



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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THURSDAY
JUNE 10, 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 in Title IX and the work we do. The comments we receive will help us determine what changes to the Title IX regulations and other actions may be necessary to fulfill the executive orders and OCR's mission.

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

Second, and related, is on how the Department can continue to ensure that schools

provide for the fair, prompt, and equitable resolution of reports of sexual harassment and other sex discrimination cognizant of the sensitive issues that are often involved.

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

A moment on logistics. Each person making a live comment will have up to three minutes. If you registered, please check your registration email for details. If you have tech difficulties, write to special.events@ed.gov. We have American Sign Language interpretation throughout the hearing. Please also see the

hearing webpage for closed captioning instructions and for a link to submit a written comment.

In closing my remarks and in opening 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. We will now begin the hearing.

The first commenter will be Francisco N., followed by David B.

Francisco, will you please unmute your mic, and begin to provide comments.

FRANCISCO N.: Good morning, Assistant Secretary Goldberg. My name is Francisco Negrón, Chief Legal Officer of the National School Boards

Association.

Thank you for the opportunity to highlight the concerns of our member state associations and the nearly 14, 000 public school boards across the country, serving over 50 million school children.

We share the goal of protecting students from all forms of discrimination while ensuring equity and excellence in public education. Our points today and others of equal importance are included in an accompanying letter to you.

I begin with respect to the May 2020 final rule on sexual harassment in schools. First, the Department should reverse the complex and formal Title IX investigative and hearing procedures as they apply to K-12. Educators need flexibility to address harassment situations consistent with the age of the student and the nature of the allegation.

And as school districts adjust

attendance and operations returning from the pandemic, layering a new procedural framework onto established, often state-required complaint procedures is both confusing and cumbersome.

Similar to recent Title IX regulations such as the clear definition for sexual harassment have proven relatively helpful to school districts. We urge the Department to retain this consistency between legal standards for legal liability, established by the Supreme Court in Davis v. Monroe County, and OCR's enforcement standard.

Twenty-one years later, the Davis standard is widely understood by school districts, adopted in policy and training materials and accepted by courts. But if the Department returns to a different standard of enforcement, confusion will arise again, leading to both families and districts needlessly expending scarce dollars in litigation.

We also recognize that, as NSBA has

explained to the Supreme Court in a pending case, school officials are often required to respond to harassing behavior impacting the school setting and affecting students, regardless of where the harassment happened. Clarification about this role, particularly after the Heitz Court's decision, will be helpful to school districts.

New regulations should also not include actual knowledge to a school district whenever any employee has noticed a sexual harassment, a requirement that operationally can be difficult for a district to implement, regardless of its policies and training. Again, readopting the Davis actual knowledge standard here will bring consistency and clarity to the rights and responsibilities of all.

Lastly, greater clarity in the area of gender identity, especially in the context of bathroom and locker room use, and athletics will be helpful. While the Administration has made its position clear, potential liability continues

to exist for school districts, as we navigate opposing legal challenges raised by state legislation, athletic conferences and civil rights groups. Thank you for your time.

MODERATOR: Thank you. Next up, David B.

David B, if you could unmute your mic, and begin providing comment.

DAVID B.: Thank you, and apologies. Good morning. I am David Baime, with the American Association of Community Colleges, where I serve as Senior Vice President of Government Relations, and I'm pleased to be here this morning to present some of the views and the priorities that community colleges share on Title IX.

We will be submitting formal comments later this week along with the American Association to elaborate our views in greater detail than I'll be able to provide this morning. But before I start, I would like to just reiterate community colleges' interests across the country

-- 1,044 community colleges and over 90 percent of them are our members.

I'd like to just reiterate the great interest and importance of Title IX for our campuses and their genuine desire to make sure that their environments are free of any kind of harassment on the -- of any of their programs and activities.

Community colleges have some features that make them different on balance from other institutions of higher education, that we ask the Department to consider as it promulgates new regulations in this area. First, the average age of the students is 28 years old. The median age of students is 24 years old.

This means that a great deal of the students' social concerns, priorities and the friends that they have are outside of the campus community. So that is a factor that relates to what Title IX should cover and how it should apply. In many cases, there are incidents

between an individual student and a family member off-campus that does impact upon their participation at the institution.

Another thing is that our colleges are very thinly resourced. That's how we can deliver education for \$3, 770 each year. So, any new administrative requirements should be viewed with an eye to the reality that community colleges do not have the same level of administrative depth that other types of institutions do.

Many of our colleges don't even have a general counsel, probably most of them don't have a general counsel on their staff.

Finally, our colleges do provide education -- settings because in part of their workforce role but also because of the vast geographic area that they're responsible for covering. And so that is something that also the regulation is going to need to take into account.

Two things I'd like to say, finally. First is that we do hope that the -- effort to

allow the institutions to maintain and finalize their own disciplinary procedures with those of Title IX wherever is possible. We understand Title IX has its priorities, and will have its regulations. Colleges have their own interests in keeping all of their students safe.

So finally, we want to make sure the Department views our colleges as working with it in partnership to keep the campuses safe. They should not be viewed as being the enemy. They shouldn't be viewed as having a heavy hand. They should be viewed as true partners, because we both share the same interests. Thank you very much for having me this morning.

MODERATOR: Thank you. Next up, we have James M., followed by Larry M.

JAMES M.: I am James E. Moore. For the past 35 years I've been a regular faculty member, first at Northwestern University, and for most of my career at the University of Southern California.

The U.S. DOE's 2011 to 2014 subregulatory guidance documents did not have the force of law. However, they were simple for the DOE to implement, and delivered a frightening, real threat to institutional leaders, termination of all federal funding, including research, to universities failing to conform to this new guidance.

Because guidance is not a regulatory rule, it is notoriously difficult to challenge in channels. Unfortunately, the DOE's guidance required schools to abandon procedural fairness for students accused of sexual misconduct. The DOE took the immoral position that universities should punish more of their guilty students by adopting procedures that more frequently punished innocents.

We train bedrock principles of fairness. This unacceptable approach reduced the Obama Administration's DOE Office of Civil Rights to an executive branch exercise in McCarthyism.

Red-baiting was replaced by unsubstantiated allegations of sexual misconduct, and expulsion from college became the new blacklist.

It is nearly impossible for an expelled student to matriculate into a new school. Hundreds of expelled innocent students sued their schools over the due process withheld from them. And they were more often than not successful with the court.

Civil judgments mounted against institutions doing the DOE's bidding. Isolated faculty efforts to hold institutions to due process were retaliated, which terrified school administrators.

I spent 26 years living in a student residence hall, guiding undergraduates. When I tried to insist my institution should continue to treat fairly, I'm confident my efforts led to termination of my resident faculty role by a former vice president, which isn't fair.

The Trump administration revoked and

replaced the DOE's flawed and subregulatory approach. Instead, the Secretary of the Department of Education negated regulatory rules, seeking and responding to over 124, 000 public comments in the process.

DeVos' new rule went into effect less than a year ago in August of 2020. It has the unequivocal force of law. President Biden has pledged to undo DeVos' reforms. In May, he nominated Catherine Lhamon who returned to her Obama Administration role as the DOE's Assistant Secretary for Civil Rights.

Tactically, Lhamon is probably the individual most responsible for the due process crisis DeVos sought to clear. Lhamon has demonstrated a capacity for overreach, and past disdain for constitutional guarantees that precludes her confirmation with the U.S. Senate.

It is crucial that President Biden's attack on DeVos' Title IX reforms be rejected. DeVos undertook to dismantle an injustice

factory. And the new rules are a deliberate move from that. Thank you for the opportunity to speak.

MODERATOR: Thank you. Larry M., followed by Ruth P.

Larry, if you can unmute your mic, you can begin providing comment.

LARRY M.: Good morning. My name is Larry Mertes, and I am an attorney in Boulder, Colorado. A large portion of my law practice is devoted to representing respondent students who have been accused of sexual misconduct by their schools, colleges, and universities.

In April of this year, the University of Colorado held one of the first Title IX hearings under the new rules in Colorado if not the United States. I want to report back on that hearing, and tell you, for the first part of my comments, how well the University of Colorado handled that hearing.

I would tell you that the University

of Colorado retained a retired Denver District Court judge with over 20 years of experience to serve as a hearing officer, and we held meetings and had clear policies and procedures of how the hearing was to be conducted.

In a situation where the complainant, the complainant chose not to appear at the hearing, her interests were still represented by an attorney, licensed in Colorado, who was also dean of the University of Colorado Law School. The procedure was marked by courtesy and candor. It was conducted over a nine-hour period of time, and then we received a written opinion.

My point in all this is that I know some commentators have said it's impossible for schools to have these hearings, it's an unfair burden for schools to put on these hearings. The cross-examination does not serve a good purpose and is basically a tool of intimidation.

Again, I was in a situation where the person who accused my client was in a situation

where even though she chose to abandon her role in the hearing, her advisor attorney conducted a very thorough cross-examination.

The process that CU provided at this time was a two-investigator model. And they were judge, jury, and early on, they were the executioner if your client was found responsible.

Well that changed over time. I can tell you that it was a decided difference, to have the live hearing. And a lot more nuance was gone through.

I want to make two brief points. One is that I believe that there needs to be some clarification of a cross-examination, because in my particular case, this was brought under a student conduct policy applying Title IX rules. And the school adjudicated the rules as to cross-examination to allow all the content provided by the accuser to be allowed and considered when the accuser never showed up for the hearing.

Second -- thank you. I believe my time is up.

MODERATOR: Thank you. Next up, Ruth P., followed by Sarah C.

Ruth, please unmute your mic, and begin providing comment.

RUTH P.: Hi, can you hear me?

MODERATOR: Yes, we can.

RUTH P.: Thank you. My name is Ruth Perrin. I am testifying on behalf of Network for Victim Recovery of D.C. in my capacity as Senior Counsel for our Campus Violence Project, and I'll elaborate on these topics further in writing.

Thank you to OCR for holding space for feedback on these important issues. Since 2012, we have provided free advocacy and legal services to 5, 000 crime victims, 900 of whom were students, of 250 receiving Title IX legal assistance at District of Columbia at eight universities. My testimony today is informed by the experiences of NVRDC clients and staff.

The spectrum of trauma experienced by students often leads to a decline in their

academic performance and changes in their social lives and relationship with their communities, all while degrading their sense of safety on campus. Often students have no choice but to transfer schools or drop out entirely.

Of the hundreds of students served by NVRDC, I cannot think of a single one whose college experience was not negatively impacted in the wake of their victimization. NVRDC implores OCR to review the regulations in the context to Title IX service, ensuring access to education free from sex-based discrimination.

To address the harm caused by sexual harassment and work towards ending interference, OCR must interpret Title IX broadly. The current definition of sexual harassment is too limited. Its high and burdensome threshold means many students' harassment will go unaddressed. OCR must use a broad definition of sexual harassment so that schools are obligated to respond to harmful and disruptive conduct.

While most of legal players respond to off-campus sexual harassment, a student should not be left without options because someone else chose to assault or harass them in the wrong place. Regardless of where sexual harassment occurs, if it creates harm within an educational program or activity, schools should respond to it.

So other definitions allow for more oversight by OCR, ensuring due process protections for all students, because of the current narrow definition, schools that want to protect students have created separate policies to address sexual harassment that is not covered by Title IX.

These policies are completely unregulated, and could result in unfair and inconsistent processes for complainants and respondents.

Our work with thousands of sexual assault survivors tells us that survivors are not

a monolith, therefore school's responses must reflect their varied needs. Addressing sexual harassment should not use a one-size-fits-all approach, and instead should involve multiple options, including alternative resolutions for survivors to address the harm they've experienced.

Far from preserving equal access to education, the current limitations exclude access to a safe education for those who are disproportionately affected by sexual harassment. OCR must use this opportunity to restore public trust in Title IX, and the Department of Education, by effectively addressing sexual harassment in campus communities, including by mandating fair and consistent processes. Thank you.

MODERATOR: Thank you. Next up, we have Sarah C., followed by Andrew L.

SARAH C.: Good morning. My name is Sarah Clegg, and I'm the Title IX Officer for

Sonoma State University, one of the 23 campuses in the California State University System.

I have been working in higher education for 20 years, and can speak as somebody with direct experience supervising live Title IX hearings. I'm all too familiar with the frustrations that administrators and students feel trying to navigate a challenging and complicated system.

I'll center my comments in two areas, that the new regulations create barriers to reporting and participating in the Title IX process, and that they create inequity in live hearings.

The decision to allow cross-examination by non-neutral advisors is a change that deters reporting, legalizes proceedings, and undermines equal representation. It takes us further away from our goal of an educational practice, and moves us into a courtroom-like setting on our campuses.

It has a chilling effect on complainants' decisions to report or participate in the process, and this moves us backwards, not forwards, in addressing sexual harassment and gender equity. An administrative hearing can be an effective tool for resolution, but it's difficult to see how creating courtrooms on our campuses is beneficial to anyone.

Cross-examination also creates issues of inequity. Any cross-examination requirement could result in parties with more financial resources securing more favorable outcomes. On its face, the new regulation that requires universities to provide advisors seems to address this issue, but the way it's framed creates more questions than answers.

How are institutions supposed to staff that role? What training requirements should there be, and how do we ensure consistency and fairness? If the heart of Title IX is equity, this requirement drives us away from that goal.

Here in California, live hearings have been required for certain types of Title IX cases since 2019. And in the Cal State system, we allow parties to ask questions by submitting them to the hearing officer before and during the hearing.

This is an effective alternative, as it allows the hearing officer to reframe questions appropriately, ask needed follow-up, and bring forward information that might otherwise go unaddressed due to the undue stress of being questioned by somebody in an adversarial way. It's consistent with the equitable, fair and educational type of proceeding we aspire to.

Title IX coordinators are fully committed to doing their work in a fair and neutral way, but we also know firsthand that our cases are rife with trauma, high emotion, and issues of communication. The last thing we want is for students to experience further harm because of our process.

We seek to remove obstacles to educational success that sexual and gender inequality cause, and ask that we be able to do that work in a way that balances fairness and transparency with care and concern for all students. Thank you so much.

MODERATOR: Thank you. Next up, we have Andrew L., followed by Grace B.

ANDREW L.: Hello. I'm Andrew Lang. I am a Title IX graduate assistant, and a master social work student. This last year, I have been focusing on the issue of Title IX, and the effect that Title IX policy has on students and campuses.

As you know, there is what we mean, and what we hope to do about policy. There is what the policy is, and how we administer it. And then there is the effect the policy has. I hope to express what I see the effect to be.

So I ask, who do we believe in a Title IX case? Guilty until proven innocent -- proven

innocent, or innocent until proven guilty? The former implies the claimant, in the latter, we believe the respondent. Who do we call a liar? Who do we discriminate against?

Do we choose the respondent's side and assume the claimant is lying until they can prove what happened? No. That is damaging and traumatizing to the claimant. On the other side, if we assume the respondent is lying from the start, that is also damaging and traumatizing to the respondent.

This is evidenced by the comments we have heard throughout this week, whether it be from those who agree with recent changes to Title IX, from those that have advocated a reversal of changes.

This issue that I see is, how do we create a process that guarantees both the respondent and the claimant an educational environment free from discrimination based on sex, including retaliation from Title IX hearings

on, of any form?

This week we have heard many issues that need to be addressed. Here are two issues that I would like to be addressed, social retaliation and punitive-focused process. The final rule explicitly states, respondents and claimants are not to restrict the ability for parties to discuss allegations or gather evidence.

It prevents -- prohibits gathering. Given that it was the school's responsibility to gather evidence and proof, this restriction should be removed. Both parties should not be discussing the investigation until after it is completed. Both parties need to be protected from slander or social retaliation during the Title IX investigation. After all, loose lips sink ships.

Both parties can have an advisor. They should be referred to counseling as a supportive measure. That way they can process

and they can discuss the allegations that are against them or the ones they are bringing forth.

Therefore, there is no need for either party to be discussing or getting support for those that are not involved in the Title IX process.

Going back to my initial question of who do we believe, we have no reason to assume either party is lying. But we do know that something can happen, and it be perceived in two completely different ways.

Therefore, our job is to not make a legal verdict about what happened, but resolve the damage to both parties in a way that allows them to continue their education, without subjecting themselves to environments that are discriminatory.

Part of my appealing the story in one environment for both parties is to move away from guilty or not guilty verdicts, but to verdicts of responsibility. Title IX seeks to find a

respondent responsible for doing the things that match what the claimant experienced.

MODERATOR: Thank you. Next up, Grace V., followed by Angela C.

GRACE V.: Good morning. My name is Grace Verbrugge. I am a rising senior at Gettysburg College, the Co-coordinator of Communications and Outreach for the University Survivor's Movement, the Co-founder of Survivors of Gettysburg, a trained advocate, and a survivor of multiple forms of campus sexual violence.

Today I would like to share with you the concerns voiced by the many survivors with whom I work on a daily basis. You heard from my colleague and friend Emma Love earlier this week that survivors and advocates across the country are requesting that the DOE revert to the preponderance of evidence standard.

I'd like to reiterate the importance of this change. And though I do not have time to discuss it at length, I'd like to say that we

must prioritize justice and safety for survivors over the reputations of violent criminals who are already given the benefit of non-criminal proceedings.

In addition to the issue of standards of evidence, I'd like to share concerns voiced by survivors regarding sanction enforcement, particularly as it relates to no-contact orders. Many survivors have come to us to ask for help when their perpetrators continue to violate sanctions and measures set to protect them, because when they report said violations to their school, they are ignored or met with multiple warnings, rather than tangible action.

I'd like to tell you a story about a young woman named Sam. Sam just finished her first year at Gettysburg College, where she suffered repeated sexual harassment, both digitally and --

MODERATOR: Hello, Grace? We apologize. Could you begin again where you left

off? And please be mindful of sharing any personal identifiable information.

GRACE V.: Oh, sorry. Where did I end up leaving off before I was muted?

MODERATOR: Just go ahead and start again.

GRACE V.: Oh, okay. Good morning. I'm Grace Verbrugge. I am a rising senior at Gettysburg College, Cofounder of Survivors of Gettysburg, Co-coordinator of Communications and Outreach for the University Survivor's Movement.

I'm a trained advocate, and I'm a survivor of multiple forms of campus sexual violence. And I'd like to share with you some of the concerns voiced by the many survivors with whom I work on a daily basis.

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In addition to the issue of standards of evidence, I'd like to share concerns voiced by survivors regarding sanction enforcement, and particularly as they relate to no-contact orders.

Many survivors have come to us to ask for help when their perpetrators continue to violate sanctions and measures set to protect them, because when they report said violations to their school, they are ignored or met with multiple warnings.

So there is one young woman, I won't include her name, but she just finished her first year of college and she suffered repeated sexual harassment, both digitally and in person

throughout the year.

She reported her perpetrator and obtained a no-contact order through the Title IX office, and he continually violated that no-contact order multiple times. And every single time that he did, this young woman sent an email to the Title IX coordinator reporting the violation with time-stamped evidence.

And each time, she did not get a response, and the perpetrator never received any further sanction. He is still a student, and she is still experiencing harassment today.

By refusing to sanction repeated violations with clear boundaries, schools are telling perpetrators that they can get away with continually intimidating and harassing survivors until they no longer feel safe at school, and eventually leave.

We recommend that the Department of Education increase oversight related to enforcement of no-contact orders and other

sanctions with credible threats to take away federal funding for the schools that do not respond to reported violations of such orders, or respond only with repeated warnings.

In the same vein, I'd like to address the matter of accessibility and awareness. Most students that we work with say that they are unaware of how to file a complaint about their school with the Department of Education for failures to uphold Title IX protocols, with even more saying that they didn't know they could.

For those trying to navigate the DOE website, it is not always clear where they can find a complaint form. It's important that institutions teach their students how to find this form, and so we would ask that the Department of Education require that schools teach their students how to find the complaint form, and include it on the relevant portion of their websites, with the Title IX coordinator information. Thank you.

MODERATOR: Thank you. Next up, Angela C., followed by Maria P.

ANGELA C.: Good morning, Secretary Goldberg and everyone from the Department of Education. Thank you so for this opportunity.

My name is Angela Catina, the Title IX Coordinator for the University of New Mexico. I would also like to extend a good morning to all of my Title IX practitioner colleagues on the call. Your work matters, and thank you.

And then I want to begin by saying happy Pride Month. My focus is going to be mostly on trans and gender nonconforming students within our community.

There's an African proverb that says, when elephants fight, it is the grass that suffers. As people in power continue to discuss differences in the rights of queer people, and as Title VII and Title IX continue to diverge farther and farther apart, students are the ones who continue to be adversely impacted, all the

while employees continue to have rights and protections.

These experiences of our gender nonconforming students are heartbreaking. They don't want to report. And the lack of report means that they are not then connected with the resources to ensure they have the support to succeed in their education.

With the continued rollback of their rights and protections, our gender nonconforming and trans students are afraid to access the campus gym and similar facilities. In discussing their fears, they mention the rape and murder of Brandon Teena, including the ways in which officials egregiously mishandled that case, which may have prevented his untimely death.

Three decades later, and Brandon's tragic rape and murder are as relevant today as they were then. The executive order on preventing and combating discrimination on the basis of gender identity or sexual orientation is

a promising direction by the Biden administration.

We encourage the administration to continue, or to consider, excuse me, using more inclusive language to reflect the full spectrum of identities. This language can include terms such as self-affirming gender expression and self-identified gender identity.

These may seem like minor modifications, however the inclusion of self-affirming or self-identified conveys bodily and personal autonomy, most of which our queer family, friends and loved ones struggle with.

I understand each circuit is different, but should the Biden administration interpret Title IX to include Bostock reasoning, post-secondary institutions would greatly benefit from clear guidance on athletics, locker rooms and related facilities, at the minimum, creating a floor for post-secondary institutions to ensure we are creating a safe place for our

LGBTQ+ community, would be a welcome guidance.

Thank you so much for this time, and I appreciate this opportunity.

MODERATOR: Thank you. Up next is Maria P., followed by Ewurama A.

MARIA P.: Good morning. Can you all hear me? Hello?

MODERATOR: Maria, you may now begin speaking.

MARIA P.: Good morning. Can you all hear me? Hello? Hello? Hello, can you hear me?

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

MARIA P.: Oh, I'm sorry. Good morning, my name is Maria Posey, and I am a mother. I am speaking to you not as a lawyer --

MODERATOR: If you are unable to speak, please open your meeting chat and let us know so we can assist you with technology. In the meantime, we will move forward to Thalia C. Is she connected?

MARIA P.: You have Posey. Can you hear me?

MODERATOR: Yes, we can hear you. Our apologies.

MARIA P.: Oh, okay. Thank you. So, this is -- I am Maria Posey and I am a mother. I am speaking to you not as a lawyer, not as a higher education professional, and not as the victim of sexual assault or gender discrimination. Instead, I am speaking to you as a mother, as a woman, and as an American, committed to doing my part in helping to shape the kind of society that I want to raise my two boys in.

Issues of sexual assault and sexual identity are a matter of law, and they need to be clarified in our legal code. But these codes and these rules reflect the underlying values that we have as a society, as a country and as people, and we need to make our policies and laws aligned with those values.

Who do we believe? Who do we protect? Who do we make the laws for? These are the questions at the core of today's discussion and in so many other discussions. We need to write the rules and policies for the people.

We need to recognize the individual human beings behind actions, behind accusations. We need to understand the impact that different rules and laws have on individuals as people.

Only when we see the individuals and the multiple dimensions of an individual, that is often more nuanced than simple definitions of right and wrong, victim or accuser allow, only then can we truly create the kind of community and the kind of country that we all aspire to live in.

Right now, we are disproportionately writing laws and believing the accusers. We are representing people who are in a defense -- who are in an accusatory position, and we need to right-size this.

We need to understand that trauma that people who have experienced an unwanted comment, physical contact experience, and the multiple rejections that these people face on a daily basis when trying to report and figure out.

So in order to get to a society where all people are equal, we need to understand the unequal nature of today, and we need to take overt action to correct that.

MODERATOR: Next up is Thalia C., followed by Emily W.

THALIA C.: Hello. My name is Thalia Charles, and I'm a policy organizer with Know Your IX, an anti-gender and dating violence young -- sorry, okay.

Hi, hello, my name is Thalia Charles, and I am a policy organizer with Know Your IX, an anti-gender and dating violence youth and survivor-led organization. I am a rising senior at Lafayette College in Easton, Pennsylvania.

Today, I will be providing testimony

about two issues faced by student survivors that are overlooked in the current Title IX rule, police involvement in the Title IX process and the punishment of student survivors.

Some student survivors have experienced police involvement in their Title IX cases. Two high school student survivors disclose, in our report, the cost of reporting, that their school resource officers, also known as SROs, were involved in the reporting or investigating process, and explicitly blamed them for their assaults.

Involving SROs in the Title IX process disadvantages students of color, LGBTQ+ students, undocumented students, and many others who may feel uncomfortable around police officers.

To remedy these injustices, the Department should prohibit schools from tasking campus safety or school resource officers for conducting sexual harassment investigations, and instruct schools not to wait for the conclusion

of a criminal investigation or criminal proceeding to begin their own Title IX investigation, and if needed, must take immediate steps to protect the student in the educational setting.

Many schools have gone beyond merely blaming student survivors for their assaults. They are actively punishing students for reporting. A student survivor who attended high school in Gwinnett County, Georgia, was suspended from her school after reporting her assault.

The survivor eventually moved out of the county to attend another school because she was being bullied and had to attend classes with her assailant.

Nude pictures that she had sent to her boyfriend at the time had been circulated to several school officials, including an SRO, and the school was using these photos to discredit her and her Title IX suit against the district.

This story is not an isolated

incident. According to our report, 15 percent of survivors who reported to their schools were threatened with or faced punishment for coming forward. Schools' punishment of survivors will only scare students away from reporting instances of gender violence, and prevent survivors from seeking help.

To remedy these injustices, we recommend that the Department create regulations that address common forms of punishment by schools, such as the discipline of a complainant for minor student conduct violations or collateral conduct that must be disclosed in order to lodge a report of sex discrimination, or that is disclosed in an ensuing investigation or occurs as a result of the reported harassment.

Discipline of a complainant for violating the recipient's prohibition against consensual sexual conduct is a putative violation, is the sexual conduct that is the subject of the complaint, and referrals to

prevent that could result in punishment of the complainant following the disclosure of a sexual harassment, such as education programs focused on altering a student's sexuality. Thank you.

MODERATOR: Next up, we have Melanie W., followed by Esmee S.

MELANIE W.: Good morning. My name is Melanie Willingham-Jaggers, and I'm the Interim Executive Director of GLSEN. My pronouns are they and she.

Thank you for the opportunity to be with you here today, and as well as Aaron and Esmee, from our National Student Council, to lift up the importance of federal protections for transgender, nonbinary, lesbian, gay, bisexual, queer and questioning youth in our K through 12 schools.

We also appreciate the opportunity to submit a written comment that is co-led by PFLAG National, the Human Rights Campaign, National Women's Law Center, National PTA, the American

School Council Association and the National Association of School Psychologists.

An additional 68 organizations support our recommendations. Chief among them is a recommendation that the Department revise its Title IX regulation 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.

Over the last decade, GLSEN's National School Climate Survey has consistently found that more than half of LGBTQ young people experience discriminatory school policies and practices. In our most recent survey, 77 percent of trans youth report experiencing discrimination at school because of their gender identity. That's more than three out of four trans students.

A majority report being prevented from using the bathroom that aligns with their gender identity, and being denied locker room access.

And this was before states began legislating anti-trans discrimination in school sports.

When transgender students face discrimination in athletic activities, it's not only those who want to play sports who are impacted, it's also the trans students who are required to compete -- to complete physical education classes.

Trans students who are required to use locker rooms or facilities that don't align with their gender identity are more likely to avoid gym class because they feel unsafe, and are missing these required classes. Missing these required classes negatively impacts their likelihood of graduating.

We also know that it is all too common for LGBTQ youth to be harassed and assaulted at school simply because of who they are, and that many schools fail to respond effectively when that happens.

Eighty-three percent of transgender

students were bullied based on their sexual orientation, gender identity, gender expression or a combination thereof.

When LGBTQ students report bullying to school staff, three in five were told to ignore it or say that school staff did nothing. One in five were told to change their behavior by, for example, changing the way they dress, and 7.3 percent were themselves disciplined.

If the well-established disparities in the use of school discipline hold, and I expect that they do, LGBTQ youth of color and those who are people with disabilities are over-represented among those being disciplined for reporting their victimization.

These experiences take a severe toll on LGBTQ students' well-being and academic performance. Those who experience hostile school climates report lower self-esteem, lower levels of school belonging, higher levels of depression, lower GPAs, and are nearly three times more

likely to have missed school in the past month, compared to their LGBTQ peers, who have what every young person should have, a school experience free from discrimination.

I urge the Department to revise its Title IX regulations.

MODERATOR: Next up, Esmee S., followed by Aaron B.

ESMEE S.: Good morning. My name is Esmee Silverman. I use she/her pronouns. I'm a transgender female, a graduating senior from Oliver Ames High School in Eastern Massachusetts, a member of GLSEN's National Student Council, the former president of my school's Gender Sexuality Alliance, and most importantly, a community leader.

Being a community leader, and someone who has made it their life's mission to provide the LGBTQ+ kids with safe, affirming spaces, I have seen many different reactions towards transgender legislation.

I have seen the positive of transgender-affirming policies, the happy kids now able to fully express themselves, the relieved parents, not having to worry for their kids' safety, the people smiling because they're able to identify how they want in public.

And I've seen the negatives of anti-transgender policies, fear, anger, doubt, misinformation, suicide. It is imperative that every single person here understand that the most good, the most happiness comes from trans-affirming policies. Title IX is groundbreaking, and sets the basis for equal treatment in schools across the country.

However, it is also important we highlight how Title IX rules could be improved. Far too many times, I have heard stories of discrimination, harassment, even assault against LGBTQ+ students for no other reason than their sexuality and gender identity.

When I first came out, the terror

received during my most vulnerable moments was overshadowed by the lingering fear that I could be harassed or denied basic services, such as being able to use the correct bathroom. I was afraid, because I did not fully know I was protected, despite being in Massachusetts, a state with strong protections.

Not every LGBTQ+ student knows their rights. This has become clear. Some students are not allowed the basic convenience of using their preferred naming pronouns. It would mean the world to millions of LGBTQ+ students nationwide if you were to provide more guidance to individual states about protecting LGBTQ+ youth, as well as clearly defined protections on the basis of sexuality, gender identity and gender expression.

LGBTQ+ students would know they are protected under law, which would help alleviate fear. Students would be able to use their correct naming pronouns, and would have to worry less

about their rights and more about learning.

Inclusive policies help alleviate stress and fear, and allow students to focus on growth, learning and living their lives, which is why it is imperative that the Title IX rule is updated to offer more concrete protection, that students will be 100 percent sure it applies to them. Thank you.

MODERATOR: Thank you. Next up is Arun B., followed by Madelaine M.

ARUN B.: Hello. My name is Arun Bhutamuni and I use he and his pronouns. I'm very lucky to live in a state with a fairly liberal population, but my experience as a trans student in public high school has still been pretty difficult.

Walking to school is always a challenge, even more so when I wear the clothes that I actually want to, since I don't conform to gender stereotypes. I wore a crop top for the first time since transitioning this fall, and I

felt stares as I walked through the hallways, teachers doing double-takes and hushed comments from my classmates.

That same month, I fought to transfer out of a class because I felt unsafe. I had emailed the teacher several times, in hopes of working with her to make the curriculum and activities more inclusive, but she refused and ignored me when I told her I didn't feel safe.

I say I fought because my school's administration refused to let me transfer classes. It took several weeks to discuss my case until my parents stepped in. Even then, the administrators defended the teacher's behavior rather than trying to support me.

This definitely isn't the first time my school didn't prioritize a student's safety, and my school is definitely not an anomaly. After this incident, I felt no need or want to participate in my school community. In fact, I'm going to community college next year just to get

away from **it**.

I've always been an active member in my school, participating in leading school clubs and in sports. But after having been denied so many times, it didn't feel worth it to keep trying. I knew my voice didn't really matter to the administration despite what they say, and so why would I prioritize a school that didn't prioritize me?

My joy for learning dissipated, and I stopped trying to work with the administration to get professional development on inclusion for teachers. I paid less attention to clubs and my grades started to slip.

I was constantly on edge in class, hyper aware of other students looking at me, and I doubted that I would get much support should my peers act directly against me, something that had already been proven to be true.

Last spring, a friend of mine was added to a group chat, its purpose only to talk

about me. She sent me screenshot after screenshot of their comments, calling me derogatory names. A few of these students sat next to me in classes, and we'd never even talked. I reported this to my principal and the assistant dean, who promised the --

MODERATOR: Excuse me, Arun?

ARUN B.: -- take care of it.

MODERATOR: Excuse me, Arun.

ARUN B.: Yes.

MODERATOR: We have technical difficulties. Your line was breaking up. Could I ask if you could please begin again?

ARUN B.: Yes, absolutely. Do you want me to start from the beginning?

MODERATOR: Yes, please.

ARUN B.: Okay. My name is Arun, and I use him/his pronouns. I am very lucky to live in a state with a fairly liberal population, but my experience as a trans student in public high school has still been pretty difficult.

Walking to school has always been a challenge, even more so when I wear the clothes that I actually want to, since I don't conform to gender stereotypes. I wore a crop top for the first time since transitioning this fall, and I felt stares as I walked through the hallways, teachers doing double-takes and hushed comments from my classmates.

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my school didn't prioritize a student's safety, and my school is definitely not an anomaly. After this incident, I felt no need or want to participate in my school community. In fact, I'm going to community college to finish my senior year just to get away from it.

I've always been active in my school, participating in leading school clubs and in sports. But after having been denied so many times, it didn't feel worth it to keep trying. I knew my voice didn't really matter to the administration despite what they say, and so why would I prioritize a school that didn't prioritize me?

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should my peers act directly against me, something that had already been proven to be true.

Last spring, a friend of mine was added to a group chat, its purpose only to talk about me. She sent me screenshot after screenshot of their comments, calling me derogatory names. A few of these students sat next to me in classes.

I reported it to my principal and the assistant dean, who promised they'd take care of it. They'd call a few of the students' parents about it, but nothing ever happened after that. I knew that Title IX was meant to protect me, and yet I felt that I was always vulnerable, and a target.

A safer environment would be a huge game-changer for me. I wouldn't have isolated myself from the rest of the community like I did. With the support of the administration, I would continue to help make my school more inclusive.

With a safer school, I could relax and engage fully in my classrooms.

High school is hard enough as it is. Both the added burden of defending myself and educating my teachers, administrators, and classmates, it's even harder to maintain the drive to be a good student.

With better regulations, future students won't just -- won't struggle just to survive high school, will actually learn, grow and thrive. Thank you.

MODERATOR: Thank you. Next up, Madelaine M., followed by Risa L.

MADELAINE M.: Hello. My name is Madelaine Matej MacQueen, and I'm a PhD candidate at Case Western Reserve University. I'm here to ask the Department of Education to strengthen Title IX protections for graduate and professional students who are pregnant and parenting.

Over the past year, I've served on my

university's Title IX Committee for Pregnant and Parenting Students, as we draft a policy in support of such students. I have learned that the guidance from the Department of Education is minimal for this population, and Title IX officers are hesitant to make their university's policies more comprehensive than the minimum specified by the Department of Education.

The Department of Education provides schools with a document called, Supporting the Academic Success of Pregnant and Parenting Students, last updated in June 2013. The document focuses on class attendance and turning in assignments, both topics that are important for high school as an undergraduate, but not for graduate students.

In many cases, graduate and professional students have no classes or homework assignments, but have research projects, teaching assistantships and professional development opportunities. Instead of teachers, we have

research supervisors, Pis, advisors and mentors. Because there is no guidance for these responsibilities and relationships, it's easy for universities to deny pregnant and parenting students the same opportunities that their peers have.

Faculty and administrators can easily say, we didn't give you the assistantship you wanted because we had to give you an easy assistantship the semester you gave birth, or you can no longer do that research because you missed a few weeks.

I'm asking the Department of Education to protect the equal rights of pregnant and parenting graduate and professional students compared to their childless peers in terms of research projects, teaching assistantships and professional development opportunities which form the bulk of work in our programs.

Further, I ask the Department of Education to address the issue of parental leave

and stipends. Many graduate and professional students function as employees. We're far into our careers, we work year round and we receive salaries minus tax withholding. However, we don't qualify for FMLA, and therefore our salaries aren't protected when we take parental leave.

At my university and at others, anyone who takes leave for a full 12-week semester loses health insurance for themselves and their families, and giving birth is the worst time to be without health insurance. Because we're classified as students and not as employees, it falls to the Department of Education to regulate our leave.

In your next document instructing schools how to support pregnant and parenting students, please think of graduate and professional students. Please protect our right to our stipend and health insurance when we take leave, affirm that we should have equal access to

research projects, teaching assistantships and professional development opportunities regardless of our parenting status. Thank you.

MODERATOR: Next up, Risa L., followed by Jennifer B.

RISA L.: Hello. Good afternoon. Can you hear me okay?

MODERATOR: Yes, we can hear you.

RISA L.: Thank you. My name is Risa Lieberwitz. I am the General Counsel of the American Association of University Professors, the AAUP. I would like to thank the Department for convening this panel, and the panelists for their time.

Since its founding in 1915, the AAUP has been an active and influential voice in higher education. The AAUP defines and develops fundamental professional values, standards, and procedures for higher education, advances the rights of faculty in particular, pertaining to academic freedom, and shared governance, and

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promotes higher education for the common good.

The AAUP's comments today relate to faculty and institutions of higher education, including all faculty, librarians, and graduate student employees. The AAUP has consistently emphasized four elements that are essential to achieving gender equity in institutions of higher education, first, free speech and academic freedom.

Title IX regulations should make clear that right to free speech and academic freedom continue to apply in cases that do not involve assault or other forms of conduct, but are otherwise alleged to constitute a hostile environment.

Second, due process. Faculty, like students, need the protections of due process provided in grievance procedures. These procedures should be the result of faculty participation in the creation of university policies.

Third, faculty governance. For faculty, shared governance and/ or collective bargaining processes are forums in which faculty participate in drafting Title IX-related policies and procedures, because these have a direct impact on the educational environment, and on faculty employment conditions.

Fourth, analysis of the sources of inequality. To achieve the goals of Title IX, gender equity issues should be addressed within the context of more comprehensive assessments of the bases for inequality, including race, class, sexuality, disability and other dimensions of social difference, both on- and off-campus.

Attention to these concerns will promote students' access to quality education, and equally important, the faculty's ability to provide it.

The AAUP will also submit written comments with specific recommendations for amending the Title IX regulations to enhance

these four elements to achieve gender equity in institutions of higher education. Thank you very much.

MODERATOR: Thank you. Next up, Jennifer B., followed by Sunny S.

JENNIFER B.: Thank you. Can you hear me okay?

MODERATOR: Yes. We can hear you.

JENNIFER B.: Thank you so much. I'm Jennifer Becker, the Deputy Legal Director for Legal Momentum, the first and longest serving civil rights organization in the nation dedicated to advancing and protecting the rights of women and girls.

For over half a century, we've worked to prevent and better respond to gender-based violence, and to achieve equity in education, recognizing that access to education is key to equity overall. We helped to craft the Violence Against Women Act and all of its reauthorizations as well as numerous other innovative public

policy measures in defending gender-based violence and supporting survivors.

We have also litigated some of the first cases leading courts to recognize sexual harassment as sex discrimination, and brought other challenges that have helped to define Title IX scope, and reach the intended goal, including protecting access to education for pregnant and parenting students, and scrutinizing sex-segregated education.

Personally, I have over a decade of experience responding directly to sexual harassment and violence prior to my position at Legal Momentum, first as sex offense and child abuse prosecutor, and then as a Title IX coordinator for the largest public K through 12 school district in the country.

I know firsthand the impact of sexual harassment on a victim's life and education, and also the power of schools to positively diminish that impact. And I'm uniquely familiar with the

ways in which schools implement policies, in preventing and responding to sexual harassment.

We're grateful for the opportunity to speak with you today, and for the Department's reconsideration of prior regulation. This administration can and should restore the strength of Title IX and improve the regulation so that the true purpose of Title IX is realized, and gender-based harassment is no longer a barrier to education.

The 2020 regulations on sexual harassment run afoul of Title IX's civil rights framework by calling for a process more burdensome than any other form of harassment and discrimination. This in itself is gender discrimination.

Mandating a process more burdensome for sexual harassment is inherently built upon the notion that sexual harassment complaints are more suspect than other forms of discrimination. This direct barrier --- more barriers than those

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parties that exist.

To restore Title IX's intended purpose to the regulations must start with reinstating long-established principles, the schools must respond to all sexual harassment, all sex-based harassment that interferes with a person's ability to participate in or benefit from the institution's educational programs and activities.

This has to include sex-based harassment, no matter where it occurs. There's no justification for excluding off-campus or online harassment. There must be a prompt address and resolution of complaints that includes supportive measures and accommodations as soon as possible.

And the recognition that education is founded on the element of equality underlies Title IX. The well-established principle that sex harassment and other forms of gender-based violence and sex harassment are acts of gender

discrimination require this civil rights framework to be applied evenly for all forms of discrimination.

MODERATOR: Thank you. Next up, Sunny S., followed by Patrick M.

SUNNY S.: Good afternoon. Can everyone hear me?

MODERATOR: Yes, we can hear you.

SUNNY S.: Thank you so much. Good afternoon. My name is Sunny Slaughter. I am the Principal and CEO of Sunny Slaughter Consulting. My pronouns are she and her.

I am a former school board member of a K through 12 school district. I am also a federally certified law enforcement instructor consultant for the Department of Homeland Security, as well as a litigation expert investigator on cases involving sexual harassment, violence and discrimination, and I work and collaborate with organizations with a focused lens on sexual violence.

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In 18 57, Frederick Douglass gave a speech, where he said, " Power concedes nothing without a demand. It never did and it never will. Find out just what any people will quietly submit to, and you have found out the exact measure of injustice and wrong which will be imposed upon them."

Today's hearings require us to revalue what the institutional language embedded in policies, cultural norms, and operational practice, and the consistency in which educational institutions have normalized behaviors that are violent, traumatic, life-altering and often in silence and without real consequence.

But to be clear, these institutional systems that are of question are operating exactly as they were designed and intended by those with the most to gain. But for the audacity of hope, and to remove any semblance of quiet submission that I, on behalf of victim survivors

and even those who have been accused, submit these demands for the measure that is due.

By the acts of congressional power for funding to and through the U.S. Department of Education, require ongoing federal insight, and immediate intervention by review and investigation into previous existing and future cases of discrimination, sexual harassment and violence for persons making a direct complaint to the appropriate body, or through a process of federal design for federal whistleblowers of anonymity and safety, that committees consisting of outside individuals across professions and expertise be convened with discretion to review such matters and make recommendations to the U.S. Department of Education to levy fines, withhold funding, and to make quarterly public announcements regarding institutions under investigation of federal violation of Title IX.

A platform be made of, to and for the public to view information regarding an

institution's previous and existing, ongoing matters and remedies taken to address violations, and a separate line item be created in the budget to ensure the priorities of these changes are valued as an investment of Congress and the U.S. Department of Education.

I have asked for nothing that does not exist in some form or fashion already, so my exact demand to the most questioned question that I seek the answer to, is how exactly will you meet the demands for anything that you have been asked for today. Thank you for your time and attention.

MODERATOR: Thank you. Next up, we have Patrick M., followed by Jake B.

PATRICK M.: Can you hear me?

MODERATOR: Yes, we can hear you.

PATRICK M.: Good afternoon. My name is Patrick Mathis. I am the managing member of Title IX Solutions, LLC. We provide Title IX support services to colleges and K through 12 school programs throughout the United States. I

am also a practicing attorney and longtime trustee of Illinois College and Midwest Liberal Arts College.

I would like to speak today regarding the importance of strengthening training standards for persons involved in Title IX proceedings. Currently, there are only general training requirements outlined in the regulations.

Title IX cases often have a lifelong impact on both the complainant and respondent, and consequently require well-developed factual information as well as carefully considered resolutions. Title IX personnel at many schools are also facing and stressed by the need to appropriately handle these serious cases.

Many schools currently engage experienced and well-trained Title IX coordinators, investigators, decision-makers and other Title IX-related personnel. These individuals may be school-based employees or

external contractors. Yet, at other institutions, these individuals have limited training and experience.

This situation increases the risk of shortcomings in the grievance process, including investigations and hearings, and ultimately the final determinations of responsibility. To address these concerns, we recommend modification of regulations to include broadened and explicit training requirements and certification for all individuals, both internal and external, who may be involved in Title IX cases.

These guidelines would require training in Title IX broadly, as well as skills specific to the individual's role in the Title IX process. We would also encourage specific hour requirements or annual certification similar to the annual requirements for attorneys, accountants and law enforcement officers, which are required in many states.

We recognize that this proposal may

impose an additional burden on schools to comply with the regulations, but the ultimate goal in every Title IX case is to ensure that the parties are treated equally and equitably throughout the entire process.

Incidence of sexual harassment and sexual violence are life-altering for many parties, and the regulations should mandate that these cases be handled by knowledgeable, trained personnel. Thank you for your consideration.

MODERATOR: Thank you. Next up is Jake B., followed by Jackie W.

Jake, if you can unmute your mic, and provide comments.

(Pause.)

MODERATOR: To the audience, please give us one moment while we assist the commenter.

(Pause.)

MODERATOR: While we assist Jake, we're going to move ahead to Jackie W.

JACKIE W.: Hi, can you hear me?

MODERATOR: Yes, we can hear you.

JACKIE W.: Okay. Good afternoon. My name is Jackie Gharapour Wernz, and I'm submitting these comments on behalf of myself and Franczek, P.C., which is a boutique law firm in Chicago, Illinois.

Franczek represents educational institutions at all level. Our clients are primarily in Illinois, but we provide Title IX consulting and legal counsel as well as other federal legal support for students across the country.

Our firm's Title IX team also operates the TitleIXinsight.com blog, which focuses on legal compliance with Title IX. These comments are also influenced by experience as a former staff attorney from the Chicago Office of OCR.

As an overarching concern, the Biden-Harris administration should focus on a balance that will allow educational institutions to play their proper roles as neutrals. Administrators

at all levels want to do the right thing in these area spaces, but they have not been given clear tools on how to do so.

Although our firm works with mainly higher education institutions, these conversations have commonly focused on higher education interests, so the rest of my comments will be focused on K-12 issues. And we have three thoughts for you to consider as you work to create a better Title IX process for K-12 schools.

One, don't make K-12 schools an afterthought. Two, remember resource restrictions in K through 12, and three, consider state law. Third, the Department of Education should not regulate K-12 schools as an add-on or afterthought to higher education. K-12 schools are a unique environment, and sexual harassment does not look the same as in higher education.

An elementary school should not be asked to use the same standards and processes to adjudicate a complaint against a small child as

though you'd address a complaint against high school or college students. We need guidance and a process that reflects the unique natures of concern of K-12 schools instead of being an afterthought.

Guidance also should be less prescriptive than the guidance for higher education may be. We represent the largest school districts in Illinois, but also some of the smallest, and their needs are different from each other.

That brings me to the second point, which is do remember resource restriction in K through 12. Most K-12 administrators are doing another job, if not multiple jobs on top of their Title IX work. And we need to keep that in mind when clarifying the differences between things like directly related and relevant evidence.

Also, requiring a separate Title IX investigator, initial decision-maker, and appellate decision-maker is not always a

possibility for small K through 12 schools.

Finally, consider state law. States regulate K-12 schools at a much greater level than higher education. For example, there are specific rules for how to handle expulsions that would conflict with the Title IX rules, so we ask that you take those into account as well.

MODERATOR: Thank you. Next up, Jake B.

Jake B.? Jake, if you could unmute your mic. If you're having technical difficulty, please open your chat for assistance.

(Pause.)

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

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

JAKE B.: Good morning. Can you hear me now?

MODERATOR: Yes, we can hear you.

JAKE B.: Well thank you. I apologize

for the technical issue. Should I go ahead and give my comment?

MODERATOR: Yes, you may.

JAKE B.: Thank you. Thank you so much. Good morning, my name is Jake Burkhardt, and I'm a graduate and law student at the University of Indiana at Bloomington.

Our K-12 and post-secondary educational environments are essential to our community. Title IX protections deliver on the promise of every American being able to choose an education in a secure, a safe and supportive education environment. As an LGBT American working in higher education, I support the internal resolution process as an alternative for securing students' equal educational access.

The current adversarial model has a high probability of retraumatizing sexual assault survivors, while giving up the thought of due process. The Department of Health and Human Services Office of Women estimates that one out

of every five female college students are sexually assaulted during their time in college. These are the cases we know of.

We cannot give a precise number on the total number of college students, male or female, cisgender or transgender, who are sexually assaulted each year. We have to do better. We need to do better if we truly want to secure a learning environment to give every student an opportunity to succeed without of fear of sex-based discrimination.

I urge the Office of Civil Rights to consider three items in the revision process. Number one, clarify the role of sexual orientation and sex-based discrimination in Title IX. The January 8th memo by the Office of General Counsel set the clock back in sexual assault protection and victim advocacy for LGBTQ Americans.

I disagree with the memo's position and I believe that Bostock v. Clayton County

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gives greater precedence to interpret sex and include sexual orientation in Title IX. We have an opportunity to protect every American. We just have to be willing to make the next step.

Number two, Title IX investigations should remove the severe or pervasive standard. The severe or pervasive and objective sense of standard allows otherwise malicious and harmful discriminatory acts to avoid investigation under Title IX proceedings. The severe or pervasive standards allow colleges to make better determinations to protect each student's right to learn.

And number three, the Secretary of Education should fund a, or mandate a funding opportunity for the Institute of Education Sciences on Title IX implementation. We need more inclusive research on dating and domestic violence experienced by LGBTQI American college students.

We need to ensure that we are

providing college administrators with empirical data and grounded research on supporting their LGBTQI college students in Title IX proceedings. These students are often the most silent in advocating for investigation.

I want to thank the Office of Civil Rights for holding these public forums, and I thank you for listening on my perspective, and hopefully continuing to advocate for our college students through Title IX. Thank you.

MODERATOR: Thank you. We'll be back shortly with our next presenter.

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

MODERATOR: To the viewing audience, we will begin in five minutes.

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

MODERATOR: Thank you. We will now begin. The first commenter is Janet L., followed by Jeri C.

Janet, if you could unmute your mic.

JANET L.: My name is Jeanette Lim Esbrook. Is this who you're calling on?

MODERATOR: Yes.

JEANETTE L.: Oh, I'm sorry. You said Janet.

MODERATOR: I'm sorry. I apologize.

JEANETTE L.: Okay. My name is Jeanette Lim Esbrook, Vice President for Legal Affairs, representing the Clearinghouse on Women's Issues. I have 36 years' experience as a civil rights attorney, and a senior executive in the U.S. Departments of Education and Justice.

In Ed, I was OCR's acting assistant secretary during two administration transitions. I have led the development and promulgation of OCR sexual harassment policy, regulations, and investigative guidance. I have litigated sexual harassment cases as a Department of Justice attorney.

The Title IX regulations enacted by

the former Secretary of Education, Betsy DeVos, has replaced these policies and guidance that were developed based on over 30 years of investigative and case experience with input from the public and educators.

Up until the 2020 regulation, the fundamental purpose of these documents was consistent with OCR's mission, to ensure equal access to education, and to promote education excellence through the vigorous enforcement of civil rights laws.

Providing a safe environment, free of sexual harassment, abuse, and intimidation, was a primary purpose of all previous guidance. But this purpose has been undermined by the DeVos regulation.

The Devos complaint process introduced costly courtroom-like requirements, which are not conducive to the learning environment that OCR and educational institutions strive to achieve. All students need to be

confident in and feel protected from inappropriate conclusions in the complaint processes.

Investigations and discipline should be fair to all parties. The survivor and the accused rights should be given equal weight and attention. A courtroom procedure that intimidates both the harassed and the accused is not required to meet these standards.

Colleges, universities, and K-12 school systems have had many years of experience with disciplinary incidents, complaints and investigative procedures. OCR's review should seek input and advice from the experiences of these educational institutions to assist in the development of grievance, complaint and investigative procedures that will be efficient, fair and effective.

Essential to developing sexual harassment policy is the need to recognize the importance of power in the relationship between

the parties. Power is a basic component of acts of harassment, assault, intimidation, and bullying. Power can simply be a matter of physical strength --

MODERATOR: Our next speaker will be Jeri C., followed by Alexa K.

Jeri, could you unmute your mic, please?

It looks like Jeri might be having some technical difficulty.

JERI C.: Here I am.

MODERATOR: Okay.

JERI C.: Good afternoon. I'm Dr. Jeri Cabot. I served as the dean of students for over 22 years at the College of Charleston in South Carolina.

The College of Charleston serves approximately 10,000 students. I also served as the director of our women's studies program for several years and held other positions in student affairs. Throughout my years, I was responsible

in whole or part for administration of Title IX as it applied to cases of student-on-student sexual misconduct.

My main comment today is about the timed resolution. Both sets of rules, that's the 2011 and 2020, are unrealistic about the amount of time administrators can devote to the training, preparation, and processing of Title IX cases. With regard to case processing, the 60-day target creates unrealistic expectation, and generates frustration and anger for all parties.

Colleges and universities operate within quarters or semesters, and within each block are key events for students and officials, midterms, finals, project deadlines, application deadlines, mandatory move-out dates.

Conscientious students keep up with their academic endeavors. Conscientious professionals do not cut corners. Hence, the tested cases on any campus often take at least 120 to 150 days to resolve.

Deans of students and other similar administrators have many other duties besides Title IX. They are chair of behavioral intervention teams, honor code systems, write CLIA reports, handle all other aspects of codes of conduct, coordinate alcohol and drug prevention programs, survivor services, assessment efforts, reaccreditation requirements, et cetera, et cetera.

Our goals with regard to Title IX are to be prompt, adequate and trained, and free of bias. But unless you work for an institution which can afford to hire and train such dedicated staff, there are not enough resources to fulfill the requirement and goals.

And let us not forget that it's been the University of Michigan, University of North Carolina Chapel Hill, Columbia, Yale, University of Florida, University of Southern California, all institutions with greater resources than institutions like the College of Charleston, that

have had complaints filed with the Department of Education that added even more time, to the distress of the individuals involved.

These roles have created a cottage industry in prevention programming, training hearing panels, investigators, and adjudicators. These entities charge hefty amounts for their programs. Paying for such programs and committing the time to complete the training are burdensome, and help increase tuition costs.

Please be sure to call in Jennifer Hirsch and Shamus Khan, authors of Sexual Citizens before drafting any new rules. Please create something like the National Institute of Alcohol Abuse and Alcoholism, AIM's Intervention Matrix for Sexual Misconduct Prevention.

Thank you for your service, and for listening to a former practitioner.

MODERATOR: Thank you. Next up, Alexa K., followed by Dan R.

ALEXA K.: Hi. My name is Alexa Kupor,

and I'm an incoming freshman at Stanford University. My high school was recently in the spotlight of myriad news reports detailing the resistance myself and other students have faced in attempting to call attention to a culture that allows sexual assault to thrive unnoticed and unpunished.

With little to no resources, an unnavigable website, and negligence and disrespect from school administration, we were left in the dark as to our federal rights and accommodation under Title IX and any options we had to use them.

Students like myself are constantly clinging to Title IX as a lifeline to maintain our education and future, and we must not only make these guidelines accessible and communicable, but also undergo reforms to fill in the egregious gaps left behind from the 2020 rule.

As an incoming college student, there

are several facets of the current rule that prove most endangering. Firstly, under the current rule, colleges are able to ignore sexual harassment that is not reported to a small set of high-ranking school employees that students may not normally have close relationships with.

If I were to go to a residential advisor this fall, for example, to report assault, it may easily go unaddressed, unpunished, and essentially unnoticed. Under this rule, for example, Michigan State would have had no obligation to investigate Larry Nassar, because his victims reported abuse to athletic staff that are not mandatory reporters under the current rule.

The government cannot allow for abuse to go on without punishment or remedy because the one right person wasn't directly informed. Furthermore, under the current rule, schools must begin an investigation with the assumption that reports of sexual harassment are untrue, despite

the lack of similar guidelines for other types of misconduct.

Also, the ability to choose between a clear and convincing or preponderance of the evidence standard allows schools to potentially hold students to a more intense discriminatory standard not applied to other misconduct cases, and reinforces the stereotype that people who report abuse have built their claims on lies.

It is a blatant example of bias, and simply lack of concern that governmental policies lack protections for survivors whose assault occurs at the wrong place, is reported to the wrong person, or takes place at the wrong time.

It is essential that the federal government stands as an example for effective, efficient, and informed policies that work to eliminate sexual assault and its consequential trauma at our nation's schools. I look forward to the day that these hopes come to fruition. Thank you for your time and consideration.

MODERATOR: Thank you.

Next up, we have Dan R., followed by Erin P.

Dan, if you could unmute your mic.

(Pause.)

MODERATOR: Dan, if you could nod and let us know you can hear us, we're waiting to see if you can unmute your mic.

DAN R.: Hello.

MODERATOR: Yes, we can hear you.

DAN R.: Oh, I didn't know that I was to sign on until 2 o'clock. My apologies. Is this part of my comment time?

MODERATOR: Yes. You can begin now.

DAN R.: If I could -- thank you. One moment. I don't, I actually don't have my text at hand. Just one, one quick moment, please. Okay, I'm ready now, thank you.

Good afternoon. My name is Dan Roth, and I'm an attorney in Berkeley, California. In addition to my criminal defense practice, I've

represented dozens of people in Title IX cases around the state of California.

Members of racial minority groups and immigrants are over-represented in my client base, making up nearly half of my Title IX cases. Anyone who practices campus discipline will tell you that campus tribunals are not built for fundamental fairness.

As we all saw last week, a Stanford Law student was almost prevented from graduating over a transparently baseless claim that a poster he had circulated in January harmed his fellow students. Had the case not been publicized, Stanford would have delayed his graduation and altered his life trajectory.

That is because schools take the path of least resistance, often to the detriment of folks who lack the resources to defend themselves against processes that both complainants and respondents describe as confusing, alienating and dehumanizing.

One of my Title IX clients is a rape survivor. Before the 2020 regulations were put in place, three of her fellow students accused her of sexually harassing them by masturbating in their graduate school class.

The initial Title IX investigation immediately showed two things. One, that the allegation was as false and ridiculous as it sounded, and two, that the complainants just hated my client. The inquiry should have ended then and there. Instead, the three complainants threatened to leave the small graduate program if my client wasn't kicked out, and hired a lawyer.

Threatened with the loss of a quarter of that year's enrollment in the program, this public university told my client, a week before the second half of the two-year program was to begin, that she couldn't attend class until the investigation was over.

They then pretended to investigate for the entire school year, leaving my client

floundering in limbo, trying to make ends meet when she was supposed to getting a master's degree that she was never able to obtain.

U.S. District Judge Susan Illston rightly called the school's conduct appalling. This is the type of abuse the 2020 regulations were meant to prevent. Again, when given the path of least resistance, students with few resources will feel overwhelmed by the system. Institutions will take it every time.

As one California court has written, due process is the life blood of our Constitution. I am saying this as a progressive Democrat who has led chapters of the American Constitution Society in Boston, Columbus, Ohio and here in the Bay Area. I am frankly confused that this is up for debate, and that a democratic administration is considering bringing back a regime that no one would argue was working well.

The Trump administration was, for the most part, a shameful abomination of law and

government, but even a stopped clock is right twice a day. And while the 2020 regulations are imperfect, the previous system created an awful set of incentives for institutions to trample the rights of those vulnerable students, the most vulnerable students in academia, those who are Black, Black-Mex, and economically disadvantaged.

Resuming these regulations will further deepen the racial economic divides in this country and strengthen the school-to-prison pipeline, which we as progressives ought to be dismantling, root and branch. Thank you for your time.

MODERATOR: Next up, Erin P., followed by Karissa P.

Erin, if you could unmute your mic, and begin with your comments.

ERIN P.: Good afternoon. My name is Erin Pine. I am 25 years old, and a law student in my third year at Villanova University School

of Law. I am testifying today to urge the Department of Education to refrain from further narrowing the Title IX due process protections.

Ladies and gentlemen, this is not a partisan issue. This is a call not to restrict the rights of sexual assault victims, but to restore the rights of respondents as was guaranteed by the U.S. Constitution.

Due process functions in both directions. It protects the accused as well as the accuser. But what it does not do is discriminate on the basis of the alleged crime committed. Let me be clear. I stand with victims, but I also stand with the 14th Amendment.

Over the past three weeks, I have spent my time combing through the 199 cases that have circulated through the courts and favored, at least in part, the plaintiff. These cases were wrought with due process violations, including failure to give notice, to properly

inform the accused of their right to an advisor, and most commonly, failure to allow the accused the opportunity to confront and cross-examine their accuser.

Furthermore, educational professionals are ill-equipped and under-trained to moderate and rule on these issues. These hearings greatly affect the lives of those involved. They require time, thoughtfulness, and due process.

Fundamental fairness does not detract from the rights of sexual assault victims, or the justice that they deserve. It simply affords protection to those accused until they are proven guilty. Protect students, uphold the Constitution. Thank you.

MODERATOR: Up next we have Karissa P., followed by Christina D.

Karissa, if you could please unmute your mic. Karissa?

(Pause.)

MODERATOR: Karissa is getting her speakers ready. We'll be with everyone in just one moment.

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

MODERATOR: While we assist Karissa, we'll move forward to the next speaker.

Christina D., if you could unmute your mic, and begin providing your comments.

(Pause.)

MODERATOR: Okay. Okay, we'll move forward to our next speaker, Chris B. as in boy.

CHRIS B.: Hello, can you hear me?

MODERATOR: Yes, we can hear you.

CHRIS B.: My name is Chris Beyer. I work in a small private college in Nebraska as the Director of Residential Life. And I also serve as the Deputy Title IX Coordinator for the college.

There are two specific things I would like to see in the new guidelines. First, I would

like to see the requirement for live cross-examination during the hearing to be removed. I find this requirement to be unnecessary and burdensome for everyone involved.

Participating in a Title IX hearing is an intimidating process for folks, and being subjected to live cross-examination can increase this. Being able to facilitate effectively the cross-examination in real time is also a skillset that very few of us have. And the cost of hiring someone who can do it well is significant.

If live cross-examination yielded better decisions I wouldn't object, but I don't see that it does. So long as investigators or hearing officers know how to appropriately question the claims before others and advise their students to know that they'll be questioned, we can feel confident that all of the relevant information needed from the parties before a decision is made rejects the need for live cross-examination.

So second, just feedback I have is I would like to see colleges have more capacity to take things from action against respondents who are in student reports, and specifically I would like to see the colleges be able to determine if and when it is appropriate for student employees to be suspended with pay from their student job if they are a respondent in a Title IX investigation prior to the formal investigation.

While of course there needs to be a process for employees with presumption of innocence, suspension from work with pay is a minor hardship, and some student workers --- RAs for instance -- are often in positions of high trust and leadership and have other levels of access. For instance, they might have access to students or even lots of students.

Depending on the nature of the allegations, in some instances it may be appropriate for colleges to temporarily suspend the student from their work responsibilities and

alert security offices of that until there is a final decision that's been made. And I would like to see more latitude given to colleges to be able to make some of those interim decisions before a final resolution. Thank you very much.

MODERATOR: Thank you. For those waiting to speak, please open your chat so we can communicate with you. Next up is Jeff S., followed by Nicole H.

Jeff, please unmute your mic and speak when you're ready. Jeff, you can unmute your mic. You may begin.

It appears Jeff's having some issues with his mic, so we're going to move on to Nicole H.

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

NICOLE H.: Hello, can you hear me?

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

NICOLE H.: Wonderful, thank you.

Good afternoon. My name is Nicole and I represent Government Affairs at Family Policy Alliance.

Family Policy Alliance is a leading national organization representing hundreds of thousands of Americans who support protecting opportunities and privacy for women and girls.

As a matter of first importance, Title IX is not the same as Title VII. The Supreme Court explicitly excluded other laws from consideration, as they stated in Bostock. Second, Title IX was clearly intended to ensure females have equal access to educational opportunities with males.

Prior to 1972, there were virtually no college scholarships available for women to play sports. Women were fortunate if they even had a sports team at their schools. They often had no locker rooms, no kind of uniforms or training equipment, no travel stipends, absurd practice schedules, and no championship opportunities. It's no surprise that only one in every 27 girls

played sports.

Today, over 100,000 women play college sports, and about 3 million play high school sports. These opportunities are in large part due to Title IX. But women and girls still face challenges in this arena. In fact, during this year's March Madness, Americans were appalled when they found out female athletes were given inadequate workout rooms and hardly any media attention.

The NCAA publicly apologized for quote, dropping the ball, after denying women reasonable women reasonable access to proper equipment and facilities. If the Department of Education redefines Title IX, they won't just quote, drop the ball on equipment and opportunities for women and girls. They will kick them off of their podiums and out of the gym entirely.

Every girl should have the chance to compete on a level playing field. In today's

world, that means one that is reserved just for girls. Males naturally possess physical advantages over females, and this natural advantage can result in them winning titles, scholarships and other opportunities that should be reserved for girls.

The Department of Education has a responsibility to protect women and girls, not steal their dreams.

And third, redefining sex would run counter to the explicit text of Title IX regarding same sex facilities. Title IX allows educational institutions to maintain separate living facilities for the different sexes, indicating binary, biological sex.

Of course, this makes sense in the context of private spaces like locker rooms and showers. And no student should be forced into an intimate setting like a restroom or locker room with someone of the opposite sex. The Department of Education should not get to determine the

first time a student is exposed to a member of the opposite sex while in the state of undress.

In conclusion, we urge the Department to adhere to the original legislative intent of sex in Title IX, ensure sports opportunities for females will not be stolen, and protect the privacy and dignity of women and girls by maintaining sex-specific facility. Thank you.

MODERATOR: Thank you. We'll be right back for our next comment.

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

MODERATOR: Next up is Commenter JSJ. Please unmute your mic and begin speaking when you're ready.

COMMENTER JSJ: Can you hear me?

MODERATOR: Yes, we can. Thank you.

COMMENTER JSJ: Thank you. I'm speaking anonymously as a mother of three children. My youngest child, now 11, was sexually assaulted by a teenage neighbor when she

was eight. She was one of seven children between the ages of five and twelve who were sexually harassed or repeatedly assaulted by the same teenager in 2018.

We brought the case to the police in February of 2019. The county attorney's office conducted forensic interviews of the children in February through April. Criminal charges in the cases for five of the children were filed by the public prosecutor in May. The perpetrator was found guilty and sentenced in November of 2019.

As you can imagine, it was an extraordinarily stressful period. The crimes occurred in a small university town in New Hampshire on a cul-de-sac with only one outlet and one bus stop, with the same afternoon drop-off time for the elementary school bus and the high school bus.

The perpetrator occasionally attended elementary school, then with his younger sister, and also attended the same school with two of the

victims. We asked the school system to provide Title IX accommodations during the criminal investigation.

Specifically, we asked them to require the parents of the perpetrator to drive their son to school, to ban him from the elementary school campus, and to require that he stop naming our daughter and calling her a liar in his school. Other parents also asked the school to ensure that their children didn't encounter the perpetrator in the hallways of their school.

The school system refused. Why? Because of the changes in the Department of Education Title IX rules. The superintendent provided us with a letter from the school district's attorney, who explained that the draft of the new Title IX rules no longer required school systems to investigate or respond to incidents of gender-based violence that occur off-campus.

Three of the victims, all of whom were

happy, healthy children prior to the attacks, suffered panic attacks that spring. And while I was able to find \$300 at the time I needed to muddle through the process of obtaining a restraining order, others couldn't.

One parent simply let her daughter stay home. Another withdrew her child from a school-sponsored extracurricular activity. All of the victims were in counseling. All of us took time off work to drive our kids back and forth to school so they didn't have to take the bus.

The school's failure created a hostile environment that year, and also prompted my husband and I to search for new jobs and move our family out of state at enormous cost. Our situation was not unique. Most rapes of the K through 12 level take place outside of school.

Please change the Title IX rules as soon as possible, so that this doesn't happen to additional children or families. Thank you.

MODERATOR: Thank you. Next up is Karissa P. Please unmute your mic and begin when you're ready.

KARISSA P.: Hi. Can you hear me now?

MODERATOR: Yes. We can hear you. Thank you.

KARISSA P.: Great, thank you. My name is Karissa Provenza. I am a law clerk at Equal Rights Advocates.

Equal Rights Advocates encourages the Department to reexamine Title IX in the K through 12 context, and provide guidance with special attention to the practical differences between the K through 12 and the university setting.

University rules cannot completely apply to K through 12 because of the obvious differences in the educational environment, the physical campuses, and the age and comprehension levels of students in K through 12.

Please include considering legal differences, such as the rights of students

outside K through 12 education, and special relationships between K through 12 schools and students, as well as the considerations regarding mandatory reporting and other laws protecting rights.

Moreover, there are different opportunities in early education for intervention and culture change. These opportunities warrant attention in the guidance and regulations issued by the Department.

To be clear, we're not asking for different standards or rights to equitable education requirements. We are asking for clearer application of Title IX by those influenced by the actual campuses, environments and age groups specific to K through 12 students.

Next, Equal Rights Advocates strongly encourages the Department to explicitly assert who composes the class intended to be protected by Title IX.

We believe it would be appropriate in

a sense of for the Department to clarify legislative history and intent, indicating that the class meant to be protected by Title IX are those individuals who have been historically discriminated against, based on their sex and gender, and placed at an unfair disadvantage because of that discrimination, namely women, girls and members of the LGBTQ communities.

In the last four years, we've also had several attempts to turn Title IX on its head, to be used as a weapon against the very individuals this civil right was intended to protect.

We ask the Department to put an end to these dangerous strategies, and to also make clear that states can indeed create stronger civil rights laws to protect those persons who historically face sex and gender discrimination.

Lastly, Equal Rights Advocates request that the Department clarify and make equitable the application of general administrative law concepts such as due process

and on-campus Title IX proceedings. As we've seen here, those who promote a form of rape exceptionalism in order to make reporting sexual harassment and assault especially difficult and dangerous for survivors.

This exceptionalism puts those reporting such misconduct at greater risk of retaliation against them than those reporting any other kind of serious misconduct under student misconduct codes.

We therefore encourage the Department to emphasize that whatever due process is appropriate must go on not only to respondent, but to complainants also, and must not be greater or present more reporting hurdles than for other forms of serious misconduct.

In closing, the nation is in desperate need of guidance appropriate for students at their different ages and in their different school environments. That does not insult the integrity nor the legislative intent and purpose

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of Title IX. Thank you for your time and consideration.

MODERATOR: Next up is Jeff S. followed by Leticia B.

Jeff, please unmute your mic and begin speaking.

(Pause.)

MODERATOR: We're going to move on to Leticia B.

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

LETICIA B.: Hello. Good afternoon. My name is Leticia Bustillos, and on behalf of the 170, 000 members and supporters of the American Association of University Women, we are encouraged by President Biden's commitment to enforcing Title IX. However, changes are desperately needed to restore protections against all forms of sex-based harassment that were gutted by the 2020 amendment.

Beginning in 2017, the Department of

Education rescinded multiple important guidance documents, and promulgated a new Title IX rule in 2020, that turns back the clock, reversing policies that were put in place to make it easier for survivors to report sexual misconduct.

It is therefore imperative that Title IX protections be restored and strengthened. To achieve these goals, we join other survivor advocate groups and civil rights organizations in calling on the Department of Education to include the following provisions in the new Title IX rule.

Define sexual harassment as unwelcome sexual conduct, require schools to respond to sex-based harassment regardless of where it occurs, require schools to provide a prompt, effective and reasonable response to sex-based harassment, allow schools to use non-investigative processes to resolve complaints of sex-based harassment, and allow states and schools to provide additional protections beyond

those in the Title IX rule.

Additionally, we call for the inclusion of robust protections against retaliation that explicitly prohibit disciplining a complainant for collateral conduct that is disclosed in a complaint or investigation, disciplining a complainant for a false report because the school has decided there is insufficient evidence for a finding of responsibility, disciplining a complainant for discussing the allegation, and allow schools to dismiss without a full investigation, a complaint of sex-based harassment that is patently retaliatory.

And to ensure fair disciplinary procedures, a new rule should require schools to resolve complaints using grievance procedures that are fair and afford both parties the same procedural rights, allow schools flexibility in implementing grievance procedures, allow schools to forego live hearings attended jointly

by the parties in direct cross-examination, but not required by law, and allow schools that rely on live cross-examination to consider past statements by witnesses who are not available for direct cross-examination.

Last, to ensure that no type of harassment is singled out for uniquely burdensome standards or labeled as uniquely suspect, we also ask the Department to apply uniform standards for other forms of sex-based harassment, including harassment based on sexual orientation, gender identity, gender expression, transgender status, sex stereotypes, sex characteristics, parental status, pregnancy or related conditions, as well as harassment based on other protected traits, including race, color, national origin and disability.

I thank you for your time and consideration of our comments and recommendations. More detail is provided in our submitted written comments. Thank you.

MODERATOR: Thank you.

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

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

MODERATOR: Commenter 57J, you're up next. Feel free to unmute your mic and begin speaking.

COMMENTER 57J: Hello, are you able to hear me?

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

COMMENTER 57J: All right, I'm ready to proceed, thank you. Thank you for the opportunity to present testimony regarding the essentiality of due process in Title IX proceedings.

Today I'm not going to focus on what I know. Instead I will focus on what courts have told you and what you know. You know that due process is the essential protection of the

individual against arbitrary use of power by institutions.

You know that due process is doubly important to historically marginalized populations, such as LGBTQ individuals, disabled individuals, especially those with impaired social skills, and minority students, especially Black male athletes who were disproportionately targeted during the Dear Colleague Letter regime.

You do know that equal protection must be given to both accusers and the accused. You know that accusers and accused persons are both students, and entitled to equal protection against sex discrimination under Title IX.

You know that the traditional deference given to colleges by courts has been squandered and lost by the kangaroo courts that followed the Dear Colleague Letter regime. You know that over 700 litigations have been filed because of kangaroo court college proceedings.

You know that colleges have been

hammered by trial courts and appellate courts because of their abuses under the Dear Colleague Letter regime. You know that the regulations that went into effect in August 2020 have sharply reduced claims of unfairness by both accusers and accused persons .

You know that the 2020 regulations are working to protect both accusers and accused persons, with essentially universal agreement that the August 2020 regulations are better than the Dear Colleague regime. You know that the 2020 regulations were needed to provide safeguards against the resumption of biased training.

You know that the 2020 regulations were needed to provide safeguards against biased investigators and biased adjudicators. You know that the 2020 regulations were needed to stop the inherent biases and conflicts of interest found in the single investigator model.

You know that victim-centered,

trauma-informed and start by believing are transparent efforts to inject bias into the investigative and adjudicatory process. You know that trauma exists not only for the person pointing an accusing finger, but also for the person toward whom that accusing finger is pointed.

You know that there is no person who can be called a victim until after an impartial investigation and impartial adjudication. You know that the victim is often the falsely accused person. You know that institutions have equal obligations to all students, both accusers and accused.

You know that schools fail to give equal resources and supports to both accusers and accused students. You know that biased investigations and biased adjudications have wrongfully destroyed careers and caused suicide attempts and completed suicide.

You know that I could continue far

beyond three minutes with a litany of abuses that you know sprang from the Dear Colleague regime, and a litany of ways in which the 2020 regulation reduced abuses. You know that the question presented in the hearing is simply whether you will allow blind ideology --

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

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

MODERATOR: Next up is Commenter 8 MD. Please unmute your mic and begin speaking when you're ready. Go ahead and unmute your mic, please.

COMMENTER 8 MD: Hi everyone. I appreciate this opportunity to share a parent's perspective on how the Department of Education can take steps to ensure that K-12 school districts are providing students with an educational environment that is safe, equitable and free from discrimination.

Over the past two years, I have been on the ground floor, working with and supporting a local student movement to address -- can you hear me?

MODERATOR: Yes. We can hear you.

COMMENTER 8MD: I'm sorry. I had started earlier.

MODERATOR: We heard you the whole time.

COMMENTER 8MD: I'm sorry. I'm having technical difficulties. Should I start again? Hello?

MODERATOR: Yes. You can go ahead and keep going. We heard you from the beginning.

COMMENTER 8 MD: I will start again. I share with you my observations and experiences so that the system failures and common roadblocks at the public school districts can be addressed.

New Title IX rules and regulations are needed. But if the systems in place to maintain and enforce these rules and regulations are

inefficient, then we continue to fail our students. Relying on the honor system, and assuming that school districts are proactively taking steps necessary to become Title IX compliant is a mistake.

Relying heavily on impacted school children and their parents to file a complaint with the OCR to have corrective action taken is a mistake. To assume that parents and students know their Title IX rights, and that school districts are willing to acknowledge and address the problem of sexual violence and discrimination is a mistake.

I suspect that of the 14, 000 public school districts in the United States, that a majority are not Title IX compliant, in turn, failing to provide the approximately 55 million K-12 students with the basic protections and rights that the law was created to provide.

If the Department and the OCR are truly committed to ensuring that all K-12 school

districts are compliant, then a more proactive and hands-on approach should be taken to audit, monitor, and enforce Title IX regulations. School districts must be held accountable, and ill-informed parents and students should not have to bear that responsibility.

The Department and the OCR must step in or the positive, systemic and cultural changes we desperately need will not be realized.

My last comment is more of a suggestion that might help engage school districts and foster Title IX awareness.

What if the Department considered creating another national program, similar to the Blue Ribbon Schools program, but one that acknowledges and awards schools for their Title IX compliance, the culture and climate of the school, and their prevention and intervention efforts, to name a few?

The problem we face as parents and students within our school districts goes beyond

modifying Title IX regulations. We need additional support, a new approach, and top-down vigorous enforcement. Thank you.

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

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

MODERATOR: Next up is Jeff S.

When you're ready, Jeff, please unmute your mic and you may begin speaking.

JEFF S.: Thank you. I am Jeff Simering, Legislative Director of the Council of the Great City Schools, a coalition of the nation's largest central city school districts.

Many of the Great City school districts with the council submitted extensive comments on the Title IX proposed rules, however we were not privy to the multiple meetings held at the White House and the Education Department as the proposed rules were being developed and apparently all the higher education interests

were consulted.

In fact, the Title IX regulatory process appears to have been driven by high-profile controversies at the higher education level with insufficient attention to K-12 implementation practices that have worked relatively well over multiple decades.

To be candid, I can't name one big city school district, Title IX coordinator, or general counsel that agrees with or supports the 2020 final regulation.

The Council therefore requests that the 2020 rules immediately be withdrawn within the context of elementary and secondary schools, and that the prior Title IX legal framework for K-12 education be reinstated in some form before the start of school year 2021-22, potentially through a K-12 interim final rule.

While the Council takes no position on Title IX regulations in the post-secondary context, we're open to considering universal

applicability to, and revisions to Title IX definitions.

Let me underscore the unsuitableness of the formalized Title IX procedures for minor children in K-12 public schools. School children have neither the judgment or experience to make decisions like adults. Even the nation's court system has adopted different procedures for juvenile infractions.

A school-age child's physical, emotional, and mental development is not complete, and instructional support services in public schools are designed in recognition of the child's developmental stages. Adversarial procedures run contrary to the traditional environment in our public schools.

These procedures are not just inappropriate for school-age children, but they're cumbersome and they're costly and ineffective for school districts and staff.

Under the higher regulatory standard

for sexual harassment and the required federal procedures, school districts now must operate multiple systems of disciplinary practices for different types of discrimination, for other forms of unwanted sexual behavior, to meet state requirements or other code of conduct violations.

The 2020 rules have doubled stamping requirements for school districts that now must have separate investigators and separate decision-makers in addition to Title IX coordinators and any appellate process.

These extensive judicial like grievance procedures add to the complexity of the process, delay timely incident resolution, require more staff training, and mandate formalized procedures even within any informal resolution.

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. This concludes this session of the public hearing. The next session will start at 3:30.

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

MODERATOR: First up is Lucas W., followed by Charlotte R.

Lucas, feel free to unmute your mic and begin speaking.

LUCAS W.: Hi. My name is Lucas Wilson, and I'm currently a PhD candidate in comparative studies at the Florida Atlantic University and a session last year at University of Toronto.

I'm also a survivor of gay conversion therapy, which I underwent at Liberty University. To give you an idea of the damage done by way of conversion therapy, I want to note that in 2019, the UN Special Rapporteur on Torture affirmed that quote, Given that conversion therapy can inflict severe pain or suffering, given also the

absence both of medical justification, of free and informed consent, and that it is rooted in discrimination based on sexual orientation or gender identity or expression, such practices can amount to torture, or the absence of one or more of those constituted elements to other cruel, inhuman and degrading treatment or punishment, end quote.

Moreover, according to UCLA School of Law, LGBTQ people who experience conversion therapy have 92 percent bigger odds of lifetime suicidal ideation. The very fact that this is a practice that goes uncontested and is promoted at Liberty University and a number of other religious colleges in the U.S. is sincerely terrifying, especially given how those schools are funded by the federal government.

Because of my deeply formative and damaging experience of homophobia at Liberty most profoundly communicated to me behind closed doors in conversion therapy for four years straight, I

am now a plaintiff in a lawsuit brought against the U.S. Department of Education regarding the Title IX religious exemption, a lawsuit that is being brought forth by the Religious Exemption Accountability Project.

We began the lawsuit against, despite what some might claim, not as a religion. We are, instead alleging homophobia done in the name of religion. As such, I am speaking to you today because I would like the U.S. Department of Education to make a rule that narrows the religious exemption as much as possible.

Cultures of homophobia and conversion therapy programs are rampant at Liberty University and other Christian colleges across the u. s. ' and this homophobia and these conversion therapy programs are currently being funded by U.S. taxpayers -

We plaintiffs in the lawsuit want the federal government to prohibit funding that's, these schools have, that are anti-LGBTQ and have

conversion therapy programs.

Please listen to those of us who have been subjected to sustained and directed homophobia. We are not in this lawsuit to end religious education. We are in this lawsuit rather to see to it that what happened to us on these campuses does not happen to other queer students.

We just want LGBTQ students to be treated equally, not face blatant and express bigotry, and to be able to view themselves openly. Please do the right thing, and stop funding these homophobic schools if they are to actively discriminate against LGBTQ students.

Let these schools finance their homophobia on their own dime. Thank you.

MODERATOR: Next up is Charlotte R.

Charlotte, feel free to unmute your microphone and begin speaking.

CHARLOTTE R.: Can you hear me?

MODERATOR: Charlotte, go ahead and -

- we can hear you, but go ahead and turn off the live session as we can hear that in the background.

CHARLOTTE R.: Can you hear me?

MODERATOR: We can hear you now. Feel free to begin speaking.

CHARLOTTE R.: Thank you. Good afternoon. My name is Charlotte Reynolds. I'm the Title IX coordinator for a public school district in Wyoming. Thank you for providing this opportunity to provide public input.

I'm speaking on behalf of my district when I state that K-12 schools need support, guidance and resources to support them in their efforts to meet the current and even the previous Title IX requirements.

Schools are reflections of their communities, and are often left to remedy the wrongs committed outside of our control, without the resources to do so. This is really a challenge, in a small rural district, that

struggles to hire and retain qualified professionals to carry out the host of duties and services we are required and expected to provide for students.

I respectfully request that any updates to the current Title IX regulation include clear definitions of terms such as severe, pervasive, and objectively offensive, and clear guidance on how we should -- how we, quote/ unquote, should know information that is not reported to us.

I truly believe K-12 schools do their very best to serve all students. But we need support and resources from those with expertise in how to serve victims and those accused.

Lastly, I would suggest that it would be invaluable, especially to small rural districts, to have low or no-cost training and special resources that we can access to ensure we are adhering to all federal laws, but more importantly, ensuring we are providing all

students with equal access to our educational, quote/unquote, educational programs and activities. 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: Next up is Faith F.

Faith, feel free to unmute your mic when you're ready and begin speaking.

FAITH F.: Hi. Thank you. Can you hear me?

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

FAITH F.: So, my name is Faith Ferber. I am a survivor, a recently graduated social worker and an activist. And working with survivors for the past seven years, I've seen firsthand how students are left to struggle and suffer in the aftermath of experiencing violence.

There's been a lot of talk about

cross-examination this week, but what I want to emphasize and what we have to recognize is that allowing the advisor of each party's choosing to conduct cross-examination doesn't serve the fact-finding process.

Instead, it's an intimidation tactic, that makes survivors less likely to want to report in the first place, potentially leaving them without critical accommodations needed to stay in school. I surely would not have gone through the Title IX process if this rule was in place when I was assaulted in undergrad, and I unfortunately have worked with countless survivors who have had to make that same decision.

The worst part of my Title IX hearing was when my perpetrator, who admitted in the hearing that he assaulted me, was able to read ten character witness statements from his fraternity brothers and girlfriend's sorority sisters, not only insisting my perpetrator hadn't

done what he admitted to, but also disparaging my character, labeling me a liar and demanding that conduct charges instead be brought against me.

The hostility was humiliating, and it scares me to think of how much more intense that hostility would have been if one of his fraternity brothers also had the power to question me about the details of that night.

The Department of Education needs to require that schools utilize a neutral third party to conduct any cross-examination that occurs. Questions should be submitted in writing, and reviewed for appropriateness before being asked by the neutral third party.

This upholds due process and supports quality fact-finding without unnecessarily burdening either party with biased questioning. What does allowing cross-examination by an advisor of each party's choosing achieve that cross-examination by a neutral third party can't? It opens the door to extreme intimidation,

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leading survivors to drop out of the Title IX process or choose to never report in the first place.

The current Title IX rule makes schools inherently less safe for students. Nearly 40 percent of survivors who report violence to those schools experience a substantial disruption to their educations, doing exactly what Title IX is designed to remedy.

It's crucial that the Department seriously consider how to provide a fair and equitable Title IX process that actually minimizes further traumatization. Changing the cross-examination requirements is a great place to start. 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: Next up is Sadie D.

Sadie, when you're ready, unmute your

mic and begin speaking.

SADIE D.: Can you hear me?

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

SADIE D.: Fantastic. Thank you so much. Okay. Good afternoon. My name is Sadie De Luca, and I'm a senior at Western Washington University. I have spent this past year volunteering as a wellness advocate on our university's Consultation and Sexual Assault Support Team.

During this time, I have learned the importance of trauma-informed practices when it comes to supporting survivors of sexual violence. The updated Title IX regulations do not incorporate trauma-informed practices, and because of this, do not provide adequate support to survivors.

One of the clearest examples of this is the new requirement for clear and consistent evidence. Studies have shown that the brain and

body do not respond to traumatic memories in ways that are clear or consistent. And as a result, a survivor's processing of trauma may not take place in a way that conforms to this requirement.

This places an unfair and unachievable request on survivors who are already facing immeasurable challenges. Additionally, the new Title IX live hearing and cross-examination process also fails to be trauma-informed, as it unnecessarily places survivors of violence in newly traumatic situations.

The new regulations also fail to provide specific protections to the individuals most often targeted for violence. A study conducted over the past year by student researchers at our university found that bisexual women and gender-expansive individuals are the students most frequently targeted for sexual violence.

By failing to provide protections for those most likely to be targeted, the new Title

IX regulations do not effectively support survivors. To remedy this, Title IX regulations must be changed to address the following.

First, trauma-informed processes, this includes the use of the preponderance of evidence standard of proof, rather than the clear and consistent standard, as well as the elimination of the live hearing and cross-examination process.

Second, Title IX must provide more specific support to those individuals and groups who are most often targeted for violence.

Third, Title IX must utilize a broader definition of investigatable instances of sexual violence, enabling more inclusive support of survivors.

And finally, Title IX must incorporate the ability to investigate off-campus reports of sexual harassment. There are too many individuals in our nation and our schools who have undeservedly experienced violence and trauma

in their lives.

Today you have a chance to actively support those individuals in a search for justice and healing. Today you have a chance to make a difference in the lives of survivors. So today I ask you, please take that chance. Thank you very much for your time.

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 William T.

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

WILLIAM T.: Hi. This is Will Trachman. Can you hear me okay?

MODERATOR: Yes, we can. You may begin.

WILLIAM T.: Great. Thanks, everyone. My name is Will Trachman. I'm the former Deputy

Assistant Secretary for Policy and Development within the Office of Civil Rights.

I spent three years there under the Trump administration. It was a privilege and an honor to work with some of the dedicated staff there, and I had the great fortune to work with folks on the Title IX regulation that was announced on May 6, 2020.

And because I have so much respect for the staff there, I know what dedication they will have in reviewing and deciding whether to keep or change aspects of the existing rule. I do request that, for the time being, while the rule is in place it be followed to its letter.

I know that President Biden asked the Department to review whether to suspend part of the federal regulation. I would object to the idea that the agency can unilaterally suspend federal regulations.

In addition to that, I wanted to make a few points. One is that the reliance interests

here are grave. Schools have been adapting to the new May 2020 rules for over a year now. I myself plan to speak to a group of administrative personnel next week on the new rules and how they function, what obligations schools have.

And the idea that the rules would be changed every time the presidential election occurs and there's a new person in the White House has to be daunting for schools who need predictability, reliability and consistency.

Then I want to talk about two issues which I think are reflective of some of the comments that have come in so far. In the new 106.44, it isn't as though a school can sweep an allegation of sexual harassment under the rug. Far from it.

In every case where the school has actual knowledge of an allegation of sexual harassment, there has to be a reach-out by the Title IX coordinator, a discussion between the Title IX coordinator and the complainant about

supportive measures.

The Title IX coordinator has to respect the complainant's wishes and their request for supportive measures, and the Title IX coordinator has to explain how to file a formal complaint. That is literally every allegation of sexual harassment must be treated that way.

Under 106.45, we've heard some mentions of trauma-informed ideas on cross-examination. There's nothing about the rule that precludes a school from using trauma-informed practices as long as those practices don't conflict with the rule.

So for instance, you couldn't say all accusers are trustworthy and all of the accused are not, but that doesn't mean that you can't encounter trauma and account for trauma as part of your processes. And, of course, in cross-examination, no one is forced to undergo cross-examination. No one is forced to answer any questions they don't want to.

The rule explicitly protects people who don't want to undergo cross-examination by having an anti-retaliation provision. So there are many features of the new rule that are protective of survivors.

And the last thing I'll mention is that the mediation provision ends up giving schools a significant amount of flexibility to work through these rules and to adjust them as needed when the students agree and the school is in favor. So I urge you to keep the current rule. 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: Next up is Vince M.

Vince, when you're ready, unmute your mic. Vince, please unmute your mic.

MODERATOR: It appears Vince is having some technical difficulties.

Vince, if you don't mind opening up your chat and we'll see if we can help you.

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

MODERATOR: Next up is Terri M.

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

TERRI M.: There we go. Can you hear me now?

MODERATOR: Yes, we can. You may begin.

TERRI M.: All right, thank you. Hello, my name is Terri Miller, President of Stop Educator Sexual Abuse, Misconduct and Exploitation.

Since 1996, SESAME is the leading national voice for the prevention of sexual exploitation abuse and harassment of students by teachers and other school staff. School employee sexual misconduct affects an alarming number of

K-12 students.

I have my microphone muted. Can you

--

MODERATOR: We can hear you.

TERRI M.: All right. I'm sorry.

Hello. This is Terri. I got interrupted by a mic announcement. Okay. Can I have my time started over because of the interruption?

MODERATOR: Sure thing. We'll restart the clock.

TERRI M.: Thank you very much. I appreciate that. My name is Terri Miller. I'm President of Stop Educator Sexual Abuse, Misconduct and Exploitation.

Since 1996, SESAME is the leading national voice for the prevention of sexual exploitation, abuse and harassment of students by teachers and other school staff. School employee sexual misconduct affects an alarming number of K through 12 students, an estimated 5.5 million students in the United States today.

Every day, there are headlines of school employee sexual misconduct in our schools. Sexual misconduct can result in lifelong emotional, physical, and psychological consequences for victims, families and their communities. Students can't learn if they don't feel safe. Parents suffer the loss of family unity and healthy child.

Unfortunately, sexual abuse is a sensitive topic, surrounded by a veil of silence that creates many loopholes offenders can exploit to continue with their behavior, and allowing offenders to enter schools and get hired multiple times before being identified and convicted.

Understanding educators must bear the cloud of shame and distrust upon them by bad apples. Dollars spent on settlements are dollars lost for education. Bad apples really do spoil the whole bunch.

Based on our experiences, we would like to offer our suggestions on how to improve

upon the 2020 Title IX regulations, and how to further prevent school employee sexual misconduct in schools. Hearings may limit reports and further harm victims. Remove or reduce the required ten-day interview notice. It is unreasonable.

Sexual harassment definition is true strong. Many cases will not meet this new definition. Jurisdiction requirements are too strong. Complainants may drop out and respondents may leave, rendering the case null and void.

Additional recommendations include disseminate and enforce Title IX responsibilities in K-12 schools, clarify and disseminate information on the roles and responsibilities of Title IX coordinators, and more clearly emphasize that Title IX also applies to K through 12 students and schools, and to cases involving school personnel to student sexual abuse and misconduct.

Conduct a national prevalence survey that includes student and administration input on employee sexual misconduct. Work with the Department of Justice and Department of Education to develop a national database. Many states do not publicly release the records of teachers whose license have been revoked, cancelled, surrendered or suspended for sexual misconduct.

This issue allows offenders to gain new employment in other jurisdictions. Develop new employee misconduct and ethics training curriculum for teacher administrator preparation programs. Develop age-appropriate comprehensive student, staff and parent prevention --

MODERATOR: Thank you. Next up is Nora G.

Nora, please unmute your mic and begin.

NORA G.: Hello. Thank you so much. My name is Nora Gallo, Co-executive Director of the Every Voice Coalition and 2020 grad from U.

Mass Amherst.

The Every Voice Coalition is a student and survivor-led organization working to pass student and survivor-written, survivor-centered legislation on the state level to prevent campus sexual violence and support survivors.

Since 2016, we are now active in 12 states with five bills already passed. What we do is we work to empower students and survivors to lead grassroots movements that are actively bridging the gap between who is and who is not in the rooms where decisions are made, which ensures that young people have a seat at the table and are leading conversations about what impacts them the most.

As a recent college graduate who works directly with students and survivors all across the country every day, we come to you with a unique and vital perspective of what students and survivors need right now.

We are proud to speak here today as

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representatives of our student and survivor-led coalition. We are constantly hearing from student survivors that Title IX changes are urgent, how the current rules limit access to education, cultivate hostile environments on campuses, and derail students' academic and long-term career goals.

Student survivors have the right to an education free from violence, to seek their education in an environment that is welcome to their needs.

Our policy priorities for what we would like to see in a new Title IX rule are outlined in the letter we wrote with Know Your IX and Rape on Campus and It's On Us, which will be submitted at the end of this week.

In our work, we see what happens when student survivors are those who are involved in addressing campus sexual violence making a change. Not only is the change then actually meeting their needs, but they are empowered with

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the knowledge they can raise their voices to demand change.

This ultimately benefits everyone. Change that is made is directly meeting their needs, and they are empowered to inform more effective future policy and change with time.

So today, I ask you, what would it look like if beyond today you found ways to hear from students and survivors, and receive their feedback in crafting a new Title IX rule? What would the outcome of that final rule be?

Student survivors are too often left out of these conversations, and further silence beyond the walls of just their institutions. And in this case, that resulted in a rule that hurt students, student survivors tenfold more than it supported them.

Just as you have set a powerful precedent of actively listening to and incorporating the feedback and needs of those most impacted reporting in these public hearings,

we are calling on you today to continue this practice.

We ask you to not only listen throughout this week, but to raise the bar for what it looks like to incorporate the voices of those most impacted at the center of any change making. You may just see that it actually creates active change.

I want to thank you deeply for your time today. We really look forward to seeing what happens next. Thank you.

MODERATOR: Thank you. Next we have Olivia O., followed by Kristina P.

OLIVIA O.: Hello, thank you. My name is Olivia Ortiz. I am a graduate of the University of Washington School of Law, and against all odds, I am a graduate of the University of Chicago College.

In 2012, I sat across from my abuser in an informal mediation conducted by my dean of students. Several months later, I received legal

counsel and filed a Title IX complaint against my school. My complaint was not resolved until I was in law school in 2018.

The Trump administration failed me, but so did the Obama administration. I wrote an article in 2016, published in the Yale Law Journal, about the impact that these suspended investigations, while necessary, have on individual complainants.

Because I complained against my school, I was forced out, and I received significant retaliation from my dean of students, including a threat to be removed from school because of the social media criticism against him.

Indeed, I believe that we should have systemic investigations, but survivors should not have to pay the price of retaliation from our schools, who deeply resent being held accountable for their violations of Title IX.

Today, I encourage you all to

reinstate a rule that forbids informal mediation, like the one that caused me so much trauma, the one that caused me to drop out of school, the one that led me to file a complaint against my university, that after several years was ultimately dismissed.

In addition, I also encourage you to adopt a rule that is sensitive to people not only at elite institutions, but people at historically Black colleges and universities, historically Latinx colleges and universities, as well as women and girls incarcerated at -- colleges and universities, as well as high schools around the nation.

The most vulnerable deserve support from the Department of Education, and I sincerely hope that this administration again values experiences of the individual as well as those of larger society.

I am excited to enter the profession of law, but again, the Department of Education

failed me in my education, and I sincerely hope that they do not fail others as they failed me. I see this as a new opportunity for the Biden administration to hold schools accountable, and serve survivors, especially those who are most marginalized. Thank you again.

MODERATOR: Thank you. Next up is Kristina P., followed by Meg K.

Kristina, please unmute your mic and begin.

KRISTINA P.: I would like to begin by thanking the Department of Education and the Office of Civil Rights for providing this time to gather comments from people all over the nation. The opportunity to share is greatly appreciated.

I am a Washington State certified victim advocate who works primarily with college survivors of sexual assault. I have been working with student survivors for over two years and have witnessed firsthand how Title IX impacts individuals, for better or for worse.

I would like to focus on two areas for my comment, the exclusion of off-campus sexual violence that occurs between students from Title IX's jurisdiction, and the creation of more space for victim advocates to support student survivors in Title IX processes.

The exclusion of off-campus sexual violence from Title IX's jurisdiction is harmful and allows schools to ignore misconduct that could be happening just blocks away from the school, online or in study abroad programs controlled by U.S. universities.

This is especially concerning during a pandemic where more and more students have the opportunity to engage in remote learning that removes them from campus, and isolates them from on-campus resources and services.

Most schools have policies that investigate and sanction students who commit other forms of misconduct off-campus, and there should not be an exception for sexual violence or

sexual misconduct.

Also, the current policy on advisors of choice is a policy that often shuts victim advocates out. In Washington State, victim advocates have privileged communication, and advisors of choice are not confidential roles, so victim advocates often cannot serve in that role, and therefore can't support student survivors during their Title IX hearings.

In Washington, a survivor has a right to have a victim advocate present during any criminal or civil legal proceeding in addition to legal representation. Survivors deserve to have trained victim support service providers available to them during all steps of these processes.

Thank you for considering these changes that will help create a safer, more equitable environment for all students on campuses.

MODERATOR: Thank you. Next up is Meg

K. followed by Zoe E .

Meg, when you're ready, unmute your mic and you may begin.

MEG K.: Good afternoon. My name is Meg Kilgannon. I was honored to serve at Ed in the Faith Office during the Trump administration, and I'm now a senior fellow for education studies at the Family Research Council.

I listened to several hours of testimony offered in this forum and I've been struck with the passion so many people feel on this topic. Both men and women have made compelling argument about how Title IX affects their lives.

And while I don't agree with all of the comments, I can understand why people advocate for the views they hold, and I very much appreciate their right to express their views. I'm grateful that our governing processes prioritize listening to comments from the public.

I hope those that have been sworn in

as public servants will listen to all sides with consideration, especially those comments informed by values and experiences different from your own.

We at Family Research Council, an organization with hundreds of thousands of supporters across the country, urge that great care be taken when considering the needs of children in the K-12 setting.

Title IX is based on facts and facts alone. It distinguishes between men and women based on biological sex. Any other interpretation on the basis of sex harms women and girls, parents and families.

Parents who send their children to schools, whether public or private, do not hand over their right to direct the education of their children at the schoolhouse door. Parents are the primary educators of their children. Parents are the best advocates for their children. The best schools and teachers strive to truly partner

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with parents so that together they can work for the good of the child.

Expansions to protections for students can therefore never be legitimate expansions or protections if they are expanded at the expense of parental knowledge and consent, not to mention the expense of other students and staff.

To interrupt the parent -- the bond between parents and children, to insert oneself between a custodial parent and his or her child for any reason is unnatural and unacceptable, period.

Policies such as keeping duplicate records that hide information from parents about their own child, allowing children to present themselves one way at school and deliberately keeping that information from parents, allowing name changes, allowing children to access opposite sex changing facilities and the like, all while keeping parents in the dark, such

policies can never be called protection, and they are not in the best interest of anyone.

Further, the social transition of children directed by school officials should instead be considered medical treatment, because the reason for directing that behavior is usually alleged to be the mental health of the child.

Only parents have the right to direct the medical treatment of students. School administrators lack the medical training and professional competency to address those needs. Medical interventions are the responsibility of the parent and the doctor of their choosing.

Every child has dignity and value. Every child is born in exactly the right body. The protections enshrined in Title IX, including religious exemptions, benefit everyone just as they are. Thank you.

MODERATOR: Thank you. Next up is Zoe E., followed by Joel L.

Zoe, please unmute your mic and begin.

ZOE E.: Good afternoon. My name is Zoe Evans-Agnew, and I'm a senior student at Western Washington University, in Bellingham, Washington. I am part of my university's sexual violence prevention effort group on campus, where I work to educate students and support survivors.

For my senior thesis, I conducted a campus climate survey on the sexual violence experiences of students at my university. I plan to present these results at the American Public Health Association Conference in October.

Over a thousand students participated in this survey, which is a large sample size for a school of 16,000 students. In this survey, I found that 23 percent of students on my campus experienced sexual violence during college. This percentage is demonstratively higher than the percentage of students who submit a complaint to the Title IX office.

It is not that students are not experiencing violence, it is simply that they are

not coming forward because Title IX is failing them. I deserve to feel safe and protected at my university, and the accountability process by the federal government neglects my right to an education.

To fix this process, I urge you to do the following four things. Number one, we need to broaden the definition of sexual harassment to include all forms of violence.

Number two, we need to do away with live hearings and cross-examinations, as it prevents reporting, and is not a trauma-informed process.

Number three, we need to require colleges to respond to sexual violence off-campus, and include this off-campus jurisdiction under Title IX.

And number four, we need to change the burden of proof to preponderance of the evidence. We are not asking for much. We are asking for a fair shot at our education, free of violence.

Students do not deserve to be treated this way. They deserve support, validation and understanding when they are recovering from trauma.

In my survey, hundreds of students detailed how they were assaulted, and their stories were painful and violent. Hardly any of them saw justice. You have the opportunity to change that for students like me. Listen to the voices of survivors and act now. Thank you for your time.

MODERATOR: Thank you. Next up is Joel L., followed by Commenter VQ8.

Joel, please unmute your mic and begin.

JOEL L.: Hello. My name is Joel Levin. I'm the cofounder and director of programs for Stop Sexual Assault in Schools, SSAIS.

SSAIS was founded in 2015, as first national nonprofit specifically created to

address widespread K-12 sexual harassment and assault. I'm also a parent of a student survivor who was sexually assaulted in a school program.

SSAIS hears regularly from families whose elementary and secondary schools have failed to respond promptly and effectively to reported sexual harassment. They feel bewildered and betrayed by the institution responsible for their student's safety, well-being and academic growth.

Just in the last year, hundreds of students nationwide have spontaneously formed Instagram groups to express anger and frustration at their schools' ineffectual response to sexual harassment complaints. They resort to social media groups out of frustration, due to their schools' inaction to reported sexual harassment.

SSAIS criticized the 2020 Title IX rule for reversing two decades of Department guidance upon which state education departments and school districts have shaped their sexual

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misconduct policies.

Schools are now compelled to navigate two tiers of sexual misconduct, Title IX and non-Title IX, with conflicting definitions, grievance procedures and accommodations. It's no surprise that students voice dissatisfaction when confused administrators offer inadequate and ineffectual responses.

It falls to the district Title IX coordinator to respond to all complaints involving possible sex discrimination, including sexual harassment. So it's critical that a coordinator has the necessary time, qualifications, training and independent authority.

The Department itself has found that the most egregious and harmful Title IX violations occur when a Title IX coordinator lacks adequate training or credentials. In too many school districts, this crucial role is delegated to a secretary, coach or office worker

who then wrongly defers the responsibilities to district counsel.

We strongly urge the Department to overhaul this 2020 Title IX rule, and restore and amplify its guidance, beginning from 2001, especially the 2015 guidance on Title IX coordinators. The Department should set minimum qualification standards for K-12 Title IX coordinators, and dedicate adequate resources for training and technical assistance.

State education agencies should certify that all district Title IX coordinators have the most current knowledge of federal and state laws, regulations and policies relating to Title IX and gender equity, and ensure that all employees whose responsibilities may relate to Title IX have appropriate training.

The Department must step up its efforts in ensuring that Title IX coordinators are qualified, proactive leaders, working to end sexual harassment in their schools. Thank you.

MODERATOR: Thank you. Next up is Commenter VQ8. Please unmute your mic and begin.

COMMENTER VQ8: Hello. I would like to comment specifically on the requirement under the Trump/ DeVos rules that victims of sexual assault can be directly cross-examined. My interest is informed by the experience of my daughter, who was raped as a freshman in college.

She went through a grueling 10-month disciplinary process. The school ultimately found in her favor and suspended the assailant, only to let him back on campus after one semester, without input from or notice to her.

Now, so first I'd say it's false to suggest that there should be the equivalent procedures in a Title IX case as there are in a criminal court. In a criminal case, the defendant could be locked in prison for many years. In a Title IX case, they can only be suspended or expelled from a particular school.

Potential for harsh cross-examination

scares many rape victims from reporting, but at least in a criminal court, the examinations, as bad as they can be, are done by licensed attorneys and overseen by judges.

In a Title IX proceeding, there's no judge, and examinations could be done by an attorney, a fraternity brother of the rapist, the rapist themselves, or anyone they bring in.

This is an unacceptable emotional trauma to put on the survivor of sexual assault, and I believe will ultimately result in many women choosing not to report, and dropping out of school, and in more assaults by repeat offenders.

In addition to the emotional cost, women who cannot afford to hire an attorney will be at a huge disadvantage. I'm lucky to be in a position to have provided legal support to my daughter. But to put a ballpark on it, it cost me approximately \$30,000. This is not a cost that could be afforded by most, and would disproportionately affect the poor.

Any requirement for direct cross-examination, or anything such as restorative justice that requires or encourages a victim of sexual assault to come face to face with their assailant is both cruel and will result in fewer women coming forward, and more repeat assaults.

My other large concern is with the durability of Title IX decisions. Right now, when a wealthy student is found guilty of sexual assault in a Title IX case, his parents often hire attorneys to sue the school. They sue on technical grounds, that the school did not follow their own procedures.

This forces the school, if successful, to vacate the decision, leaving no protection for the victim, or the prospect of having to go through the entire process again. The more specific the procedural requirements in the rule, the easier it will be for lawyers to get these decisions overturned for children of the wealthy.

Thank you very much for hearing me

today.

MODERATOR: Thank you. Next up is Adrian N.

Please unmute your mic, Adrian, and begin when ready. Adrian, please unmute your mic.

(Pause.)

MODERATOR: It seems Adrian's having some technical difficulties.

Adrian, if you don't mind opening your chat, we'll see if we can help you.

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

MODERATOR: Next up is Shalither C. Please provide your comment now.

(Pause.)

MODERATOR: Shalither, please unmute your mic and begin.

SHALITHER C.: Oh, and I was trying to read the instructions to see what I'm supposed to be doing.

MODERATOR: This is your opportunity to have three minutes to speak. If you're just wanting to listen, we'll put the listening link in the comments section, if we could set that up.

SHALITHER C.: Yes. I would like to listen. Thank you. I'm sorry.

MODERATOR: No problem. Just open up to the comment section. We'll send the link to you in just a minute.

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

MODERATOR: This ends this session of the public hearing. The next session will begin at 5:30 p.m.

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

JOE C.: evaluating accusations that gives findings of responsibility legitimacy, and avoids courts ordering the process to be repeated to the detriment of a complainant.

If the Department of Education is

determined to amend these regulations, and we do not think that it should, the changes must be modest, and the Department must keep two principles in mind.

First, it must take the rights of accusers and accused students seriously. Two things are simultaneously true. Sexual misconduct occurs on college campuses, and some students are wrongly accused. Our national policy must be fair to all students.

Second, any regulation applying to public institutions must conform with the United States Constitution and applicable judicial authority.

This means not only affording accused students sufficient procedural protections to satisfy the requirements of due process, but also ensuring that any rule or definition affecting verbal peer-on-peer harassment is complying with the First Amendment as set forth in the U.S. Supreme Court case of Davis v. Monroe County

Board of Education.

The Department's policies must also abide by the jurisdictional limitations set by the U.S. Supreme Court in Davis, and the due process requirements set by the federal appellate courts that require the right to a live hearing and the opportunity for meaningful cross-examination.

And with that, I want to thank you all for your time.

MODERATOR: Thank you, Joe C. We had a little bit of technical difficulties in the beginning. If you don't mind, would you repeat the first minute.

JOE C.: Sure. Good afternoon. My name is Joe Cohn. I'm the Legislative and Policy Director of the Foundation for Individual Rights and Education, or FIRE. Thank you for holding this important hearing.

In 2017, when the Department of Education rescinded the Title IX guidance, it set

a goal of creating binding rules that were fair to complainants and respondents alike. Contrary to the hyperbolic assertions of critics, the final regulations accomplished this important goal.

The regulations provide a number of key protections for complainants, including supportive measures to help complainants pursue their education, an appropriate rape shield provision, and prohibitions on gag orders and retaliation.

The regulations also ensure that institutions take the rights of all parties seriously by requiring essential procedural protections like the right to a presumption of innocence, access to evidence in the institution's possession, a live hearing with the right to cross-examination by an advocate, and other important safeguards to help ensure that both sides are treated fairly.

While it is tempting to think about these protections only through the lens of

their benefit to accused students, they also play a vital role in protecting the interests of complainants. After all, it is the process of thoroughly evaluating accusations that gives findings of responsibility legitimacy and avoids courts ordering the process to be repeated to the detriment of a complainant.

Should I continue? Or did that cover everything that you needed repeated?

MODERATOR: That covered everything, Joe. Thank you very much.

JOE C.: Thank you very much as well.

MODERATOR: Next up is Nathalie F.

Nathalie, you can unmute your mic and --
begin.

NATHALIE F.: This is Nathalie F., I'm not sure if my name was on here incorrectly, so --

MODERATOR: That's you. I apologize.

NATHALIE F.: Okay, great. Well, I

guess my question is based on, I guess, what was just said about following Davis v. Monroe County. Is do we really think that deliberate indifference is a good standard to create equitable outcomes, given that it is very difficult to prove deliberate indifference, and employees under Title VII don't have that higher standard?

Yeah, and also, the actual knowledge clause that is, that was established there is also, like quite high and difficult to prove. So I'm just wondering why the statement is agreeing that that is a fair standard for these sorts of cases.

MODERATOR: So Nathalie, this is your opportunity, you have two minutes left to provide any other comments for Title IX. We are not doing any Q&A.

NATHALIE F.: Okay. Yeah, I guess that's my statement. I'm just disappointed that

this is not being looked at further, and this isn't, like in line with other sorts of employment. So, I'm not sure how that's going to be corrected, but given some of -- yeah. I don't know. That's all I have to say. Thanks.

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

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

MODERATOR: Next up is Jennifer R.

Jennifer, feel free to unmute your mic and begin when ready.

JENNIFER R.: Thank you. Excuse me. I'm an administrator for a small college, and the Title IX coordinator, and I'm also a lawyer in my home state.

My experience with the changes in Title IX have been pretty significant. Not only did it mean that, as a small college, we now have to train and/ or pay for an adjudicator who has at least some strong understanding of the Rules of

Evidence, and what might be admissible in a particular hearing.

And it's treating the Title IX process as more of a court case than an administrative hearing that's looking to comply with the rules and the policies of the particular college.

Here, not only is it a burden for the college, to have to train additional people with very specialized knowledge, and if we can't afford that, to hire someone on an hourly basis to review all the documents in the case, to spend the time adjudicating and then making the decision afterwards.

So it can be pretty burdensome, also, the obligation to hire an advisor for the party that doesn't have one. So, these things, I think that the Committee needs to take into consideration. But probably the most significant matter that disturbs me with the new rules is that, the issue of cross-examination in general. Already we know that statistically, the vast majority of sexual assault cases

involving campuses go unreported. There is a sense of shame, or a desire not to injure the other party and a variety of other reasons why complainants do not come forward.

And this has nothing to do with their sex. It could be either way, any gender can be affected by this. But the chilling effect of having to endure cross-examination, and particularly being put out there as someone who might be hurting the other party in some way by just simply telling their truth, I'm very much against.

With the subject matter -- excuse me, there's dogs in the background. With the subject matter of protecting people of transgender students and nonbinary students, I personally have family members who are both, that are both in the educational system.

And I'd like to know, in the future, you know, what other kind of guidelines are going to be added to make sure that our transgender students are protected nationwide, and our

nonbinary students are protected as well.

And that really is the extent of my comments. So first, as an administrator, and second as a parent, I would like to know the answer to these questions and see that the guidelines make the -- see that the -- excuse me, see that the Congress makes the different changes to the laws and the administrative rules. Thank you very much.

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: Next up is Gregory Z.

Gregory, go ahead and unmute your mic, and you may begin.

GREGORY Z.: Thank you. Good afternoon. My name is Gregory Zenion. I am the principal of Chariho Middle School in Wood River Junction, Rhode Island. I appreciate the opportunity to speak before you as the U.S. Department of Education reviews its regulations under Title IX

of the Education Amendments of 1972.

I join the National Association of Secondary School Principals and others in asking ED to immediately rescind the 2020 amendments to the Title IX regulations and replace them with non-binding guidance for K through 12 schools, technical assistance and best practices to ensure the fair, prompt and equitable resolutions to reports of sexual harassment and other sex discrimination.

The 2020 amendments are unworkable and harmful. During the summer of 2020, I was provided a two-hour training from my district attorney on the 2020 amendments to Title IX. Although it was a good overview of the changes, it was enough. I've had two Title IX investigations in my middle school of about 1, 000 students this year.

Both cases ended with informal resolutions, but the first one required over 30 hours of staff time. The second required over 20 hours. Public schools do not have the personnel

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in place to conduct these kinds of investigations .

Our experience with the 2020 amendments is that we are unable to swiftly remove students from harmful educational environments because of paperwork, evidence, and notice requirements in the regulations .

In the past, we've relied on previous federal Title IX guidance to develop and solidify procedures to ensure that all Title IX complaints were addressed in an effective fashion that offered fair protections for both the accuser and the accused.

However, the new multi-layer process is an overwhelming undertaking by staff and may take 80 to 90 days to complete. It is also a striking difference in how school leaders can discipline students for incidents of sexual harassment versus any other school infractions, which has infuriated parents, led to further traumatization of students, and greatly

frustrated our staff, who want to effectively address potential Title IX violations quickly.

We are also frustrated by the staffing required to conduct an investigation of sexual harassment. In addition to having a Title IX coordinator in each school building, there are various roles that must be assigned to other trained personnel, on a case by case basis, who are all free of bias towards or against victims and accused students.

While the provision requiring all to remain neutral with respect to the process generally is quite appropriate, mandating that every individual tasked with responsibility on a Title IX be unbiased, and therefore viewed by parents as neutral with respect to the individual complainant and respondent in every case may not be practical in many smaller or more rural K through 12 schools.

Any individual likely tasked with the responsibility of either conducting an

investigation or rendering decision, either at the initial stage or appeal stage, would be someone who has experience or primary responsibility in a building where they are connected with the students involved. Thank you for the opportunity to provide comments to DOE on this very important issue. We will also be submitting my comments for the record. Thank you.

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

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

MODERATOR: Next up is Torn R.

Torn, you can unrnute your rnic and begin.

TOM R.: My name is Torn Rossley and I am from Chicago, Illinois. [REDACTED] was expelled in a he said/she said Title IX kangaroo court at a private college in Des Moines, Iowa, one month before his graduation in 2016.

The sex crimes prosecutor who was hired as an independent investigator, as well as

the law professor that served as the hearing officer both stated in the reports that there was no real evidence that an assault had occurred on Jane Doe, that they just believed her and not [REDACTED].

[REDACTED], who had language-based learning disabilities that were accommodated in the classroom were ignored in the adjudication. As a trustee of the university, I complained to the board at how the whole situation was handled, and the board removed me from my position after serving the university as a trustee for nearly 23 years -

Ironically, [REDACTED] had also claimed that Jane Doe had sexually assaulted him in his car mere minutes before Jane claimed she had been assaulted.

Nobody asked Jane Doe about the assault on [REDACTED], not the dean who told [REDACTED], if he made an official claim that he could be further punished, not the Title IX

coordinator whose husband represented the university in Title IX issues, and not the sex claims prosecutor who was brought in to adjudicate this mess.

During the hearing that expelled [REDACTED] a month before his graduation, Jane Doe admitted to initiating the assault on [REDACTED] when he claimed to be falling in and out of consciousness. The Title IX coordinator, the law professor hearing officer, and the dean, who was seated next to the university's legal counsel, all heard her make that statement, and nobody blinked an eye.

She went on to graduate a year later. Maybe that's because Jane Doe was from a very wealthy family in Iowa and had incredible political connections. Unfortunately, we learned all of this too late in the game.

Her mother is an heiress to a retail fortune in the Midwest. Her mother is personal friends with a currently seated United States senator, who represents a state in the Eighth

Circuit, the same circuit that denied our appeals, and Jane Doe herself is followed on Twitter by a past United States president. Think about that.

To this day, the entire administration and the entire board of trustees continue to bury the sexual assault on [REDACTED]. My point is that there is not a college in this country who is qualified to be impartial. They are only concerned with their own brand and reputations.

The interpretation of Title IX that mandates that colleges need to adjudicate rape and sexual assault is an extreme overreach of the law. It was [REDACTED] who was denied an education, not Jane Doe. Murder would certainly deny someone an education but there's not a single person who would believe a college should adjudicate murder.

I strongly believe that the Department of Education should not be in the business of adjudicating sexual assault and rape. When that

occurs, call the police. You may never get your noses out of sexual assault on college campuses, but I will not stop fighting the overreach until you do.

My life's mission will be to expose the ineptitude and corruption in these college bureaucracies. I am confident that they will always be either inept or corrupt. This kangaroo court took place at Drake University in Des Moines, Iowa. Thank you.

MODERATOR: Thank you. Up next is Stephen S.

Stephen, please unmute your mic and begin providing your comments.

STEPHEN S.: This is Steve Snyder-Hill, and I'm a retired U.S. Army major, having served the combined total of 26 years in the U.S. Army and the Army Reserves. And I also happen to be one of the many hundreds of sexual assault survivors of the abuse perpetrated by [REDACTED].

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

MODERATOR: Next commenter is Zoe L.

ZOE L.: Hi. My name is Zoe Levitt, and I'm a student at MIT, and I'm a survivor who went through the Title IX process just this last fall.

I'm here to speak first about timeline, and to ask the Department to use the 60-day timeline put in place by the Obama administration.

The Title IX process is extremely harmful to survivors, and the longer it drags on, the more it impedes students having access to their education. My case went on for six months, and during that time, I was unable to do summer research, and had to take a leave of absence from school.

And I know students at my school who have been, who have had cases drag on for up to two years, and that's absolutely unacceptable, and especially makes it hard for students to focus on school while they're going through a Title IX case. And so it's really important that schools are running these cases quickly, because

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they do have the capacity to do so, if they hire more people.

The second thing I would like to ask for is that the new regulations really emphasize the importance of support for survivors, because that's something that a lot of people really need, and training around faculty and staff in how to support survivors.

I know of students who have had professors stop talking to them just because they don't want to be involved at all when the school sent them information related to cases. And so, and other students who have been turned away from therapy, which they really needed. And that support is a really important part of keeping students in school.

And then, finally, the last thing I'd like to mention is that the -- for students looking to overturn cases or seek justice, the preponderance of evidence standard is really difficult because it means that the school has to

be deliberately indifferent.

And there are a lot of ways where a school, while they try to, may be aware, and try to address the harm, but they do things that are wrong, such as make a biased decision. And students should be able to appeal the fact that a school made a biased decision. Thank you.

MODERATOR: Our next commenter is Hannah S. -- F.

HANNAH F.: Good evening. My name is Hannah Forys, and I am a recently graduated social worker in the field of sexual violence. I am also a survivor of childhood sexual assault.

My assault was by a family member, and thus not covered under Title IX, but I emphasize with every survivor who has spoken over the last few weeks, who has had to continue to see their assailant, and worse, realize they are not protected by the systems in place. That pain is just as unbearable as the assault itself.

My personal and professional

background have given me a front row seat to the epidemic that is sexual violence in this nation, in particular in our nation's schools. The Title IX changes made under the previous administration, making the process mirror a criminal trial, goes against the very nature of Title IX.

By removing the 60-day investigation requirement, schools can prolong the process until the perpetrator has graduated, or the survivor has dropped out, or transferred, because of the continued presence of their attacker.

These changes have and will continue to affect survivors who are already marginalized because of their race, ethnicity, national origin and emigration status, the LGBTQ community and disabled survivors, who already do not have access to their institution.

Survivors reach out to their school administration because they need to feel safe on their campus. They cannot feel safe with the

perpetrator present, and thus the goal is not to prosecute but simply to ensure every student has the right to attend classes and extracurriculars without fear.

Confining it, an institution's responsibility to actions only in institutionalized property, in buildings, alienate high school students assaulted at away events or competitions. This excludes the violence perpetrated in off-campus housing at universities.

Sexual assault and dating violence are not confined to campus, and so neither should protections. Survivors deserve more than the bare minimum of what the law requires. These regulations should rely on best practices and survivor input, to ensure all students are protected and institutions are held accountable.

Last year, survivors across the nation watched the previous administration enact regulations that protect institutions first, and

every single one of us felt it like a physical pain. It is within your power to right this wrong, and to stand with every student survivor in a resounding, no more. Thank you.

MODERATOR: Thank you. Our next commenter is Jeffrey M.

JEFFREY M.: Hello. Thank you for the opportunity to share my thoughts regarding the rights of accused in Title IX tribunals.

From 1987 until 1988 I took part in the U.S.-Soviet exchange at Moscow State University. My longtime girlfriend was a Soviet citizen and resident of suburban Moscow, and she had a promising job at a Soviet international trading firm.

On one of our dates, we went to a bar that accepted hard currency only, and on our way out, two KGB employees stopped us, and took my girlfriend for interrogation. The KGB refused to let me in to speak with the interrogators, and I was ordered to leave.

Ultimately they released her, and she and I left together. Later, I learned that because she had been with a foreigner in a hard-currency bar, it had been determined that she was a prostitute.

At the time, during glasnost, there was a big societal effort to identify and punish prostitution and criminality, generally. The KGB ordered my girlfriend's employer to note the finding of prostitution in her work papers, which would result in her losing her excellent job, being directed to more menial work, and destroying her career.

As we consider chartering away from the August 2020 Title IX regulations, there are some lessons from this 1987 miscarriage of justice. A unitary investigator, prosecutor in the KGB determined my girlfriend's fate. Counsel was not provided.

There were no defense witnesses. Showing guilt beyond a reasonable doubt was not

required. And there was no real presumption of innocence. Rather, there was a presumption of guilt, because she was young, attractive and in a foreigner's bar.

Most importantly, because the penalty that would be imposed was not a trip to Lefortovo prison, but instead a blot on her record, there was little procedure or due process expended on her behalf. But we were talking about her hopes for a good life, by Soviet standards.

Until August 2020, a U.S. Title IX accused could reasonably expect no active participation of counsel. The mandated standard approved was preponderance of evidence. Witnesses could not be compelled to appear by the college, and the accuser might not appear for questioning.

There could be a unitarian investigator-prosecutor-judge model, or one in which all were just influenced by the college's Title IX bureaucrats. And let's be honest about

presumption of innocence. We were living in an environment of start by believing trauma-informed investigations. The accuser was given credibility just because that party had troubled to come forward first.

Of course, just like my Soviet friend, the accused in Title IX enjoys much less in the way of due process protections, that in the criminal context, because no one's going to prison, they are just losing their dreams.

The KGB was serving what it perceived to be a societal good, cracking down on prostitution, and they ran roughshod over process and independent rights to get there. Our societal good is to get -- is to rid campuses of the alleged rape epidemic.

When you take away enough procedural protections, miscarriages inevitably follow, in destroying young people's lives, dreams. Dreams, lives matter.

MODERATOR: Thank you. Our next

commenter is David G.

David, if you could unmute your mic, and begin providing comment. David, your mic is open. Could you begin providing comments?

DAVID G.: I'm sorry, are you speaking to me?

MODERATOR: Yes.

DAVID G.: Okay, great. Good evening. I'd like to speak to you tonight about the potential effects of Title IX enforcement on students on the autism spectrum.

While this is a topic that unfortunately has not received as much research as it deserves, there's good reason to believe that autistic students are at elevated risk of being the target of false allegations.

There's one case that has been documented in the media where this has happened, involving a student at Navarro College in 2015. This student, like many people on the autism spectrum, has a deficit known as prosopagnosia,

that makes it difficult for him to remember and recognize the faces of other people.

Because of that, he mistakenly identified a woman on campus as his friend, and he hugged her and kissed the top of her head. For this offense he was charged with sexual assault and kicked out of school.

I think hopefully we can all agree that this sort of innocent mistake should not be treated as the worst thing that a person can do, short of murder.

There's also good reason for concern that the affirmative consent standard in use at many schools can effectively discriminate against autistic students.

This standard in many cases requires that consent be enthusiastic. Supporters of it call it yes means yes, but in practice, yes may actually mean no, depending upon the nonverbal cues at play.

But one of the major impairments

that's present in autism is difficulty reading things like facial expressions, tone of voice, body language, and the semantic and pragmatic aspects of language, more colloquially known sometimes as reading between the lines.

Therefore, an autistic man can fail to read these cues and generally believe that he has consent, when the woman may mean something else. And to treat this understanding, this misunderstanding as if it was a sexual assault is a great injustice.

I'll also note that many autistic individuals go undiagnosed until well into adulthood, and therefore don't have the luxury of being able to play the disability card. Therefore, really the only way to ensure that autistic students are treated fairly is to ensure that everyone is treated fairly.

In terms of solutions, we should be prohibiting the use of the affirmative consent standard and ensuring that we use an

appropriately narrow definition of sexual assault that distinguishes between a violent crime and an innocent mistake. Thank you.

MODERATOR: Thank you. We will now pause to prepare for the next commenter.

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

MODERATOR: Next up is Tito P.

Please unmute your mic and begin when ready.

MODERATOR: He's --

MODERATOR: Please unmute your mic, and you'll be ready to speak.

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

MODERATOR: Tito, go ahead and unmute your mic, and you may begin.

(Pause.)

MODERATOR: Looks like Tito had some more technical difficulties. We'll be back in a moment for next comment.

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

MODERATOR: Tito, let's try again. If you can unmute your mic, you may begin speaking.

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

MODERATOR: Tito, go ahead and unmute your mic, and begin speaking. Let me first confirm that we can hear you.

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

MODERATOR: Tito, you can begin speaking when you're ready. Just make sure you turn your volume down a little bit.

Tito, turn your speaker volume on your computer all the way down and you can begin.

TITO P.: Yeah, I just did. Can you hear me straight now?

MODERATOR: We can hear you now. Feel free to begin.

TITO P.: Okay, thank you very much.

So I had a couple of questions, which I'm probably, everybody's asking, and I'll be able to listen in after this conversation. But I was wondering about the timeline for changes, if there are going to be changes, what that timeline would look like, and how soon would they be allowed to be implemented.

Would they be reverted back to the last regulations or would they be complete changes? One of my, the biggest issues that we've had on our campus and a lot of questions of, with the, as it pertains to the hearing process, where if a formal complaint is filed, leading to a hearing process, that causes a lot of issues with people concerned on being victimized again by having to go through that process and the way it's set up now.

So there's a lot of questions around would that still be the same, and if not, what would that look like, as far as differences. That's -- those are all the questions I have. I

don't want to up a bunch of time because I know you guys are getting a lot of questions, but those are some of the bigger ones.

And I'm sure that some of the ones, other ones that I wanted to ask are probably being asked, and we're hear about it, but those are some of the concerns that we see on this campus, and some other campuses that have reached out to me as well, as far as discussions, and just the process seemed to kind of -- a little bit stringent when it came to the complainant.

And I think that has turned some of the complainants away from wanting to file a complaint and receive services. And, actually, in some cases, not on our campus but other campuses, students have talked about leaving school because of that.

And also, when students go on field trips, we have a lot of campus field trips, and they leave the country, and not having that jurisdiction of, even over maybe a campus event, leaving the campus, leaving the country, them still not being part of that, the process when entering the country back in, from what the new regulations say.

So those are some of the concerns that students had and that I had, and some of our deputies had, excuse me, our investigators had on this campus. And so I will relinquish the rest of my time to whoever's next in line.

But thank you very much for your time and going through this process to, I guess, get the best outcome we can for people. Thank you very much.

MODERATOR: Thank you, Tito. This concludes today's sessions of the public hearing. We'll begin again tomorrow morning at 9 a.m.

(Whereupon, the above-entitled matter
went off the record at 7:05 p.m.)