



Transcript of Title IX Public Hearing Notice of Language Assistance

Notice of Language Assistance: If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

給英語能力有限人士的通知: 如果您不懂英語, 或者使用英語有困難, 您可以要求獲得向大眾提供的語言協助服務, 幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊, 請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線: 1-800-877-8339), 或電郵: Ed.Language.Assistance@ed.gov。

Thông báo dành cho những người có khả năng Anh ngữ hạn chế: Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: Ed.Language.Assistance@ed.gov.

영어 미숙자를 위한 공고: 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일주소 Ed.Language.Assistance@ed.gov 으로 연락하시기 바랍니다.

Paunawa sa mga Taong Limitado ang Kaalaman sa English: Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na inpormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalín, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: Ed.Language.Assistance@ed.gov.

Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.

U.S. DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

+ + + + +

PUBLIC HEARING ON TITLE IX

+ + + + +

FRIDAY

JUNE 11, 2021

+ + + + +

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

(9:00 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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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'll now begin the hearing. The first commenter is Louis E., followed by Riya S. Louis feel free to unmute your mic and begin speaking. Louis, please unmute your mic. It looks like Louis is having some technical difficulties. If you don't mind opening your chat, we'll try to help you out.

LOUIS E.: It's unmuted now.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

MODERATOR: Okay. Great. You may begin.

LOUIS E.: I just wanted to thank the Department and the Secretary and the Assistant Secretary for having this hearing. We appreciate your desire to hear from us in the field that are responsible for implementing this important law.

And I just wanted to say, my basic comment is please consider ways to streamline this entire process. It went from fairly simple to extremely complicated last year, and while we understand the intent was to provide appropriate voice to all the parties involved in a complaint and in the complaint process, it became cumbersome in many ways and we think in part the importance of hearing from both the person filing a complaint and the respondent is critical. We don't want to lose any of that in this fine process. Any way that you can streamline the thing.

We have a complaint process here in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Georgia for state school employees that is fairly straightforward. We have a fairly straightforward process. There's a couple of flow charts. You know exactly what you have to do. You can move through the process quickly and while we have a similar guidance set up for Title IX, you know.

And for Title IX the Title IX one is like the Bible in terms of the volume. And the local process, the state process is just a few pages. So we just are seeking to have it streamlined because we, you know, as we go through a process of a Title IX complaint, we want to make sure that we've taken into account everything.

But we also don't want to have so many hoops to jump through and so many steps to follow where we're focused more on the process than we are on the complaint and, you know, providing everything that everybody needs in the complaint process, to be able to be protected. So that's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

it. Thank you very much.

MODERATOR: Thank you. Next up is Riya S.

RIYA S.: Hi. Thank you for giving me the opportunity to speak today. My name is Riya Seth and I'm a state champion wrestler. Since I started wrestling in 2017, I've been competing on a male dominated team where I've had several experiences of sexual harassment.

Luckily once I joined my high school team, I had access to information about my protection through Title IX through my local Title IX officer. This enabled me to report my experiences and I worked with the Title IX officer to make some positive changes.

After doing so I wanted to understand how deep issues of harassment were in the area wrestling and so I reached out to several dozen female high school wrestlers. I was saddened to hear that the overall majority had experienced sexual harassment in this sport.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

However very few had spoken up or reported their experiences. For many this is because they didn't know about the Title IX protection, they feared retaliation and didn't even know where to report their experiences.

Hearing the stories of other girls became the catalyst for me to work towards fixing the problems in wrestling and other co-ed sports. I knew a change needed to happen.

I began working with school administrators, athletic leaders, and local politicians to work towards preventing harassment from occurring especially on co-ed athletic teams.

Through my work I realized that although situations of harassment are complicated, they can significantly be reduced through prevention efforts. I ask you to require secondary schools put on prevention and education programs to educate community members of our gender-based items.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Every secondary school should provide parents and administrators with a written copy of its rules and policies regarding gender-based misconduct that includes clear definitions of inappropriate conduct, how to report incidents, any available resources and accommodations for victims and the disciplinary process by which the school investigates a report.

I do know sexual violence and harassment does not begin in college. I ask you to protect young people from experiencing sexual violence and empower survivors to seek justice. Thank you so much.

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

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

MODERATOR: Next up is Erin P. Erin, please unmute your mic and begin when ready.

ERIN P.: Hello. My name is Erin Prangley and I am the Director for Policy for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

National Association of Councils on Developmental disabilities. Thank you so much for the opportunity to provide comment today regarding how the Title IX regulations affect students with disabilities and in particular those with developmental and intellectual disabilities.

Students with disabilities are more likely than their peers to experience sexual harassment, less likely to report it and more likely to be pushed out of school as a result of sexual harassment.

Schools must meet their obligations to address this harassment under both Title IX and laws that protect the civil rights of students with disabilities. And they, these students depend on OCR to deep understanding of not only Title IX but also the interplay between Title IX and other federal laws ensuring students with disabilities receive education free from discrimination.

In 2019, the Consortium for Citizens

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

with Education Task Force responded to former Secretary of Education, Betsy DeVos's proposed regulations to eliminate the strong OCR enforcement tools that severely undermined the safety for students with disabilities in our education system.

Twenty-three national disability advocacy organizations signed on to the letter which underscored how the DeVos proposal, which is now final, would make schools less safe and negatively impact students with disabilities.

And I encourage you to take a look at that CCD Education Task Force written comments that will be submitted later today. And I incorporate by reference all the arguments that we made in that. We must make sure that any regulations define sexual harassment in a meaningful way and hold schools accountable.

The broadest definitions must be used to encompass the broad variety of students and their experiences. Children with disabilities

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

are at great risk of sexual abuse and violence.

In general children with disabilities of both genders are 2.9 times more likely than children without disabilities to experience abuse and violence, and college students with disabilities are also more likely than their peers.

In fact, 3.6 percent of undergraduate females with disabilities reported non-consensual sexual conduct involving force and incapacitation. In whatever regulations are developed, I encourage you to remember these students with disabilities and make sure that the interplay with these laws is seamless. Thank you very much.

MODERATOR: Thank you. Next up is Allison O., followed by Courtney D.

ALLISON O.: Good morning. I'm extremely grateful for the opportunity to provide the Department with a comment. My name is Allison and I'm a college student whose life has been

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

irreparably changed by campus sexual violence.

While I cannot give you the specific details of what I endured that night and what I continue to go through in the aftermath, I shared this so you know that I do not speak about Title IX from a hypothetical place.

Just know that I will never forgive my rapist for taking things away from me, that I did not know someone can take fear from another person but I will also never forgive my university for helping him take some of what he did or just using Title IX investigation.

As the Department of Education, I am sure you have read through the DeVos guidance time and time again, all 554 pages, and most of which are nothing more than anti-survivor rhetoric. It would be insulting and a waste of your time for me to sit here and detail all the problems because I know you know what they are.

Simply put there is no way to reform the DeVos guidance. Nor is there a way to provide

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

schools with enough resources to make this investigative model a just process because the policies are based on the idea of ensuring that survivors have less rights than their rapist. It is therefore vital that the current guidance is rescinded immediately and replaced with a survivors insured process.

This new process must be transparent. It should mandate universities to provide updates and options. This process must be fair. It should ensure that universities are providing survivors with the legal, physical, and emotional support that they need to participate equally in an investigation.

This process must be safe. Survivors should be able to withdraw consent at any time during the process. This is barely a start but these must be cornerstones of any proposed Title IX policy.

If even an ounce of this was present in my Title IX investigation I might still be on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

track to graduate with my friends. I might not have had to take over a year off of school to cope with the injustices I was facing at the hands of those who harmed me and at the hands of my university.

I might still even be creating art at my new university, something that was my whole life until my assault took that from me, too. I resent Title IX for not protecting me when I needed them the most, which is why I am pleading with you to take action immediately.

Every day that this guidance is in effect is another day where people are being irreparably harmed. Title IX is intended to protect everyone's equal right to education and although we should not be survivors are currently not considered in the context of this basic right.

I thank you again for your time and implore you to rescind and rewrite the current guidance immediately. This is not what due

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

process looks like. Thank you.

MODERATOR: Thank you. Next up is Courtney D.

COURTNEY D.: My name is Courtney. I serve as a trauma counselor on a college campus. And Title IX -- I've served as a trauma counselor on a college campus, a Title IX specialist. Now I'm an advocate at a campus and I come today with those experiences in mind to make three suggestions.

First I want to speak about the narrowing of the definition of sexual harassment under the DeVos rule to severe, pervasive, and objectively offensive. This narrowing of the definition was a direct contrast and steps back from the previous efforts to ensure more reporting of sexual harassment on college campuses.

Title IX should be encouraging reporting, not limiting the scope of reporting. When a campus is allowed to disregard behaviors

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

that cause harm to our students and our community because those behaviors don't meet three difficult parameters for failing to ensure that the environment is free from sex discrimination and sexual harassment.

When we fail to address situations as they are reported to us, we allow them to continue to grow and become more severe and more severe impacts will have our community facing a lot of difficulty particularly as student survivors.

As the DeVos rules were rolled out, I recall a period of time where students were discouraged and felt like the incidents that were harming them were not severe enough to warrant more attention.

It's impossible to know how many students were left behind by the narrowing of this definition and therefore it's essential that we move forward by broadening the definition back out to include all behavior that harms our community and creates an environment where sex

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

discrimination thrives.

Next I want to talk about the impact of the requirement for cross-examination and how that's impacted my campus and the survivors I work with. As an advocate I'm in a unique position where I truly get to support survivors without investigating or needing to know what happened to them.

When the advisor of their choosing became required to cross-examine the responding party, myself and many other advocates across the country realize that our role of supporting survivors and in the process had changed drastically overnight.

Many advocates, myself included, no longer felt like we could serve as an advisor for survivors, given the complexity of asking questions to respondents. Some campuses responded by allowing advocates to be a second support person.

Unfortunately, my campus did not go in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

that direction and we had to stop being a part of the process altogether. I believe this was very detrimental to our students and that students became even more fearful of coming forward with an investigation.

Campus systems do not have the same protections and trainings as criminal justice systems and therefore should not have the same type of cross-examination. Finally I want to talk to you about the importance of ensuring that we have strong policies and practices to prohibit retaliation.

Whereas Title IX is meant to ensure equity on the basis of sex and prevent sex discrimination, I'm increasingly concerned about the increase in retaliation from both schools and assailants on survivors who attempt to report their sexual assaults or engage in campus activism.

In the short period of a year we went from having a robust student activist base on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

campus to absolute silence. Our students were afraid to advocate and participate in the process.

I began hearing reports over and over again that people were afraid to report and they felt like they couldn't speak out. We need to make sure that these students are protected and safe from retaliation. Thank you for listening.

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

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

MODERATOR: The next commenter is Marley P.

MARLEY P.: Hello, can you hear me okay?

MODERATOR: Yes, we can hear you.

MARLEY P.: All right. Thank you. Can I go ahead?

MODERATOR: Yes. You can begin.

MARLEY P.: Thank you. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Hello. My name is Marley Pemberton. I am a 2020 graduate from Arizona State University where I fiercely advocated with my peers for violence prevention, education, and awareness, as well as adequate survivor support services for students who have experienced sexual misconduct.

As a recent college graduate who is now working to pass student- and survivor-written, survival-centered legislation on the state level in Arizona to prevent campus sexual violence and to support student survivors.

I come to you with vital and unique perspective of what students and survivors need right now. I'm proud to be here speaking with you and with me, I carry the voices of many who have been consistently left out of these conversations, in hopes that you will hear us today.

The current Title IX rules limit access to education, cultivate hostile involvement in violent environments, cultivate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

hostile environments on- and off-campus and derail student academic and long-term career goals.

Student survivors have a right to an education free from violence. It is their civil right. Three minutes is not enough time for me to explain how the current Title IX rules atrociously harm students.

How I've witnessed the current systems in place irrevocably harm my peers. Nor is three minutes enough time to advocate to you what urgent life-saving changes must be made to the current Title IX.

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

Student survivor voices are too often left out of these conversations and further silenced beyond the walls of their institutions.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

In this case that resulted in a rule that hurts student survivors ten-fold more than it supports them.

Just as you have set a precedent of actively listening to and incorporating the feedback and needs of those most impacted through holding this public hearing, 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 effective change. 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 Jordan D. Jordan, please unmute your mic and you may begin speaking.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

JORDAN D.: Thank you for holding this public hearing today. My name is Jordan. I'm a gay male survivor of campus sexual assault. I was sexually assaulted my freshman year and although it took me years to truly come to terms with what happened, I eventually reported my assault to my university.

After about half a year my assailant was finally found responsible for sexually assaulting me and was suspended. One reason it took me so long to report what happened is because what happened to me, an assault between two gay men is not what I was taught sexual violence looks like.

I didn't know then that LGBTQ people face higher rates of sexual violence than their straight and cisgender counterparts. That's why it's critical that any new Title IX rule make explicitly clear that schools have a responsibility to respond to sexual violence against LGBTQ people and that Title IX

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

prohibition on sex discrimination prohibits sexual orientation and gender identity discrimination.

If the current Title IX rule was in effect when I was a student, I don't know if my assailant would have been found responsible. The current Title IX rule, by offering schools the opportunity to choose clear and convincing standards for Title IX investigations, allows schools to tip the scales to favor the respondent.

And therefore, I urge the Department to restore previous Title IX guidance that mandated a preponderance of the evidence standard, the same standard that's used in most civil cases.

I also urge the Department to restore its recommendation that investigations conclude within 60 days. The more than half a year I spent waiting to learn if I'd be sharing a campus with my assailant were some of the difficulties of my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

life.

And no one should have to wait for more than half a year for their Title IX case to conclude. It's been about a decade since I was sexually assaulted but Title IX remains really relevant to my life. About two months ago, two weeks before paperwork to enroll in my dream law school was due, I learned that my assailant was also a 1L at that school.

I immediately contacted the Title IX coordinator and I was really relieved to learn that protections could be put in place if I decide to enroll. However, under the current rule, my school wasn't required to offer these protections because the sexual assault occurred on another campus.

I know if these accommodations weren't available to me, I would have ended up at a different lower rated school. I don't think anyone should have to choose between their dream school and being safe on campus.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

So I also urge the Department to revise the Title IX rule to make clear that schools must address sexual violence, all sexual violence that creates a hostile environment for students regardless of where it occurred.

I never know what this law school knew about my assailant's history of sexual violence when they decided to admit him. I know from others though that I wasn't the only person he sexually assaulted.

And I know as person's whose life was permanently impacted by his act of violence that my assailant has never done the necessary work to repair the harm he has inflicted.

While I believe it's possible for people who commit sexual violence to reform, I also believe that it's important that schools making admission decisions have the opportunity to weigh the dangers repeat offenders pose to their student body.

And therefore, I urge the Department

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

to issue guidance to schools in how they should share and what information they should share about repeat offenders. Thank you.

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

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

MODERATOR: Next up is Finley M. Finley, you may unmute your mic and begin speaking.

FINLEY M.: Hi. Can you hear me okay?

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

FINLEY M.: Perfect. Hi, my name is Finley Muratova. I'm an American University senior and survivor of sexual abuse myself and student journalist working with victims of Title IX's pitfalls and failures.

Over the last year I've heard numerous stories of pain and despair from fellow student survivors and all of them had one thing in common,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

that being severe mistreatment by their college's Title IX office.

A survivor once told me she was not informed about her right to bring a lawyer to the hearing, unlike the perpetrator who brought his lawyer for emotional support. His lawyer even argued in front of the victim that she just wasn't drunk enough for the encounter to be considered rape.

And neither person was interrogated at length about the type of underwear she wore the night she was raped. In the following months she felt guilty and worthless because the questioning wasn't done with respect for the victim in mind.

A different individual was forced to continue working with their advisor who groped and propositioned her. This happened despite the investigation concluding that her claims were credible. Her advisor had numerous accusations filed against him years prior to the victim even meeting him.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

She would have never been assaulted if those in power took action. In my field of work stories like these seem never ending. These are the stories of young people who turned to their schools for protection but instead of receiving help they suffered further.

Institutions and the Department of Education bear a responsibility to protect student survivors. So why don't they? Based on the stories I heard from more than 20 sources, I'd like to offer some amendments to the way colleges handle sexual violence cases under Title IX.

Number one, there must be a mental health professional trained in working with sexual abuse victims present in the room whenever the victim is interacted with. They must be allowed to step in if re-traumatization might occur.

This would eliminate situations in which survivors are insensitively interrogated

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

and victim-blamed, as was the case in source was condemned for wearing bright red underwear.

Number two, institutions should not be allowed to reinstate any staff members including tenured faculty who have been found guilty of sexual misconduct upon investigation. This could have prevented the accused advisor from continuing to interact with the victim with full impunity causing her pain on the daily.

Number three, Betsy DeVos' amendment to Title IX says institutions don't need to investigate assault committed off-campus by or against their students. But over 40 percent of rapes in college in fact happen off-campus.

This rule must be repealed promptly and emergently to avoid causing further harm. Fighting for survivors should not fall on the shoulders of other young people because institutions have failed them. That is the job of those in power, law makers, administrators and they need to do it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

I'm hopeful that the Department of Education will take note of the stories told this week and do the right thing, step up and protect student survivors. Thank you and have a great day.

MODERATOR: Thank you. Our next commenter will be Jen S.

JENANI S.: Hi. Hi.

MODERATOR: Go ahead.

JENANI S.: Okay. Sorry. Thank you for your time. My name is Jenani Srijevanthan and I'm the Director of Policy and Marginalized Outreach for the Georgia Network to End Sexual Assault.

I am here today to discuss the regulations implemented in Title IX of the education amendments in 1972 Title IX were final by the U.S. Department of Education on May 6, 2020, as it pertains to my state of Georgia and higher education.

To be frank, the interpretations of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

the final rule do not work for my state. Not only are many of them blatantly illegal, but they also give validation to institutions that go as far as retaliate against survivors of gender-based violence when they come forward.

Since release of the information of this hearing I have been going around the state interviewing anyone who wanted to talk to me about the implications of Title IX on their institutions and higher ed in Georgia.

Individuals have disclosed to me that institutions in Georgia have been using the final rule in a number of ways that have already raised concerns, despite a majority of students being home for the last year.

We had heard that institutions will mandate students to complete an entire investigation process before even allowing informal resolutions to be made available. Institutions are having individuals serve as advisors but only telling the advisors they can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

advise on the cross-examination piece alone.

Student advocates are not being allowed to support students in hearings because they are not a quote/unquote advisor, therefore students have to use their breaks during the hearing process to receive assistance from campus support staff, which are not made available to them during the hearing itself.

Some institutions are going as far as investigating claims of sexual harassment that are reported by campus mandated reporters, even if the survivor says no. The worst of all, many institutions are not mandated to share their non-Title IX policies surviving sexual harassment publicly.

So students are often left in the dark completely on how on an institution will handle their case if it does not fall under the purview and jurisdiction of Title IX. As a queer individual I'm also enraged that the final rule on Title IX makes no effort to acknowledge

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

LGBTQIA survivors of students within higher education.

While Georgia has gone blue in the national election that does not mean local and statewide politics mirror it. Our statewide rape definition does not include LGBTQ survivors since we still utilize the definition of carnal knowledge.

If these policies were written to encourage students to handle these complaints in the court system by continuing to have these policies in place who we are actively telling and even going as far as ignoring LGBTQIA and TGMC survivors of gender-based violence within higher ed.

LGBTQIA and TGMC survivors are often left with less options than their heterosexual and cisgender peers in Georgia to not only keep them safe from sexual harassment and violence but also get justice and accountability when harmed.

In my state we really need to have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

something changed and make it different, therefore every day this policy is not changed, not only is the U.S. Department of Education doing a grave disservice to Georgia survivors of gender-based violence, but they're also continuing to blame and disregard protecting the rights of the Georgia LGBTQIA population. Thank you all for time today.

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 Grace G. Grace, feel free to unmute your microphone and begin speaking. Grace, please unmute your mic and you may begin speaking? If you're having technical difficulties please open your chat and we'll attempt to assist.

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

MODERATOR: Good morning. Anybody

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

waiting to speak, please open your chat so we can communicate. Next up is Noah D. Noah, feel free to unmute your microphone and begin speaking.

NOAH D.: Thank you. Good morning. My name is Noah Durnell and I'm the president of the Associated Students at the University of Montana. Our committee on equitable education has been closely following the effects of the DeVos guidelines on our campus and works to provide policy recommendations relating to the implementation at both our university and within the university system.

I want to note that while we advocate for the most sustainable, non-polarizing and equitable processes this committee was built on survivors' backs and to those survivors, thank you.

We further acknowledge the complex and historical relationship between the University of Montana, the Department of Education and the Department of Justice. Our 2013 Department of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Education MOU has contributed to better practices at our institution, increased accessibility, and reduced gaps in survivor services.

However our institution's growth on these issues has been stifled by the 2020 policies. Our committee has prioritized discussing four of our eight recommendations in our oral comment today.

First, we echo the comments of our SARC Director, Jen Euell on requesting that the Department provide a timeline on our complaints. As students we suggest the process from complaint gestation take no longer than five months or one semester.

Second, it is of utmost importance that the Department implements a robust conflict of interest check for all parties, staff, analysts, advisors, and Title IX personnel.

We emphasize the importance of recognizing the unique complexities that exist on small to midsized campus across the nation like

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

ours. Montana is a small state and the campus community is much smaller.

Therefore we find it imperative that the Department implements a standardized process of conducting conflict checks to recognize these institutions and their policies.

Third, policy relating to advisors should provide more clarity, less freedom, and should be standardized to increase neutrality. This can be accomplished by requiring universities to provide a neutral and trained advisor from a maintained list.

We further suggest that to reduce delays, universities be required to assign parties to advisors. Fourth, and most importantly, the Department should withdraw the use of any mandatory dismissals and implement a system that allows complaints to be dismissed without prejudice.

Students are not experts and dismissals based on failure to raise arguments in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

original complaints, dismissals resulting from a terminated relationship between school and one of the parties.

And failure to withhold the conferral of degrees pending the results of an investigation make Title IX dangerously ineffective to those who need its help the most.

We appreciate your time and feel there are more humane ways for the federal policies to explain access to educational programs and activities without practicing inequitable processes guided by protecting school liability. Thank you again.

We did provide a written public comment that goes into much more depth on some of the things I described that reflect the hard work of our equitable education committee who worked really hard to protect the student welfare and the welfare of survivors on University of Montana campus. Thank you again.

MODERATOR: Thank you. Next up is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Mark H., followed by Ruth V. Mark when you're ready please unmute your mic and begin speaking.

MARK H.: My name is Mark Hathaway and I'm a 30-year attorney admitted in California, New York, Illinois and Washington, D.C. My law partner, Jenna Parker, and I have assisted over 283 faculty in Title IX cases and have filed over 100 cases in a trial court and courts of appeal.

I urge the Department to ensure due process and civil rights for all students, faculty and staff and to maintain the current regulations at the very minimum. Here are three examples of why access to evidence, a live hearing before a neutral adjudicator, and the questioning of witnesses through the back and forth of cross-examination are so important.

In a very recent case, a Title IX investigator fabricated evidence to undermine the credibility of the female student, that she was incapacitated by alcohol and prescription medication when the male respondent had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

nonconsensual sex with her in his apartment.

If not for the live hearing and cross-examination, our client would have been denied a fair opportunity to present her case to an impartial panel and the case would have been decided against her by the Title IX investigator.

In the end, the hearing panel found our client to be more credible than the respondent. The second case concerns a YouTube video with over 21 million hits called, Rape charge dropped against USC student after video surfaces.

The YouTube video shows a drunk female student gesturing to her friend outside a nightclub, like she wants to have sex with a male student. In fact, they did have sex about an hour later at the female student's apartment.

The female student never filed a Title IX complaint, but the university Title IX office found the male student responsible for sexual assault without any hearing and ordered him

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

expelled.

After a court decision against the university there was a live hearing with cross-examination. The female student confirmed that there was no sexual assault and our client was cleared and has graduated.

And third example concerns two students who were both intoxicated. Both were investigated for non-consensual sex due incapacity. But without access to all the evidence and without a hearing, the Title IX office expelled only the male student while clearing the female student, even though both students were intoxicated.

Later it was learned that the Title IX office had concealed evidence of the female student bragging to her friend early the next morning about hooking up with the male student and that she was walk of shaming past her friend's apartment.

After a court ruling required a live

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

hearing, right before she was to testify, the female student asked to withdraw her accusation and the two students used an alternative resolution.

Our client was able to continue with his education and is seeking recovery from the university for three years of lost education and other damages. Over the past few days, we've heard from many people who are impacted by Title IX from many points of view.

That is why it is so important to include civil rights and due processes of all parties and to keep the protections of the current regulation. Thank you.

MODERATOR: Thank you. Next up is Ruth V., followed by Kristina S. Ruth, feel free to unmute your mic and begin.

RUTH V.: Thank you. Thank you for this opportunity to comment on the Title IX regulatory framework and to share ideas about how the Department should move forward. I am an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

attorney with a nonprofit that provides free civil legal services to victims of rape and sexual assault.

I have worked with campus sexual assault victims in the context of the Obama era guidance, as well as under this new regulatory framework of the Title IX rule. I will tell you firsthand, this framework does not lead to more fair and reliable outcomes.

One of the most dangerous provisions of these regulations is the exclusionary rule in their admissions of the culpability from a respondent that they in text messages, emails, or social media, the respondent can decline to be cross-examined and all of those admissions are excluded from consideration by the decision-maker.

By contrast, in a criminal legal proceeding with a much higher burden of proof, these would be considered admission of a party opponent and would not be automatically excluded.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

That is not the case in this context.

There is automatic exclusion and no discretion given to the institution. In reality, how this plays out demonstrates just how one-sided and unfair this rule is. A victim must be cross-examined or else all of the information they've provided in the course of an investigation, including the original allegation, that's all thrown out.

A respondent, on the other hand, often has a strategic advantage not to be cross-examined so that their own admissions are not considered. I have worked on cases where respondents beg the institution to apply their new Title IX policy even though the assault, the sexual assaults, occurred way before August of 2020 because of this very loophole.

In one instance, a respondent had written a letter to a victim admitting the assault. Under the guise of due process, the respondent argued that they were entitled to this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

new framework that would allow their own admission to be excluded from consideration.

How does this lead to reliable outcomes? The idea that it does so is so illogical when you see how it actually plays out. If the Department is authentic in its drive to address the rampant sexual harassment and sexual violence that occurs in education, the exclusionary rule must be removed. Thank you so much for your time.

MODERATOR: Thank you. Next up is Kristina S. Kristina feel free to unmute your mic and begin.

KRISTINA S.: Good morning. My name's Kristina Supler. I'm an attorney in private practice in Cleveland, Ohio. I'm speaking to you today in my capacity as chair of the Title IX Committee for the National Association of Criminal Defense Lawyers.

NACDL advances the mission of the criminal defense bar to ensure justice and due

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

process for persons accused of crime or wrongdoing. On a regular basis, Title IX proceedings intersect with the criminal justice system.

And students must navigate the complex issue of how to participate in a campus Title IX proceeding while not sacrificing the constitutional protections that are attendant to criminal investigations and prosecutions.

Given the potential, long term implications of Title IX hearings, it is essential that the Department of Education does not remove or weaken any of the due process protections created by the 2020 amendments.

NACDL commends the Office for Civil Rights for creating a requirement that educational institutions provide accused students with a presumption of non-responsibility.

Moreover, schools are required to provide accused students with detailed, written

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

notice of the charges against the student to allow complainants and respondents the ability to review all evidence and to also hold live hearings with cross-examination.

While all of these protections are important and indeed essential, live hearings with cross-examination are of the utmost importance. Courts regularly write that cross-examination is the greatest legal engine ever invented for uncovering the truth.

Though to be sure for cross-examination to be effective it must be carried out by a skilled advisor with training and experience questioning witnesses. Despite the improvements brought about by the 2020 amendments, campus Title IX proceedings still remain rife with inequities.

For precisely this reason OCR must preserve the due process protections in place and in fact work to bring about greater fundamental fairness to these proceedings. Without question

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

due process benefits all parties involved in Title IX proceedings. 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 Cynthia G. Cynthia when you're ready please unmute your mic and begin speaking.

CYNTHIA G.: Thank you for this opportunity to comment. I'm Cynthia Garrett, co-president of the nonprofit FACE, which advocates for wrongly accused students. As FACE parents, we believe our daughters and sons deserve Title IX policies that treat them fairly and equitably and give them every opportunity to represent their interests.

Over 700 accused student lawsuits and 200-plus court decisions in their favor demonstrate inequitably that before the 2020 Title IX rules, some school officials did not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

treat all students equitably.

Who are the accused students at FACE? Mostly men but also women, LGBTQ+, minority, disabled, ranging in age from graduate students to kindergarteners. Yes, children as young as five.

So, victim advocates frequently cite how minority students are particularly vulnerable to victimization, they too are the accused students who pay the highest price.

In fact minority, immigrant, first generation, and other students without resources to obtain legal advice pay with loss of an education they've worked so hard for, loans to pay for an adult diploma they'll never receive, their dreams, their dignity and a promise of a better future and a belief in the American sense of justice.

Is this the America we really want, with justice but only if you can afford it? You may not believe this but these students could be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

your sons, daughters, brothers, or sisters because as you know by now doing the right thing no longer protects you in this accusation equals guilt world.

Worse still and despite the fact the that preponderance-based decisions have a lower likelihood of accuracy particularly without procedures meant to ensure accuracy, transcripts of students found responsible are permanently marked with a disciplinary notation.

Unlike felons, for these students there is no ban the box. Their often minimized emotional repercussions have caused most FACE students to consider or attempt suicide, a few successfully, and those students and their families continue to suffer significant trauma.

Yet at FACE we still firmly believe it is possible to balance the interests and provide the equity both complainants and respondents deserve. In fact, having served on American campus sexual misconduct projects at the ABA as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

well as, as a liaison at the American Law Institute, I've seen it firsthand.

Please let's take into consideration all parties impacted by sexual misconduct allegations. We can do better. Thank you.

MODERATOR: Thank you. Next up is Natanya D. Natanya when you're ready please unmute your mic and begin speaking.

NATANYA D.: Thank you. My name is Natanya DeWeese and I'm an attorney with the firm of Shaw and Murphy in Ithaca, New York. I represent college students accused of Title IX violations and other misconduct.

I am testifying today to encourage you to uphold the current Title IX regulations, especially the provision requiring cross-examination by advisors. To a college student accused of violating Title IX, the possibility of losing their college education and future career is just as serious as a defendant facing criminal charges, but they have far fewer rights than

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

criminal defendants.

If the due process protections given to accused students in the 2020 regulations are rescinded, accused students will lose the few rights they had in these proceedings.

Before the 2020 regulations went into effect, accused students had very little means to challenge credibility or inconsistencies. This allowed complainants to dictate the narrative, resulting in hearing panels finding students responsible based on very little evidence.

In one case, there was evidence that the complainant admitted in writing that she consented, but she testified at the hearing that she did not. Without cross-examination, the respondent had no opportunity to ask follow-up questions or challenge her credibility.

The hearing panel therefore did not explore possible evidence of consent and found the respondent responsible based on the complainant's testimony. If cross-examination

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

had been permitted, the outcome might have been different.

The substitutes for cross-examination that the colleges had in place before the 2020 regulations did not give respondents a meaningful opportunity to question their accusers.

One college had students submit questions to the hearing chair in advance to ask each other at the hearing. The students were provided with questions ahead of time, allowing them to prepare answers in advance with no opportunity to ask follow-up questions.

Another college allowed students to email the hearing chair questions to ask during the hearing, resulting in the hearing chair changing the wording of questions so it asked something different than what the student intended.

With suspension or expulsion likely sanctions for students held responsible for sexual misconduct, there is too much at stake to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

not allow the truth to be explored. And accused students have felt like they are presumed guilty.

And nothing they say makes a difference, especially when they are not given a fair opportunity to challenge the evidence against them. Colleges cannot accurately determine responsibility without giving accused students a right to cross-examine their accusers.

I therefore encourage you to uphold the current Title IX regulations. Thank you.

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

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

MODERATOR: Good morning. This concludes this session of the public hearing. The next public hearing session will start in approximately two minutes.

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

MODERATOR: Good morning. First up is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Catherine S., followed by Jonathan T. Catherine feel free to unmute your mic and begin speaking.

CATHERINE S.: Good morning and thank you for this opportunity. Since 1995 I have worked in the Title IX and Civil Rights and Education field, first at the Office for Civil Rights of the U.S. Department of Education for 19 years, and since then for one public and two private universities.

Since August 2020, I have managed investigations up to and through the live hearing under the new Title IX rule. As such I want to address one key requirement of the new Title IX rule that I believe significantly undermines a core purpose of Title IX: to ensure a prompt, fair, and equitable process to all parties.

That is the requirement under the new rule, that parties and witnesses must participate in the live hearing and be subject to cross-examination or the hearing officer must not rely on their statements in determining

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

responsibility.

Here's a real-life scenario playing out across the country. Imagine an investigation in sexual assault. The parties and the investigator identify 25 total witnesses. You're now preparing for the live hearing, reaching out to advise the parties and witnesses of the hearing dates.

More than half of the witnesses for a variety of reasons, fear of retaliation, scheduling conflicts, decline to participate. This places the investigator in the untenable position of advising witnesses that, if they don't participate, the time they took to provide their statements to the investigator will not be considered by the hearing officer.

The message they hear is that their valuable time and cooperation with the process is not valued. This also places the hearing officer and the institution in the untenable position of rendering a decision that is forced to ignore

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

available, relevant evidence.

Prior to the new rule, what would happen is that schools would do their best to ensure witnesses were available for questioning at the hearing, however if they were not, hearing officers who are highly skilled individuals could still consider an absent witness's statement, but would exercise their judgment as to what weight to give it.

But they would not be forced to give that available relevant evidence zero weight, zero consideration as would be required under the new rule. Sometimes we have to go back to move forward.

The time before the new rule, the hearing officers were given the discretion to consider all submitted relevant evidence and to conduct questioning of the parties and witnesses, rather than advisors conducting courtroom adversarial cross more than met the requirement to provide a fair process.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Not allowing available relevant evidence to be considered due to an arbitrary rule harms not only both complainants and respondents, but also witnesses. Often our institutions valued faculty and staff and students, but we need to have faith and trust in our process.

This aspect of the Title IX rule must be changed as soon as possible to ensure a fair resolution process for all. Thank you very much. I appreciate your time.

MODERATOR: Thank you. Next up is Jonathan T., followed by Linda W. Jonathan you can unmute your mic and begin speaking.

JONATHAN T.: Hi. Can you hear me?

MODERATOR: Yes, we can. Thank you.

JONATHAN T.: Great. My name is Jonathan Taylor, founder of Title IX for All. I'm a former aide and instructor. Our website, Title IX for All, is home to the Title IX legal database, a comprehensive hearing house of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

lawsuits by accused students, which now exceeds 700.

Lawsuits by accused students exploded following the 2011 Dear Colleague letter and the following years opinions by judges across the political spectrum, male and female presiding over appellate and lower state and federal courts and of every creed and color have denounced the lack of due processes, gender bias, and other deprivations of rights in higher ed Title IX proceedings.

Since the 2020 regulations went into effect, new lawsuits by accused students have declined sharply and schools have won more lawsuits than they lost. This is a sharp reversal from the previous years and an indicator that things are generally heading in the right direction.

Since schools are now providing a greater degree of due process accused students less frequently find the need to sue for redress.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

And complaints tend to be weaker than previously leading them to be more easily dismissed.

In the grievance process, we see competing goals and values, increased reporting by alleged victims, preventing the recurrence of misconduct, respect for due process, group advocacy for either one or both sexes, and so forth. One goal must take priority, however, and that is the search for truth.

In the Title IX context, I mean, by truth, I mean the truth of the alleged incident. There are several structural elements which empower the pursuit of truth and they are, but are not limited to, neutral Title IX personnel with no conflicts of interest.

Timely notice provided to the accused student including a description of the allegation, the accuser, the date of the incident.

Relatedly, notice in the form of a prehearing phase that allows both parties to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

examine the evidence in play, live hearings that allow the presentation of evidence, questioning and answering phases.

Cross-examination by representatives of the parties, never the parties themselves, and the prohibition of trauma informed approaches to weighing and interpreting evidence specifically as opposed to its more appropriate use during intake interviews as well as to some degree, first responders and mandatory reporters.

Where the truth of the alleged incident cannot be found, schools should refrain from causing new harm to either complainants or respondents and instead focus on accommodations such as adjustments in living arrangements, classwork and the maintenance of mutual no-contact orders.

This is better than haphazardly issuing severe punishments, such as expulsion. The 2020 regulations are imperfect, but they are leaps and bounds ahead of the previous system in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

terms of overall fairness.

We cannot hope to address everything in the time allotted here. Whenever possible look to the wealth of reasoning available in court decisions. They are made with the insight of judges who have invested their lifetime in the pursuit of justice and while historically deferring to schools and matters of coursework decided that they had gone so far that a correction had to be made. Thank you.

MODERATOR: Thank you. Next up is Linda W., followed by Anissa C. Linda, you can unmute your mic and begin.

LINDA W.: Good morning. I'm Linda Williams and I'm the director of the Justice in Gender-Based Violence Research Initiative at the Wellesley Centers for Women at Wellesley College.

I've been conducting research for the past 48 years on violence against women. My focus, my focus on my current work is on investigation and adjudication of campus sexual

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

assault and justice systems response to sexual violence.

My colleague is April Pattavina, Mary Frederick, Alison Cares, and Nan Stein and I have recently concluded a federally funded study of college responses to sexual assaults on campus.

It's critically important for the Biden administration to change the rules promulgated by the prior administration not only to assure women equal access to education.

But also to contribute to change in a culture that currently at best minimizes and at worse encourages sexual violence, physical abuse, and sexual harassment of women and girls.

President Biden knows the issues well and it is on us to foster efforts designed to end violence against women and to take decisive action to hold perpetrators accountable.

The new Title IX rule set in place by the previous administration removed longstanding protections for survivors, access to support

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

measures and accommodations and requirements that school respond to all violence that creates a hostile environment whether it, whether it occurs on-campus or off-campus.

New guidance should reaffirm that Title IX offers a wide range of supportive measures and remedies, including protections against retaliation. The new regulations were misguided in requirements that colleges hold live disciplinary hearings during which those who've been sexually assaulted and those accused of assaulting them present live testimony and can be cross-examined.

It's not good for students and likely to create a more litigious and adversarial process and to have a chilling effect on reporting. Our research team examined policies and processes that colleges and universities use to address sexual assault complaints.

And in the course of our research we spoke to dozens of Title IX coordinators. They

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

face countless challenges and voice critical need for more well-trained investigators and for strong support from the institution so that they have an increased visibility.

Existing research is clear. We have convincing evidence that one in three women are sexually assaulted in their lifetimes and that perpetrator needs to be held accountable.

We know all of this because of high quality research and must consider it in reviewing our regulations and rules so that women can have equal access to education. Thank you very much.

MODERATOR: Thank you. Next up is Anissa C., followed by Blake M. Anissa you may begin.

ANISSA C.: My name is Anissa. I attend Delaware State University. I'm an advocate on my campus and I'm with the university survivor movement. Being an advocate was not a role I wanted to take over but it was a role that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

was forced on me after I witnessed destructive and degrading process we call Title IX.

I was assaulted in November of 2019 and went through the process without being aware of all of my rights. If that was not enough, I was repeatedly contacted by my abuser during the entire investigation process.

I'm one of the lucky ones at my university. My abuser was found responsible and a one-year suspension and no contact order was put in place. Little did I know the Title IX process was only going to get worse.

Three months later my abuser violated the no contact order by directly contacting me through social media. This contact caused me extreme duress and I ran to my Title IX office for protection and help.

Despite him breaking the order both of us were issued a warning for NCO violation. In June 2020, roughly a month and a half later, my abuser filed a Title IX case against me and used

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

the night that I was raped to claim I assaulted him, not the other way around.

Despite his claims being clearly retaliatory I was forced to endure a long, two-month process in which I had to be the basis (phonetic) degrading comments from my abuser. During this process, my abuser continued to cyber stalk and harass organization I participated in along with close friends of mine.

I was thrown in cycles (phonetic) every time I attempted to report a new harassment claim. I was forced to go to my university police department and be questioned and revictimized by the officer they ordered to file a Title IX NCO complaint violation.

His retaliation claim was eventually dismissed but it was after I already suffered severe mental and emotional trauma. And I will now have to spend months, if not years fixing the trauma that was caused.

If you think the trauma ended here,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

I'm afraid to say it didn't. My abuser weaponized the Title IX system and lack of enforcement to make life a living hell. I have filed more Title IX NCO violation complaints than I have fingers to count on.

And in November of 2020, my abuser filed another retaliation complaint against me and I was forced to endure another investigation. I was cleared again but it was not until I felt my dignity be ripped away.

In January 2021, I was informed that my abuser manipulated the Title IX system and got his ex-girlfriend to file another Title IX case against me for the same night I was assaulted.

I have endured four Title IX investigations in a little over a year. And I was forced to take incompletes almost every semester because of the harassment I'm continuously enduring.

What is happening to me has been occurring to so many survivors around the country

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

due to the current Title IX rules. This has to end. So I ask the Department of Education to show schools it is serious about effective enforcement of no contact orders.

And to enforce the existing ban on schools' entertainment of retaliatory claims like the ones I was forced to endure. Thank you.

MODERATOR: Thank you. Next up is Blake M., followed by Kristina T. We're going to move on to Kristina T., followed by Sarah C. Kristina please unmute your mic and you may begin.

Kristina's having some technical difficulties, so we're going to come back to her in a minute. Next up is Sarah C. Sarah please unmute your mic and begin.

SARAH C.: Thank you. Good afternoon. Thank you for allowing me to speak today. My name is Sarah and my husband and I are the proud parents of 15-year-old twins. We fully support the DOE enforcing Title IX protections for LGBTQ+

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

students.

Five years ago, just before the start of fifth grade, one of our twins came out to us as transgender. At times it has been extremely stressful navigating these uncharted waters, but having the support and protections from our school system has carried us through.

Like all parents, we worry about our kids and feel vulnerable sending them off to school for many reasons. But the worry intensifies for those of us who have marginalized children.

We have the added worry that our gender-expansive kids will not be treated with dignity, not only from their peers but from the adults they encounter throughout the day.

We just don't worry that they will have a bad day. We worry about their emotional health and safety. We need protections in place so that all kids are able to learn and grow in school environments which are free from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

harassment and discrimination.

Every student should have the opportunity to fully participate in all school activities regardless of sexual orientation or gender identity. Just once after our kid came out, they were scheduled to go on a multi-day school trip.

After a little bit of discussion, we made the decision to let our trans child sleep in the cabin of their choosing; after all, why should only one of our kids be allowed to be where they felt more comfortable and not the other?

How could I have explained to one child that their well-being was being taken into consideration and not the other? The school supported our decision. No one complained about where our child slept because he did just that, he slept with all the other kids.

No extra measures were taken to make this happen. This is how it should be for every student. Proper placement based on gender

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

identity only lifts up marginalized students and does absolutely no harm to the rest of the student body.

Language is critical for these kids. Respecting the language that you've used to identify their gender is not only polite, it saves lives. Studies show that using chosen names at home and school reduces depressive symptoms and suicidal ideation.

I can tell you from personal experience that this is true. Once we changed names of pronouns, our child began to thrive in all aspects of life, bringing him up to concentrate on things all kids should be thinking about: going to school, playing with friends, and soaking knowledge.

Our school system honors our student's chosen name and pronouns. Teachers only see our kid's chosen name, so when attendance is taken, he is respectfully acknowledged just like all of his peers.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

And again absolutely no one is harmed by doing this, but it significantly enhances our child's daily existence. How can supporting a kid like this even be in question?

It's the right thing to do. With as many as one in six youth identifying as LGBTQ+, it is critical that the Department of Education make it fair that our kids must be fully protected under Title IX. 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 Kimberly L. Kimberly, feel free to unmute your mic and begin speaking. Kimberly, feel free to unmute your mic and begin. If you're having any technical difficulties, please open the comments and let us know. We'll attempt to assist.

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

MODERATOR: Kimberly, we're all set. You may begin. I reset the clock for you.

KIMBERLY L.: Thank you. Good morning. My name is Kimberly Lau and I'm a partner and chair of the Title IX College Discipline Practice, a New York City based firm, Warshaw Burstein.

And over the years I've represented over 200 students at both public and private schools across the country including matters involving Title IX. I've also successfully litigated cases that have helped shape the legal standards that address Title IX liabilities.

And it's important to note that I represent both sides, complainants and respondents, so I'm well-versed in the unique perspectives of each. And while the Title IX regulations are not perfect, in my experience they represent a much closer version of fairness that balances the interest of all parties involved as compared to previous policies.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

The 2020 regulations, for example, give complainants more control over the process than they ever have before. Under the regulations, complainants can decide to file a complaint or request supportive measures or engage in mediation, whatever they decide is best for themselves.

For respondents, there were crucial changes made as well and because I'm a lawyer, it comes as no surprise that live hearings and cross-examination are values that I believe are very important as they comprise a basic foundation in due process.

Allowing due process should not be seen as a negative. Rather, it ensures the integrity of the results in the matter who prevails. In the past, some schools of reason that's later models (phonetic) and in real hearings.

And courts have struck this down repeatedly as being inherently unfair. Live

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

hearings guarantee that a separate fact-finder is able to fully assess credibility with live testimony and will allow proper form for cross-examination.

And that said, there's no question that cross-examination is an important fact-finding tool. I agree that parties should not be required or allowed to determine or ask questions of each other directly.

But the right to cross-examination has been heralded by courts across the country as a cornerstone based in fairness. While there are many positives to the regulations the following areas could be improved.

Regarding off-campus jurisdiction, having dual track discipline systems for sexual assaults that take place off-campus is confusing and will create an end run around the robust rights that are available to students charged under a Title IX process.

If a school is going to exercise

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

jurisdiction to the offense, the nature of the offense should control, not where the offense took place. And finally, regarding the issue of retaliation, currently students are not prohibited from speaking publicly about their Title IX matter.

But some students have abused this right by utilizing social media to publicly harass and shame. And the consequences can be deadly including attempted suicides.

There's a clear between freedom of speech and cyberbullying and harassment. Schools need the tools under Title IX to appropriately address these matters. Thank you.

MODERATOR: Thank you. Next up is Kristina T. Kristina, do you want to try again and unmute your microphone? Kristina it appears you're still having some technical issues. If you'll open up your chat, we'll attempt to assist.

KRISTINA T.: Can you hear me now?

MODERATOR: Yes, we can. You may begin.

KRISTINA T.: Okay. Great. Thank you. So my name is Kristina Tucker and I am here to speak on behalf of my children and also many other children that cannot speak up for themselves.

On January 29th of 2021, my ten-year-old twins were encouraged to engage in sexual acts on their school bus. The twins informed me of many other sexual conversations personally directed at them as well as others, in addition to physical violence all in which the bus driver ignored.

They described the hostile and fearful environment that no child should ever have to endure. Although I'm obviously personally invested with this situation, I'm here to speak up for the smallest children in our communities that cannot speak for themselves.

I went through the proper channels to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

request a sexual harassment investigation under Title IX. The administration initially spent a lot of time trying to get me to consider my request for an investigation telling me things like this is unnecessary.

The issue has been dealt with. These Title IX procedures are made for colleges, not public institutions. This investigation will make your children have to be interviewed. You don't want to do that.

They encouraged a DASA report which in where I live in New York state is a dignity act, or a criminal report as a substitution, as well as restorative meetings as a resolution.

Although I didn't understand the reason for trying to talk me out of it at that time, it became clear to me the district wanted this information to be hidden. Although the sexual harassment investigation was founded, the respondent returned to the bus ten days after launching the investigation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Unfortunately, more victims have come forward and more information has been obtained during the disturbing -- about the disturbing actions taking place on that school bus.

Although the school bus is video monitored and under Title IX, parents should be able to view all evidence, this video has been held under lock and key. Although I have obtained counseling for the twins, not one mental health provider from the school district has ever reached out to me regarding the situation.

When asked about the supportive services mentioned under Title IX, my children were then offered after school clubs. What a joke right? It's unreasonable to think this situation does not have significant impact on their lives.

I have been transporting my children back and forth to school for their protection and mental wellness. This affects my ability to do my job and takes away the healing and learning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

opportunities that they deserve.

My request to have this boy be provided separate transportation had been denied by all administrators because this boy had his punishment. No amount of punishment is going to help him nor the victim in this situation.

An equitable investigation of a Title IX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence and take into account the unique and complex circumstances of each case.

The investigator in this case did not receive any interactive formal training or follow the child interview protocol, which faced further trauma on my children. I'm asking that the Department require investigators who have received, to receive formal training in sexual harassment investigation. I'm asking for a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

person free of --

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

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

MODERATOR: Next up is Kenyora P.

KENYORA P.: Good afternoon and thank you to all survivors who have come forward to share their testimony verbally and written this week. I believe you. My name is Kenyora Parham.

I'm serving as the executive director of End Rape on Campus. I'd like to remind the Department of Education that prior to, during, and after the Betsy DeVos era, campus sexual violence continues to remain a public health crisis that widens and deepens the education gap and mental disparities for students.

More specifically, student survivors I've spoken with who identify within and attend historically Black colleges and universities, tribal and Hispanic serving institutions, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

community colleges who may be Muslim, Jewish, LGBTQIA, or neurodiverse, undocumented, or a combination of the above or other intersectional and marginalized identities.

These students face higher rates of sexual harassment or violence in addition to their peers and counterparts who attend predominantly white institutions, yet they under report due to being unaware of their rights under Title IX.

They're subjected to victim blame ideology held by their peers, campus administrators, and public safety. And the additional perpetuation of stereotypes and biases, both conscious and subconscious, that ultimately denies these students their rights to understand, engage, and navigate the Title IX process and ultimately gain justice.

The undue burden and mental health effects of not only having been violated by their perpetrators, but also by the very institution

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

that should be able to support them are instead denying and silencing them.

Furthermore, it doesn't help in the narrative that campus sexual assault only happens to those who don't look like them, are continuously portrayed by the media or within our history books.

Therefore, we must center and uplift these students and make them hidden no more. Here are five non-exhaustive priority areas we recommend the Department of Education do: an intersectional, survivor-centered, entitlement reformed lens, swiftly and appropriately address and replace within the current regulations.

Please note that our full written statement is forthcoming. One, the requirement of all institutions of higher education to adopt a comprehensive educational training program designed to equip their communities on an ongoing basis about gender-based violence and harassment and thereby understood policy and development

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

laws.

Two, adopt new language that expands upon a sexual harassment definition that ensures that, regardless of the level of severity of the harassment, students' experiences are taken seriously and swift action is taken to address incidents.

Three, enforce regulations that specifically prohibit any form of retaliation against student survivors including, but not limited, to the threatening of scholarships, visas, and other accommodations and resources.

Four, provide transparency to students at institutions that claim exemption from Title IX, including a list of those schools that claim exemptions, and explicit what constitutes an exemption.

And finally, expand upon access to and types of supportive measures and accommodations that are culturally competent, intersectional, and properly support student survivors' continued

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

access to education.

All students, regardless of and with their identities, deserve an education that is free from violence.

MODERATOR: Thank you. We'll be back in a few moments with our next commenter. Next up is Ashley S.

ASHLEY S.: Hi, can you hear me?

MODERATOR: Yes, we can. You may begin.

ASHLEY S.: Okay. My name is Ashley and I'm a sexual violence advocate for a nonprofit in New Jersey. Prior to the DeVos Title IX rules, since 1997, the Department of Education across Democratic and Republican administrations had consistently outlined recipients' Title IX responsibilities to survivors in the standards by which the Office of Civil Rights refused complaints.

The Department's longstanding guidance led to greater and more meaningful

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

action by institutions to address sex-based harassment and support victims and increase in reporting by victims to their schools and the Department, and greater accountability when institutions fail to comply with Title IX.

However, much remains to be done to protect students who are sexually harassed. To effectuate Title IX's purpose on a broad remedial statute, the Department must reinstate its decades-old view, and explain that sex-based harassment includes sexual harassment, sexual assault, dating violence, domestic violence, and sex-based stalking and harassment based on sexual orientation, gender identity, gender expression, parental status, pregnancy, childbirth, termination of pregnancy, or related conditions.

Define sexual harassment as unwelcome sexual conduct. Require schools to respond to all quid pro quo harassment and any other sex-based harassment that's sufficiently serious to create a hostile environment that interferes with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

or limits an individual's ability to participate in or benefit from the recipient's program or activity.

Require institutions to complete and effectively respond to, take action to eliminate and prevent the recurrence of sex-based harassment, specifying that institutions must address sex-based harassment that may create a hostile environment in their program or activity regardless of where it occurred.

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

To ensure a prompt response to sex-based harassment, institutions should be required to provide supportive services and accommodations to the complainant as immediately as possible but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

no later than five school days after a report is made.

Institutions must take reasonable steps when responding to sex-based harassment and an effective response may include restorative justice or other alternatives to traditional student discipline, as long as participation is truly voluntary and all parties are able and aware they are able to terminate the alternative resolution process at any time and those facilitating it are adequately trained to do so. 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 Sarah A. Sarah feel free to unmute your mic and begin.

SARAH A.: Okay. Thank you. Good afternoon. My name is Sarah Axelson and I am Vice President of Advocacy for the Women's Sports

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Foundation. We're a national nonprofit organization which exists to enable girls and women to reach their potential in sport and in life.

But sexual equality has consistently been the very cornerstone of the Women's Sport Foundation and it continues to drive our mission to this day. As such, I'm here today to express our deep concern over the recent increase in the number of attacks on transgender athletes' ability to access sport consistent with their gender identity.

In 2021 alone, nine states have enacted transgender athlete bans and many more are considering similar legislation which would prohibit transgender girls and women from participating on girls' and women's sports teams.

We find these state-level bans deeply concerning and counter to what Title IX requires. Far too often this legislation is presented under the guise of protecting girls' and women's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

sports.

However, we wish to make it abundantly clear the inclusion of transgender athletes is not a threat to girls' and women's sports. In fact, there are many real threats to women and girls receiving equitable access and opportunity in sports such as the lack of Title IX awareness and compliance, girls in underserved communities facing inequity in sport access, resources, and opportunity.

The fight for equal pay, the lack of sponsorship support and media coverage, and the harassment and abuse of girls and women who work or play in sports. These real threats are well known and well documented yet they have become tolerated or worse ignored.

These are issues that can and should be addressed to keep girls' and women's sports growing and thriving. Sports participation provides invaluable and life changing benefits that are equally important to transgender girls.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

It can help break down barriers, create understanding, provide a place to belong, teach discipline and leadership and increase health and academic outcomes. After all, this is exactly why sports are part of our educational system and subject to Title IX.

It is the power of sport that spurs our mission for all girls and women to have access and opportunity to play regardless of their race, ethnicity, gender identity or expression, sexual orientation, ability, zip code, or family income.

We believe humanity wins when all girls and women, including transgender girls and women, have the opportunity to play. We ask that you clarify that Title IX requires transgender student athletes to be able to access sport consistent with their gender identity. Thank you for your time and attention to this matter.

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

(There was a brief break between

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

speakers at this time.)

MODERATOR: Next up is Susan E. Susan feel free to unmute your mic and you may begin.

SUSAN E.: Thank you. Good afternoon. My name is Susan Estep. I have two rules where Title IX directly impact me and the students I work with. First, I'm a program manager in student affairs programs at the University of Michigan.

Second, I'm a Board of Education trustee at my local school district. Today I would like to focus my time on our LGBTQ students especially our preschool through 12th children.

Antitransgender legislation has been introduced or passed across the U.S. with the 2021 having the highest number of these bills in history. Many of these bills are direct attacks on our children, my children, and your children who have an obligation, you have an obligation to protect.

Our most vulnerable and marginalized

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

student population continue to be harassed simply based on their gender identity, gender expression, and sexual orientation. I'm asking you to act immediately to protect our most vulnerable students and provide guidance that is very specific.

Being a policymaker at, being with the Board of Education, it is very difficult and there is much push back. So I would love for it to be just very explicit and just so the local schools can also make sure that we're doing the right thing for these children. Thank you for your time today.

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

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

MODERATOR: Good afternoon and welcome to the 1:30 session of the public hearing. First up is Charlotte W, followed by Nancy W. Charlotte feel free to unmute your mic and begin speaking.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

CHARLOTTE W.: Hi. Thank you for letting me speak to you today. My name is Charlotte Woodward and I am a college student at George Mason University studying towards a degree in sociology with a concentration in social change and inequality.

I also work as at the National Downs Syndrome Society as a community outreach associate. Today I speak to you as an individual to share my own views. In my university classes, one of my textbooks was Gender Power and Violence.

And I was and still am horrified the rapists, sexual abusers, and sexual harassers are not being brought to justice. I am aware that these issues have been present throughout U.S. history. I am a woman.

A woman with Downs Syndrome and I am saddened that America still exists -- is still sexist and patriarchal to women in society. Did you know that one in five women report being raped

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

and many more experience a sexual violent or harassment that fall short of the legal definition?

Did you know that one in five girls and one in twenty boys experience child sexual abuse, 12.3 percent of girls and 27.8 percent of boys were raped when they were ten years old or younger?

Did you know that approximately 35 percent of women and 13.8 percent of men have experienced several physical violence by an intimate partner at some point in their lifetime?

Did you know that it is estimated that more than half of all women experience emotional, psychological, and sexual abuse by their partners and 15 percent of women and six percent of men report being stalked?

Not only that. According to a report by NPR, people with Downs Syndromes and other disabilities are assaulted at a rate seven times higher than others without disabilities and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

perpetrators are not held accountable. I believe that programs and events are important, that by supporting women students on college campuses, we have to do better. Thank you.

MODERATOR: Thank you. Next up is Nancy W., followed by Cherise T.

NANCY W.: Hi there. Unmuting. Okay. My name is Nancy Willard and I run a program called Embrace Civility. I wrote the first book ever published actually in the world on cyberbullying. It was published in 2007.

And then I, as the Obama administration increased their activities in bullying and discriminatory harassment I -- hang on, I've got to get rid of the phone -- I expanded my work in that area.

So since about 2010 I've been working in the fields of bullying and discriminatory harassment and sexual harassment. And I just wanted to use this time to tell you what's happening out there in the field isn't working.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

We are seeing absolutely no progress. If you look at the Youth Risk Behavior Survey data, there's been no decline in the rates of bullying. There's been six meta-analyses of bullying prevention programs that showed limited to no effectiveness with zero effectiveness at the secondary level.

Now there's some critically important things to understand that happened way back in 2010. There was a dynamite Dear Colleague letter that came from the Office of Civil Rights in October and also the Department of Education issued some standards for state statutes.

What we've got going on here is a conflict between the state statutes and the civil rights laws. And what happens under the state statutes is it's a disciplinary code. So all they're looking at is whether or not the student engaged in behavior that's bad enough to warrant a suspension.

And that is not in accordance with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

civil rights, it's serious, persistent, or pervasive. But the school leaders don't know this. I asked all of the universities in my state in the preparation of administrators whether they were being trained in civil rights law and they are not being trained in civil rights.

And none of the special ed people I've ever talked to know that if a student with disabilities is being or engaging in bullying this is supposed to be addressed in an IEP or 504 meeting.

Oh, I'm a former attorney so I understand the legal issues on this. The other thing that happened is that the National School Boards Association has been successful in convincing the courts that it's not deliberately indifferent if the school has followed the state statute.

That is, they have a policy and they investigate and suspend if warranted. So I'd like to actually be asked to come and talk with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

you for a longer period time because I can help you understand what's not working and potentially how to remedy this. So you've got my contact information.

MODERATOR: Thank you. Next up is Cherise T., followed by Brett S.

CHERISE T.: Good afternoon. Thank you for having me here today. My name is Cherise Trump. I'm the Executive Director of an organization called Speech First. Speech First is a nationwide membership organization of students, alumni, and other concerned citizens.

We are dedicated to preserving civil rights secured by law, including the freedom of speech guaranteed by the First Amendment. Speech First seeks to protect the rights of students and others at colleges and university through litigation and other lawful means.

So basically I'm here today to be in strong opposition to any efforts by the Department to substantially change or withdraw

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

the May 19th, 2020, rule entitled, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, specifically as it relates to the definition of sexual harassment.

As it stands, the 2020 rule struck the proper balance between allowing universities to properly regulate sexual harassment under the Title IX and complying with the First Amendment.

It defines sexual harassment to include unwelcome conduct, as determined by a reasonable person, that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program, or activity.

That definition precisely tracks the Supreme Court's definition of actionable sexual harassment in Davis v. Monroe County Board of Education. The 2020 rule adopts the Davis standard for good reasons.

The Davis standard provides

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

consistency for judicial administrative enforcement and gives schools flexibility and discretion. More importantly, the First Amendment requires it.

There is no harassment or antidiscrimination exception to the First Amendment. By requiring that the harassment be severe, pervasive, and objectively offensive, the Davis standard draws a line between actionable conduct and protected speech.

Any broader definition of sexual harassment, including the ones that preceded the 2020 rule, would be inconsistent with the First Amendment. In short, the 2020 rule is a measured solution that allows universities to police sexual harassment without trampling the free speech rights of students.

Indeed the 2020 rule uses the Davis definition verbatim because other watered-down standards have led to infringement of rights of free speech and academic freedom of students and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

faculty.

Because the federal government is prohibited from violating the First Amendment, it is also prohibited from enacting policies mandating third party is by (phonetic) like the First Amendment.

So the Department should leave the 2020 rule alone. I'm also going to be submitting a written version of this as well. Thank you.

MODERATOR: Thank you. Next up is Brett S.

BRETT S.: My name is Brett Sokolow. I serve as president of ATIXA, the leading professional industry association for 7,200 Title IX administrators at schools and colleges.

I make this statement on their behalf and thank you for the opportunity. ATIXA's members have been working to implement the new Title IX regulations since they first took effect and have seen their impact firsthand:

How they have changed the way that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

sexual harassment is defined, how survivors have experienced barriers to accessing resolution processes.

How protections for the accused have complicated procedures, how informal resolutions have encouraged, have been encouraged in appropriate circumstances, and how live hearings requiring party and witness participation with cross-examination have been implemented.

Any new regulation will undoubtedly require changes and compliance challenges for ATIXA members. Colleges and schools generally have observed the negative impact of some parts of these new regulations on the community members they serve.

As a result, they welcome the possibility of changes contemplated by the Biden administration to ensure fairness for all parties and a restoration of Title IX's promise that access to education will not be denied on the basis of sex.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

The process of resolving complaints of sexual harassment has become slow, cumbersome, bureaucratic, laden with paperwork, and a significant drain on already limited available resources.

The rich experience of college and school Title IX administrators is the cost predicted by the Department in implementing the regulations grossly underestimated the actual burden on schools.

The highly prescriptive 2020 regulations have failed to serve institutions well and have also largely failed to meaningfully protect the parties involved. The current regulations fail to achieve a fair balance between the rights of complainants and respondents.

If the Obama administration's approach favored complainants, and the Trump administration approach favors respondents, then ATIXA members inspire to provide a neutral,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

equitable Title IX approach that balances the rights of all parties while favoring none.

ATIXA members are well positioned to share some critical insights into how the Biden administration may best address the negative impact of the August 2020 Title IX regulations.

Our written submission outlines the thoughts shared by ATIXA membership. Our written submission also provides a point-by-point critique of the current regulations from the perspective of ATIXA members.

ATIXA is confident the necessary reform for Title IX will occur during the Biden term. ATIXA welcomes the opportunity for change through a set of workable regulations, practical and budget conscious expectations can balance expediency with protection from all forms of sexual and gender-based discrimination and offer a fair resolution process to all parties.

ATIXA believes that the path outlined in our written submissions will help recipients

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

to best achieve the balance, procedures and protections that are necessary to fulfil Title IX's nearly 50-year mandate for educational equity. Thank you very much.

MODERATOR: Thank you. Next up is Jeff W. Jeff please unmute your microphone, then you may begin. We'll be back in the next few moments with our next commenter.

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

MODERATOR: Next up is Tristan C. Go ahead Tristan, you're all set.

TRISTAN C.: Okay. Thank you. My name is Tristan Campbell and I am a named plaintiff in Hunter v. Department of Education, a lawsuit filed by REAP, Religious Exemption Accountability Project on behalf of over 30 plaintiffs who have experienced discrimination.

I have not been able to have any recourse for that due to the Title IX exemption. I attended Oklahoma Christian School from pre-K

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

through 12th grade and then I went on to attend Oklahoma Baptist University, which means that I attended school who had either an explicit or implicit Title IX, religious exemption for the first 20 years of my education.

I'm going to talk specifically about my experience at Oklahoma Baptist University and as it relates to the post-secondary environment. While there I, during my junior year I started dating another man on campus.

It was a relationship that we didn't tell anyone about out of fear of what would happen to us if people found out. As a result, it caused a lot of stress and during one of our fights I was the victim of intimate partner violence.

At any other school, I know the Title IX process would have been there to protect me. It would have meant I may not have had to live right across with him and live on the same hall as him maybe both would have been able to seek counseling as a result of the event.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

But at a school like OBU, just like other schools that receive religious exemptions, I knew that revealing what had happened to me would also mean fundamentally changing both of our lives.

And this isn't just some hypothetical what could have happened. I know this because just a month later when I did come out publicly on campus, I was fired from my on-campus job.

And I was expelled from the university just three semesters from graduating. While the Constitution does guarantee us religious freedom, I don't believe that it requires taxpayers to fund the civil rights violations that have resulted because of the Title IX exemption.

I believe that the Department of Education should interpret the Title IX exemption in the way that Congress has clearly written it, that is that it only provides an exemption for institutions that can prove that they have a closely held religious belief that allows them to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

practice, it allows them to have these practices.

But I don't believe the Constitution has, is saying that the mere protecting and preserving a student's educational environment cannot be upheld at the same time as that these institutions are upholding their religious beliefs.

And it is because of this I asked the Department of Education to reconsider the way that they're currently interpreting the Title IX exemption and mirror it to only include those closely held religious beliefs and cause these schools to prove that those religious beliefs are being violated just by simply following Title IX. 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 Megan S. Megan feel free to unmute your mic and begin with ready.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

MEGAN S.: Thank you so much. Good afternoon. I just want to thank the U.S. Department of Education and everyone else present for listening to the experiences and concerns of myself and others.

My name is Megan Steffen and I am a proud lesbian woman and the plaintiff from the current case of Hunter v. Department of Education alongside the Religious Exemption Accountability Project.

The lawsuit's goal is to end the sexual, physical, and psychological abuse endured by LGBTQ+ students on federal funded religious campuses. I graduated from one of these campuses, Moody Bible Institute in Chicago, Illinois, in May of 2020.

When I began school there, I was not out with myself as lesbian, not even to myself, and it wasn't until halfway through my time that I ever fully accepted and exposed my identity to others.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Immediately after coming out, I received backlash from peers including anonymous mail stating I should be ashamed of myself. The harassment didn't stop with peers. Not long after coming out did I begin to have meetings with MBI's administrators.

Once they knew of my sexual orientation, the consistent mistreatment, harassment, and emotional abuse I suffered at the hands of the administration spanned across my final years at Moody, including over ten meetings with, ten meetings with them in which I was berated, investigated, and manipulated because I was a lesbian.

In my final meeting, they even threatened to not give me a diploma simply because they didn't want an out lesbian graduating from Moody. All the events contributed to these being the darkest years of my life and the cause there is something I've yet to heal from.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

It's for this reason I've turned out for the Religious Exemption Accountability Project to ensure no other queer student experiences the same mistreatment and abuse I faced.

A few days ago, the Justice Department released a since amended document saying -- since amended document stating that they share the same ultimate objective, mainly to uphold the religious exemptions as it currently applies to federally funded religious schools actively discriminating against LGBTQ+ students.

Although the Justice Department has since removed this statement, the sentiment has already been expressed and it begs the question, will my government protect the ongoing abuse and discrimination against queer students nationwide or will they stand with myself and others involved in this case?

I ask that you do the latter, that you hold accountable federally funded colleges and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

universities by requiring them to safeguard all students on their campuses regardless of sexual orientation or gender so that LGBTQ+ students can receive the respect, protection, and support we have not yet been afforded. Thank you so much.

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

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

MODERATOR: Next up is Sonci K. Sonci feel free to unmute your mic and begin.

SONCI K.: On behalf of survivors of sexual assault living in Iowa, the Iowa Coalition Against Sexual Assault calls for Title IX revisions to restore and further strengthen protections for student survivors of sexual harassment and assault and improve the educational outcome for student survivors.

First, the option to pursue an informal resolution process should remain available to survivors. The Department of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Education should issue written guidance setting forth standards for an acceptable informal resolution process.

And affirm survivors are still entitled to protection from further harm during and after this process through implementation of supportive measures. Training for all facilitators in the informal resolution process should be required.

Survivors should be informed of the voluntariness of their participation in the informal resolution process and their ability to terminate this process at any time without sanction should they choose.

If a survivor chooses to terminate an informal process, they should still be allowed to file a formal complaint. OCR should retain oversight of complaints from survivors who were forced, coerced, or otherwise tricked into participating in an informal resolution against their wishes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Survivors should be informed of their right to an advisor including, but not limited to, advocates and legal advisors, whether or not those advisors are associated with the school.

This right should apply to informal and formal resolution procedures. Second, the definition of sexual harassment should be changed. Instead of the current definition, which requires that sexual harassment be severe and pervasive, the Department should instead adopt the simpler definition such as unwelcome sexual contact.

The term sexual harassment should include conduct that has a significant negative impact on the education setting even if the conduct occurred off-campus or separate from a school sanctioned event or organization.

Conduct that occurs off-campus still limits a survivor's ability to participate in or benefit from the educational setting and fosters a hostile learning environment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Finally, the standard of evidence in determining responsibility for sexual misconduct should be the preponderance of evidence. There should be no option for a school to impose a greater standard for sexual misconduct complaints.

Survivors of sexual assault should not be subjected to uniquely burdensome standards. This is imperative to ensuring full disciplinary procedures for reports of sexual misconduct.

On behalf of Iowa CASA and survivors of sexual violence, I thank you for your time and consideration. We will also be submitting a written comment. Thank you.

MODERATOR: Thank you. Next up is Stacey R.

STACEY R.: Good afternoon. Hope anyone can hear me.

MODERATOR: You're all set Stacey. We can hear you.

STACEY R.: Okay. Thank you. My name

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

is Stacey Elin Rossi and I practice law in Massachusetts and New York. I would like to speak with you about the reality of the majority of these cases.

I cannot tell you how many potential clients reach out for help but they do not have the financial resources to hire an attorney, even one with the barest of fees. Even if a student or employee has sufficient resources to hire an attorney on an initial retainer, the cost of carrying a case into litigation are enormous.

There are filing fees, transcript costs, deposition stenograph costs and most importantly expert witness fees. We're talking about tens of thousands of dollars if not into the hundreds of thousands.

Schools have an enormous advantage against accused students and employees in this regard. Take the John Doe v. Williams College case for example. My client was a first-generation student on a full scholarship whose

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

limited-English-speaking parents lacked the resources to help him.

Williams College, on the other hand, has an endowment of around \$3 billion. The college has the resources to take these cases as far as they possibly can go and money surely is no object for them.

In fact, grinding a student down to the point they can no longer defend their rights is a central play in many schools' overall strategy. This is why a fair process at an educational institution level is so very important.

And a fair process is one that includes the greatest fact-finding tool of them all, cross-examination. Again, I'm sure others have discussed the importance of cross-examination but I will conclude it here.

Thank you for your time and the opportunity to give voice to those who are all too frequently silenced by unjust policies and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

procedures. Thank you.

MODERATOR: Thank you. We'll be right back with our next comment. Next up is Doreen D., followed by Shirley W. Doreen you may unmute your mic and begin speaking.

DOREEN D.: Thank you for the opportunity to present testimony for Concerned Women for America on behalf of the hundreds of thousands of women and girls we represent across this nation.

We're the largest public policy women's organization in America and we're here to say that what it means to be a woman can never be redefined and should not be overruled.

President Joe Biden's policy stated in his executive order fails to protect the status and dignity of women as female and is a threat to every woman in America especially female students and athletes.

Gender identity does not equal sex. Therefore, it should not be used to undermine Title

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

IX protections for women. On the basis of sex, as stated in Title IX, should be based solely on the biological of truth of being male or female.

A person's subjective claim to being the opposite sex does not make that person the opposite sex. This is not opinion. It is science. Biology is not fantasy, it is reality.

As women, we expect that the sex discrimination protections of Title IX cast into law nearly 50 years ago will continue to protect our safety, privacy and opportunities based on our objective female status.

Nothing in congressional statute, or statutory interpretation of Title IX of the Supreme Court, has changed the meaning the sex discrimination. The Department of Education has no legitimate authority to rewrite the federal civil rights law to redefine the immutable characteristic of sex to mean gender identity.

And those force women to comply with allowing males to declare a transgender status to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

have access to sex separated schools, facilities, or sports programs for women.

Justice Ruth Bader Ginsburg wrote the opinion in a landmark women's equality case declaring that sex-based characterizations and classifications are sometimes permissible because certain difference between men and women are enduring.

She understood the difference, physiological difference between men and women. A proper interpretation of the Bostock decision leaves no room to claim its reasoning somehow allows changing the meaning of sex discrimination under Title IX at any level of education. Justice Ginsburg even pursued this question during oral argument.

She asked, does it violate Title IX to allow a male who has transitioned to play on the female team? The answer given by the ACLU emphasized that Title IX is a completely different statute with different standards.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Concerned Women for America filed two civil rights complaints with the Department to stand up for the rights of female college athletes to compete in women's sports only against other female athletes.

One of the complaints was resolved in our favor last year. It found that the university violated Title IX by allowing a transgender athlete to compete in women's track and win a National NCAA title.

The other complaint is under investigation. The facts of these two cases are nearly identical. We expect the Office for Civil Rights to once again protect the rights of female college athletes and the equality of opportunity as required under Title IX.

The Department of Education has a responsibility to enforce the law, not to rewrite it. Subjective identity categories should not be used to redefine this meaning of sex discrimination. Doing so would turn Title IX on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

its head. Please protect women. Thank you.

MODERATOR: Thank you. Next up is Shirley W.

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

MODERATOR: Next up is Lisa A. Lisa, feel free to unmute your mic and begin speaking.

LISA A.: Can you hear me?

MODERATOR: Yes, we can. Thank you.

LISA A.: My name is Lisa Anderson and I'm the founder of Atlanta Women for Equality which provides free legal representation to campus sexual misconduct survivors.

First, there's a widespread misunderstanding of Title IX's interaction with due process, both of which counteract differentials in power structures that disadvantaged individuals balance the scales for all with interests at stake.

In criminal cases, defendants face a state with power that vastly outweighs

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

individuals. Only they can be imprisoned and survivors of whom they're witnesses.

In campus complaints, both parties are private individuals with the same interests at stake -- equal access to education in a specific school. Thus, while beyond a reasonable doubt, it's the only proper standard of proof for criminal cases.

Preponderance is the only standard for campus disciplinary proceedings consistent with both due process and Title IX protections. Requiring schools to presume neither side is lying also mandates discrimination against that party based on sex and denies the party due process.

The words also mandate discrimination based on sex by prohibiting schools from preventing sexual misconduct for reaching the pervasive and severe threshold.

This threshold forces schools to engage in quid pro quo sexual harassment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Survivors must endure continuing sexual misconduct until they lose access to their education in exchange for access to Title IX protections.

Campus-based complaints between two individuals for sexual harassment are not analogous to students' lawsuits against schools for unacceptable responses to sexual harassment.

Also, misguarded justice is a misnomer for by-law offenses. Even if offered as an option, survivors would feel pressured to take that route because we blame ourselves. We don't want to hurt anyone. And we're subject to social pressure to be compliant.

It is unjust to place that kind of responsibility on the survivor, to make her the one who decides how to fix the former friend who wiped her blood on the wall after violating her and not after years of healing.

This paradigm also allows schools to bear risks to their community. It is not only

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

cruel, but irresponsible to delegate determining whether a respondent is likely to hurt others to someone with PTSD and no training.

That is not to say that survivors cannot handle full autonomy. Schools must consider their input when identifying remedies.

Also parties in Title IX complaints must have timely access to information relating to the case. That access must be brought not only to the other sides, but also to that of the institution.

Unlike Clery, the regulations only offer access to evidence, not all relevant information used in a suit at all stages of the complaint.

Denying access to information such as communications with administrators denies parties the opportunity to respond to statements against them, identify bias, correct errors, or sometimes participate meaningfully at all.

However, there must be limits on that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

information's use. Parties should have access to records concerning whether -- should not have access to records concerning the others' accommodations or protective measures.

Nor should they receive copies of medical records. Schools should not -- cannot prevent parties from discussing their cases with others which is necessary for gathering evidence in hearing. But they must stop the use of that information for retaliation.

Thus, schools must have a clear definition of relevance that addresses both probative value and prejudice. Some schools mistakenly conclude, for example, sending a partner a nude picture, somehow constitutes an indefinite agreement to have sex with that person whenever and however he or she wants. Schools must not be complicit in revenge --

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

(There was a brief break between

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

speakers at this time.)

MODERATOR: Next up is Amy W. Amy, you may unmute your mic and begin speaking.

AMY W.: Hi. Thank you for this opportunity to testimony. The Fifth and Fourteenth Amendments to the U.S. Constitution provide that no person may be deprived of life, liberty, or property without due process of law.

However, in recent years the rules in place in college campus Title IX offices adjudicate accusations of sexual assault have violated those amendments.

Students were not given full access to the evidence being used to accuse them of wrongdoing. They were not allowed to cross-examine their accusers.

In fact, many of the Title IX hearings were essentially kangaroo courts. That all changed on August 14th, 2020, when the new regulations under Secretary of Education Betsy DeVos took effect.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

The new rules underwent rigorous review and incorporated opinions from a large variety of stakeholders including victim's rights organizations.

We all want victims of sexual wrongdoing to have their day in court. But those accused of such crimes deserve the full due process rights promised by the U.S. Constitution.

Proof that many accused students have been mistreated by college Title IX offices, that there have been more than 200 court decisions in their favor.

Falsely accusing someone of sexual assault is not a victimless crime. I personally know dozens of young men who have had their lives devastated. Some have attempted suicide and some of those have succeeded.

Others have PTSD years later. As there is no ban the box in applying to new schools after an expulsion, many of these young men are unable to complete their education.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Their transcripts are permanently marked with a disciplinary notation. In this polarized MeToo environment most colleges will not take the risk to accept one of these tainted students.

Finally, these false accusations affect students from all walks of life. Many are minorities or the first in their family to attend college. The latter in particular have no ability to pay for a lawyer.

The economic and psychological costs to such families are particularly steep. In addition, they have lost their belief in American sense of justice.

Please keep the 2020 regulations in place. They protect all parties impacted by sexual misconduct allegations. Thank you.

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

Next up is Jeff W. Jeff, please unmute your mic and begin speaking when ready.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

JEFF W.: Thank you for this opportunity. My comments will address a profound concern that I feel among religious teachers, like myself.

My name is Jeff Walton. I'm a teacher with 38 years of experience. I've taught hundreds of middle school, high school, and college students and have counseled several young men who've come to me with questions about same sex attraction and sexual identity.

I've always counseled them kindly, sympathetically, and biblically. I firmly believe that all people must be treated with kindness and that the foundation for all of genuine kindness is truth.

It's my very real fear that regulation like this now or just down the road will take from me and thousands of others who share my biblical world view the freedom to teach and/or advise with truth of God's design for human sexuality, marriage and family.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

I submit to you that President Biden's orders, the premise for this review, are flawed orders that incorrectly interpret Bostock and threaten both individual and institutional religious liberty.

Individuals would be prohibited or severely limited from providing guidance for young people with any information that does not conform to government-sanctioned ideology about human sexuality.

Religious schools that do not comply with the standards for sex discrimination will be forced to either to deny their deeply held beliefs or lose the ability to accept students who are in need of government loans and grants.

The immediate impact will be felt by Christian colleges but the ripples will soon reach K-12. The premise of new regulation is flawed, part because it relies legally on the Bostock decision.

It ignores the court's careful

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

construction of its decision to exclusively limit its reinterpretation of the word sex in Title VII to employment law.

The premise is also flawed because it substitutes an understanding of human sexuality based on emotion and desire for the historic and biblical understanding of human sexuality based on biology and genetic design.

It is not kindness but cruelty to affirm a construct based on emotions and desire when those are in opposition to observe the whole reality.

The Christian understanding of human sexuality and marriage promote genuine individual and societal thriving. My freedom to speak and live faithfully by these understandings is constitutionally protected.

And I ask that the Department uphold the religious freedom and the conscience rights of Christian Americans like me as you consider these regulations. Thank you for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

opportunity.

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: This concludes this session of the public hearing. Our next session begins at 3:30 p.m.

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

MODERATOR: First up is Lance L. followed by Joanna M. Lance, please unmute your mic, and you may begin.

LANCE L.: Hello. My name is Lance LeVar and my pronouns are he/him. I'm a public school program advisor in the Equity Assistance Center in the Arkansas Department of Education's Division of Elementary and Secondary Education.

We provide technical support, guidance, and training to district and open enrollment charter schools throughout the state

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

of Arkansas.

This academic year, we provided training to hundreds of district and charter school leaders on the new Title IX regulations.

As has already been mentioned in previous days of these hearings, these regulations seem to have been created for higher education and then simply tweaked to address a few of the K through 12 education concerns.

This tweaking of a post-secondary system into a K-12 system is extremely evident in the timelines. The hard rule on the 10 days -- plus 10 days, makes it difficult to maintain equitable access to the educational environment when the students are confined to the same building six to seven hours each day during the 20-plus days it takes to complete the Title IX grievance process.

Unless there is a serious threat, emergency removal is not an option. In the eyes of complainant and, frankly, the community, it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

appears as if nothing is being done to keep the students safe and take actions on an incident.

There needs to be more flexibility on how different this looks and functions even within the K through 12 environment.

As stated in the Davis v. Monroe Supreme Court decision, determining whether gender or conduct rises to the level of actionable harassment, thus depends on a constellation of surrounding circumstances, expectations, and relationships, including, but not limited, to the ages of the harasser and the victim and the number of individuals involved.

We also concur with other commenters that the Title IX personnel team requirements make it extremely difficult for small districts to be able to provide the personnel and for the Title IX coordinators to keep up with the rules of this along with the rest of the Title IX requirements in relation to non-harassment based of sex discrimination.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

In the January webinar, regional centers and school consortia, OCR mentions the possibility for school district consortiums to jointly employ a Title IX coordinator.

And we ask OCR to give more guidance and support on how similar small schools especially can accomplish this sort of task and still ensure the Title IX coordinator is authorized to do their jobs in each of the districts.

We would also appreciate more convenient ways to ask questions such as FAQs, hotline, increased moderating of email, et cetera as we've had multiple timely inquiries such as the T-IX questions email that never receives responses.

We encourage the U.S. Department of Education's OCR to thoroughly consider the concerns of the representatives of the K through 12 community that have been heard throughout these hearings with a significant focus on the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

needs of smaller school districts which, in Arkansas, can have as few as 300 students and a couple dozen staff members -- and make appropriate adjustments. Thank you.

MODERATOR: Thank you. Next up is Joanna M. followed by Emily S. Joanna, you may unmute your mic and begin.

JOANNA M.: Thank you. My name is Joanna Maxon. I'm a plaintiff in the Religious Exemption Accountability Project lawsuit.

I was a student at Fuller Theological Seminary. I wanted to earn a master's degree and I chose to go to Fuller Theological Seminary because it's a well-known school that offered a program in theology.

Fuller is not represented by one Christian denomination. In fact, Fuller claims to have students from over 100 different denominations, many of which affirm LGBTQ persons.

Fuller is not affiliated with,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

governed, or owned by a church or a denomination. This was important to me as I was looking to grow and mature in my faith and learn from people who had different perspectives than my own.

After three years of taking classes, I was just five classes short of earning my degree. As a queer Christian woman, I had been accepted by professors and students in my time at the school.

I was expelled from Fuller after someone in the financial aid office reported me to administrators after viewing my tax return for financial aid purposes.

My tax return indicated that I had married. I married a woman and the school expelled me for being in a same sex marriage.

Fuller's Title IX officer is the one who investigated me and had a large role in my expulsion, leaving me nowhere at the school to turn for help regarding the discrimination I was experiencing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Almost three years later, I'm still working through the damage from my expulsion. I don't have a degree, but I do have a large amount of student loans yet.

I was pursuing an education. What I received instead was the fact that even in the Christian community where I was welcomed and included, because I am a part of that community, being also a part of the LGBTQ community made me a target of the school's administrators and the Title IX office at my school.

The emotional damage is one carried not only by me but also by my immediate family. The religious exemption to Title IX at my school, governed by a Board of Directors, relied on to justify my expulsion effectively exempted me from protection, not because I'm not aligned with the Christian tradition but because I'm queer.

So I don't fit into a narrow view of what it means to be Christian to the administrators but clearly, not to most of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

other students and staff.

My school is still receiving taxpayer funds. The religious exemption to Title IX currently allows our Board of Directors to single out and cause harm to their LGBTQ students and to use the school's Title IX office as the vehicle for discrimination.

The religious exemption to Title IX has been used as a weapon against LGBTQ students. I'm asking today for this office to do what can be done to minimize the harm by narrowing the scope of the religious exemption. Thank you for allowing me the opportunity to comment.

MODERATOR: Next up is Emily S. followed by Aarefah M. Emily, feel free to unmute your mic and begin.

EMILY S.: Hello.

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

EMILY S.: Okay. Thank you. I will speak on behalf of Womankind, formerly the New

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

York Asian Women Center.

Womankind is an organization dedicated to helping survivors of gender-based violence in AAPI communities.

I work with college campuses in the New York City area to provide support and education to students and administrations.

The current Title IX regulation are horrible to all students who are survivors of sexual violence on college campuses, especially students with marginalized identities.

We urge the Department of Education to rescind the DeVos regulations immediately. There is not enough time to fully explore this issue, so I will focus on a few key points and elaborate in my written comments.

First, the narrow definition of sexual assault and harassment does not -- it will limit protection for students on campuses. Survivors already question whether or not their experiences were severe enough to count as sexual violence.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

It is imperative to state clearly and unequivocally that all sexual violence is serious and unacceptable.

The language included in this definition is deliberately constructed to undermine and downplay the trauma that survivors experience.

Every instance of unlawful sexual behavior is severe and pervasive. We also want to emphasize the importance of cultural humility in trauma informed care when advising Title IX.

There is a lack of inclusion and understanding for marginalized students on college campuses, which results in isolation for students coming from diverse or different cultural backgrounds.

And the current Title IX goes further in that isolation. Minority students experience sexual violence at a higher rate and are forced to deal with intersecting issues of identity and discrimination simultaneously.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

At the City University of New York schools, only 33 percent of teachers identify as from a minority group, as opposed to 80 percent of students. Survivors at CUNY schools are already isolated and under-represented.

Cultural and language accessibility surrounding Title IX are important considerations that the Department has to prioritize moving forward.

In their definitions and complex process enforced under current guidance make Title IX procedures harmful, difficult, and inaccessible for all survivors, but they disproportionately impact students with different cultural backgrounds.

We encourage the Department of Education to not only rescind the harmful current regulations but continue working to make Title IX processes more culturally accessible, trauma-informed, and survivor centered, inclusive of the LGBT community and focused on the safety of its

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

survivors. Thank you.

MODERATOR: Thank you. Next up is Aarefah M. followed by Emma L. Aarefah, please unmute your mic and begin speaking.

AAREFAH M.: My name is Aarefah. It's impossible to capture eight years of suffering and my struggle for justice in just three minutes.

Sexual violence is not limited to just the failures of our colleges, but is a systemic crisis that encompasses law enforcement and our courts.

98 percent of victims are denied justice even though data show at least 98 percent of us are truthful about our experiences.

Such a framework is backwards where inevitably the entity renders itself complicit in state-sanctioned violence and discrimination against us.

Much of what I will discuss is public record through the lawsuit entitled Mosavi v.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Mount San Antonio College, et al.

I enlisted and I was targeted on the basis of my gender and religion by a former coworker who lured me into a dark secluded area on the campus farm at Mount SAC, making repeated unwanted demands to take my hijab off and raped me on December 12th, 2013.

The reporting process at Mount SAC was discriminatory. They chose not to investigate fairly. The Title IX coordinator demanded I reenact the rape on her note taker despite knowing I was traumatized.

They failed to interview my sister who also suffered such sexual harassment and religious discrimination by him.

Another potential witness said he would make comments about tying women down and committing sex acts on and in the workplace. They failed to question his credibility when he concealed/attempted to destroy text evidence and kept changing his story.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

College defendants admitted under oath they didn't review his accounts of what he did to me and how they gradually changed. Mount SAC closed their investigation into my complaint without interviewing my witnesses and did not afford me a right to appeal their decision.

The college reportedly violated the Clery Act and claimed to have lost additional records of my complaint that were in their possession.

Some potential solutions here: Number one, victims are currently required to prove a deliberate indifference standard where the college's response is clearly unreasonable in light of known circumstances.

Unfortunately, the burden to prove deliberate indifference is interpreted by judges as an impossibly high burden to prove.

Federal Judge Michael W. Fitzgerald, in my case, for instance, did not believe Mount SAC's conduct constituted deliberate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

indifference.

The deliberate indifference standard, I think, should be removed or revised so that it is actually enforceable.

Second, most colleges claim to adhere to a preponderance of evidence standard to investigate complaints. Although the standard is supposed to be less burdensome, colleges are still finding overwhelmingly against victims as they judge for themselves what evidence -- now which evidence satisfies the preponderance of evidence standard.

Establishing a uniform criteria that is, for instance, based on the damages most victims suffer from sexual misconduct in order to find it is more likely than not a respondent has engaged in sexual misconduct against a complainant.

Lastly, Obama's Dear Colleague letter, unfortunately, was not legally binding, according to Judge Fitzgerald. Rape survivors

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

deserve Title IX investigations that are fair to us too.

We should require colleges to interview our witnesses and demand appeals processes be in place for complainants too. Thank you.

MODERATOR: Thank you. Next up is Emma L.

EMMA L.: Hello. My name is Emma Levine, and I'm an organizer with Know Your IX, fighting for students right to an education free from violence.

Student survivors having access to accommodations and supportive measures under Title IX is often the difference between a safe, successful remainder of one's college experience and mental health crises, impounding trauma, financial ramifications and pushout from school.

This became abundantly clear to me when I was in college, living on campus and my roommate was assaulted by her partner. In the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

aftermath of the violence and their breakup, we were worried about my roommate's safety and also the rest who lived there knowing that her abuser knew exactly where we lived and could violently retaliate if he chose.

We spent months avoiding places her abuser frequently showed up on campus, did our best to not walk home alone or at night, and supported our friend as she tried to navigate trauma while being a full-time student.

As my roommate's abuser began stalking her, we created a schedule to ensure that someone would always be available to walk our roommate to class.

My roommate chose to not move forward in a formal Title IX process because she feared violent retaliation from her abuser. As a result, no supportive measures were provided to her by our school.

A simple no-contact order would have helped us all sleep at night. My roommate would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

have benefitted from a campus escort, academic accommodations that would have allowed her the time and space she needed to process the trauma without having her grades suffer, and housing accommodations, such as allowing her to move to a different dorm.

Without these essential accommodations, her grades dropped and she had to retake classes, taking on more debt that would limit her future options.

This is not a unique experience. In organizing with Know Your IX, we found that nearly all students who report to their school experience consequences to their academic success.

I want to be clear that these accommodations should also be accessible to K-12 students whose experiences in the wake of violence are unique yet just as worthy of our attention and supportive measures.

This all occurred before DeVos' Title

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

IX Rules went into place which only makes it more difficult for survivors of sexual assault or intimate partner violence to receive support.

As Know Your IX documented in our report, survivors are now being pushed out of school and retaliated against instead of being provided with the technical assistance they need to continue their education.

For Title IX to fulfil its intended purpose of guaranteeing an education free of violence, the Department must require schools to provide accommodations in a timely manner without going through a formal investigation or having a finding or responsibility so that student survivors can reach their educational goals and pursue their dreams.

Survivors should also be able to access one-way no-contact orders as abusers have weaponized mutual no-contact orders in hopes of having their victim punished.

Finally, the Department should ensure

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

that the definition of intimate partner violence is accepted as students' experiences make it clear that dating violence, both sexual and emotional relationship violence, and domestic violence all constitute intimate partner violence.

The Department must interrupt the harm that the current rule continues to inflict upon students and ensure that all survivors have access to the accommodations, supportive measures, and technical assistance they need. Thank you for your time.

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

Next up is Isabel K. Isabel, feel free to unmute your mic and begin speaking.

ISABEL K.: Good afternoon, members of the Department of Education. My name is Izzie and I was Rice University's undergraduate representative on the sexual misconduct rewrite team, policy team talks with overhauling our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Title IX procedures to fit the 2020 final rule.

I not only helped write university policy that complies with federal regulations but also assisted many reporting and responding students through the new process.

And what I've seen concerns me and it should concern you too. When students come to me asking whether they should initiate an investigation, I pray that the incident occurred off-campus so they won't have to undergo the costly protracted and cruel process of a Title IX investigation and hearing.

But an absolute privilege, should be able to trust my university to handle sexual assault better through a non-Title IX process.

As you all know, a university cannot impose any restriction on a responding student before a case resolves other than a regularly enforced mutually agreed to no-contact order.

This forces survivors through a treatment of public life. I've worked with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

students who are terrified of going to the dining hall or to any social event in fear they will run into their attacker or their harasser.

This anxiety over a short period of time is understandable, but the current Title IX process has doubled and then sometimes tripled the amount of time cases are resolved.

Sometimes the growing harassment from peers and trauma within the case lasts so long that survivors either leave school or drop the case entirely.

I understand that the investigation process should not be rushed. I'm a believer in due process. However, the new rules prolong the decision-making, not the investigation.

The hearing process resulting in an extensive delay serves no substantial purpose other than to prolong the pain and harm for both parties.

I want you to understand what it is like to tell a survivor who's formally close

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

their case file in the investigation to review that investigative report, negotiate admissible evidence with the hearing officer or a panel, prepare for a hearing and get grilled for hours by the responding student's advisor, likely a lawyer, about the worst experiences of their life.

It's heartbreaking. But you have the power to reform the rule to ensure that case is resolved in a timely manner. A single investigator adjudicated model is the most effective and fair way to approach this.

The requirement that a school separate the investigators and adjudicators is burdensome for schools who do not have a large number of adequately trained staff for the process.

Furthermore, in cases of my institution and others, universities are outsourcing the hearing process to someone who is not accountable to the procedural at all.

The hearing officer apparently

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

doesn't even have to be knowledgeable in sexual violence besides a vague reference to a training. This does not even begin on the issues of frankly untrained advisors cross-examining survivors in a live hearing and the retraumatization that that entails.

Many changes are crucial to this process such as requiring that the preponderance of evidence standard be the standard in every case.

But the most important, from my experience, is the return to a single investigator and adjudicator model which affords ample due process to both parties.

Lastly, the Department must give sufficient time for schools to develop a new process and not these changes so quickly that rushing it will prevent schools from collecting the needed feedback to develop a just process. Thank you for your time.

MODERATOR: Thank you. We'll be back

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

in a few moments with our next commenter.

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

MODERATOR: Next up is Sayedah M. Please unmute your mic and begin. Sayedah, it appeared you were muted for a second. Can you try again?

SAYEDAH M.: Can you hear me now?

MODERATOR: Yes, we can. You may begin.

SAYEDAH M.: Okay. Okay, thank you so much. My name is Sayedah. I wanted to share my experiences with sexual harassment and campus Title IX violations.

You've already heard from one survivor named Aarefah who talked about her experiences at Mt. SAC, Mount San Antonio College.

I was a student at this campus too and I wanted to share what happened to me and what I'd gone through. I distinctly remember in my case two men. One was a repeat offender and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

other one tried to sexually assault Aarefah.

The first, I will call him Spector. He was adamant that I date him, and when I rebuffed his advances on multiple occasions, he'd go onto some stereotype of my Muslim identity and said that he couldn't actually date me because I'm from a conservative culture.

He continued to harass me about seeing him out to lunch and dinner, but I reported this. And I was told that I was the second person to complain about him but nothing was done after the first person complained.

And it's only actionable after a second person complains as per Mt. SAC's administrative policy. I reported also to my supervisors that it was common for women in the workplace to be sexually harassed.

And during this time we also ended up having a meeting where all student workers were present and our supervisor said that these hazers were actually uncommon, against what I told them,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

that it was actually common.

But they also said that, should something like this arise, that I need to report it to the nearest person of authority. At the next semester, I was subjected to sexual and religious harassment again by a second person who I will call Tester.

Tester made all kind of remarks about himself and referred to himself as a molester at one point and said, oh, but that's really hard, because his real name rhymed with the word molester.

I told him that this wasn't a good thing. He got up and he left. And he walked away. On two separate occasions Tester also made remarks about my hijab and said that I was trying to seduce him because my hijab had flowers on it.

On the second occasion the area supervisor witnessed this exchange but did not intervene. Mind you, this is already after the meeting that everybody was told about the responsibilities.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

And despite this, I had resigned myself to keep a formal distance from everyone because nothing came to fruition. Nobody did anything. And I didn't think it was feasible to continue reporting every incidence of sexual harassment because I was already worn out from doing it.

And I rightfully thought that it was the responsibility of supervisors to actually take action to put an end to this behavior, but they didn't do it after Aarefah had already mentioned it to us.

I also want to let you know that Mt. SAC is currently a campus that serves 60-plus thousand students. Okay, this is a community college in Los Angeles County and they expect you to believe that around 12 or so sexual violence or harassment cases over the past several years is a believable statistic.

That's not believable. It's not acceptable. We know that there's something going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

on there. And I want the DOE to find a way to hold these schools accountable retroactively.

I know that we're discussing ways for the DOE to move forward, but I want to let you know that people like Aarefah and other survivors live with PTSD and they cannot move forward.

Right, I think that the DOE needs to rescind DeVos' regulations and draft new regulations and hold voices like mine and Aarefah's in the center so that marginalized voices like ours can be heard.

And I also think --

MODERATOR: Next up is Sasha B. Sasha, please unmute your mic and begin speaking.

SASHA B.: Thank you for the opportunity to provide testimony. My name is Sasha Buchert and I am a senior attorney at Lambda Legal, this country's oldest and largest national organization working on behalf of LGBTQ people and people living with HIV.

As study after study has shown, and as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

almost all of us know from our personal experience, LGBTQ-plus students experience pervasive discrimination and harassment in schools.

There are negative short-term and negative long-term consequences when students aren't safe in their schools. In the short-term students will stop going to school and their grades will be lower and they'll be estranged from their peers.

In the long-term, such discrimination and harassment means they'll be less likely to finish school which will lead to negative long-term outcomes in healthcare, housing, security and financial well-being and increases their likelihood of being enmeshed in the criminal justice system.

We know this is especially true for LGBTQ+ students of color. The following are six actions the Department can take to address discrimination based on sexual orientation and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

gender identity.

One, we recommend the Department clarify the statute's definition of, on the basis of sex, encompasses at least sex stereotypes, sexual orientation and gender identity.

Number two, we recommend the Department provide clarifying language to sex segregated exception regulations that recognize that students must be allowed to participate in in accordance with their gender identity.

This year we have seen a record number of bills seeking to prohibit transgender students from participating in athletics in accordance with their gender identity.

At least 75 bills have been introduced seeking to exploit participation and six states have passed laws seeking to ban transgender kids from participating.

These bills, even if they aren't passed, cause enormous harm to youth and their families. And clarification from the Department

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

that such treatment violates Title IX would be of invaluable assistance to those students, the legislators, school administrators, state Attorneys General and members of the public in the coming legislative sessions.

Number three, we recommend the Department revise existing regulations to require fair assurances concerning entities seeking religious exemptions and then have proper notice -- and that proper notice be provided to the public regarding any requested exemptions.

We'd also recommend that the eligibility criteria be narrowed for organizations seeking to qualify as religious organizations.

Number four, we recommend the Department revise the existing sexual harassment and sexual violence regulations in accordance with the recommendations made by the National Women's Law Center.

Number five, we recommend the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Department continue to prioritize timely and vigorous enforcement of Title IX complaints in order to create effective deterrence of discriminatory conduct that destroys educational opportunities for those subjected to it.

And lastly, number six, we recommend steps be taken to protect LGBTQ+ students' privacy and enable transgender students to update their name and gender on school documents.

Thank you again for the opportunity to comment.

MODERATOR: Thank you. Next up is Mar L. Mar, when you're ready, unmute your mic and begin speaking.

MAR L.: Hi. My name is Mar Lee. My pronouns are they/them/theirs. I am a survivor of sexual violence. I'm also a survivor of institutional abuse while trying to report sexual violence.

I'm here to represent a group of student survivors of sexual violence at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

University of Nebraska-Lincoln. We go by the name of Dear UNL and formed a little over two years ago when we decided it was time to take action at our university.

We contacted our administration, sending 21 letters to the chancellor to take action to address how sexual violence wasn't being properly addressed on our campus.

After we were ignored and given stock responses that didn't address our concerns, we've since been working as a grassroots movement to educate students about Title IX.

With that, we evaluated policy at our campus and came up with a list of changes that we believe needed to happen and that we think these changes need to happen at a federal level as this is not happening at just our university, as I'm sure you've heard over this last week.

We need to have a standardized way that Title IX reporting is dealt with at universities in making sure there is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

institutional accountability.

Of course, with our demands, the first one is accountability, making sure that there is oversight over Title IX and equity and compliance offices.

At our university, there was only a director who oversaw the office and from there there was no oversight of that director, which doesn't make sense to me. There should be an oversight of the entire office.

Along with that comes transparency in making sure there is regular reporting of things happening at the university and for making information readily available on how the Title IX process works.

In my time doing grassroots movement work over the last few years, I have realized that most students on campus have no idea how to report to Title IX until it happens, when they are in a state of crisis, which is not the time to be learning all of this structure of policy

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

that varies from institution to institution.

We need to have some kind of regulated policy on how to deal with this. Staffing as well needs to be improved. There was only like three officers out of our equity compliance office to deal with not only sexual violence and sexual orientation, gender identity, ableism, racism at our university.

And so things were not happening within the timeframe that they were supposed to. We need better support for survivors on campus and making sure accommodations and modifications are happening to support survivors.

I know people who have dropped out of the university because they were having to sit next to their abuser in their classroom.

And then finally, we need better training. We need trauma-informed training across the board. Personally, when I tried to come forward, I was blamed for my sexual assault by my professor. And when I tried to report that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

to the Title IX office, they told me to go on my way and that it wasn't their problem.

So we need to address this and have something across the board, at a federal level, to make sure that this does not continue to happen. Thank you so much for your time.

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 Nick D. Nick, you can unmute your mic and begin speaking.

NICK D.: Well, it's academic freedom and excellence and accountability at America's colleges and universities.

My statement today addresses the absolute necessity of protecting academic freedom and campus freedom of expression by ensuring clear guidance on what qualifies as a Title IX violation.

OCR should not revise -- hi. Can you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

hear me?

MODERATOR: Yes, we can hear you.

NICK D.: My statement today addresses the absolute necessity of protecting academic freedom and campus freedom of expression by ensuring clear guidance on what qualifies as a Title IX violation.

OCR should not revise Title IX without considering academic freedom and free speech in higher education. They're the lifeblood of a vibrant democracy and are essential to intellectual growth.

The 2020 revision of the definition of sexual harassment in 34 CFR 106 was a significant improvement for colleges and universities who've struggled to interpret rules set by the 2011 Dear Colleague letter.

They innovated it to interpret what did and did not constitute sexual harassment which the new 2020 regulation sought to improve, obstructing free speech at these institutions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

across the country.

I call your attention to the 2015 investigation at Northwestern University. Professor Laura Kipnis published essays in the Chronicle Review highlighting a sexual harassment case and critiquing the institution's overreaching sexual misconduct policies.

Several students then filed a Title IX complaint against her. After extensive and exhaustive investigation, Northwestern found no evidence of wrongdoing and cleared Professor Kipnis.

In 2014 the University of Mary Washington's Feminists United organization visited their opposition on Yik Yak to the university's decision to allow all male fraternities.

When the men's rugby team recorded an abrasive video insulting the group Feminists United attempted to file a Title IX complaint.

The university declined to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

investigate. Feminists United then filed a federal complaint that was thrown out by a federal district court.

This case, which is pending before the Fourth Circuit Court of Appeals highlights the confusion.

The situation prior to 2020 left instructors and students apprehensive about teaching or discussing topics that some might perceive as sensitive. This severely limited academic freedom and free speech on college campuses.

The newest Title IX regulations have been in place only briefly. President Biden issues his executive order mandating Title IX reform in March 2021, seven months after the latest regulations were implemented.

This is not enough time to gauge the effectiveness of the new regulations. Academic freedom, freedom of speech and intellectual diversity lie at the very heart of a quality

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

education.

I'd like to urge OCR to hold these foundational principles in high regard as it continues to gather information on possible revisions to Title IX of the Education Amendments of 1972.

Thank you again for allowing me the opportunity to speak before you today.

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: This concludes the final session of the Title IX public hearings. Thank you all for attending.

(Whereupon, the above-entitled matter went off the record at 5:00 p.m.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701