensure equitable access to educational opportunities, it should not matter where the conduct occurred.

Schools must ensure access to education and respond to all incidents as a report of sexual violence that potentially impact benefits and opportunities offered by the institution. The way they should respond should be straightforward, student-centered, and consistent, and not matter where the conduct occurred.

In close, we ask you to consider the many stories that you will and continue to hear about the new Title IX regulations and how they've chilled reporting and tied schools' hands in a way that negatively impacts people who have experience sexual violence, ultimately resulting

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in barriers to access to education. Thank you.

MODERATOR: Thank you. Next up is Kaleigh A., followed by Lorraine H. Kaleigh, if you're ready, please unmute your mic and begin speaking.

KALEIGH A.: Hi. My name is Kaleigh Alwood. I am an education major at the University of Arkansas. I'm here to talk to you today about preventative measures at the college level.

As a freshman attending the university of Arkansas, I was required, along with my classmates, to take a course that taught us, over a period of about an hour, about bystander intervention and methods that potential victims could use to avoid sexual harassment and assault on a college campus.

This was the only mandatory educational seminar that I attended in my current three years at the University of Arkansas.

Education to prevent sexual assault must be ongoing. It must be mandatory, and it

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must not be something that is simply checking off a box, which is what it feels like right now.

Students at the University of Arkansas have been given opportunities to attend further seminars, later in their career. However, these are optional, and they focus on bystander intervention and victim intervention, rather than focusing on consent education.

As educators, we know that education cannot stop at one instance. Students will not remember what they were taught in one hour. You have to continually repeat the point in different ways, to reach everybody.

So I come here to ask you to please consider instituting -- to please consider instituting a program that would require semesterly trainings for all students at the university level on consent education, what consent looks like, how consent can be given, and when it can be taken away. Without this, everything will just continue. Thank you.

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MODERATOR: Thank you. Next up is Lorraine H. Lorraine, when you're ready, please unmute your mic and begin speaking.

LORRAINE H.: Hi, there. My name is Lorraine. And I am representing Bay Area Women Against Rape. I'm an advocate, and I also have been a confidential advocate on campus at CSU East Bay in California.

In addition to my experience as an advocate, I am also a survivor of campus sexual violence. And that experience, you know, derailed my education. It took me almost eight years to earn my bachelor's degree. And to this day, I support students who have similar experiences.

Title IX, right now, is broken. I have never seen it work for a student survivor to guarantee what it is supposed to -- their equal access to education on campus.

Right now, survivors are not supported by their schools, and schools are allowed to

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ignore complaints of violence that happens on their campuses and also off-campus.

Because of the new requirements of Title IX, violence that happens off-campus is often not able to be acted upon in the same way that violence that happens on campus. The result is that student survivors are completely unsupported, left alone to deal with the consequences of the violence that they experience.

We're not protected. We're not able to access supportive measures easily from our campuses. And that needs to change, so that survivors can access the education that they are required to, that the government is required to protect for them.

And so I am asking that, with the new -- or that there are new Title IX guidelines, and that these guidelines are robust and create a reporting structure that students trust, and that there is a transparent process that students can

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access, that they know what to expect before they report to Title IX.

And these reporting procedures should be able to be decided by schools. Schools should decide what procedure works for them and their campus, that will be fair and equitable to all students.

But it needs to be easier. There needs to be a process so that students can stay enrolled, that students can graduate, because right now, you know, survivors are not supported in that way, and they are not able to graduate at the same rates as non-survivors. Thank you.

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

(Pause.)

MODERATOR: Next up is Rebecca. Rebecca, if you are ready, unmute your mic and begin speaking.

REBECCA B.: Thank you. Good afternoon. My name is Rebecca Berkowitz. I am

the school policy attorney at the Maryland Coalition Against Sexual Assault or MCASA.

We are the federally recognized state sexual assault coalition. And our offices include the Sexual Assault Legal Institute where we provide direct representation to Maryland survivors, including to student survivors.

MCASA has already submitted written comments addressing the many harms and inadequacies of the August 2020, amendments. And in particular, we concur with the written comment submitted by the National Women's Law Center.

So I'd like to focus now on the need for new regulations regarding supportive measures for survivors. Because the current regulations don't require schools to offer any particular supportive measure and they don't give any guidance for how measures are to be implemented or enforced.

Left to their own devices, schools routinely fail to offer adequate supportive

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measures. Which leaves survivors without the help they need to stay in school and vulnerable to further harassment.

First, faculty and staff need to be trained on how to implement supportive measures. One Maryland college student was raped by a classmate and is currently going into month nine of her Title IX investigation. Still no hearing date has been set.

The lengthy process has tanked her academic performance. Her Title IX coordinator told her that she was welcome to reach out to professors to ask for academic accommodations. Placing her in the position of having to tell her teachers she was raped in order to get support.

She did ask one professor for extra time on an assignment and his response was basically, you know, I'm sorry this happened to you, but I really can't give you quote, special treatment.

Even without investigation,

supportive measures are essential. As an example, of what can happen when no measures are in place.

One Maryland student was raped by a classmate on campus but chose not to pursue a formal investigation. Then in the months following her assault, her GPA plummeted. She was kicked out of her major and she eventually attempted suicide.

When she finally connected to Title IX, they refused to provide her with a letter of support for her request to make up work she had missed due to having PTSD, due to having been raped.

She was raped while she was a student. But Title IX said they couldn't help her because too much time had passed and they quote, can't tell teachers what to do. She wasn't able to graduate on time and she incurred thousands of dollars in addition tuition costs and student loan debt.

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So the Maryland Coalition Against Sexual Assault and its Sexual Assault Legal Institute urge the Department to draft new regulations that require schools to proactively offer and actually enforce specific supportive measure including academic accommodations and financial adjustments.

Thank you for your time.

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: Good afternoon. We have one commenter waiting. Can you please open up your chat so we can communicate?

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

MODERATOR: Good afternoon. This concludes this session of the public hearing. The next session will begin at 3:30.

(There was a brief break between

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speakers at this time.)

MODERATOR: Good afternoon, folks. Our first two commenters will begin in just a few moments.

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

MODERATOR: Thank you for your patience. First up is Jon M. followed by Nicholas W. Jon, feel free to unmute your mic and begin speaking.

(No response.)

MODERATOR: Jon, please unmute your mic and begin speaking.

(No response.)

MODERATOR: Looks like Jon might be having some technical difficulties. We're going to move to Nicholas W. Please unmute your mic and begin speaking when you're ready.

NICHOLAS W.: Hello.

MODERATOR: Yes, Nicholas, we can hear you. You may begin.

NICHOLAS W.: Excellent. Thank you. My name is Nicholas Wolfinger and I'm here today to talk about Title IX. I'm a tenured professor at the University of Utah where I've taught for over 20 years.

I support the broader ends of Title IX with respect to gender equity and higher education. Indeed, my 2013 book, *Do Babies Matter?: Gender and Family in the Ivory Tower*, addressed the barriers that female academics face.

That having been said, I think that the Department's 2011 Dear Colleague letter to American universities has perverted the original intent of Title IX by turning higher education into a gigantic star chamber that tramples the rights of faculty and students in a misguided crusade against sexual violence.

The Dear Colleague letter authorized campus tribunals against those suspected of sexual assault or harassment using the lowest

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possible burden of proof, discourage cross-examination.

It also set up a federal registry to shame universities and threaten them with the loss of federal funds. The stage was set for a witch hunt. Colleges have every incentive to pursue any charges filed no matter how flimsy.

And pursue them they did. This is how I found myself facing allegations in 2016 for telling a colleague that I had proposed to my wife at a strip club.

It doesn't matter that I told the colleague and several other colleagues this in the late 1990s off-campus and over drinks. I find it probable that she was offended. Instead, she was simply settling a score.

The dossier by the university prepared against me also contained allegations of an unnamed reporter who phoned my academic department to complain about something I'd said in an interview.

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It's hard to imagine anything having more chilling effect on scholarly research and teaching than the prospect that anyone can contact your university and complain about anything at any time.

Ultimately, I was exonerated after a review that lasted several months. I was lucky. Many faculty careers have been ruined and many students have been expelled. My costs were limited to the time I wasted and \$14,000. in attorney's fees.

Reforming Title IX wasn't about getting rapists a free pass. Justice for victims of sexual assault should come from the legal system, not kangaroo courts that are ill equipped to adjudicate felony charges.

Indeed, the relentless pursuit of offenders for non-offenses like kissing one's sleeping boyfriend, and that actually happened at Brandeis University, is an insult to people who've actually endured sexual assault.

Even a broken clock is right twice a day and Education Secretary DeVos implemented sensible reforms to stop the miscarriage of justice that has ensued from the Dear Colleague letter.

I urge the Department of Education to leave the DeVos reforms on the books. Thank you.

MODERATOR: Thank you. Next up is Jon M. Jon, if you could unmute your mic and begin speaking.

(No response.)

MODERATOR: We will be back in a few moments with the --

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

MODERATOR: Jon M., you're up next if you could unmute your mic and begin speaking.

JON M.: Good afternoon. My name is Jonathan Mathis and I serve as the Title IX coordinator for Chemeketa Community College in Salem, Oregon.

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Can you hear me now? Are you able to hear me?

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

JON M.: Good afternoon. My name is Jon Mathis and I serve as the Title IX coordinator for Chemeketa Community College in Salem, Oregon.

Can you hear me now? Are you able to hear me?

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

JON M.: Okay. Good afternoon. My name is Jon Mathis and I serve as the Title IX coordinator for Chemeketa Community College in Salem, Oregon.

I'm speaking to you today from the land originally inhabited by the Kalapuya who are today represented by the Confederated Tribes of the Grand Ronde and Siletz Indians whose relationship to this land continues today.

To begin, I want to affirm the shared

desire between our educational institutions and the federal government to create an equitable process for all parties involved in sexual misconduct cases.

Sexual harassment, sexual violence, and gender discrimination are traumatic and require colleges and universities to have a fair and equitable process to support those involved.

As a proud representative for community colleges, I would like to offer four suggestions for improvement to the current Title IX regulations.

First, I strongly recommend that any additional changes to Title IX should censure the lived experiences of historically marginalized student populations. And be written collaboratively with authors who have been trained in trauma informed approaches to ensure equitable educational environments.

Since these populations are disproportionately impacted by sexual harassment

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and sexual violence, their voices must inform the regulations designed to protect them.

Second, I suggest that we discontinue the use the term complainant when referring to someone who brings forward a report of sexual harassment or sexual violence.

The term is closely associated with the word complain. Meaning those reporting incidents of sexual misconduct with the assumption that they are complaining to their institution. I would suggest that we instead use term adopted by the state of Oregon, reporting party.

Third, I strongly recommend discontinuing the requirement for live hearings to adjudicate Title IX cases. The possibility of hearings often creates a chilling effect.

In addition, requiring the hearings to be both live and verbal may unfairly impact students, staff and faculty who experience auditory or verbal disabilities.

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Finally, I recommend that the Title IX rule be amended to be more inclusive than is currently written. In order for a person to be able to qualify for Title IX related services, the misconduct must clear the thresholds of being severe and pervasive and objectively offensive.

This leaves out many instances of sexual misconduct that still deserve to be addressed but may go unreported. As colleges and universities, we need to assure students and their families that we want to know about sexual misconduct within our communities. And we will work with them to resolve the reported concern and restore equitable access to their education.

Thank you for your time and consideration. I'm grateful for your service to our country and to making our educational institutions a safe place to learn and grow.

MODERATOR: Thank you. Next up is Wendy P. followed by Colleen F.

WENDY P.: Hi, can you hear me?

MODERATOR: Yes, we can. You may go ahead.

WENDY P.: Good afternoon. I'm Dr. Wendy Price and I'm a school psychologist at Whitman-Hanson Regional High School in Whitman, Massachusetts.

I'm also our school's faculty advisor for our Gender and Sexuality Alliance. And I'm the current president of The National Association of School Psychologists.

School psychologists are ethically obligated to ensure all youth of diverse sexual orientations, gender identities, and/or gender expressions are able to develop and express their personal identities in a school climate that is safe, accepting, respectful of all persons, and free from discrimination, harassment, violence, and abuse.

NASP has long advocated for needed practices and policies that support the safety and wellbeing of all students. Including those

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who are transgender and gender diverse.

We believe that civil rights of transgender students are protected as part of the U.S. public schools' obligations under Title IX of the Education Amendments of 1972.

This includes honoring a person's right to express gender identity and the right to modify gender expression when necessary for individual well-being and to have their gender identity affirmed and acknowledged.

In addition, NASP supports all students' rights to explore and question their gender identity. As such, we strongly urge the Department to revise the Title IX regulations to define on the basis of sex to include on the basis of sexual orientation, gender identity, transgender status, sex stereotypes, or sex characteristics, including intersex traits.

The desire to accommodate other people's discomfort does not justify a policy that singles out disadvantages of particular

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class of students.

In addition, we encourage the Department to release guidance that reinforces the fact that LGBTQ+ students are afforded protections under Title IX. And outline best practices on how schools implement policy and practices that protects the rights of all students.

The DoE must delineate appropriate ways to prevent harassment and discrimination and swiftly address when it does happen. Schools need guidance to develop policies and practices that prohibit remediate bullying, harassment, and discrimination on the basis of sex, including gender identity and sexual orientation. Ensure transgender and gender diverse students have access to facilities and activities including sports teams that align with their gender identity. Support the delivery of inclusive curricula where accurate and appropriate information about LGBTQ+ people, history and

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events are infused into classroom instruction when relevant. Provide accurate and inclusive professional development for staff on how to be a supportive ally and how to recognize and intervene when LGBTQ+ bullying and harassment occurs.

We urge you to take the necessary steps to protect the rights of all students and ensure that this protection is not subject to the beliefs of those in charge. And issue regulations that clearly and unequivocally state that Title IX includes discrimination on the basis of sexual orientation, gender identity, transgender, status sex stereotypes, or sex characteristics.

NASP looks forward to working with the Department. Thank you.

MODERATOR: Thank you. Next up is Colleen F. Colleen you can unmute your mic and begin speaking.

COLLEEN F.: Hi, can you hear me?

MODERATOR: Yes, we can hear you. You may go ahead.

COLLEEN F.: I'm a registered nurse, with lots of experience working with trauma in the emergency room and on a college campus under Title IX.

I want to share why we must support the current 2020 regulations, the due process protections and why we need to end the confusing and unscientific neurobiology of trauma informed training of all those involved in Title IX cases.

First, college and university lawsuits are the best place to see the failures of a trauma informed approach. This training has been well established on our campuses for the last decade.

More and more due to the biases of trauma informed training, courts are denouncing victim centered philosophies and are showing they support clear standards for admissibility of scientific evidence in court.

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In Doe v. Purdue it was found that schools can be discriminating against accused men if they adopt a start by believing approach. The federal appeals court found that Purdue University might have discriminated against a male on the basis of sex, believing his female accuser's version of events while barring this young man from presenting evidence on his own behalf.

The unanimous court decision written by Amy Coney Barrett said it is plausible that Purdue chose to believe Jane because she is a woman and to disbelieve John because he is a man.

The alleged victim never submitted a statement of her own. The university itself pursued the case on her behalf. How do you believe someone without ever speaking to him or her or hearing from them directly?

Colleges should not be using start by believing methods as they are biased and work from a survivor centric viewpoint that lacks

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transparency, accountability and is fraught with conflicts of interest.

Many experts state the talk on fragmented memory and tonic immobility is unsupported by prevailing scientific research findings.

The U.S. Airforce of Special Investigations has sounded the alarm calling for the end of trauma informed training stating that it is loosely constricted. Is based on flawed science, makes unfounded claims about its effectiveness and has never once been tested, studied, researched, or validated.

In another court case, Doe v. University of Mississippi, the court found trauma informed training materials caused those trained to make an assumption that an assault had occurred.

Even the Association for Title IX Administrators, a prominent agency that leads the way for campus policy and training had this to

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say. You will need to assess whether you can afford to have non-empirical biased training on your resume in this age of litigation.

We need to end the unscientific use of trauma informed training of those on our college campuses as well as our police, law enforcement, and medical health professionals. We need to support the current 2020 regulations that were put in place to allow for due process protections and cross-examination.

We would not want to see rape cases thrown out of court due to the use of this flawed training. We are hearing a lot about how traumatizing cross-examination is for the accuser, but this process is a process that's affecting two sides, both the accuser and accused.

Those accused labeled and charged by their schools or colleges with titles of rape or sexual assault are being treated as criminals.

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 China W. China, if you're ready, you may unmute your mic and begin speaking.

CHINA W.: Good afternoon everyone. My name is Dr. China Wilson and I am the equity and civil rights compliance specialist with the Maryland State Department of Education.

Much of the portfolio that I overlook and that I oversee involves the compliance of Perkins V the methods of the administration protocols in regards to equitable practices around access and performance in our local school systems, our community colleges and our state operated programs. Meaning juvenile service education and adult correctional ed.

I appreciate the time before you today and wanted to just share that I really think there needs to be an additional focus on the K-12

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system. Much of the regulation in Title IX focuses on the college environment.

And while that is certainly a need, and there's certainly, you know, the requirement to look at that arena, I believe we also need to look a little bit further at the K-12 system and the services that need to be provided, the guidance that needs to be provided to leaders in order to make sure that they are compliant with Title IX.

So I have two simple requests. Two simple recommendations. The first is to revise the Title IX regulations to include specific guidance for K-12 systems regarding issues concerning sexual misconduct and gender discrimination and the unique circumstances that exist in those environments.

And then my second recommendation is that in addition to Title IX's focus on sexual misconduct, please provide stronger and equal emphasis on the protections provided under Title

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IX that prohibit gender discrimination.

Many times we focus on sexual misconduct, again which is important, but we also need to provide equal emphasis on gender discrimination.

And so those are the two recommendations that I have as you all look at revising this regulation and thank you for your time.

MODERATOR: Next up is Jennifer G. Jennifer, please unmute your mic and feel free to begin.

JENNIFER G.: Can you hear me?

MODERATOR: Yes, we can. You may begin.

JENNIFER G.: Thank you, sir. 2067 days ago I picked up my son from school and that was the day when my fight for justice began.

My son informed me that he was sexually violated by two female classmates during his PE class. We both went into the office after

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school to report this to the principal and guidance counselor.

After 50 days went by without any investigation by the school employees, I contacted the superintendent of public schools. I delivered my concerns about the school employees who have failed my son and myself after reporting a sexual violation.

Still to this day the school district failed to report the crimes in 2016 to the State Department of Law Enforcement in which I possess five school police department incident reports.

And in one of those reports, it states that what my son described to the police officer appears to be criminal in nature. My son and I decided to speak numerous times at school board meetings only to be told, thank you, after describing the sexual violation.

Since my county school board was clearly incompetent, I began to reach out to the state governor and state commissioner for the

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Department of Education. Unfortunately, the continuity of discrimination went through two governors and two commissioners for the Department of Education.

When it comes to Title IX of the Education Amendments of 1972, a revision is imperative. It is well established that Title IX protects against discrimination on the basis of sex and that sexual assault is a form of sex discrimination.

I strongly recommend that when it comes to the reporting of a sexual violation directly from the victim to the school administration, that we eliminate the use of wide discretion and implement strict protocol for school administrators to adhere to.

In my state, the teachers are protected by the Educator's Code of Ethics. There is one sentence that fails to be mentioned in all 67 counties within my state Code of Student Conduct, sometimes known as Behavior Matrix or

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Discipline Matrix.

After discovering this failure, I decided to turn my pain into purpose. I created and have proposed King's Law several times to the Department of Education. Every child in America deserves to learn in a peaceful environment.

We need to emphasize for students as well, quote, keep your hands and other parts of your body to yourself, end quote.

Implementing King's Law and strict protocol for school administrators to follow will bring the much-needed change that we desperately need when it comes to public schools.

Thank you for your time. Have a beautiful day.

MODERATOR: Thank you. Next up is Richard K. Richard, when you're ready, please unmute your mic and begin speaking.

RICHARD K.: Hi. I just wanted to introduce myself really quickly. I was a criminal defense lawyer representing indigent

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defendants for ten years and I have been a law professor for approximately 40 years.

My focus has been the effective assistance of counsel and also changes in the rape laws. I'm most concerned about due process when it comes to the procedures that universities will be using in conducting the Title IX investigations.

As a criminal defense lawyer, I saw the damage that can occur by the simply start by believing because the police officers will always believe by the judges, by the prosecutors and sometimes wrongly convicted people would result.

There will be wrongful convictions because of this start by believing. So I do think that's a real concern. I also think that victim centered investigations present all kinds of due process issues because it shouldn't be the victim, the alleged victim, the accuser, who determines the appropriate ways that the independent objective investigator will be

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proceeding with witnesses to contact, what evidence to pursue. So I think that's a problem.

And then trauma induced, a focus on trauma induced testimony can also present damage. Because what that leads to is the investigator sometimes trying to fill in the gaps for the witnesses, for the accuser's failings to sort of think that well, the reason the accuser is saying something different this time than what she had said before was just because she has been traumatized.

Any trial attorney is fully aware of the absolute need for fundamental fairness and due process concerns. There has to be cross-examination of any accuser.

Witnesses sometimes might be mistaken. There might be memory lapses. They might be confused, or they might be simply lying. And the only way we can really determine the accuracy of an allegation is if we do have cross-examination.

Due process requires that the accused have a counsel to represent him or her and that there's full access to all of the evidence which may influence any fact finding.

This country's becoming increasingly aware that the public perception of the fairness of our criminal justice system is of paramount importance.

And so too in matters where an accused can be expelled by a university and a career and a future forever ruined, procedures providing for fair and thorough adjudication of any complaint must be absolutely adhered to.

Thanks very much. Again, it's Richard Klein.

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

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

MODERATOR: Next up is Rachel G. Rachel, when you're ready, please unmute your mic

and begin speaking.

RACHEL G.: Can you hear me?

MODERATOR: Yes, we can hear you.

RACHEL G.: Great. The New York City Alliance Against Sexual Assault and Vida House co-chair on multidisciplinary New York State campus working group created in 2015 that is comprised of institutions of higher education, attorneys and rape crisis programs with years of expertise serving college and university populations.

The existing expertise in New York State was bolstered by the introduction of Education Law 129B or Enough is Enough in 2015. This is a comprehensive sexual assault law which addresses prevention and response to campus sexual assault, stalking and dating violence.

We commend OCR's comprehensive review of the Department's existing regulations and other actions related to Title IX to implement President Biden's March 8th executive order.

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Given our vantage point, representatives of the working group would like to express the following views. First, we believe the narrow definition of sexual harassment as redefined in the Title IX rule that went into effect in August 2020 must be changed.

The rule defines sexual harassment where they have an institutional response as quote severe, pervasive, and objectively offensive. Which raised the threshold of what kind of harmful behavior demands intervention.

This leaves students to endure repeated and escalating levels of abuse until it sufficiently fits in that narrow definition. The new rule also narrowed the circumstances where a school is responsible to report as they are not required to address sexual harassment unless there's quote, actual knowledge received by a small subset of employees who have authority to respond to harassment.

We believe this must be changed so

students retain the right to disclose an incident of sexual harassment to a school employee with whom they already have a trusted relationship and have that disclosure treated with the same seriousness as other disclosures.

Along with the actual knowledge requirement, the geographical restrictions that limit a school's responsibility to only respond to sexual violence that has occurred within an education program or activity excludes students living off-campus or participating in study abroad programs from the protection of Title IX.

With many of the students we serve experiencing sexual violence off-campus and or online, we urge the OCR to expand schools' geographical responsibilities to include off-campus housing, tech facilitated abuse and study abroad programs.

We believe there must be clarification around the issues of advisors of choice. We have seen firsthand the inequity that persists when

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some students are able to hire attorneys in these investigations and others are not. Especially in schools that cannot afford to provide counselor reimburse.

We also continue to stand firmly behind the standard of preponderance of the evidence for all these cases.

In addition, we remain concerned about cross-examination requirements under the revised Title IX regulations and hope to see the religions exemption standard raised.

Finally, the new rule does not address tech facilitated abuse and cyber sexual abuse which are both areas we've seen as critically important. Especially throughout the pandemic.

We welcome more information about what the DoE will do with the comments shared and how it will be reported back out. Thank you.

MODERATOR: Thank you. Next up is Katherine H. Katherine, when you're ready, please unmute your mic.

KATHERINE H.: Hello and thank you for the opportunity to provide comments today. My name is Kate Hildebrandt and I'm a civil rights specialist and Title IX coordinator with the Oregon Department of Education. I'm here today to provide comments on discrimination based on sexual orientation and gender identity in the K12 environment.

Oregon has prohibited discrimination based on sexual orientation and gender identity in schools since 2007. To assist schools in addressing discrimination, in 2016, Oregon released a guidance document to help schools best support trans students and we provide ongoing training and technical assistance.

Today I want to share with you some of what we've learned in Oregon in the past few years and some suggestions we hope OCR will consider in any future guidance.

First, names, pronouns, and gender identity. Students in Oregon may change their

name, gender identity, and pronouns in school records without the need to provide legal or medical documents.

We trust our students to know themselves and their identity. And we suggest any guidance from OCR reflect a similar trust in K-12 students.

Two, student privacy. While many students may be ready to assert their sexual orientation or gender identity widely, others will only be ready to share their identities in certain settings. They may be ready to be out at school, for example, but not necessarily to their parents.

Guidance should address the intersections of parental rights and student privacy in the K-12 environment and should prohibit schools from revealing confidential personal information in any way that violates student's privacy rights.

Three, athletics. Students in Oregon

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may play on the athletic team that aligns with their gender identity. The Oregon School Activities Association's handbook also specifically addresses policies for nonbinary and gender fluid students. Allowing them to access these programs in a way that affirms their identity.

We find this practice very successful for schools and students across the state. Should OCR issue guidance, they should similarly address athletic opportunities for trans, nonbinary, and gender fluid students.

Four, educator and administrator training. A key finding of Oregon's LGBTQ2SIA+ student success plan was that students usually know where to report discrimination but do not trust that educators and administrators will actually do anything about it.

Any OCR guidance and regulations must address training for educators and administrators. And should go beyond simply

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stating that discrimination is wrong and that it must be reported.

Educators specifically need training on how to intervene in discrimination when it happens such as anti-bias or bystander intervention training.

And last, harassment and bullying. Oregon's biannual Healthy Teen Survey has found that Oregon student trans students experience higher rates of bullying, harassment, and school absence than their cisgender male or female peers.

Harassment and bullying based on sexual orientation or gender identity must be treated as discrimination and seriously handled. The Oregon Department of Education will elaborate further on these and other issues in our written comment.

And thank you again for this opportunity.

MODERATOR: Thank you. We'll be back

in a few moments with the next commenter.

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

MODERATOR: Next up is Samantha S. Samantha, when you're ready you may unmute your mic and begin speaking.

(No response.)

MODERATOR: Samantha, please unmute your mic and begin speaking.

SAMANTHA S.: Can you hear me?

MODERATOR: I can hear you now. You may go ahead.

SAMANTHA S.: All right. Give me one second. Hi everyone. My name is Samantha Sheppard and I work for the Louisiana Foundation Against Sexual Assault. The designated coalition for sexual assault in Louisiana.

I am the campus sexual assault project coordinator. Where I previously have been before this, I was a first responder to sexual assault in Baton Rouge, Louisiana, where there are many

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universities for almost two years.

I'm here to shed light to the empirical facts of sexual assault in the university space. Especially amid all the prevalent issues occurring in the state of Louisiana surrounding sexual assault and Title IX. Sexual harassment of students is widely prevalent in higher education, but most students do not report it to their schools.

In college, one in four women, one in fifteen men, one in four transgender, nonbinary and gender nonconforming students are sexually assaulted during their time as students.

In addition to this, one in three college women and one in six college men are survivors of dating violence or domestic violence. In addition to this, one in six women and one in nineteen men have also experienced stalking on campus.

However, few students report these incidents to their schools. Often because of

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shame, self-blame, fear of retaliation, fear of not being believed, fear of being ignored or disciplined, and fear of police. And this is very prevalent in Louisiana.

As I am sure you have all seen what is going on current state due to the current system. When student survivors do not come forward, they are often ignored or punished by their schools instead of receiving help.

This is especially common for women of color but especially, particularly Black women. Meaning this translates to the HBCU space. This also affect LGBTQ students, pregnant and parenting students, and disabled students due to their stereotype that labeled them as more promiscuous, less credible, or less deserving of protection.

When schools fail to protect survivors, they suffer in form of lower grades, lost scholarships and lost degrees. One in three college survivors end up dropping out all

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together because of the current system in place. And this has been all empirically proven.

Survivors of sexual assault need a rule that offers healing, dignity and justice. Including a safe and supportive learning environment. We need to protect and believe survivors. Student survivors need support, and they need to learn without discrimination or fear.

It is critical for the Department to hear directly from students, educators and other stakeholders like myself. Not only to hear us but to listen and truly consider how to restore civil rights protection under Title IX for student survivors.

Thank y'all so much for giving me this opportunity to speak.

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

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

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MODERATOR: Next up is Christian C. Christian, when you're ready, unmute your microphone and begin speaking.

(No response.)

MODERATOR: Christian, you may begin.

(No response.)

MODERATOR: Christian, it appears there are some technical difficulties. If you'll open up your chat, we'll try to help you out.

(Pause.)

MODERATOR: Next up is Carrie S. Carrie, when you're ready, unmute your mic and begin speaking.

(No response.)

MODERATOR: Carrie, if you can unmute your microphone, you can begin speaking.

(No response.)

MODERATOR: Okay, Carrie, if you could open up your chat, it seems there's some technical difficulties. We'll try to assist you through the chat.

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

MODERATOR: Next up is Adele K. Adele, when you're ready, please unmute your microphone and begin speaking.

ADELE K.: Good afternoon. I'm Adele Kimmel, the director of Student Civil Rights Project at Public Justice, a national legal advocacy organization.

The Student Civil Rights Project uses litigation and advocacy to combat harassment and other forms of discrimination so all students can learn and thrive in school.

For years we've been representing student survivors of sex-based harassment including sexual assault in Title IX litigation throughout the country and administrative complaints filed with OCR.

The Department should replace the Title IX regulations promulgated by former Secretary DeVos with rules consistent with the

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text and purpose of Title IX.

For decades, the Department applied consistent substantive protections to students who experienced harassment based on sex, race, national origin, or disability.

The DeVos rules inexplicably treat sexual harassment complaints differently from complaints concerning all other forms of prohibited discrimination.

Now, federal funding recipients only need to address sexual harassment that is severe, pervasive, and objectively offensive and that occurs on campus or during an off-campus recipient activity.

And if the survivor files a Title IX complaint with OCR, the Department must use a deliberate indifference and actual knowledge standard in analyzing the complaint.

In deviating from its long-standing position, the Department gutted protections for survivors, reducing recipient's responsibility

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to address harassment and depriving OCR of critical enforcement power.

The Department must promulgate regulations that restore long-standing protections for student survivors and OCR's robust enforcement powers.

Specifically, the Department should one, explain that sex-based harassment includes sexual harassment, dating violence, domestic violence, sex-based stalking and harassment based on among other things, sexual orientation, gender identity, and gender expression.

Two, define sexual harassment as unwelcomed sexual conduct including quid pro quo sexual harassment.

Three, define actionable sex-based harassment as all quid pro quo harassment and any other sex-based harassment that's sufficiently serious to create a hostile environment.

Four, require recipients to respond promptly and effectively to actionable sex-based

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harassment that they know or should know about and any sex-based harassment by employees done in the context of the employee's responsibilities within the recipient's program or activity.

Five, explain that recipients must address sex-based harassment that may create a hostile environment in their program or activity regardless of where the sex-based harassment occurred.

And six, expressly prohibit common forms of retaliation against survivors who report sexual harassment such as punishing them for sexual contact on school grounds and disciplining them for conduct code violations they must divulge in order to report.

Thanks for considering my input.

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

Christian C., please unmute your mic and we'll give it another try.

CHRISTIAN C.: All right. Can you hear

me now?

MODERATOR: Yes, we can. Go ahead.

CHRISTIAN C.: Great. Hi, I'm Christian Corrigan and I'm the Assistant Solicitor General for the state of Montana. And I'm here speaking on behalf of Montana Attorney General, Austin Knudsen.

Now someone once said that allegations of sexual harassment and sexual assault are complicated. That same individual who has been accused multiple times of sexual misconduct argued that victims deserve to be treated with dignity and respect and should be heard but that their story should be subject to appropriate inquiry and scrutiny.

That person was President Biden, and he was absolutely correct. Victims and accused students deserve a fair, impartial and reliable process to adjudicate accusations of sexual harassment in education.

It's unfortunate that President Biden

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demanded due process for himself yet was responsible as much as anyone for denying that same due process to students across the country.

In a 2016 speech, he mocked the idea that sexual assault allegations might be complicated. He spearheaded the infamous 2011 Dear Colleague Letter that resulted in a Kafkaesque disciplinary disaster.

Over 600 lawsuits by accused students and widespread criticism from across the ideological spectrum. And one of the more tragic ironies is that the 2011 DCL, resulted in a disproportionate number of expulsions and scholarship losses for Black male students.

In fact, the only individual who bears remotely similar culpability for the Title IX fiasco is Catherine Lhamon. OCR became a biased institution under Ms. Lhamon's leadership.

With former and current OCR's investigators telling the media quote, the perceived message from Washington was that once

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an investigation into a school was opened, the investigators in the field offices were not meant to be objective fact finders.

Their job was to find schools in violation of Title IX. When Secretary DeVos began to fulfil her promise to clean up the mess created by the Obama administration, and restore fairness and due process to Title IX, former Vice President Biden called supporters of reform quote, cultural Neanderthals and even compared them to neo-Nazis.

But the list of Neanderthals is ideologically diverse and spans the partisan divide. It includes, for example, numerous law professors, many of them liberal feminists, a past president of the ACLU, The American College of Trial Lawyers, The American Council on Education, former Obama DHS secretary Janet Napolitano, The American Bar Association, The American Association of University Professors and even the late justice, Ruth Bader Ginsburg.

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Vice President Biden and Ms. Lhamon put the interests of fringe activists over students, schools, and core American values. In contrast, Secretary DeVos's Title IX rules now require schools to respond promptly and supportively to allegations of sexual harassment while also providing due process to both alleged victims and alleged perpetrators.

To improve Title IX, OCR should vigorously enforce the new DeVos Title IX rules and defend the rights of all students. Thank you.

MODERATOR: Thank you. Next up is Carrie S. Carrie, when you're ready please unmute your mic.

(No response.)

MODERATOR: Carrie, can you try to unmute your microphone again?

(No response.)

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

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LIBBY M.: Hello, can you hear me?

MODERATOR: Yes, we can hear you. You can begin speaking.

LIBBY M.: Thank you. My name is Libby Munoz-Smith and I'm with the Fierberg National Law Group. We represent survivors of sexual assault on college and university campuses across the country.

I work for a Title IX attorney, Cari Simon. Previous OCR guidance recognized that harassment that was severe, pervasive, or persistent could limit or alter a student's access to their education.

During this time, it allowed flexibility for varying types and degrees of harassment and protected students' educations from being altered by it.

The DeVos era final rule dangerously heightened the standard for investigation of harassments such that schools must dismiss complaints of sexual harassment if they are not

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so severe and pervasive and objectively offensive that it effectively denies a person equal access to education.

This sets an extremely high standard for schools to even begin to be able to investigate complaints. This is highly problematic.

First, many survivors make a concerted effort to avoid the harassment so that it doesn't get worse. Often altering their education experience to do so. But if it doesn't get worse, so bad that it is so severe and pervasive and objectively offensive it can't be investigated.

Further, this gives schools the discretion to determine what is severe and pervasive and objectively offensive. LGBTQ+ students, Black and Brown students, and students with disabilities are harassed at a much higher rate and their complaints of harassment are often taken less seriously due to behavioral stereotypes labeling them as hypersexualized or

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deviant.

The discretion given schools will mean their complaints will be dismissed at a much higher rate.

Second, if a student reports harassment or bullying and the school refuses to investigate it because under Title IX it is not so severe and pervasive and objectively offensive that it must be dismissed, is that student going to re-report?

They've already felt that the harassment is bad enough to report it and ask for help in the first place. The survivor is not likely going to come back and report a sensitive issue to the same authority who declined to listen in the first place.

There is already a serious chilling of reporting of harassment and assault, and this standard only further discourages it.

Finally, and most importantly, forcing schools to wait to investigate until the

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harassment is so severe and pervasive and objectively offensive that it effectively denies a student's education is a dangerously high standard.

By this standard we are asking students to suffer so much for so long just so that they can be protected by Title IX. I would think that conduct meeting only one of those criteria would deny me equal access to my education.

Harassment, particularly of LGBTQ+ students, Black and Brown students, and students with disabilities is leading to marginalize students dropping out of school and committing suicide at an alarmingly high rate.

We must protect students and their access to education. This standard does not do that. Rather, it requires students to bear the harassment until it gets so bad, so severe and pervasive and objectively offensive that it might be too late. Thank you.

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

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

MODERATOR: Good evening. This concludes this session of the public hearing. The next session will begin at 5:30.

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

WILLIAM F.: My name is William Flack, and I am a professor and chair of the psychology department at Bucknell University in Lewisburg, Pennsylvania.

I have conducted research on campus sexual assault for over 20 years and I am a member of The Administrator Researcher Campus Climate Collaborative, abbreviated ARC3.

I have five comments. First, campus misconduct procedures should give survivors choices about getting justice. Not reproduce a legal system that has failed them.

Requirements such as live cross-examination should be abolished. Trauma informed procedures and alternative approaches such as restorative justice should be required to be available on all campuses.

Second, because survivors should never have their autonomy violated, especially by those to whom they feel safe enough to disclose sexual assaults such as trusted professors, for example, mandated reporting should also be abolished and replaced with information sharing about available alternatives.

Number three, research-based campus climate surveys should be mandated at least every four years. Linked specifically to intervention and prevention efforts on each campus. And results should be recorded publicly online.

The ARC3 survey, a research based modifiable instrument available at no cost is one example of such an instrument.

Number four, institutions should be

strongly encouraged to examine and change the systemic factors within their campus cultures that encourage and perpetuate sexual assault perpetration.

These include the kinds of male peer support networks that promote the abuse of women and gender minorities and that often function within but are not restricted to fraternities and sports teams.

Number five and finally, all efforts made by institutions to develop and maintain adjudication and prevention procedures should prioritize the participation of current students. Especially those assault survivors who are willing to be part of those efforts.

They have the experiential expertise required to help us better understand and ultimately eliminate this problem. Thank you. I appreciate your time and attention.

MODERATOR: Thank you. Next up is Carrie B. followed by Kevin C. Carrie, when

you're ready, unmute your microphone and begin speaking.

CARRIE B.: Can you hear me now?

MODERATOR: Yes, we can hear you now.

CARRIE B.: I'm so sorry for my technical difficulties.

MODERATOR: That's okay.

CARRIE B.: Thank you for this opportunity to testify today. My name is Carrie Baker and I'm a lawyer and gender studies professor at Smith College in Northampton, Massachusetts.

In 2006, the Department of Education issued Title IX regulations allowing single sex education in many more circumstances than allowed for remedial or affirmative purposes in the previous Title IX regulations.

Under the 2006 regulations, to justify single sex classes for schools, public school districts need only show that the single sex classification is based on an important objective

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such as providing diverse educational opportunities.

While many provisions to counteract the 2006 regulation have been included in the single sex education Q and A guidance issued by the Office of Civil Rights in 2014, the 2006 regulation should be withdrawn, and the single sex education guidance should be updated.

Proponents of single sex education say that boys and girls are hard wired to learn differently. And that the most effective way to teach them is to separate them based on their sex and use different teaching strategies.

However, the practice of separating boys and girls in public schools is based on discredited theories that are rooted in outdated in gender stereotypes. Advocates of single sex education argue that girls' and boys' brains are different.

But in fact, neuroscientists have found few sex differences in children's brains

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beyond the larger volume of boys' brains and the earlier completion of girls' brains worthless. Neither of which is known to relate to learning.

According to the former president of the American Psychological Association, Diane F. Halpern, advocates of sex segregated education often justify segregation using weak, cherry picked or misconstrued scientific claims rather than valid scientific evidence.

There is no scientific evidence that single sex schools produce better educational outcomes than coeducational schools. In fact, evidence shows that sex segregation increases gender stereotyping and legitimizes institutional sexism.

One of the original goals of Title IX was to decrease sex segregation and decrease the use of gender stereotyping in decision-making by and about individuals.

The Bush administration's 2006 regulations significantly expanded allowable sex

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segregation in public schools. Opening the door to gender stereotyping in the treatment of boys and girls in American public schools.

I urge you to revisit these regulations and tighten up allowable reasons for sex segregation. Thank you.

MODERATOR: Thank you. Next up is Kevin C. followed by Elizabeth H. Please unmute your mic. Kevin, you're ready to speak.

KEVIN C.: Hello. Thank you for this opportunity. My name is Kevin Carmody. I am the Title IX coordinator at Alma College which is a small private liberal arts college in Michigan. I've done Title IX work since 2011.

I've also trained investigators hearing officers and Title IX coordinators at the national level. I'm also a doctoral student. My dissertation that I'm working on right now is about Title IX investigation process.

I wanted to talk and comment on the regulations from 2020 and some of the things that

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I've observed. I think that there are some things that add value and I want to note those. I think that there's some things that were in desperate need of clarification and I think there's some things that really need to be changed.

One of the things that I have found that has added value in the new regulations is the increased notice prior to a meeting or a hearing.

I think we still need some clarification on how to handle some situations such as when a respondent is the one who comes into my office and shares with me a potential allegation.

I don't know how I could possibly give that person notice prior to that meeting because I did not know that they were coming. But I still think that the increased notice adds some value.

I think the requirement to review and respond information prior to the hearing is something that I hear as a positive both from

those accused and also from reporting parties.

I think that the focus on timeliness rather than 60-days timeline which felt arbitrary and ignored institutional size constraints. Additionally, talking with colleagues it was frequently waived as long as institutions documented some rationale for why a case took longer than 60 days.

I also think that the removal of the requirement to push forward with an investigation despite a criminal investigation is added value. I've had the experience of being threatened with arrest for doing my job as Title IX coordinator. I don't want that to happen to anyone else.

Things that I think need clarification. How we address sexual harassment, stalking, or intimate partner violence when some behaviors occur on campus and others occur off-campus.

The requirement that the incident happen on our educational program ignores the

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fact that, by definition, these are courses of conduct with multiple behaviors. And that we've had situations where we're left with two half cases and we're unable to address bad behavior that we are aware of.

Additionally, what to do with reporting parties who are not affiliated with the school at the time of the offense but have since either been enrolled or employed. Again, this has caused confusion and I think that this needs clarification sooner rather than later.

Then there are some things that I think desperately need to be changed. I know we've already heard tonight about the need to change cross-examination and I want to echo that.

It creates a more legalistic process which very few professionals in this field are trained for. And it goes against what we do well which is create an environment for education.

It does not meaningfully add to the ability of panels to make determinations of

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credibility. It also chills reporting. I've heard from a number of reporting parties that this is the reason that they did not report or did not want to move forward with the formal process.

I'm in the Sixth Circuit and I know that my colleagues that public schools are required by the courts to have some form of cross-examination, but any requirement should not be so prescriptive.

Courts have allowed questioning to move through the chair and I think that that would be less awkward. The pause that sort of happens where we have to --

MODERATOR: Thank you. Next up, Elizabeth H. followed by Paul S. Elizabeth, please unmute your mic when you're ready to speak.

ELIZABETH H.: I should be unmuted. Thank you. Good evening and thank you for allowing me to submit public comment to the U.S.

Department of Education. My name is Elizabeth Hunter, and I am the named plaintiff in a lawsuit against the U.S. Department of Education regarding religious exemptions for private colleges. And the lawsuit is being brought by REAP LGBTQ.

I attended Bob Jones University from 2015 through 2019. The summer before my senior year, I tweeted on June 1st, happy Pride to all of my friends in the closet and out of the closet. You are brave and I am proud of you.

That tweet came to the attention of my school administration. For my support of same sex marriage and my LGBTQ friends, I was called into a meeting with the administration. My school leadership told me I must be homosexual because of my public support for LGBTQ rights.

I was given the choice of outing myself or losing my position as a student. Because of my beliefs in sexuality, I was put on disciplinary probation and required to pay a \$75

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fine. I was required to attend mandatory counseling with the Dean of Women. I was also removed from my position in our campus TV media department, a student position I had worked in for two years and was a key part of my major and educational experience.

I experienced anxiety, depression and constant harassment and monitoring the rest of my senior year. And was noticed and possibly, almost missed my graduation due to this campus atmosphere.

Title IX did not offer me protection as a student. I was isolated and monitored by my school administration for the entire rest of my senior year as well as suffering anxiety and being completely closeted to all but a few friends.

I am asking the U.S. Department of Education to narrow Title IX exemptions so that other LGBTQ+ students at private institutions that accept federal money are not discriminated

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against and harmed due to their sexuality and gender orientation. Thank you very much for your time.

MODERATOR: Thank you. Next up, Paul S. followed by Michele D.

PAUL S.: Hello. My name is Paul Southwick, and I am the director of the Religious Exemption Accountability Project.

We have filed a lawsuit against the Department of Education relating to the religious exemption for taxpayer funded educational institutions that allows them to harm LGBTQ students while receiving government funding.

Religious exemptions to civil rights laws are something that are rooted in racism. And are a response to the desegregation of public educational institutions beginning with Brown v. Board of Education.

Many private religious colleges claimed a religious basis for maintaining segregationist policies or for continuing bans on

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interracial dating and interracial marriage. One of those institutions is Bob Jones University where our plaintiff, who you just heard from, Elizabeth Hunter, was a student.

Bob Jones University maintained its ban on interracial dating all the way through the year 2000. That's not that long ago. And it did so on the basis of its sincerely held religious beliefs regarding the separation of the races.

Government support for educational institutions that maintain racist policies was wrong then and it is wrong now. Government support for institutions that maintain policies on the basis of sexual orientation and gender identity were wrong and are also wrong now.

We call upon the Department of Education to narrow the scope of religious exemptions as much as it is able. During the Trump administration in the year 2020, the Department issued multiple new regulations regarding religious exemptions that expanded the

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scope of which educational institutions are able to claim them and whether or not there would be transparency.

Unfortunately, those new regulations have made it so that LGBTQ students deciding which colleges to attend are unable to determine whether or not their future college, which receives federal money, will be choosing to discriminate against them on the basis of their sexual orientation or gender identity.

So we ask at a bare minimum that transparency be increased, and notice be given to prospective students and their families. And additionally, the government introduced regulations that made it so that essentially any educational institution could claim a religious exemption. That should be narrowed as much as possible, consistent with the Title IX statute.

So again, my name is Paul Southwick, director of the Religious Exemption accountability Project. And we thank you for

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your time.

MODERATOR: Thank you. We'll be back shortly with the next commenter.

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

MODERATOR: Next up, Michele D.

(No response.)

MODERATOR: Michele, please unmute your mic.

MICHELE D.: Got it. My name is Michele Dauber. I'm a law professor at Stanford and I'm speaking in agreement with the comments of the National Women's Law Center.

In addition, I have two other requests. First, the Biden administration's revised Title IX regulations should provide standardized definitions of sexual assault, stalking, domestic and dating violence and affirmative consent and incapacitation in order to establish a floor below which schools cannot go.

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At Stanford, we had years of highly publicized struggle over Stanford's efforts to define sexual assault extremely narrowly. Prior to the DeVos regulations, Stanford defined sexual assault as penetration through force or while a victim was completely unconscious. Everything else was labeled merely misconduct.

At that time, the vast majority of our peer schools defined sexual assault as sexual contact without affirmative consent.

The DeVos standard definitions resulted in Stanford for the first time defining sexual assault as any sexual act or attempted sexual act directed at the complainant without affirmative consent.

Based on my experience at Stanford, it is important that in revising the rule that OCR maintains a standardized definition and that it makes affirmative consent a part of that definition.

There is no justification for having

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thousands of schools creating different definitions of sexual assault and there are many reasons to have a standardized definition. Including that it will help with the development of prevention education. It will ensure that victims do not feel invalidated due to using definitions that minimize harm and it will increase the equal treatment of LGBTQ victims by not allowing schools to require penetration as the sign of sexual assault.

Second, the revised regulations should require transparent data collection and reporting for federally supported colleges and universities. We need a national data collection similar to the Civil Rights Data Collection for sexual and gender-based harassment in higher education.

Such a data collection would include collecting and reporting out by each institution anonymized aggregate data showing the number of complaints, how they were handled, and the

sanctions applied. As part of this data collection, institutions should be required to administer a uniform prescribed sexual harassment and assault climate survey at regular intervals no less frequently than every three years.

Transparent publicly available data will serve many purposes. It will hold schools accountable. It will aid research in prevention. And it will provide schools with any information they need to improve. Thank you.

MODERATOR: Thank you. Next up, Bernadette B.

(No response.)

MODERATOR: Bernadette if you could unmute your mic.

BERNADETTE B.: Am I now unmuted?

MODERATOR: Yes.

BERNADETTE B.: I'm so sorry. I couldn't see it. The disparate impact of the new Title IX regulations on marginalized students. I am Bernadette Brooten, director of the Brandeis

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Feminist Sexual Ethics Project and professor emerita Brandeis University.

The Feminist Sexual Ethics Project sponsors research and programs on sexual violence against Black, African American women, indigenous women, transgender and nonbinary individuals, lesbian, gay and queer women, women of East and South Asian origins, Jewish women and persons with disabilities. Please consult our website.

I have advised students through the Title IX process and counseled others. Sexual violence occurs in all demographic groups but differently in each.

For example, centuries of sexual violence against indigenous women is a military tool and against Black women within slavery and under Jim Crow result in many such women hesitating to report results by white men.

For many fear the authorities will not believe them. Centuries of state sponsored and citizen generated violence against Black and

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indigenous men make many women of these groups hesitate to report a member of their own group.

The DoE in the 2020 Title IX regulations and accompanying discussion, dutifully report that certain categories of students are at heightened risk of sexual violation and even carefully summarized research on marginalized students complete with bibliography.

But does not take seriously the disparate impact of its regulations. I urge you to take the research fully into account. For example, the cross-examination requirement is a special hinderance to vulnerable groups at heightened risk of re-traumatization.

The right to face one's accuser in court is a foundational principle of criminal law, but not of civil law and certainly not of schools administrative hearing.

Further, bringing in outside counsel may help some survivors but not those who cannot

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afford an attorney. The 2020 regulations allow schools to use the clear and convincing standard of evidence rather than the less strict preponderance of the evidence standard.

Under the stricter standard, more perpetrators of sexual violence will persist with immunity, impunity. Survivors within the most vulnerable demographics are used to having their complaints disregarded. Once again, they will experience that their group is highly valued.

The 2020 regulation limiting school's jurisdiction over cases means that the severely harmed students whom I advised would have had no recourse, even though all concerned students were at the same school. Thank you very much.

MODERATOR: Thank you. We'll be back shortly with the next commenter.

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

MODERATOR: DeAnn Y. Please unmute your mic and please provide comments. Thank you.

DEANN Y.: I'm DeAnn Yocum-Gaffney. I'm a Title IX coordinator. The comment that I wish to provide is that the requirement for the direct cross-examination by the other party's advisor is very problematic.

I've seen a real chilling effect that that has on people coming forward with reports. I certainly want all parties to be able to ask questions, but I would recommend that those questions be funneled through the advisor of the hearing panel which we had done before and was much more effective and still allowed for all questions to be answered and in a way that provided that direct access, but it wasn't, it didn't quite as much, it didn't have such a chilling effect.

I also wanted to state that the definition of sexual harassment, the very restrictive definition, I find to be problematic in that it requires that, it removed the or instead of and in severe, pervasive and

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objectively offensive.

And the restriction that off-campus incidents be dismissed, I think is also a concern in that those off-campus incidents can have a very direct impact on whether or not another party has equal access to their education and so I would like to request reconsideration of that, of those matters.

Those are the main questions that I had. Again I'd like to just emphasize the direct cross is highly problematic, very chilling and I do not think advances equal access to education. The definition of sexual harassment under the regs that came into effect in August is highly restrictive. And again, I think does not provide equal access to education.

And so those are my comments. As the new administration looks to potentially revise those requirements and the rule making process. Thank you so much for the opportunity to speak.

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

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

MODERATOR: Thank you. That concludes all the sessions for the public hearing today. We will return tomorrow at 11:00 a.m.

(Whereupon, the above-entitled matter went off the record at 7:00 p.m.)