



Transcript of Title IX Public Hearing Notice of Language Assistance

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U.S. DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

VIRTUAL PUBLIC HEARING ON

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

HELD:

June 7, 2021, from 9 a.m. - 5 p.m., EDT
June 8, 2021, from 9 a.m. - 5 p.m., EDT
June 9, 2021, from 11 a.m. - 7 p.m., EDT
June 10, 2021, from 11 a.m. - 7 p.m., EDT
June 11, 2021, from 9 a.m. - 5 p.m., EDT

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OFFICE FOR CIVIL RIGHTS

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PUBLIC HEARING ON TITLE IX

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MONDAY
JUNE 7, 2021

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

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

(9:02 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

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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

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

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

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

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

Third, on the Department's role in addressing discrimination based on sexual orientation and gender identity.

These are all critically important as sex discrimination in all forms can disrupt and derail students' opportunities to learn, participate, and thrive in and outside of the classroom. In this hearing, and in all of our efforts, we are eager to hear and learn from your diverse experiences, expertise, and insight.

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

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

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

MODERATOR: Thank you, Suzanne. We will now begin the hearing. The first commenter will be Michael M., followed by Eric R. Michael, please unmute your microphone.

MICHAEL M.: Am I able to be heard?

MODERATOR: You're good now, Michael. Thank you.

MICHAEL M.: Thank you. Good morning. My name is Michael Miley. I'm a law

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student at George Mason University, and I thank the Department for the opportunity to speak here today. Allegations of sexual misconduct or sexual assault are serious charges that demand a serious and consistent process for the investigation and deliberation as to the fault, or lack thereof, assigned to the accused.

Even if a wrongly accused person does not face a punishment such as prison, a finding of fault by an officially sanctioned institutional authority, particularly as it relates to sexual misconduct, can devastate a person's life by potentially destroying their private relationships and professional reputation. All individuals and groups of individuals can find assurance in systems or processes where the laws apply to everyone equally.

Our recent federal complaint filed in Virginia is illustrative as to how due process protections are necessary to prevent the Title IX

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process from violating the rights of the very people it was designed to protect. In 2015, Ms. Reid, a nationally recognized debater and professor at James Madison University, began a romantic relationship with Lese, a female graduate TA who Reid did not supervise and who did not work in Reid's department. One year into their relationship, an anonymous complaint prompted a Title IX investigation by JMU, which cleared Reid of any wrongdoing in her relationship with Lese for precisely those reasons.

Two years later when their relationship ended on less than pleasant terms, Lese began sending Reid abusive text messages with threats to ruin Reid's career. Lese then gave a statement to JMU's Title IX Office that did not meet the standard necessary for a formal complaint. It did not allege that their relationship was non-consensual, unwelcome, or negatively impactful to Lese's education. And

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Reid alleges that JMU discriminated against her because of her sex and sexual orientation when they improperly accepted Lese's complaint, did not inform Reid of the complaints against her for two months, applied the wrong version of JMU's Title IX policy to her case, and imposed sanctions on Reid prior to the consummation of the Title IX investigation hearing and appeals process.

Furthermore, there were no representatives of the LGBTQ community on Reid's hearing panel, and during the hearing, Reid was prevented from cross-examining Lese and Lese's witnesses, as well as being prevented from presenting her own witnesses. Reid has been recognized by students for using her rhetorical skills and communicative abilities to give voice to marginalized individuals and groups. And now her voice has been silenced because of an unstructured process that turned Reid into a non-person, guilty, with no way to prove her

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innocence.

But current regulations correct these deficiencies. The answer to concerns from students, faculty, and other Title IX stakeholders as to how they will be treated under the Title IX process is to look for ways due process rights and other safeguards can be strengthened and applied to these kinds of proceedings. Thank you very much for your time.

MODERATOR: Thank you. Eric R. is up next, followed by Charlene G. Eric, please unmute your mic.

ERIC R.: Apologize, I couldn't find the button. Thank you. My name is Eric Rosenberg, and my law firm has represented hundreds of respondents and complainants in Title IX disciplinary proceedings since 2011. We've also represented parties in more than 20 lawsuits in federal courts across the country. And I am one of the authors of a comment signed by 93 attorneys and academics provided yesterday to the

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Department in consideration as you revise your 2020 rules. This comment addresses some provisions of the 2020 rules that we believe are either essential to accomplish the Department's objectives or in need of slight modification.

First and foremost, the 93 signatories of this comment wish to reiterate the importance of the right to a live hearing with cross-examination codified in last year's rules, or as dozens of courts have noted, decision-makers cannot make fair and impartial credibility determinations without these hearings in questioning. Nevertheless, some want to prohibit cross-examination because they allege it favors respondents over complainants. This allegation lacks merit in part because those who have regularly attended Title IX hearings like myself, repeatedly witness robust and highly impactful credibility questioning by both complainants and respondents.

The second issue the comment addresses

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relates to Section 106.45(b) (6). We believe this section would benefit from clarification regarding the consequences of not answering questions at a hearing. Currently, it states decision-makers cannot rely on any statements made by individuals who do not answer questions at a hearing. Now, unfortunately, this provision has been used to exclude things like text messages that may suggest a respondent engaged in prohibited conduct and/or exculpatory statements by complainants. Therefore, we suggest the Department's new rules clarify that a party's refusal to submit to cross-examination does not preclude decision-makers from relying on prior statements against interest such as the text messages I have just described.

Third, we propose off-campus Title IX allegations that involve students from the same university be addressed under the Department's 2020 rules. This would require modification of the 2020 rules which currently allow these

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allegations to be adjudicated under non-Title IX policies. This is problematic because these non-Title IX policies expose universities to the liability discussed in cases like Doe v. RPI. In that decision, the Court found RPI's dual-track discriminatory processes could constitute sex discrimination because they provided fewer protections than the Department's 2020 rules. And finally, our comment discusses how the number of defamation lawsuits filed by students could be reduced if universities better enforced the anti-retaliation provisions of Section 106.45(b)(5). And I thank you for your time.

MODERATOR: Next up is Charlene Green.

CHARLENE G.: The first step in implementing Title IX should include elaborating and distributing an organogram to know its professionals in public schools. Educational leaders, students, and parents need to know who will support the program's implementation and

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provide orientation and authentic support to victims, perpetrators, and bystanders. People need to see the role of the professionals within the organogram and how to contact them throughout the Title IX implementation process with information on who from the school community is protect should be published.

A question-and-answer activity is highly recommended for school community members to clarify their thoughts and concern. Title IX experts who provide a conference informing how they have worked the claims and supported the victims. The State Department of Education needs to provide learning resources on Title IX, and keep educators and students informed about Title IX's protected rights among other school community members.

Another step is emphasizing how Title IX protects gender roles, student's rights providing them equal learning opportunities. Still vocational school students are facing

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difficulties trying enrolling in no gender role stereotype workshops. Similarly, adults face administrative positions within the school systems because of gender role stereotype claiming for an accepted campaign. To end my contribution in this hearing, I recommend an informative top down campaign starting from the State Department of Education to the lower level for them to become role models of Title IX. Thank you.

MODERATOR: We will be back shortly with the next commenter, Louise G., followed by Philip B.

LOUISE G.: Good morning. The Department of Education can effectively implement Title IX, assessing the school's data on previous Title IX claims and their legal results. Next, a school committee can design a plan for the local implementation of Title IX to prevent --

MODERATOR: Thank you. Next is Philip B., followed by April D. Philip, please

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unmute your mic. Philip, we can't hear you. Please unmute your mic. Okay. We're going to skip to Sara Jane R. If you're available, please turn on your mic. Philip, we'll come back to you in a minute.

PHILIP B.: Hi. Can you hear me?

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

SARA JANE R.: Okay. Hi. My name is Sara Jane Ross, and I'm a student at the University of Texas at Austin. I was raped by a classmate during my freshman year, went through a year-long Title IX case, and have since dedicated myself to advocating for survivors at my school and across the country. If my Title IX claim had been processed under the new rule, it wouldn't have been investigated at all because my rape occurred off-campus.

Roughly 87 percent of students live off-campus, and it's those off-campus places like apartments, parties, bars, sporting events, and

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frat houses that are hotspots for abuse. Allowing universities to ignore over 80 percent of misconduct simply because it didn't occur on campus is neglectful. When assault happens off-campus, the effects don't stay there. After being raped, I had to walk into a 13-person class the next morning and sit across the table from my rapist. And then I had to do that again every single morning for an entire year. My mental health and education suffered for it. Off-campus cases need to be addressed.

My case took a year from start to finish. I had to withdraw because advocating for myself as a teenager and having to learn the ins and outs of the law because my rights weren't being upheld became a full-time job. When institutions are allowed to drag cases out for months at a time with no accountability and no reasoning, students have to put their education on hold. Investigations shouldn't take more than 60 days because students, especially ones like me

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without fancy lawyers or parental help, shouldn't be asked to neglect their education and endure the uncertainty and trauma of the case any longer than that.

There will be people in the coming months who say things to you like, it's a very scary time to be a young man, and MeToo has gone too far, and throw around the term due process, when what they really mean is that they think most people like me are lying. But to you I ask, whose education was protected when the interim measure my university's lawyer offered me was telling me to transfer schools? Whose education was protected when I was forced to drop out of the prestigious honors major I shared with my abuser? Was it due process when despite having mountains of evidence and his confession, I still lost my case? Did my accusation ruin his life when I'm the one who became a social outcast, endured harassment, dropped out, tanked my GPA, and attempted suicide twice?

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Meanwhile, he just graduated on-time with honors. I am living, breathing, flesh-and-bone proof that there is no glory in accusing someone of assault. There are no personal gains to be made or ulterior motives. I gained nothing and lost everything because of my Title IX case, and I'm not alone. This idea that we have the upper hand from the start is a myth. So I'm asking you to please listen to the experienced and dedicated survivors and organizers with lived experience who are demanding these and other changes so that in the future, Title IX can actually deliver on its promise of an equitable education free from discrimination. Thank you.

MODERATOR: Thank you, Philip B., you're next, followed by Linnea S. Philip, please unmute your mic. Okay. We're going to move on to Linnea S. And we'll try again with you, Philip, in a minute.

LINNEA S.: Hi. Can everyone hear

me?

MODERATOR: Yes, we can hear you.

LINNEA S.: Hi. Good morning. Thank you so much for allowing me to share. My passion for running wasn't something that started until later in my life, yet it became so much of an identifier of mine that I made the decision to extend my running career longer than expected. I'm currently a graduate student at Georgetown University where I transferred after receiving my undergraduate degree from Southern Utah and recently exhausted my NCAA eligibility this spring of 2021.

My day-to-day schedule was a little different than that of a normal student athlete. I would wake up on Monday mornings at 5:45 in order to get to practice. Following practice, I would rush to work from 10:00 to 4:00 p.m. just to come home and go to class for the remainder of my night. Although my days were long and tiring, I couldn't wait to wake up each morning and

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participate in the sport that I love. I've sacrificed multitude of things in my life to focus on being the best that I can in my sport and representing myself, my team, as well as female athletes across the country. Yet to me, this sacrifice seems so small when I was able to celebrate in the successes of my training.

But that was all up for debate in the last year of undergraduate college running. Starting in my senior season at Southern Utah, we received word that the first male-to-female transgender was not only going to be competing for the first time in division one athletics, but it was going to be a face that was familiar to me as this individual had previously been competing in my conference on the men's team at the University of Montana. Being the defending 800-meter Big Sky Conference champion, I immediately jumped online to see what I was going to have to be competing against this season.

All hope was lost when I realized that

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the male-to-female transgender athlete I was going to be competing against had a personal best time of 1:55 in the 800 meter. Not only ten seconds faster than the best time I had posted the season prior, but a world leading time in the event. An athlete that had previously competed on the men's team was now going to be racing against me and all my teammates. An athlete that had a personal best time of 3 minutes and 50 seconds in the 1,500 meter, which might I add is a world record time for women, was going to be on the starting line standing next to me. An athlete that was born a male and competed as a male was going to be racing me for a spot at the first place chance at the podium.

I took a step back and realized that my senior year was no longer going to be about the sacrifices, hard work, pain, and dedication I put forth the last four years. It was going to be about fairness in women's sports being stripped away right in front of me. Title IX was

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passed in order to create an equal and fair playing field for all, yet allowing these athletes to compete will discourage young women and expel them from their own sports. Sports that encourage independence, strength, strong will, and give you confidence of being a competitive athlete.

Although there are many women that are taller and stronger than that of an average athlete, they do not possess the physiological advantages that a male-to-female transgender athlete does. It is biological fact that men have proportionately more muscle mass, bone mass, and lower body percentage -- body fat of women. Because of this, it affects the way they run, train, lift, and compete in any sport. This is a bipartisan issue that boils down to biology. This is why women should be allowed to compete against other women and not forced to compete against men.

What I experienced was unfair and no

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woman should have to stand on the line, walk on the court, and share a stadium, and feel as if they've already lost the competition before it's even begun. Women deserve a fair chance. And although there's a place for everyone in this world, being an NCAA women's athlete is a privilege and not a right. We should proceed the problem and ensure that women everywhere remain excited to participate in sport and continue to allow athletics to be part of their identity. Title IX granted me the opportunity to become the person I am today. And I don't think that should change for future generation of talented young women. All of this is why I urge --

MODERATOR: We'll be back in just a moment with the next commenter. Next up is Kimberly M. Kim, please unmute your mic. Kim, your microphone is muted. We'll be back in a few minutes with the next commenter. Next up is Allison C.

ALLISON C.: Hello. My name is

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Allison Cipriano, and I am a doctoral student researching sexual violence policy and its effects on survivors in higher education. From my work with survivors, I have learned that universal mandatory reporting policies or policies where nearly all employees are required to report all details of disclosures from students to the university's Title IX office are not preferred amongst survivors. It has become abundantly clear that these universal mandatory reporting policies are not meeting survivor's needs.

In the words of one student survivor who was interviewed about their experience for research, universal mandatory reporting is quote, unnecessary, invasive, and intrusive. They do not consider survivor consent. University employees are mandated to report details of student disclosures even when students state they do not want their information reported. Survivors may not feel ready to come out with

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their story and share graphic details of their assaults, may have justified fears about negative reactions, may have fears about perpetrator retaliation, and may be aware that Title IX offices are very unlikely to make a determination of responsibility and hold their perpetrator accountable if a report is made.

Regardless of their reasoning, survivor consent must be at the center of reporting policy. Otherwise, survivors are, quote, dragged kicking and screaming, end quote, into the reporting and investigation process as described by one student survivor in a research study. Through my research, survivors have communicated that they prefer policies that consider their consent and prioritize their need for regaining their sense of autonomy and control after this was taken from them through violence. Survivors prefer a survivor-directed policy approach where employees are required to report only when survivors consent and/or otherwise

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required to defer to their wishes.

As another survivor explained in a research interview, quote, ask if you want to report. Make people feel empowered instead of taking all their agency away all over again, end quote. Additionally, survivors prefer policies that incorporate support into their policies, requiring employees to provide survivors with information about all of the resources available to them and their options for moving forward when they disclose to an employee. Further, universal mandatory reporting policies actually cause unintended further harm to survivors as they force them to engage with the Title IX process, even when they don't want to.

Knowing a disclosure to an employee will result in a report, students actively avoid disclosing. Instead of the assumed effect of increasing reports, universal mandatory reporting policies actually create a harmful silencing effect on student survivors as they

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live in fear of disclosing and triggering a report. If federal guidance does not shift to requiring survivor consent to report disclosures and providing support and information for survivors, we will continue to fail student survivors at educational institutions across this country. Thank you.

MODERATOR: Thank you. Due to the technical difficulties, we're going to have Louise G. back on for comment. Please unmute your mic, Louise.

LOUISE G.: Good morning. The Department of Education can effectively implement Title IX assessing the school's data, okay, yes. It is on mute. Are you listening me? Hi. Are you listening me? Okay. I will start my presentation now.

MODERATOR: Next is commenter 96P.

COMMENTS 96P: My name is Karen. Can you hear me?

MODERATOR: Yes, Karen, we can hear

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you. Thank you.

COMMENTER 96P: I am the parent of a male student who filed an OCR complaint seven years ago alleging Title IX gender discrimination. The case is still active today. My son is a male who identifies as a male. He was raped by a female student when he was blacked out and unable to consent. His claim was first ignored by the university and now sits with the OCR who, for the past seven years, has chosen to not prioritize and fairly conclude this case. This is straight male gender discrimination. The gender and sex discrimination your office claims to fight is the very discrimination you are doing.

Females can rape males, and they do. It's time the narrative changes about who rapes who. The university followed the current narrative and believed the female, yet the clear evidence, including photographic and eye-witness, supported the male. The male was

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fully incapacitated, unable to consent, yet the university never investigated his claim, and he was the student expelled. He was seen by many others while he was naked, passed out on his back with his arms laying limp by his side, while the female was seen moving up and down on top of him with her hands pressing on his chest. He woke up the next morning with hickeys plastered all over his neck.

But let's reverse the scenario, and I ask you to just imagine the following instead occurred. She was seen by many others fully incapacitated and unable to consent, laying naked passed out on her back with her arms laying limp by her side, while he was seeing moving up and down on top of her with his hands pressing on her chest. If this was the case, expulsion from the university of would've been the least of his problems. He would likely be in prison. The female student was not denied her right to an education. She graduated with no repercussions.

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On the other hand, the male student was denied the right to complete his education and to pursue his chosen career path. This is Title IX discrimination, which as the OCR you are to enforce. Why are you not? You are having this week-long session to hear ideas on what needs to change. I say new policies, rules, and regulations won't fix the problem. Enforcing the ones you have more likely will. OCR is to be a fair enforcer of law, not a discriminator.

Using a math term, the constant variable in this mess we have is the OCR. My son was first wronged by the female who sexually assaulted him, then he was wronged by the university who ignored, discriminated against, and expelled him, denying his right to an education. And for the past seven years, he is being wronged by the OCR who is not enforcing the Title IX law. Schools cannot be allowed to discriminate against a student denying access to education because of his or her gender, even a

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straight male.

My son was discriminated against and denied his right to an education. It's time you stopped discriminating who you choose to fairly investigate discrimination claims and enforce your current regulation for all individual students. We don't need more rules and regulations. Just enforce the ones you have. Thank you.

MODERATOR: Thank you. If you're a commenter waiting to speak, please turn on your chat. We have a few names that we don't recognize. We're trying to get some information from you before we can allow you to speak. We're going to move to Louise G. again.

LOUISE G.: Good morning. The Department of Education can effectively implement Title IX assessing the school's data on previous Title IX claims and their legal results. Next -- good morning. Are you listening to me? The Department of Education can effectively

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implement Title IX, assessing the school's data on previous Title IX claims and their legal results.

Next, a school committee can design a plan for the local implementation of Title IX to prevent sex gender discrimination among the school community members. A prevention campaign using Title IX resources can control threatening actions among the school community members. The designation of teachers and staff members who represent appropriate role models will help to develop a safe school environment. It is recommended that claims be solved immediately and not after several years.

One reason why Title IX implementation has not been entirely effective is that educators and students do not know who precisely they can trust throughout the process. Educational leaders can integrate Title IX dispositions into the school vision, mission, and goals. In addition, Title IX must be integrated into

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developing thoughtful and reflective minds directed to achieve tolerance skills and behavior and no threatening outrage about Title IX is necessary to ensure that the school and general community members are aware of Title IX's prohibited actions and protections.

Sometimes, victim's claims remain on paperwork and the victims remain without support or legal protection. So the school community members have no way to go toward an effective resolution of their issues. Besides the law must protect against retaliation that ends in the expulsion of teachers, principal, and students. The Department of Education's role is addressing Title IX must be strengthened through a follow-up program.

Students from sports schools are facing difficulties accomplishing their goals because of discrimination. Therefore, The Department of Education must ensure legislation do not legislate against Title IX asking what

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usually happens in some states and US territories. Finally a roundtable where the US president activates a help program for immediate solution to volunteers who will share their painful and humiliating experiences as victims of administrators of other people who violate Title IX will improve the last implementation. President will learn firsthand how the abuse of power of administrators effects the performance of Title IX and probably amending Title IX. My sister and I will volunteer as a legacy for our country. Thank you very much.

MODERATOR: Next up is Edward B. Edward, please unmute your mic.

EDWARD B.: Good morning. My name is Edward Bartlett. I am the president of SAVE, a non-partisan organization that is working for campus fairness and due process. SAVE advocates on behalf of both complainants and respondents. One of the misconceptions surrounding the sexual harassment debate is that the issue is a partisan

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one that separates democrats and republicans. But is that really true?

First, let's look at the statements issued by law school professors who are generally inclined to be liberal. Beginning in 2014, law professors from Harvard, Penn Law, and Cornell issued strongly worded statements in support of campus due process. Second, let's look at a recent public opinion poll. The 2020 UGA poll commissioned by SAVE, found that two-thirds to four-fifths of all Americans agreed with the due process questions that were asked. This survey reported similar levels of support among Democrats and Republicans.

Third, let's look at the judges who have issued rulings in favor of campus due process. The 2019 analysis published in the NYU Journal of Legislation and Public Policy looked at the number of pro due process decisions by judges who had been nominated by Presidents Clinton, Bush, and Obama. The report found,

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quote, no meaningful statistical correlation exists between the judicial outcome and which president nominated the judge.

Fourth, let's examine the statements published in the last three months after the Department of Education announced it would be reviewing the 2020 regulation. The editorial boards of five major newspapers weighed in in support of campus fairness. Those are the Detroit News, LA Times, New York Daily News, Washington Post, and the Wall Street Journal. Of these newspapers, four are generally regarded as liberal and one, the Wall Street Journal, is viewed as conservative.

Finally, former Democratic presidential candidate Michael Bloomberg issued a strongly worded editorial on March 25th, referring to the campus regime established under the 2011 Dear Colleague Letter, Bloomberg explained, quote, alleged victim said that schools failed to investigate their claim

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professionally, accused students were routinely denied the right to cross-examine witnesses, receive written notice of the charges, and the right to examine evidence. Bloomberg concluded, quote, college students deserve a better and a more just system, and the Biden administration should undertake to create it. Thank you very much.

MODERATOR: Thank you. Again, any commenters awaiting to speak, please keep your chat open at all times. Next up is Susan S., followed by Philip B.

SUSAN S.: Good morning. Can you hear me?

MODERATOR: Yes, we can hear you.

SUSAN S.: Okay. Great. I would share my video. I'm not sure how to do that. I'll just start talking Okay. Here I go. Under current Title IX law, an institution must promptly respond to all allegations of sexual harassment that affect a person's ability to

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participate in the education program. The primary goal is to restore the complainant's access to the education program.

Title IX law is not intended to subjectively address students' feelings of safety, nor to punitively punish a respondent found responsible. If a student is a victim of a crime, they should go to the police. With that goal in mind, the August 14, 2020 amendment has been effective. It mandates a fair, prompt, equitable response from the institution with proper notice of the allegation. It provides clarity and uniformity to the process institutions must take to guarantee strong due process protections essential to both accusers and accused persons, especially those identifying as LGBTQ, disabled, or a minority, that have been vulnerable to biased treatment in the past.

The current Title IX regulation allows the alleged victim to have full autonomy how the institution will address their complaint.

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Victim survivors can receive extensive supportive measures designed to preserve access to their education, and they decide whether to follow an informal resolution or formal complaint process. The live hearing supports complainants by allowing them to choose a victim rights advocate to assist in telling their full stories, challenging the credibility of their alleged perpetrator, and reviewing the truth all cognizant of the sensitive issues involved.

Inappropriate amendments to the current regulation would include consent, defined as affirmative consent an impossible standard with no definable boundaries, an overly broad definition of sexual harassment that deviates from the Supreme Court, Davis v. Monroe definition, inclusion of off-campus housing as an institution's education program. Why should an institution have jurisdiction over conduct in an apartment, hotel, or personal home? The use of a biased approach, such as a trauma-informed

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response in the investigation or adjudication phases, the science of trauma-informed is inconclusive.

The use of transformative or restorative justice. Why should a respondent to an unfounded allegation accept accountability due to perceived oppression and social injustice? An amnesty provision which only encourages underage drinking and unfounded allegations. A transcript notation policy, a person's education record should not be scarred for life after a quasi-judicial process. Prior to the last year's amendment, institutions did not treat complainants and respondents equitably. There was deliberate indifferent stereotyping and rush to judgment.

The current regulation is procedurally sound. The Department should not take steps to rescind, cut back, or broaden this rule. We need to give it a chance. It restores equity with fair and balanced protections for all

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students without the due process protections and the current regulation and institutions response to an allegation of sexual harassment may be deemed unconstitutional, erroneous, or unreliable.

MODERATOR: Thank you. Next up is Philip B., followed by Miranda M. Philip, please unmute your mic. Looks like Philip's still having technical difficulties. We're going to move onto Miranda M.

MIRANDA M.: Between the ages of 8 and 10, I was raped. My mind tried to protect me by burying the memories. In college, I was raped again, and suddenly a tsunami of memories came crashing down. My mind was flooded with a lifetime of enduring sexual violence simply because I tried to get an education. Why am I sharing this with you? To demand your attention. I'm using my pain as a platform to tell you one thing, Title IX must prevent sexual violence.

Let me make an analogy. In the early

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1980s, drunk driving was at an all-time high, with over 20,000 deaths per year and thousands more life-altering injuries. The Department of Transportation began the Drunk Driving Prevention Campaign dedicated to preventing people from driving drunk. Since then, drunk driving has decreased by over 52 percent, saving over 300,000 lives.

Let's imagine that instead of launching a prevention strategy, they only focus on victims. When someone was hurt or killed by a drunk driver, investigators would investigate their claims and therapists would help them heal. Would this strategy have saved 300,000 lives? No. Investigators and therapists are certainly important, but they don't prevent drunk driving. The victim is already hurt or worse, dead. So why is this our current approach to sexual violence? I speak on behalf of all survivors when I say that even if the best therapists and the best Title IX investigators are available, I

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would much prefer my rape was prevented in the first place.

Sexual violence is life altering. No matter how much support and healing I do, I will never fully recover. Prevention is the only option. So why didn't Title IX prevent this from happening to me? And why does Title IX still lack prevention? The reason is rape culture. Society places all responsibility on victims. Victim blaming makes people feel better. It's comforting to think that we can prevent sexual violence by simply wearing the right clothes or taking a self-defense class. Even if that were true, we wouldn't be preventing sexual violence. We'd be ensuring perpetrators choose a different victim.

The only way to prevent sexual violence is to prevent perpetration. What does Title IX say about that? It says the only way to prevent perpetration is for victims to report. The entire system places the responsibility on

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victims to go through the traumatic and flawed process of investigation and adjudication. When victims choose not to report or are unable to do so, they are blamed when their perpetrator attacks again. Perpetration has been deemed inevitable by omission. Rape culture is so deeply ingrained in our society that it seems unfathomable to consider preventing people from becoming perpetrators. I'm here to tell you Title IX has the power to prevent perpetration.

Now that I'm wrapping up, let me introduce myself. My name is Miranda Martone, and I'm the founder and CEO of the Sexual Violence Prevention Association. There are policies, practices, and programs proven to prevent sexual violence. In order to deliver on its promise to protect people from discrimination Title IX must prevent perpetration. The SVPA will be submitting a written comment with a comprehensive strategy for incorporating this prevention in Title IX. Thank you.

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MODERATOR: Thank you. We will be back for more comments in ten minutes. Philip B., you are now up, followed by Bria B. Philip, please unmute your mic. Philip, you should find the microphone button at the top right. Please unmute. Okay. We still have technical difficulties with Phillip, so we're going to go to Bria B.

Bria, please unmute your mic. Bria, we can't hear you. Please unmute your mic. We'll be back soon with another commenter once some technical difficulties are resolved. Bria, if you are able to unmute your mic, or Philip, please go ahead and start speaking.

BRIA B.: Can you hear me now? This is Bria.

MODERATOR: We can hear you.

BRIA B.: Oh, perfect. Hi everyone. My name is Bria, and I work as the director of engagement for interACT Advocates for Intersex Youth. interACT is the oldest and largest

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organization in the US dedicated to advocating for the rights of youth born with differences in their physical sex characteristics, often referred to as intersex. And I'm here to talk a little bit about why Title IX rules must expressly define discrimination on the basis of sex to include discrimination based on sex characteristics including intersex.

Intersex people are born with differences in their physical sex characteristics that don't align with societies idea of what a male or female body is supposed to look like. Intersex people can have differences in their genitalia, their gonads, their chromosomal makeup, and in their hormone production or response. About 1.7 percent of the population is born with one or more of these variations.

While the Department of Education does acknowledge intersex students as an under-served population in its 2021 program priorities and definitions, intersex students do face

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discrimination due to their sex characteristics, and this should be acknowledged under the Title IX regulations. Intersex students face stigma, discrimination, and abuse in the same way that their LGBTQ plus peers do. In addition to that, there are also so many intersex students that are already trying to cope with the added trauma of being forced to undergo non-consensual genital surgeries at a very early age. Surgeries that are -- often have lifelong psychological and physical risk, such as sterilization.

From my personal experience as an intersex person and from so many other intersex people who have shared their stories, I can attest to the fact that there are intersex students who absolutely do face educational barriers because of the natural differences in their sex characteristics. I was assigned female at birth, and when I was in the second grade, I started growing facial and body hair, but I was also in the second grade when I had my first

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period.

Oftentimes, intersex students are singled out because of our intersex characteristics. Like our trans peers, we also face harassment and discrimination when it comes to things like restrooms and locker rooms. Many intersex students like myself were forced to avoid using restrooms during normal school hours unless it was absolutely necessary. And there were times where I had to hide in the bathroom stall until I knew it was safe to come out.

We can't expect students to perform well in school if they are forced to go six to seven hours without using the restroom because they can't do so safely. An intersex student should not be required or pressured to disclose private information about their traits in order to use the restroom. Stigma, discrimination, and trauma are all things that hinder our ability to have a positive educational experience. Thank you for allowing me to be here today.

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MODERATOR: Thank you. For those waiting to speak, please open up your chat. We have a couple people waiting to speak that we're trying to identify. We'll be back in just a moment. Commenter R85, you're up next.

COMMENTER R85: Yes. Can you hear me?

MODERATOR: Yes, we can. Thank you.

COMMENTER R85: I wanted to say that -- thank you for allowing us to speak today for three minutes. Our children are our future. I am a parent. I am a previous youth life skills worker. I am a previous mental health instructor, and I'm also trained in ACE, Adverse Childhood Experiences and identifying trauma. Title IX should be easy for everyone to advocate through the system in finding resources. There needs to be better reporting navigation. Title IX reporting for OCR and through schools.

It should be searchable in a language for students and parents with ease. There should

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be verbal reporting similar to the mandating reporting hotline. The schools already know how to do that, and it would be easy for them to link students to that. With that, schools and staff need to be held accountable to the same standards as parents are that are reported. The supervisors of our children acting as loco parentis should be responsible in our absence.

OCR needs to have updates to the reports, not just the victim's one report. So the report itself needs to have the totality of the circumstances. That's why verbal reporting is best. Even though schools are not admitting to being at fault during a report, it has to have follow-up of areas of concern. There needs to be ongoing checking of websites and policies per the dates of the schools reporting versus the incident. Follow-up report when the victim or parent as the dates of reporting don't match due to school's lack of tracking.

With schools and universities, staff

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need to be trained. When interviewing victims and perpetrators, they need skills. The training of staff needs to include coaches, nurses, teachers because teens need at least one adult who they feel they can go to with safety. Every report should be made by schools. Make sure that the SROs are trained like staff, and they should make -- a law enforcement referral should be mandated. Follow-up services and classes and scheduling. Many schools don't know what to even --

MODERATOR: Thank you. Next up, is Philip B. We're going to move on to Norma F.

NORMA F.: Am I unmuted?

MODERATOR: You are good.

NORMA F.: Okay. Hi. My name is Norma Fox. I am a concerned parent and a trustee of a school for students with special needs. It is clear to me having been through Title IX processes in both roles, that the 2020 rule is considerably fairer than the previous approach,

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which led to repeated miscarriages of justice. While there were many egregious examples of the lack of procedural fairness in our case that ended up in federal court, I will confine my comments to the single most important element in the new rules that would've made a world of difference. The requirement for a live hearing with cross examination by an advisor.

With two competing narratives, a live hearing would've been the best and perhaps only opportunity to effectively present evidence, expose inconsistencies, investigate errors and biases, and have it on the record. In the process we endured, only written questions were allowed, the hearing chair did not ask many of our submitted questions, and we were not allowed to ask any follow-up questions. Crucial information was not brought out during the hearing that would've helped the panel understand the whole picture.

Allowing live questioning by advisors

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would've avoided the subsequent federal lawsuit that cost our family and the school thousands of dollars along with the years of therapy treating PTSD that directly related to this experience. The lack of a live hearing with cross-examination in this instance got you incorrect and unreliable results along with lasting harm. Many victim's advocates will tell you that adversarial cross-examination is too traumatizing for complainants. It is also traumatizing for respondents, particularly innocent ones.

The limitations the 2020 rules have on the cross-examination aspect of hearings sufficiently protect both complainants and respondents from unnecessarily aggressive or inappropriate questioning. The robust due process protections in the 2020 Title IX rules, which includes a live hearing and cross-examination, benefits decision-makers, complainants, and respondents alike. Thank you for your time.

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MODERATOR: Next up, is Lauren A., followed by Laura D.

LAUREN A.: Good morning, and thank you for the opportunity to comment. My name is Lauren Adams, and I am the legal director of Women's Liberation Front or WoLF, a nonpartisan, radical, feminist organization with members across the country. I'm also a life-long progressive who believes in equal rights for all. And I am here today to urge support for single-sex sports for women and girls and constitutional protections for freedom of speech and belief.

Thanks to the groundbreaking passage of Title IX, women have prospered in the education system, including through increased participation in competitive athletics. Today, the Department of Education is considering policy changes that threaten to rollback these gains by reinterpreting Title IX to prohibit single-sex sports teams. No one should face discrimination in publicly funded education due to their sexual

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orientation or not conforming to sex stereotypes, but the notion of gender identity, on the other hand, denies the reality of differences when they exist and are relevant between the sexes almost universally to the disadvantage of women and girls.

It is no more appropriate to separate teams by personal identity than it is to separate teams based on sexual orientation or race. When female athletes are forced to compete in de facto co-ed teams, they are deprived of titles, records, metals, scholarships, and opportunities to win or participate fairly and safely. In one example, two male high-school track runners in Connecticut blew away female competitors at a state track championship and smashed 15 records previously held by female competitors. We firmly believe in equality and dignity for all.

I encourage you to remember that all students are welcome to use sex-specific programs and spaces with their same-sex peers. And that

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this has not changed. We cannot allow the rights of women and girls to be dictated by threats, nor can we allow women and girls to be silenced by threats of discipline, suspension, or even expulsion for speaking the truth or for saying no. I urge the Office of Civil Rights to ensure the legacy of Title IX by continuing to enforce the law on the basis of sex, and affirm that the First Amendment protects our right to discuss these issues of public concern, including on matters that affect single-sex spaces and sports. Otherwise, we will risk turning back the clock on 50 years of educational advancements for women and girls. Thank you for this opportunity to comment.

MODERATOR: Thank you. Laura D. is up next, followed by Constance.

LAURA D.: Hi, my name is Laura Dunn, and I'm the founding partner of the L.L. Dunn Law Firm, which advances and enforces victim and whistle blower rights in campus, criminal, and

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civil proceedings. I'm also the founder of SurvJustice. While COVID has prevented Title IX regulations from having the full impact, with the new coming school year and schools opening across the country, it's important that the Department act quickly to update Title IX to ensure protections for all students.

Ideally, given the range of diverse perspectives coming out today in the hearing, the Department would hold a rule-making committee to ensure consensus regulations are formed. Regardless of the process, however, any new Title IX regulations formed should not be overly prescriptive as the Trump-era Title IX regulations are. Instead, they should ensure promptness rather than needlessly prolonging Title IX grievance procedures to last almost full school years before resolution in many cases.

Additionally, Title IX regulations need to be updated to avoid existing conflict with the Clery Act, which is a federal statute

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that should in fact trump any regulations put forward given that it is law, not guidance or regulation. Additionally, the Department needs to act to make sure that there is clarity about how any Title IX regulations around sexual misconduct proceedings intersect with FERPA, which is an archaic law that must be updated by the legislature given that it creates an ability for schools to abuse access to records for students when they're going through the Title IX process.

Regulations aside, I would ask that OCR be mindful that with any new regulatory changes to Title IX, that they provide additional and increased technical assistance not just to schools but parties accessing campus disciplinary proceedings. This will hopefully avoid ongoing complaints, confusion, and issues. Additionally, OCR should continue to have mediation options to resolve Title IX complaints filed with the Department of Ed. Moving forward,

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the Title IX regulations should reimpose preponderance of the evidence as the only appropriate standard for Title IX sexual misconduct proceedings. Truly, it will be one that ensures equity between the parties putting them on equal footing.

Additionally, changes are needed to make sure that live cross-examination ends during campus proceedings. These are not proceedings with judges, nor do they have rules of evidence. It is nothing short of absurd to have attorneys coming in in cross-examination without the protections given in such judicial settings where cross-examination is the norm. Finally, the Department of Education must work with the Department of Justice to ensure there is increased the guidance when the intersection of Title IX and crime occurs. I agree with a previous speaker who noted that there must be training in school resource officers. All too often they are the ones failing to protect

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students on campus. Thank you for allowing me to make these comments.

MODERATOR: Next up is Matt S. Matt, please unmute your mic. Matt, your mic is muted. We will be back in a few with the next commenter. Matt, if you want to try unmuting your microphone, you can start talking.

MATT S.: Hello. Sorry about that. This is -- my name is Matt Sharp. I'm senior counsel with Alliance Defending Freedom. ADF is the nation's largest non-profit legal organization that advocates for religious liberty, free speech, life, and marriage and family. ADF currently represents female athletes from Connecticut and Idaho in federal court who've personally lost out on championships and other athletic opportunities to biological males who are permitted to compete in female sports.

Women deserve to compete on a level playing field, and allowing males to compete in

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women's sports destroys fair competition and women's athletic opportunities. Title IX and its implementing regulations have long protected equal opportunities for women and girls in athletics by, among other things, permitting schools to maintain separate teams for women based on biological sex. Unfortunately, we are seeing a growing number of instances across the country where biological males have taken away championships, records, and countless opportunities from female athletes.

Biological sex is indisputably the single biggest driver of athletic advantage. Males generally have a 10 to 20 percent performance advantage depending on the sport over females. And having separate teams for men and women is the time tested way to ensure that women can showcase their talents and become champions. The science shows that comparatively fit and trained males will always have physical advantages over women. Even the world's best

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female Olympic athletes would lose to literally thousands of boys and men on any given day. That's the reason we have women's sports as a separate category.

Federal courts have long recognized that it is constitutional to provide separate programs based on biological sex, including sports teams, locker rooms, or even single-sex schools. As the Ninth Circuit Court of Appeals explained, it is a physiological fact that, quote, males would have an undue advantage competing against women. And the evidence was clear that due to average physiological differences, males would displace females to a substantial extent if they're allowed to compete for positions on the women's team. The result would be that, quote, athletic opportunities would be diminished.

The Sixth Circuit Court of Appeals reached the same conclusion. Quote, it takes little imagination to realize that were play and

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competition not separated by sex, the great bulk of females would quickly be eliminated from participation and denied meaningful opportunities for athletic involvement. In sports, biology is what matters. And so we strongly encourage the Department of Education to maintain the longstanding practice of allowing schools to maintain separate teams based on biological sex.

We further encourage the Department to, as it has previously done, take enforcement action against schools and colleges that deprive girls of equal opportunities on the playing because of policies that permit biological males to take spots on women's teams. Thank you for your time.

MODERATOR: Thank you. We'll be back in a few with the next presenter. Philip, you are on.

PHILIP B.: My name is Philip Byler, senior litigation counsel at Nesenoff &

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Miltenberg where I've been litigating Title IX cases representing male respondents for the past seven years. After graduating from Harvard Law School and clerking for a US Court of Appeals judge, I have been a litigation lawyer for over 40 years. I was the winning appellate lawyer in the noted cases Doe v. Purdue, and Doe v. Columbia.

My point today is that the current Title IX regulations aren't broken and therefore don't need to be fixed. I've submitted a written case comment discussing Doe v. Purdue, a Seventh Circuit decision that former Secretary DeVos cited when issuing the current Title IX regulations. I discuss Doe v. Purdue to show the current Title IX regulations in mandating due process and fairness in Title IX sexual misconduct proceedings were well formulated because they were based on well-considered decisional law dealing with some unjust experiences as exemplified in Doe v. Purdue.

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Doe v. Purdue was a suit brought on behalf of John Doe who had been accused of sexual assault by his former girlfriend five months after the supposed occurrences of non-consensual sexual touching. Never mind that the two had a two-month prolonged period of consensual sexual intercourse about which no complaint was made. And John Doe was suspended by the university and dismissed from Navy ROTC because of the university suspension.

John Doe's hope and dream to serve his country as a naval officer was destroyed after a university disciplinary process in which there was no access given for John Doe even to see the investigation much less comment on it. No hearing, no cross-examination, no presumption of innocence, no consideration of evidence. Jane Doe was deemed credible by the decision-maker dean of students without ever appearing before that dean. The Seventh Circuit upheld the complainant's pleading and the constitutional due

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process in Title IX discrimination claims.

The current Title IX regulations would not have allowed the university not to disclose ever the investigation report to John Doe but rather very definitely would have required the university investigators to share the school's evidence with John Doe before completion of the investigation report. The current Title IX regulations require a live hearing at which cross-examination is to be conducted by a party's advisor of all witnesses in real time and the university to create a transcript or audio recording of the hearing.

There was no hearing at all in Doe v. Purdue, just an untranscribed meeting of John Doe alone with the dean and equity committee. The current Title IX regulations impose decision-making obligations on schools that would not have been satisfied in Doe v. Purdue because the decision-maker was the Title IX coordinator, and the dean's decision consisted of a conclusion

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without findings, conclusions, and without rationale. In sum, keep the current regulations.

MODERATOR: Thank you. Please stand by for our next commenter. Thank you. This concludes this session of the public hearing. The next session will start at 11:00 a.m.

MODERATOR: Next up is David P., followed by Brian C. Dave, please unmute your mic. Dave, try to figure out to your mic problem. We'll come back to you. Brian, your microphone is muted. There it goes. Brian, please unmute your mic. Looks like we're having some problems with Brian. Lyda K., you're up next.

LYDA K.: Hi. I'm assuming you can hear me.

Moderator: You're good to go, Lyda.

LYDA K.: Okay. I am Lyda Costello-Kiser, executive director for Title IX at Stetson University and the Stetson University College of Law, both in Florida. I've been doing

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Title IX work since 2011 and have over 20 years of working on issues of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. The new rule of May 2020 presented a significant difficulty for my institution. The newly created college sex court resembles nothing we have ever done to address either student misconduct or civil rights violations.

Our institution already focuses on due process, education, and letting the complainant drive the university's response. Most complainants want support only such as counseling services and faculty notification with accommodations. A few wanted an informal process, which under the new rules still requires an investigation. However, the idea of a formal hearing with cross-examination when we have nothing like that for any situation, has resulted in many students not wanting to engage in a full process when we rely on the complainant's participation for the university to move forward.

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This means it's harder for us to address situations where a member of the campus community is harming others. This is the most important component of the new rule that must be changed. To provide true due process, our Title IX procedures must look like other policy and processes at our institution including those that address other violations of the Civil Rights Act.

The second is the requirement that any case where an employee is reported to have harmed a student must go through the full formal process. This has a chilling effect on reports by students against employees including faculty. The power differential between students and faculty is great, and this requirement causes students to fear the repercussions of even making a report. Institutions need the flexibility to handle these situations in ways that address problems and provide support to complainants and limit additional trauma.

Other issues that need to be addressed

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are limitations of what can be considered policy violations. Our students and employees deserve an environment to work and learn that is safe, free from discrimination, and consistent in how it addresses policy violations. Removing the live hearing with cross-examination, removing the requirement for formal process with situations that involve employee and faculty respondents, allowing institutions to include other incidents that are now discouraged will help us achieve that goal. Our institutions need to be able to have policies and procedures that work to promote safety, accountability, and support. Thank you.

MODERATOR: Thank you, Dave P., you're up next. Dave, I believe you're signed in twice. Close one device. Dave, try again. Please unmute your mic.

DAVE P.: Thank you for taking my testimony. I provided a copy of my written testimony. Please read it. The views I express are my own. They do not necessarily reflect

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other's perspectives. My name is Dave Porter. I'm a 72-year-old veteran. I served as an Air Force Officer for 30 years. In 1995, I was selected by the Air Force Academy and confirmed by the Senate as the third permanent professor of Academies Department of Behavioral Sciences and Leadership.

After my retirement in 2001, I spent 17 years as academic vice president, then a tenured professor of Psychology and General Studies at Berea College. Throughout both of these careers, I've dedicated myself to the cause of diversity and inclusion. However, due to misunderstanding and misapplications of Title IX, my last five years at Berea College have been pure hell. Like hundreds of other faculty members and students, I became a target of cancel culture and am now a professor in exile.

I would like to address the protection from hostile environment discrimination provided by Title VII of the 1964 Civil Rights Act and its

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application to colleges and universities by Title IX. I've seen the misapplication and hyperextension of this well-intended provision demolish a highly effective academic department, chill a once thriving liberal arts campus, and callously deny the due process and free speech rights of many individuals. Sometimes the zealous pursuit of political correctness together with their reluctance to assess the consequences and deleterious effects of such programs, have turned benign administrators into malicious, self-serving, diverse-ocrats.

Trying to combat racism and discrimination without authentic and effective assessment is like fighting a fire while blindfolded. Hosing down a fire chief because he happens to be some old white guy is not an effective tactic. The survey study which ended my tenure and resulted in my dismissal from Berea College showed that sensitizing individuals to micro-aggressions and hostile environments

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decreases their support for academic freedom and the freedom of speech, which have sustained liberal arts education and higher learning for the last century.

Please read my brief written testimony and visit my website at DAVESFSC.com. Thank you for your time and attention and your ongoing efforts to integrate diversity and inclusion with the --

MODERATOR: Thank you. Brian C.'s up next, followed by Zoey B. Brian, you may begin. Looks like Brian's still having technical difficulties. We're going to move on to Zoey B. Zoey, please unmute your mic. We'll come back to Zoey. Danielle W., you are on deck.

DANIELLE W.: Good morning. My name is Danielle. I am the associate vice chancellor and executive director of equal opportunity and Title IX. And I have just a few comments related to Title IX, some of which my colleagues have already indicated. So I am going to switch gears

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a little bit and not solely focus on sexual harassment, sexual assault, and things of that nature, but more aligned with pregnancy and parenting, which I looked at the listening session, but in hopes that I'm not too far off base here.

One of the things that I was looking for more guidance on and in hopes with the review and revision of Title IX is providing more information and clarity about what colleges and institutions are permissible to do not so much under the pregnancy aspect of Title IX, but the parenting side. As my institution and I'm sure all institutions have the opportunity to assist individuals that are parenting, it would be very helpful if the Department of Ed would provide more education and guidance about what is permissible under the parenting aspect, specifically the longevity of it.

What type of accommodations can be provided once elements of the pregnancy has

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somewhat -- and I say -- move forward? So that would be very helpful in understanding exactly, you know, what exactly institutions are permitted to do or required to do under the provision of Title IX. And then also, I'd like to speak just very briefly about what some of my colleagues indicated on Title IX related to Title VII.

And I would readily agree with one of my colleagues that indicated that there was some concern, not so much a lot of feedback provided between the cross-section or the intersectionality of Title VII and Title IX, and where there's not a lot of information and guidance related to that even though the faculty and staff or employees are covered under Title IX, it can sometimes, as my colleagues have -- it can be somewhat of a concern because of the processes that were outlined in the new Title IX regulations, which causes more issues and concerns, again, as my colleagues have indicated. So I would say I'm in full agreement with some of

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the comments that were made earlier regarding the due process. So again, thank you for this opportunity. I see my time is drawing nigh. So have a good day.

MODERATOR: Okay. Thank you. Next up is Zoey B.

ZOEY B.: Good morning. My name is Zoey Brewer and I am a student engagement organizer with Know Your IX as well as a current college student. While I could speak on the harm I've experienced as a student and survivor on college campus, I believe that the harm I experienced as a K through 12 student is a little bit more demonstrative to the importance of a swift drafting of the new Title IX policy designed to support and to protect survivors.

My high school experience was dominated by Betsy DeVos' charge of the Department. I along with other K through 12 students across the country got to feel the brunt of the lack of enforcement and care for

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survivors. However, while many educational institutions at least attempted to hide their failings to survivors, my school district made no such attempt despite being the largest school district in my state. The complete lack of a Title IX coordinator for a significant period of time allowed schools within my district to fly under the radar as they failed to provide student survivors with the support necessary to stay in school, avoid retaliation, and receive the resources necessary to feel safe in the classroom.

My school district, enabled by DeVos, simply ignored the needs of survivors, was able to get away with having no Title IX coordinator for months. At its most basic level, Title IX should offer students with a place and person of whom to report to, answer questions, and address their case. If we want to protect our students and their education, we must ensure that K through 12 institutions are placed under the same

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microscope for allowing Title IX policy -- or for following Title IX policy as higher ed.

That being said, simply having a Title IX coordinator isn't enough. Many K through 12 institutions bypass hiring a new Title IX coordinator by tacking the title onto another position, typically another administrative job. This prohibits the Title IX coordinator from providing the attention and trauma-informed response necessary to address Title IX complaints. Not to mention the frequent lack of qualifications to deal with trauma. If the Department wants to ensure that K through 12 schools are doing their best to protect students, they must have a Title IX coordinator where it is their only job to be Title IX coordinator.

At the point of hiring a coordinator and having the coordinator only holding one job, we have sent the most basic requirement for a safe environment for survivors. However, it's nowhere near good enough. We need to ensure our

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students have access to the resources they need to stay in school, and that the school and abuser don't have the room to retaliate against the survivor for reporting to the district. Under DeVos, schools have the ability to deny survivors these protections. However, with one in three teenagers experiencing sexual violence, it's clear that it's not just a matter of higher education.

Violence is occurring at the K through 12 level, and by continually failing student survivors in providing the resources necessary to stay in school or forcing many to drop out for either home schooling or transferring. No student should have to go to a different school to be able to learn in a safe environment. It is time that we have a rule and enforcement that takes violence at the K through 12 level just as seriously as the violence occurring at the higher education level. Thank you.

MODERATOR: Thank you. Next up is

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Jen R., followed by Pam D. Jen, please unmute your mic. Okay. We're going to move to Pam D. Jen, please try unmuting your microphone again. Okay. Let's try Amanda B. Please unmute your mic.

AMANDA B.: Hello, can you hear me?

MODERATOR: I can hear you.

AMANDA B.: Great. So can I begin?

MODERATOR: You may begin. Thank you.

AMANDA B.: Thank you so much. Hello. Amanda Bastiani, Title IX coordinator for the College of St. Rose. Thank you for this opportunity. I am focusing my comments on the requirement to hold a live hearing and for complainants and respondents to face each other in person or through virtual means. This requirement puts undue burden on smaller, less resource institutions to manage the live hearing, which as we've seen play out over the last academic year, has proven to be way more

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resource, time, and labor intensive than we had anticipated.

In addition, the setup of a live hearing under the new regs appears to look like and function as a courtroom, and colleges could be at risk for the unauthorized practice of law. And students often choose to go through the college process instead of the criminal process in order to have a more fair and equitable procedure as the evidentiary standard is the preponderance of the evidence standard at many institutes. However, under the new regs, we've already seen a notable decrease in students choosing to move forward with a formal complaint and investigation in order to avoid facing their alleged perpetrator in the live hearing.

This effect is not in the students best interest, nor is it in the college's best interest to ensure a safe and healthy campus community. By requiring this labor-intensive resource and time demanding live hearing process,

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the Department is in essence, not providing students or institutions with an alternate, more equitable process. It is setting up yet another process that looks and feels like a criminal proceeding or court process. Many institutions were doing this right before the regs were changed, but I acknowledge some institutions were doing it wrong and we can all agree that needed to change.

It is my recommendation that the Department leave it up to individual institutions as to what adjudication process works best for them ensuring due process, rights of both parties, and to manage a procedure that is both equitable and resource reasonable. Thank you so much.

MODERATOR: Thank you. We're going to try Jen R. again. Please unmute your mic.

JEN R.: Thank you. Can you hear me okay?

MODERATOR: I can hear you fine.

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Thank you.

JEN R.: Thank you. This is Jen Richardson. AVP for Student Development at the College of St. Rose. I'm going to focus my comments this morning regarding the role of the advisor in the live hearing process. The role of the advisor in the live hearing process specifically as it relates to cross-examination has the ability to create a disadvantage and an inequity for both parties. Students and families may not be able to afford hiring outside counsel, which automatically puts them at a disadvantage in the live hearing and directly goes against the spirit of the new Title IX regulations, which is to make this a fairer and more equitable process.

For individuals who are not able to afford outside counsel, the burden falls back to the campus to provide an advisor to the student. Small institutions are not equipped with the financial means to outsource advisors for the students involved. And that responsibility

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falls back on members of the campus community who must serve in that role. A role that adds on to what they are already doing as part of the campus. Members in the campus community tend to be hesitant to serve in this advisor role because they are anxious about cross-examining other students.

Our campus communities are meant to be places where students can feel comfortable, where they can turn to individuals for assistance and guidance. In this live-hearing setting, we turn the campus into an adversarial arrangement where students lose a sense of trust for those around them, including the staff and administrators and faculty who serve in these roles.

It is my recommendation that the Department leave it up to individual institutions as to what adjudication process does work best for them to ensure due process, to ensure the rights of both parties, and to manage a procedure that is both equitable and resource reasonable on

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a day-to-day basis. Thank you.

MODERATOR: Thank you. Next will be Pam D., followed by Margaret V. Pam, you should be able to unmute your mic now. Looks like Pamela's having difficulties. We're going to move to Margaret V. Pamela, if you'd like to try again. We will be back in a few moments with the next commenter. We're going to move on to Angela D.

ANGELA D.: Hello, can you hear me?

MODERATOR: Yes, we can. Thank you.

ANGELA D.: Hi. My name is Angela. I recently graduated with a Master of Social Work from Rutgers University. I transferred to Rutgers in the fall of 2020 following sexual harassment and institutional betrayal at another public university. I was dismissed from a graduate program after reporting sexual harassment by another student. I was never given the option to file a Title IX complaint and was told I would need to take courses with my harasser

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if I wanted to graduate on time. I was also encouraged to take a leave of absence or drop out if I did not want to be in the same classes as my harasser.

My graduate assistantship, which provided nearly full tuition remission was taken away from me without warning for reasons that had nothing to do with my work performance. During class, I often took breaks when I felt overwhelmed and asked faculty for support when I was struggling emotionally with being in class. I was then told that these behaviors were unprofessional and were reasons for my dismissal. The new Title IX rule must broaden the scope of sexual harassment back to severe or pervasive conduct that limits students access to education. Behaviors that constitute sexual harassment should be clearly defined to students so they know what their options and rights are.

At the time of my report, I did not know I should have been given the option to file

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a Title IX complaint despite the fact that I shared with administrators patterns of behavior by my harasser that clearly constituted sexual harassment. If sexual harassment occurs between members of the campus community in an off-campus setting, such as through social media or text message or other online formats, or occurs between a student and another party on campus, these incidents should fall under Title IX to ensure students get the support they need.

Most importantly, the new rule should ensure that students who have experienced sexual violence are not punished or pushed out of school for demonstrating trauma symptoms. And students should rather be given supportive measures by their schools to ensure they're able to complete their education, including accommodations that allow students to complete their coursework remotely, and flexibility with deadlines and attendance. I was told that seeking additional support from Faculty Disability Services and the

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Dean of Students Office was unprofessional and aggressive.

Coordination and collaboration among different offices, such as those mentioned, should be encouraged by the new Title IX rule, especially at a survivor's request. I appealed my dismissal and my appeal was ultimately accepted due to procedural errors in the dismissal process. However, my rights as a student who experienced sexual harassment were never respected by the university. The new Title IX rule should also include institutional accountability to support student survivors rather than contribute to the retaliation against us. Thank you.

MODERATOR: Thank you. Next up is Margaret V.

MARGARET V.: Thank you. My name is Margaret Valois. I'm an attorney who represents both complainants and respondents in college and high school disciplinary matters. I want to

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discuss positive results achieved for both parties since the implementation of the 2020 Title IX regulations, specifically in regard to attorney-advisors and cross-examination of parties and witnesses.

In serious misconduct manners, current Title IX regulations require live hearings in front of impartial decision-makers to determine whether the respondent has violated the school's code of conduct. But my client's experiences, these hearings which advocacy groups had decried as too traumatizing for victims have proven to be useful tools in helping retain a sense of control over their lives and the situation.

The hearings I've participated in have been well managed and have benefited both complainants and respondents who have an opportunity to be directly heard by the decision-makers and to face all witnesses and view all evidence. This creates connection to

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the entire process, leaving students feeling more satisfied that they've been heard and taken seriously regardless of the outcome.

Under the previous Title IX policy live hearings were not required, resulting in complainants and respondents feeling frustrated and uninformed during the decision-making period. My clients have indicated that the live hearings have been positive events during their Title IX ordeals. Cross-examination, a hot button issue within the current regulations and an element many courts have identified as essential to fair Title IX adjudications, is a necessary tool for both complainant and respondent and the best way to get to the truth of the matter.

My complainant clients feel very empowered in their ability to question witnesses and the respondent. Having an attorney perform cross-examination on their behalf has proven to eliminate fears and to build confidence. Respondents are likewise empowered by the ability

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to examine witnesses. Attorney-performed cross-examination helps the parties maintain their dignity and protects all their emotional well-being, resulting in fewer outbursts and further trauma, thereby allowing the decision-makers to focus on facts and not the emotional tolls these procedures take on all parties.

With the requirement for attorney-performed cross-examination, attorneys have a greater role in advising complainants. Since the 2020 regulations went into effect, I've observed that complainants are not only better prepared for Title IX hearings, but that they are also emotionally stronger having had a guiding hand that is adept at wading through complex policy and procedural rules. Whether I'm advising a complainant or respondent, the fact that attorneys now advise both parties during the stressful and often frightening Title IX adjudication process has resulted in a calmer,

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more efficient proceeding.

Prior to the implementation of the 2020 regulations, complainants often attended hearings alone. Many indicated that they believed the school was their advocate, which of course cannot be possible in an impartial process. This resulted in complainants feeling abandoned and angry at having to go at alone. Having an attorney advisor puts both parties on equal footing during the hearing, which is much better for the complainant. It also allows the school to maintain the necessary neutrality the 2020 regulations and the Clery Act require.

The live hearing and cross-examination requirements have proven to be useful and necessary elements of the current Title IX regulations. They must be retained to the benefit of both complainants and respondents. Thank you.

MODERATOR: We'll be back in a few with another commenter. Going next to Jasmin M.

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JASMIN M.: Hello. Can you hear me?

MODERATOR: Yes, we can. Thank you.

JASMIN M.: All right. Good morning.

My name is Jasmin Mundi. I am a born and raised Illinois resident and will be attending American University in Washington DC this upcoming fall to start my undergraduate studies. I am speaking today to iterate a need for urgent, persistent, and effective action in regards to sexual violence and rape culture in American educational institutions. As I've taken an issue with the accessibility of Title IX to student bodies across the nation, I've had to file numerous Freedom of Information Act requests with my school district to quantify the pervasiveness of sexual violence in their schools.

Not every student has the means to be drafting FOIAs or scrutinizing grievance procedures. We shouldn't even have to be doing this in the first place. As a member of the Illinois Lieutenant Governor's Council on Women

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and Girls, Girls Subcommittee. I have had the opportunity to address the impact sexual violence has had on the academic and economic potential of women and girls. I wholeheartedly consider sexual misconduct to be discriminatory towards women, students with disabilities, and members of the LGBTQIA+ community.

The frameworks of Title IX in grievance policies aren't accessible to those who may not be able to comfortably articulate their traumatic experiences either. How is the student body expected to advocate for themselves when we don't understand what our rights are, what our educational institutions are obligated to do, and which of our birth rights are enshrined both within our democracy and bureaucracies that exemplify it.

But would you really expect the school district who lets 13-year-olds and 18-year-olds roam the same hallways without preventatively educating them on sexual assault awareness to

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also provide students with the means to hold their administrators accountable? No. And that's the problem. School districts have picked keeping their federal funding over the well-being of their constituents over and over again. And they won't stop because they currently have nothing to gain and everything to lose.

So I have a proposition. Schools in a state of active and permanent restitution for their mishandling of sexual violence and all that term encompasses should keep their federal funding. I think a flagship program such as this led by the US Department of Education and Office for Civil Rights would encourage educational institutions to better educate students on their rights with the idea that their transparency would be rewarded in a way that benefits everyone.

This includes consent education, increased support staff, and aggregate data collected each and every sexual violence claim

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made all in a way that tracks consistency over time. None of these ideas are new. Enforcing sexual violence prevention in classrooms isn't your responsibility, but the impacts this collective trauma has on the potential for success of students is. For an education without dignity isn't an education at all. Thank you.

MODERATOR: Next up is Delaney D.

DELANEY D.: Hello. My name is Delaney Davis, and I'm a recent graduate of the University of Texas at Austin. And I will be attending the University of Georgia School of Law in the fall. During my four years at UT, I was involved in interpersonal violence prevention work and Title IX reform advocacy. Working with survivors of sexual violence has directly informed the testimony that I'm sharing with you today.

The previous administration's guidance as a whole is detrimental to college survivors of sexual violence. However, today I

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will be focusing on two aspects of the new rule I find to be the most troubling. The new guidelines on off-campus misconduct and the lack of guidance surrounding investigation timelines. Under the Trump administration's new rules, schools are not permitted to investigate misconduct that takes place off-campus under Title IX. This leaves student survivors at schools like UT, where the majority of students live off-campus, and thus, the majority of sexual misconduct occurs off-campus, without protection. Students are only protected if their schools decide to investigate off-campus misconduct outside the purview of Title IX.

The goal of Title IX is to ensure that gender discrimination, which includes sexual assault and harassment, does not disrupt a student's education. Off-campus sexual misconduct is no less disruptive to a student's education than misconduct that occurs on campus. What is the point of even having Title IX if we

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are picking and choosing which survivors are worthy of protection? Why have a federal guideline that only protects some survivors? If the DoE is actually serious about fighting gender discrimination in schools, it should allow institutions to investigate off-campus misconduct when writing the new rules.

Secondly, the new guidelines provide absolutely no guidance in terms of the time frame of an investigation. While I understand that institutions need time to properly conduct an investigation, a survivor's Title IX investigation should not be the defining moment of their college career. I have worked with survivors who have had their investigations last almost an entire school year resulting in a poor academic performance, declining mental health, and even students withdrawing from their academic programs.

Again, if the point of Title IX is to prevent gender discrimination from disrupting a

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student's education, we need to make sure that investigations are not drawn out so that they themselves don't become a barrier to a student's academic success. The DoE should work to find a clear and specific time frame that balances a school's need to collect evidence with the survivor's well-being.

I hope that the DoE takes the testimony given today in consideration when drafting the new Title IX guidelines. Being a survivor of sexual assault should not be able to keep someone from reaping the benefits of higher education. It is past time the DoE does right by survivors. Thank you.

MODERATOR: Thank you. We are now going to take a break. We will be back at 12:00 for more commenters. Amelia, please try again.

AMELIA R.: Sorry, it wouldn't let me before. Can you hear me?

MODERATOR: We can hear you now. Thank you.

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AMELIA R.: Great. Thank you. My name is Amelia Roskin-Fraze. I'm a graduate student at UC Irvine. On October 5, 2015, I was raped as an undergraduate at Columbia University. I told the person in charge of Columbia Sexual Assault Response, who is now the deputy assistant secretary for Strategic Operations and Outreach at the office for Civil Rights. She did nothing to help me.

A couple of weeks later, my rapist assaulted me again, said an anti-gay slur, and left me to die on my dorm room floor. As these hearings begin, I want to make sure you all know how the decisions OCR makes today about regulating conflicts of interest, including who they hire, can affect students for the rest of their lives. Deputy Assistant Secretary, when I see -- I'm sorry, was I muted? Hello. Was I muted? I'm still here. We can --

MODERATOR: Selina S., you're up next. Selina, you're up. Please unmute your

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mic.

SELINA S.: My name is Selina Soule and I'm a track and field athlete for Connecticut. I have been competing in track and field since my mom introduced it to me when I was a little girl. Track means everything to me. I would wake up every morning eager to get on the track, waiting to run, waiting to jump. I love my sport. I've spent countless hours training to shave fractions of a second off of my times so I could be the best because I race to win, but my chances of being first, of being the best, were shattered.

In 2017, Connecticut began allowing two male athletes who self-identify as girls to compete in girls' sports. During all four years of public high school, I was forced to compete against them even though they were bigger, faster, and stronger than me because they are male. In just three years, these two athletes won 15 women's state championship titles in track

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and field. And they set 17 new individual meet records, records which we girls had no hope of breaking.

I remember what it was like to line up for a race and get into my blocks already knowing the outcome of the race long before it started. Those two biological males will dominate the field, leaving us girls to compete for third place and beyond. No matter how hard we trained and how hard we pushed ourselves, they'd beat us time and time again. We elite female athletes don't give up our normal high school experience just for participation trophies. We race to win.

Because of Connecticut's policy, I have lost countless opportunities over the past few years. I lost opportunities to compete on world class tracks and opportunities to win titles. During my junior year, I was denied the chance to compete at the New England regional championship. I missed advancing to the next level of competition in the 55-meter dash by just

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two spots, two spots that were taken by biological males. It is frustrating, heartbreaking, and demoralizing to be sidelined in my own sport. Boys will always have a physical advantage over us girls. And that's why we have women's sports in the first place.

Science and common sense show us that boys are, on average, bigger, stronger, and faster than girls. It's simple biology. That is why it is fundamentally unfair to let boys who identify as girls come in and dominate any sport. As a female athlete, I recognize the opportunities for elite competition are limited, including access to college recruitment, scholarship funds, equal access facilities, coaches, training opportunities, and even opportunities to play professionally even decades after Title IX was enacted.

That's why I'm asking the Department of Education to restore protections for women and girls under Title IX. Title IX was designed to

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ensure that female athletes have the opportunity to compete and win. But less than 50 years after passing this landmark law, we girls are once again losing to male athletes because of the bad policies that substitute gender identity for biological sex. This is wrong. Women fought long and hard for the opportunity to compete and win in their own sports. Please protect women sports for female athletes like me. Thank you.

MODERATOR: Thank you. Shimi S., you're next, followed by Ben N. We lost connection with Shimi. So we're moving on to Ben N.

BEN N.: Thank you. It's time to put students back in the driver's seat. For too long schools have been able to either sweep sexual assault and harassment under the rug, or wrongfully discipline accused students on the basis of sex. Both of these problems are direct consequences of school's overly broad discretion in the adjudication of these matters and of the

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limited rights that are granted to students.

If we want students to be protected on campus from both forms of Title IX mismanagement, we need to give more rights to the students on both sides of the disciplinary process. This means more procedural protections and rights for both parties, something that the 2020 regulations effectively accomplished.

Good afternoon. My name is Benjamin North, and I am a recent graduate of Case Western Law School. Throughout my legal education, I focused on the recent explosion in Title IX litigation since the Dear Colleague Letter in 2011. After reviewing hundreds of cases and my own personal experience with the process, I've come to the realization that schools are only minimally capable of handling these sensitive issues on campus, and they must be given as little discretion as possible.

Now by contrast, students must be protected from discriminatory adjudications in

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violation of Title IX. The best way to do that is to give both sides robust procedural protections. The most important procedural protection for complainant and respondent alike is a live hearing with cross-examination. The cross-examination allows both sides to, through an advisor, effectively advocate for themselves and challenge the other side. Both respondents and complainants benefit from this procedure despite the emotional difficulties it does indeed present. Because the alternative is allowing the school to decide the case unilaterally with little input from the parties.

Unilateral decision-making from schools, particularly through the single investigator model, opens the door to those decisions being made by schools as a result of sex bias in violation of Title IX. By contrast, empowering students and their advisors to be the advocates of their own interests, limits the school's ability to employ sex bias to decide the

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case. I encourage the Department to consider whether it wants to return to the days in which schools could adjudicate sensitive issues of sexual assault in secret behind closed doors.

Now, the answer to that question must be a resounding, no. Instead, students must be empowered to advocate for themselves through an advisor at a live hearing with cross-examination so that they can control their own case as much as possible. It's time to put students back in the driver's seat. Thank you.

MODERATOR: Thank you. We'll be back in a few moments with the next commenter. Next up is Daniel C.

DANIEL C.: S. Daniel Carter, president safety advisor for Educational Campuses, LLC, a social entrepreneurship devoted to safer learning. As the US Department of Education reviews the 2020 Title IX rule, we believe that the goal ought to be developing agency actions, including regulations that are

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sustainable and stand the test of time. In order to accomplish this, they need to afford regulated parties with the flexibility to employ evolving best practices and adapt to changing legal precedence and carefully balanced the needs of all parties involved, including through the provision of due process, fair process, and procedural safeguards guaranteed by the Constitution, other laws including the Jeanne Clery Act as amended by VAWA, and institutional policy.

Beyond any specific policy issues associated with the 2020 rule, the extensive scope of the prescriptiveness of the requirements has made it profoundly difficult for federally funded educational programs, including institutions of higher education, to comply with. We encourage the Department to carefully consider the impact that the focus on disciplinary proceedings is having to the exclusion of prevention and response work under Title IX.

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Eliminating hostile environment sexual harassment is not the sole province of disciplinary action.

Programming geared towards preventing it and accommodations provided when it is reported are equally essential. We recommend restoring the long-standing administrative definition stating that sexual harassment is unwelcome conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX. It should be noted that the appropriate burden in civil rights matters is unwelcome, not a criminal consent standard.

Where off-campus harassment causes a hostile environment in the educational setting, it creates a nexus between off-campus misconduct and the educational program. Accordingly, we recommend that the Department apply Title IX in instances where there is a nexus of activity, especially in the most serious of matters. We recommend restoring the constructive knowledge

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standard in use by the Department between 1997 and 2020, as explained in both 1997 and 2001, this means a school has notice if a responsible employee knew or in the exercise of reasonable care should have known about the harassment.

We also encourage the Department to reconsider the expansiveness of requiring all employees to be considered responsible or reportable officials. Title IX is a contractual obligation with the federal government. It is not a blanket source of authority. Rather, it obligates institutions to prevent and remedy sex discrimination. This obligation cannot and does not in any way conflict with obligations to provide due process, fair process, and/or procedural safeguards. Thank you.

MODERATOR: Thank you. Next up is Kat M., followed by Kathryn N. Kat, please unmute your mic. Kat, you can begin.

KAT M.: Yes. Hello. Can you hear me?

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MODERATOR: Yes, we can. Thank you.

KAT M.: Okay. Thank you. I would like to highlight some of the recent changes that I believe are vital for a thorough, fair, and impartial, inequitable process in consideration in revising a few of the regulations moving forward. The dismissal of a formal complaint, I think is -- actually has been very important and helpful to institutions. I do believe that if the conduct alleged in a formal grievance process would not constitute sexual or gender-based prohibited misconduct as defined in our college policies, even if proved, if it didn't occur in the college's education program or activity or did not occur against a person in the United States, that the Title IX coordinator has the ability to dismiss that formal grievance complaint with regard to the conduct for purposes of sexual harassment under Title IX is important, and I do believe that documentation of that is also important.

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I do think that if a Title IX coordinator dismisses a complaint, it should not preclude action under another college provision of a college's policies. And again, I do think this practice is very important for fairness of allegations. And again, it doesn't preclude a Title IX coordinator from referring those allegations either to another department such as their Student Conduct or Human Resources departments for review and consideration. I think the collaboration between departments at a college is essential. And that if another department investigates those allegations and even as they're investigating does discover that allegations could potentially fall under the Title IX policies that those departments and those staff members can refer the matter back to the Title IX office. I think this does provide equity, coordination, and a thorough review of all allegations with the possibility of reviewing allegations under all of an institution's

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policies.

I also want to highlight informal resolution. I have had some wonderful experiences working with informal resolution processes. And I have found through my experience that many survivors share that they do not wish to file a formal grievance complaint specifically because they do not wish to engage in a full investigation process nor a hearing. And I found that in order to reduce barriers to both reporting and filing a formal complaint, colleges should provide an alternative voluntary and informal resolution process. Those processes can provide both parties the ability to resolve a complaint with a very similar outcome or near similar outcome as if they would be moved forward through a formal investigation or hearing process.

MODERATOR: Thank you. Next up is Kathryn N., followed by Christina M.

KATHRYN N.: Thank you for the

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opportunity to participate in this hearing. My name is Kathryn Nash. I'm a higher education attorney with Lathrop GPM and trainedED. My team advises institutions on sexual misconduct matters and has served in the role of outside investigator, adjudicator, hearing panel officer, appeal officer, and interim Title IX coordinator.

We have conducted over 300 investigations and adjudications on behalf of schools around the country. We also train individuals with heightened responsibilities. Because of our work with a variety of schools, we have a unique vantage point of the impact of the regulations. Given time constraints, we will also submit written comments that outline our feedback in more detail. As to the hearings, we recommend that the Department eliminate the live hearing requirement. We have seen the chilling impact of the live hearings.

There are fewer reports, and there is

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less willingness for witnesses to participate in the process. The hearings have created additional burdens for the parties, witnesses, and institutions, and they aren't necessary to ensure a fair process. Pre regs, many of our clients utilized a process where the parties could suggest questions, had access to all information provided to decision-makers as VAWA requires, and parties had the opportunity to review and respond to that information before a decision was made.

We found this process to be fair, more expeditious, and less burdensome on the parties, witnesses, and schools. If the Department retains the hearing requirement, one of several changes we recommend would be to create an exception that would allow statements against interest to be considered by the decision-maker even when a party or witness does not appear for cross-examination. Currently, a respondent could admit to misconduct during the

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investigation, and then if the respondent does not submit to cross-examination, the prior admission could not be considered by the decision-maker.

Regarding informal resolution, it provides institutions with important flexibility to resolve lower-level harassment allegations. Given that live hearings are currently the only alternative, there is increased interest for informal resolution, but the regs have created some roadblocks. In some instances, the requirement to first have a formal complaint has been problematic. Also, the prohibition on the use of informal resolution when an employee is accused of sexual harassment has prevented the use of informal resolution where allegations are made against a student employee.

Practically speaking, this limitation takes informal resolution off the table for many cases where it might otherwise be appropriate. The Department also needs to address the

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application of these prescriptive procedural requirements on at-will employees. They prevent institutions from being able to take prompt and appropriate disciplinary action against at-will employees and require schools to go through a burdensome process, giving significant additional rights to at-will employees. Thank you.

MODERATOR: Thank you. Next up is Christina M., followed by Sharon P.

CHRISTINA M.: My name is Christina Mitchell, and I am the mother of three female athletes from Connecticut. Our daughters are talented athletes who work hard and love to compete. In Connecticut, though, their right to a fair playing field has been discarded and the purpose and promise of Title IX has been abandoned. It was April of 2017 when I first learned that our state's high school athletic association was allowing males to compete in girls' sports based on gender identity rather

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than biological sex. It was obvious that this would undermine girls' sports and would wipe away the opportunities that Title IX had created.

When I contacted Connecticut state officials, I was astounded to hear a new narrative from them. Girls have the right to participate, not to win. My middle daughter Chelsea was among the best sprinters in new England during her high school years. Those years, however, were marked with controversy, stress, and heartbreak. In 2019, despite being the first female finisher in the 55-meter, 100-meter, and 200-meter at the Connecticut state championships, Chelsea was deprived of the gold metals and state titles she had earned in those races. That recognition went to a biological male instead.

The policy was devastating for female athletes all across the state, and it was difficult to see the adults in charge disrespect young women in this way. I watched as two males

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were awarded girls' state championship titles 15 different times. One of the biological males then went on to win seven New England championship titles. This athlete had competed on the men's team for the three prior seasons and did not even rank in the top 100 among male sprinters in our state. The sudden switch to the girls' team in 2018 brought this biological male a stack of gold metals and championship titles.

The female athletes that were denied those titles worked hard to be the very best at their sport, yet they were deprived of fair competition, the thrill of victory, and the honor of being a champion. They missed out on media interviews and recognition of their accomplishments that they rightfully deserve. These things matter to a young girl, as do the scholarships and career opportunities that can flow from that success. Title IX was supposed to make sure that female athletes have these opportunities in athletics.

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Since 2017, hundreds of girls in Connecticut have lost championships, awards, or their chance to compete because biological sex categories in sport were abandoned. Sadly, most of the female sprint records in Connecticut, some which stood for more than 30 years, have been wiped away by a male athlete. I urge you to learn from the terrible experience that Chelsea and other female athletes have been through. This is not a close call.

We need sex-based categories in sport due to the scientifically proven physiological differences between males and females. People often try to ignore our story or say that what happened in Connecticut wasn't a big deal. That is untrue. It was a very big deal to many young athletes like Chelsea. The case study is right in front of you. Please affirm sex-based protections for females under Title IX. Thank you.

MODERATOR: Thank you. Next is

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Sharon P., followed by Kim T.

SHARON P.: Hello, I am Sharon, and I am a practitioner in the field. Most practitioners you will find, or Title IX coordinators, go into this field because they really want to help. They understand humankind and they want to make the world a better place. However, the current regulations do little to help the Title IX coordinator or a practitioner navigate when they have barriers that are set up within the organizational culture.

It is believed by expanding the conflict of interest, regulation, or statement there to completely and directly and explicitly state that the Title IX coordinator or practitioner needs to report to the highest ranking official at the institution if we truly want change. In order to do that, we all understand it needs to start at the beginning.

Allowing the Title IX coordinator to report to any other official at an institution

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will ultimately impose barriers. Barriers that could be if they are reporting to the director of finance and the challenge happens to be an incident between someone that works in the Finance Office and a student, more than likely there will be a barrier for that Title IX coordinator. However, if they are reporting to the person that is at the top, which ultimately is responsible, it will assist in removing those barriers within the organizational cultures. Thank you.

MODERATOR: Thank you. Kim T., you're up next.

KIM T.: My name is Kim Turner, senior staff attorney of the Gender Equity and LGBTQ Rights Program and director of the Fair Play for Girls in Sports project at a 105-year-old non-profit of Legal Aid At Work. For nearly 20 years, Fair Play has focused on low-income girls of color in K12 public schools to ensure they're experiencing lasting gender equity in athletic

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programming across the country. Unfortunately, still today, millions of girls are not being afforded gender equitable opportunity in federally funded school athletics, and those that do play are on a blatantly uneven playing field.

Title IX athletics equity is directly connected to and supportive of anti-gender discrimination aims. Girls who play sports have lower rates of depression and breast cancer and higher self-esteem, better mental and physical health, higher graduation rates and increased workplace success. We have litigated Title IX athletics cases for K12 girls for almost two decades because virtually all federally funded schools across the country are not yet making good on the requirements of Title IX, despite the nearly 50 years since the law was passed.

At the high school level, girls across the US are afforded one million fewer opportunities to play sports compared to boys although girls want to play in far greater

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numbers. The girls that are playing sports face obviously inferior or nonexistent locker rooms, team rooms, scheduling, publicity, and coaching, in violation of Title IX. As OCR assesses the current regulations and approaches regarding Title IX and its implementation, athletic equity must be a key pillar to OCR's work, regulations, updates, and strategies.

Nine key items on which OCR should take action to resolve acute gender-based athletic inequity in schools include the following: one, fund and support OCR staff and leadership learning and implementing athletics-oriented Title IX standards.

Two, lessen the investigation and resolution time for OCR athletics complaints and all OCR complaints and repeal harmful DeVos-era complaint processes and standards.

Three, proactively review schools for gender inequity in athletics.

Four, mandate regular Title IX

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training of schools before federal funds can be annually disbursed.

Five, review current guidance such as Dear Colleague Letters and the policy interpretation regarding athletics and ensure they're more digestible to school staff, students, and families, including strengthening and promoting anti-retaliation provisions.

Six, create a one-stop website for school personnel, families, and students to understand and apply Title IX athletic standards in an easy to digest manner.

Seven, review, update, and reissue the 1990 athletics investigator's manual.

Eight, review and evaluate sunseting prong two, the continued history and practice of program expansion component of the three-prong test. A school should now simply be offering proportional athletic opportunities under prong one or showing they gender equitably meet all students' athletic interest.

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Nine, support legislation to enhance the roll-in of and training for Title IX coordinators. We look forward to partnering so as to transform school sports into a truly gender equitable offerings to ensure discrimination-free, positive school environments for all, regardless of one's gender, gender identity, sexual orientation, or gender expression. Thank you so much.

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

SHIMI S.: Hello. Can you hear me okay?

MODERATOR: Yes, we can. Thank you.

SHIMI S.: My sound's been acting up a bit. Hi, my name is Shimi Shimabuku, and I am a representative of Safe Horizon. We are the largest leading victim service agency in the country. At Safe Horizon, our mission is to provide support, prevent violence, and promote

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justice for victims of crime and abuse, their families, and communities. I work at the campus sexual assault coordinator, and through my role, I provide trauma-focused therapy to students survivors as well conduct sexual violence prevention education on college campuses.

As an agency, we prioritize trauma-informed practices and care. And we are primarily concerned that the new Title IX rules that went into effect in August 2020 prevent survivors from accessing needed supports on campus, potentially re-traumatizes and causes more harm if they do try to access supports on campus, and ultimately fails to reduce costs for all involved. And in line with the whole purpose of Title IX, these rules fail to protect the survivor's right to equal access to their education. We believe at Safe Horizon that all students regardless of sex, sexual orientation, race, class, religion, ability, have the right to pursue their education free from violence.

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Our ultimate goal is to prevent violence from happening in the first place, and the best way to do that is to empower students to seek support and justice if they choose while also creating cultures in which this kind of violence is not normalized or minimized. We know that sexual violence is rampant in our society, including on college campuses, and in the work that we do, we work with many survivors who are victimized while pursuing their education and/or enter college with histories of trauma. The effects of this violence are long-lasting for survivors, whether it be emotional, physical, financial, or spiritual. Studies have shown that early intervention can mitigate these risks.

However, we also know that accessing support after experience sexual violence is not something that students often do. They may believe it's not serious enough. They may not think anyone will believe them. They may fear stigmatization, retribution, social risk, and so

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on. We often demonstrate avoidance of the impact of the violence and instead prefer to focus their energy on goal-oriented behaviors, throwing themselves into academics and extracurriculars, or trying to keep their suffering at bay. Research shows that only about 10 percent of cases of campus sexual violence are even reported to Title IX. This means that almost all students who are victimized during a pursuit of education will not come forward to tell the school about it.

As advocates at Safe Horizon, we, of course, do not believe that our goal should be to force everyone to come forward and make a report. In fact, we've seen, particularly through the criminal system, how traumatizing depositions can be sometimes. However, we do believe that institutions have a duty to support those students should they disclose the violence confidentially or choose to move forward with the Title IX report. The goal of which is not a

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criminal prosecution and punishment, but rather a determination as to if the student code of conduct has been violated and to ensure that the survivor has equal access to their education during and after this process. People who experience sexual assault, harassment, and other forms of violates such as IPV, respond in different ways. There's no right way to respond.

MODERATOR: Thank you. Amelia R., you're up next.

AMELIA R.: Thank you. Can you hear me?

MODERATOR: We can hear you. Thank you.

AMELIA R.: Thanks. All right. My name is Amelia Roskin-Frazee. I'm a graduate student at UC Irvine and was an undergraduate student at Columbia University. I was actually muted earlier for mentioning the job title of the public figure at OCR. I'm not going to rehash that, so I'm just going to skip to the gist here,

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which is explaining the multitude of things that can happen to a survivor when the people at their school do not adhere to Title IX.

When I see doctors about my permanent injuries, I am still too ashamed to tell them how I got hurt because Columbia's first responders told me I shouldn't have such rough sex again. I wear a bra under my pajamas on the anniversary of my first rape because I'm still haunted by how Columbia's investigators quizzed me about why I wasn't wearing a bra under my pajamas. I have recurring nightmares about getting expelled because the person in charge of Columbia's assault response threatened to expel me for legally recording my meetings with them and Columbia's investigators, something that OCR should, in my opinion, explicitly allow students to do to encourage transparency in Title IX processes.

Many days I hate myself because I wonder what's so disgusting about me that I'm a

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queer person who the head of responding to assault at Columbia, a queer rights activist, doesn't think it's worth fighting for. I don't know if there's anything really I can say to convince OCR to regulate conflicts of interest when, in my opinion, the people in charge that have benefitted from those conflicts existing. So what I want to make sure everyone knows is that survivors cannot be silenced, and I cannot be silenced. I'm going to finish my PhD in 2026 as a National Science Foundation graduate research fellow, despite being disabled from what happened to me on campus.

I'm going to finish the documentary I'm working on about how Columbia treats survivors of violence despite the implicit threat of having my degree revoked for recording previous meetings. I'm going to keep advocating for queer students and survivors despite what my rapist said about my sexuality and the way administrators ignored my safety concerns. And

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unlike the administrators at Columbia, I am never going to be deliberately indifferent. Thank you.

MODERATOR: Thank you. Next up is Joseph W. Joseph, please unmute your mic. Joseph, you could please try unmuting your mic. Looks like Joseph is experiencing some technical difficulties. We'll be back in a few minutes with our next commenter.

This session for the hearing has now ended. The next session will begin at 1:30. It's now time to start this public session. Starting off is Jake S., followed by Suzanne T.

JAKE S.: Good afternoon. My name is Jacob Sapp. I'm the deputy Title IX coordinator at a private college in Texas. I studied Title IX specifically at law school under Peter Lake, a higher-ed guru. I have a number of points about the new Title IX regulations that I think need to be taken into consideration. First, the new regs need to clearly define the difference between a responsible employee, i.e., the Title

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IX coordinator or deputy Title IX coordinator and then mandatory reporters.

I believe that the Department should mandate all higher-ed employees as mandatory reporters following states like Texas and Louisiana in crafting laws that require individuals that learn of harassment to report it. We've seen numerous failures of universities through deliberate indifference causes of actions because employees failed to report. Two, in applying and incorporating the Bostock provisions, I believe that the Department needs to be extraordinarily careful to make distinctions between public and private individual exceptions. I would turn your attention towards the Sixth Circuit's Meriwether v. Shawnee State University, regarding faculty members, their private religious beliefs, and not forcing them into speech that conflicts with their religious beliefs.

Perhaps one of the most salient pieces

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that I think the Department needs to consider is, you need to create a Title IX policy, a model policy, that all schools can use and then they can build out from there. I think it was really unfortunate that the last Department created a huge regulation, but didn't provide a model policy and instead made schools turn to boutique lawyers, boutique firms for policies that were not very well put together. Fourth, I don't think there should be a constructive notice standard. It needs to be actual notice to the Title IX coordinator through the mandatory reporters.

Please do not create a regulation that substantially conflicts with majority circuit-approved case law that'll create hell for administrators. Following that, I believe that cross-examination should be retained. However, it should not be done by party advisors. You should follow the First Circuit Haidak v. UMass-Amherst decision and make it mandatory that

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a neutral decision-maker at hearings is the one that does cross-examination.

There also needs to be training provided by the Department, not just PowerPoints online that go over the points articulated in the regulations, but actual substantive training that's provided to all schools engaging in Title IX that don't follow. We need -- the pregnancy discrimination is covered under Title IX. It needs to be articulated in the new regulations. And you need to keep the notice of allegations and review of all evidence in the investigation. Providing the notice and an opportunity to be heard is mandatory and essential for fair decisions. Thank you.

MODERATOR: Suzanne T., you may begin.

SUZANNE T.: Good afternoon. I'm Suzanne Taylor. My pronouns are she and hers, and I'm the system-wide Title IX director of the University of California System. Before joining

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UC, I was an attorney in the Office for Civil Rights in San Francisco for over a decade. Thank you for this opportunity and for the good work that you do. I would like to first focus on some non-legal tenets that guide UC as we develop policy and that remain constant despite a shifting legal landscape.

First, we must encourage complainants to come forward so they can understand the resources and resolution processes available to them.

Second, we must strive for a process that is not only fair, but also kind. And by fair, I mean outcomes are based on reliable evidence gathered through a neutral and thorough fact-finding process in which both parties have meaningful rights. When I say, kind, I mean we treat parties with compassion, knowing that we ask them to share some of the most intimate, and for some, most painful experiences of their lives, and that the stakes for both parties are

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high.

Third, our outcomes must be just, including accountability for misconduct. Without accountability, we simply cannot adequately protect our community. At the same time, schools must also, of course, comply with the law. This is challenging, though, when requirements are in constant flux and when they don't align with our policy objectives. For UC, that misalignment is acute with the current regulations.

That said, our process did already include many components required by the regulations, like detailed written notices, the right to advisors, the opportunity to identify witnesses and submit evidence, and hearings and appeals in student respondent cases. These help ensure a fair process. Yet other requirements, though, actually undermine our policy objectives. Notably, this includes live hearings in cases with employee respondents because most school

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employees already have the right to a hearing before being disciplined under other policies.

This additional hearing means it will be more difficult and take longer to hold employees accountable for sexual harassment than virtually any other misconduct. Also objectionable are certain procedures, like allowing parties to question each other through their advisors at the hearing. An intimidating prospect that may discourage some from reporting at all. As you consider improving the regulations, I hope these goals will be paramount. To balance fairness and kindness, to provide schools flexibility to align policy with institutional values, and to withstand future changes in administration since schools have the chance to build best practices on the foundation the law provides.

Finally, I urge you to definitively affirm that Title IX requires schools to treat transgender students according to their gender

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identity and protects transgender and non-binary students from both harassment and other forms of discrimination. As I end, I want to thank you for giving students a voice and mention that a member of UC's Title IX Student Advisory Board, Guadalupe Ariana Castro, will speak Wednesday at 1:00. I know you will find her words valuable. Thank you, again, and please let me know how UC can support you.

MODERATOR: Thank you. Next up is Delia H., followed by Elizabeth A.

DELIA H.: Thank you. My name is Delia Harrington, and I'm here to speak with you about reporting survivors of sexual violence on campus. I was sexually assaulted in 2007 when I was a college freshman, which probably makes me among the oldest of the students that you'll be hearing from. I'm now a graduate student finishing up my master's degree at the same school where I first organized on issues of consent and sexual violence back in 2012. It's

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both surreal and frustrating to be speaking on this same topic a decade later. Survivors need meaningful support on college campuses beyond and independent of the adjudicatory process.

When I was assaulted, it never occurred to me that I could seek assistance from my school. I had to go it alone when it came to facing trauma, including determining how to keep myself safe from my perpetrator, managing what I would later learn is PTSD, and doing my best to finish school on time. While I appeared to others to be doing fine, making the dean's list and going on study abroad, I felt like I was barely keeping my head above water. I had nightmares, flashbacks, and trouble turning in assignments. I'm back on campus again nearly 15 years after my assault.

I've done a lot of healing as well as volunteer work speaking to the public about consent and sexual violence, but trauma has a long memory. It isn't done after a few weeks,

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months, or semesters. I suffer from migraines which were occasional before the assault and have since become chronic making school especially difficult during the pandemic when screen time has been inescapable. My attacks have been near daily, and I've had to severely limit my screen time, icing my eyes multiple times a day just to be able to complete my coursework.

Like me, many survivors experience long-lasting physical and mental health issues, which necessitates support from our universities. This isn't a coincidence. People with disabilities are much more likely to experience sexual violence. Moreover, sexual violence can result in disabling conditions like PTSD, depression, or physical injuries from the assault. For far too many of us, we have a hard time convincing our schools to take our conditions seriously. There are many other aspects of on-campus support that we survivors require in order to have the education to which

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we are entitled.

It is not enough for a Title IX office to exist as a standalone resource on campus. It must coordinate with disability resource centers, LGBTQ centers, cultural centers, housing, and others. Student survivors pursuing a degree in the aftermath of trauma deserve to have as many barriers to our education lowered as possible. It isn't enough to simply refer students out with a name and a room number. These offices need to work together to offer survivors meaningful support so we can complete our education safely. Thank you.

MODERATOR: Thank you. Elizabeth A. Followed by Elizabeth H. Elizabeth, please unmute your mic. Elizabeth A. seems to be having technical issues. Elizabeth H., can you please unmute your mic? Elizabeth A., can you please try your mic again. Okay. Let's move on to Buddy U. Buddy U., if you can try unmuting your mic. You are good to go, Buddy.

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BUDDY U.: Can you hear me?

MODERATOR: We can hear you loud and clear. Thank you.

BUDDY U.: Okay. Thank you. I am a former professor of Biochemistry and Molecular Biology at the Oregon Health and Science University in Portland, Oregon. And I had the misfortune of experiencing Title IX up close as a respondent after I was falsely accused of sexual harassment by a female medical student. I was ultimately found to have engaged in 29 years of sexual harassment of female students. Sounds terrible, and it was for me, but it was all made up.

My ordeal started in 2014, entailed five investigations over three years, and ultimately resulted in my termination in 2017. A lot of people who were dependent upon me were harmed. My investigation occurred under the now rescinded Obama-era guidance. Accordingly, I was not allowed to know the allegations against

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me or the name of the complainant. I was not allowed to have witnesses or present evidence, exculpatory evidence was withheld from me. I was not allowed to defend myself in any way, and I was gagged through the proceedings. Kim Jong-un would've been proud.

Let me emphasize that none of these shenanigans would have happened if the current regulations had been in place. After I was found responsible for sexual misconduct (audio interference) and unfair as hundreds of court decisions and especially 23 circuit court verdicts have attested. Obama-era guidance would also violate President Biden's executive order, excuse me, it discriminated against the accused and therefore on the basis of gender and the selective enforcement of Title IX against Black and Brown people is worse than discriminatory, in my opinion. Black lives do matter. We cannot go backwards. Please keep the new rule.

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MODERATOR: Thank you. We're going to try Elizabeth A. again.

ELIZABETH A.: Can you hear me now?

MODERATOR: Yes, we can. Thank you.

ELIZABETH A.: Okay. Great. Thank you. My name is Elizabeth Armstrong, and I am a professor of Sociology at the University of Michigan. And I have been studying student sexual misconduct policies for about the last five years, and we pulled, read, and coded 381 different school policies as of 2016 and have a paper under review looking at these policies.

And I just wanted to make really one point today. And that is that the 2020 regs, the new regs, are overly prescriptive and inappropriately narrow in terms of the procedures and types of ways they may serve to balance the rights of respondents and complainants. We found that by 2016, schools had really innovated and had arrived at a really diverse way of balancing the rights of both parties in the process, like,

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our higher education system is just enormously differentiated and diverse.

And one of the things that the 2020 regs did is really narrow things down into kind of one type of procedure, this kind of adversarial hybrid hearing model with cross-examination. We found that kind of what we call an investigatory hybrid offered a good solution for schools that potentially might not have the resources to actually fully host the kind of adversarial hearings with all of the kind of training of continuously moving people through the process.

So for example, this model works something like this, that trained Title IX investigators, often more than one, conduct an investigation ensuring consistency, sensitivity, being trauma-informed, and then instead of going to a live hearing, the report, after the investigation, is handed off to a different individual, board, or group to make the

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determination of the finding. This serves to balance rights by importantly separating the person making, or board making the determination of the finding from the people doing the investigation.

So this kind of adheres and protects the due process rights of the accused in ways that kind of fully single-investigator model would not. But it also serves to avoid the trauma of cross-examination and the burden of schools to continuously have to kind of staff, train, schedule, and hold these live hearings. Yes. And so since my time is ticking down, that is my point, and I will close there. Thank you very much for holding these hearings.

MODERATOR: Thank you. Next up is Elizabeth H. Elizabeth H., can you unmute your mic? Okay. We'll go to the next guest is Fallon Grey F.

FALLON GREY F.: Hello. Can you guys hear me?

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MODERATOR: We can hear you. Thank you.

FALLON GREY F.: Okay. Awesome. Thanks for hearing my comment today. In 2016, I was a victim in a university disciplinary hearing, and as a result of this hearing, my abuser was expelled and banned from campus for five years. My abuser was violent, controlling, and threatened me, and I lived in fear of him for many years. He told me that no one at the university would believe me, and that he would destroy my career. At the disciplinary hearing, my primary academic advisor for my PhD and my two lab cohorts came in support of my abuser. Each said they knew nothing about the abuse, but that my abuser was a great graduate student.

The hearing lasted all day, and I was forced to be in the same room as my abuser who had terrorized me for years. The hearing members consisted of a panel of my peers, including a student and two staff members. These individuals

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were not trained in understanding domestic violence, sexual harassment, including sexual violence, and discrimination based on sexual orientation and gender identity in education programs and activities.

I have three comments and questions pertaining to Title IX disciplinary hearings. And I think in order for Title IX to be effective, I believe that these three things need to be addressed. Number one is, how should a university find panel members? I think that it is unreasonable to expect untrained panel members to determine facts, understand the behavior of victims, and decide sanctions for guilty parties. Number two, how does the university decide who attends these disciplinary hearings?

In my case, my abuser was allowed to bring in character witnesses as a way to intimidate me. How can a university allowed parties to attend on behalf of the perpetrator, especially knowing that they know nothing about

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the alleged incidents? While a fair hearing process is a goal of Title IX, can we let perpetrators use the hearing process as a means to further harass and intimidate victims. And finally, number three is, after these hearings take place and a party has been found guilty, how is the university supposed to enforce that the expelled student is actually adhering to the campus ban?

Further, if the university has banned a student, a professor decides that he would like to continue to work with that expelled student, how can the hearing sanctions be enforced? Particularly, if university staff, including professors and students don't adhere to the authority of Title IX, how can Title IX ever be effective? Even if the hearing was favorable, as it was in my case, how can a victim feel safe? I think that three minutes is not long enough to discuss this topic, and I look forward to continuing to use my voice. Thank you so much

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for your time.

MODERATOR: Okay. Thank you. Next up is Julia P., followed by Elizabeth H.

JULIA P.: Can you hear me?

MODERATOR: Yes, we can. Thank you.

JULIA P.: Thank you. My name is Julia Paris, and I am a survivor and student finishing my undergraduate degree at Stanford University this Sunday. In my past four years at Stanford, I have seen very concerning changes to sexual violence prevention policies that were directly the result of changes to federal Title IX guidance. Before continuing, I want to share a trigger warning. I'll be discussing sexual violence as well as institutional responses to sexual violence. And I also have permission to share the following stories.

I can speak for hours about the ways that the previous administration's changes to Title IX made student life more dangerous for me and my peers, but in these three minutes, the

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problem I want to focus on is that after the 2020 regulations, Title IX only applies to misconduct that occurs within the schools program or activity and within the United States. These restrictions effectively excluded a significant proportion of students from being able to access justice under Title IX. This is because sexual violence can happen anywhere.

Yes, it happens in dorms and labs and classrooms, but it also happens at bars, at off-campus frat parties, online, at academic conferences, at off-campus residences, and in study-abroad programs, and more. But no matter where the violence occurs, it can have impacts on survivor's ability to access education. I was assaulted my freshman year. For almost two years after that, I was constantly worried about running into the perpetrator.

One semester, he had a class right before mine, so we'd pass in the hallway, and I stopped going to that class. For me, the

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violence had happened on-campus, but it wouldn't have made any difference if it had happened off-campus. I still wouldn't be going to that class. My education would still have been impacted by his actions. I still would've deserved protections under Title IX. Under the new regulations, schools are also allowed to use separate and non-Title IX processes to address instances of sexual violence that don't fall under Title IX anymore, like violence occurring off-campus or outside the country. Stanford has done that, but that caused its own problems.

Stanford now has three separate processes to address sexual violence. It's nearly impossible for a survivor to read these processes and understand which one applies to their case and what would happen if they came forward. I have a friend who experienced sexual violence outside the country this year, the perpetrator was also a Stanford student, and she wanted to make a formal report, but she couldn't

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tell what process would apply and what her experience would look like if she reported it, and she decided not to make that report.

She and the perpetrator will both be on campus next year, and this is not what a response to sexual violence should look like. As these stories demonstrate, the 2020 Title IX regulations excluded many survivors and also fractured many schools' responses to this violence. I urge the new administration to change this. Title IX is supposed to ensure that all students can access education without sex-based discrimination. Therefore, the important question should not be where sexual violence occurs, but whether it has impacts on campus. I hope that future Title IX regulations reflect that reality. Thank you very much.

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

MIKE R.: Can everybody hear me okay?

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MODERATOR: Yes, we can. Thank you.

MIKE R.: Okay. Thank you. So good afternoon. I am the Title IX coordinator for a K through 12 school district located in Colorado. We have over 36,000 students enrolled in our school district. Currently, I'm the only person whose sole responsibility is working with Title IX. Over the past year, our school district has dealt with several challenges due to the implementation of the 2020 Title IX regulations, two of which I will discuss with you today. The first challenge that we have encountered is the undue hardship that the Title IX regulations have placed on our building staff.

Considering that I'm the only person in the district who works directly with Title IX, we are required to have principals and assistant principals act as investigators and decision-makers. Since most Title IX investigations take approximately 60 days to complete, requiring a principal and/or an

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assistant principal to conduct a Title IX investigation and issue a decision places a burden on the staff thus impacting the children to which they serve. Serving as a principal or an assistant principal is not your typical nine-to-five job in that most work well over 40 hours a week, sometimes on the weekends.

They do this because they love their job and their students. Our recommendation would be to bring back the single-investigator model so that while one staff member's conducting the investigation and rendering a decision, the other staff member can support the students. Adding a decision-maker to the process who is not familiar with the case only prolongs the Title IX process, thus impacting the students who are participating in that process. In addition, the investigator is the expert on the case and is in the best position to render a credible outcome.

The second challenge that we have encountered is the regulations themselves. The

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current regulations were not written with the interest of K through 12 school districts. Our recommendation would be to create separate regulations for K through 12 school districts. Since the regulations were not written to serve K through 12 students, we feel it is imperative that OCR consider having separate expectations for investigating and adjudicating allegations of sexual harassment. There is a distinct difference between the cognitive level of a fifth grader compared to that of a four-year college student.

College students are viewed as adults whereas, K through 12 students are still viewed as children. Children should not have to be forced to participate in a process that was designed for adults. Although parents can act on behalf of their child, the child is still required to participate in the process, and if found responsible, be sanctioned accordingly. Most children do not understand what sexual

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harassment is, nevertheless, how to participate in a formal grievance investigation. In addition, we also recommend aligning the Title IX investigation and due process requirements with existing state law due process requirements for student disciplinary matters.

This will simplify the process and will allow school principals to protect complainants using a familiar, practical, and time-proven process. All in all, we appreciate that OCR's considering these comments and will be issuing new regulations in the near future. It is our hope that these new regulations will better support our children. Thank you for your time.

MODERATOR: Thank you. Rebekah B., you're up next. Rebekah please unmute your mic. We can hear you now.

REBEKAH B.: Can you see me?

MODERATOR: No, we're not activating video.

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REBEKAH B.: Okay. That makes sense.

MODERATOR: Thank you.

MS. BRUESEHOFF: Okay. My name is Rebekah Bruesehoff. I'm 14 years old. I live in New Jersey with my mom, dad, and two little brothers. I'm a pastor's kid. I sing in the church choir. I'm a straight-A student and a National Junior Honors Society member. I actually love school. I play clarinet in the school band, and I'm on the field hockey team. I love to be a part of our school musicals. I have great friends, and I worked really hard to contribute positively to my school community, and I love to laugh. I'm also transgender.

That means when I was born, everyone thought I was a boy, but I deeply know myself to be a girl. I've been living with myself out in the world since I was 8 years old. I've had amazing support from my family, community, and my school from the very beginning. I know that makes me very lucky, but it also means that it

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can be done. I'm able to be a successful student and a positive member of my school community because of the support I receive.

Because it's never been a problem for me to use the girls' bathroom or the girls' locker room. Because I've been welcomed on the athletic field and with my field hockey teammates. Because my name and my pronouns were always correct in school databases. I've never been misgendered or called by the wrong name in school. There's always been a place for me. Because of all those things, I've been able to thrive. And because my school never questioned my identity, neither do my peers. That means that I can focus on my schoolwork, show up fully in my activities, and have fun with my friends.

Every kid deserves access to this kind of safe, affirming education free from bullying and discrimination, and not all of them have it. I have friends who can't update their names in the school portals. So every time there's a

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substitute teacher, they are called by the wrong name. It's disruptive and embarrassing. It makes them a target for harassment and bullying. It tells them that every single day, there isn't a school -- that their school community doesn't accept them.

Next week, I will graduate from eighth grade, and I truly can't wait for high school classes next year. I'm really looking forward to more challenging classes, joining new clubs, and just showing up as myself like I've always done. To help people understand transgender students like me and that they're just like other students. We need to be seen and affirmed. We need safe access to bathrooms and locker rooms. We want to be able to join clubs and play sports with our friends. And when that happens, that's when you get to watch us soar. Thank you.

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

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RAUL J.: It's on already.

MODERATOR: We can hear you.

RAUL J.: Oh, we can? Sorry about that. There are between 600,000 to 800,000 DACA recipients, yet no one has stepped forward to protect dreamers' rights under Title IX. My comment aims to do just that. I have practiced Title IX student sexual misconduct since 2013 when I first sued Swarthmore College and I have now focused on Title IX sexual misconduct regulations for dreamers, a group so compelling that as President Biden told Congress, quote, now, look, if you don't like my plan, let's at least pass what we all agree on. Congress needs to pass legislation this year to finally secure protection for dreamers, the young people who have only known America as their home, close quote.

Dreamers face discrimination three times over while in college. First, they are systematically discriminated against because of

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their race. Second, dreamers' discrimination experience includes their national origin, and third, dreamers alone amongst all college students face discrimination and outright disparate impact because of Title IX and particularly the due process eroding rule rollbacks currently under consideration, which ignore the unique risk that dreamers.

To maintain their DACA eligibility requirements, dreamers cannot be convicted of significant misdemeanor offenses, like the kind of sexual misconduct that Title IX rules establish. To not be convicted, to stay in DACA, dreamers will choose to not defend their side during Title IX student misconduct hearings, particularly if they are stacked against them in terms of low to no due process in a system that has already racially biased against them. In reality, for Title IX rules and rulemaking to provide a maximum of fairness, the weaker the standard of proof allowed, the stronger the due

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process must be. The following rules need to be maintained and strengthened.

Section 106.4(b)(5)(iii), (b)(5)(vi), and (b)(5)(vii) allow dreamers to understand their risk and to defend against it before the hearing even takes place or to not do so. Section 106.45(b)(6)(i) becomes the dreamer's last resort to defend and maintain DACA eligibility. Importantly, the federal courts, the federal circuits broadly agree with the current state of this regulation.

To change it would create a patchwork where dreamers receive better or worse treatment according to their school's state. Finally, Section 160.45(b)(5)(i) mitigates the impact of the two great obstacles Title IX's public proceedings visit upon dreamers. That the preponderance standard is unsophisticated for them. And that they defend against more accusations as people of color who cannot escape systemic bias, system inheritance, be biased

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against them. Thank you.

MODERATOR: Thank you. Next up is Laura S. Laura, please unmute your microphone.

LAURA S.: Thank you. Thanks so much for allowing this time. I work at a mid-sized university in the Midwest. There, I work with victims and survivors of sexual violence and intimate partner violence. In my role, I lead support groups, offer educational opportunities, programming, and confidential advocacy. In this work, so often victims and survivors choose not to seek out traditional systems of justice or accountability as a result of barriers.

Many of us agree that it's our goal to reduce or eliminate these barriers for victims and survivors who are seeking healing and support. Unfortunately, at this time, as I've worked with students, they have struggled to overcome current barriers. Some of those that I've seen firsthand are as follows. At this time, the perpetrator's advisor can be an

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attorney, which sets up a power imbalance and unfair advantages for the perpetrator. While the victim or survivor works primarily with a confidential advocate who might not be trained in legal matters, the perpetrator's process advisor, who's often an attorney, can view and respond to the investigation prior to the investigative report being written and sent to the administrative law judge.

This is re-victimizing and unfairly skewed in favor of the perpetrator. For a victim or survivor reading this investigation, especially things that the perpetrator said in their interview with Title IX officials is re-traumatizing and re-victimizing. The process itself being new and untested is traumatic for victims and survivors. They have questions that we cannot always answer. The hearing itself can certainly be anxiety provoking, painful, humiliating, and unethical since the perpetrator's hearing advisor can cross-examine

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the victim or survivor.

If the victim or survivor needs to remain in the room, we're continuing to re-traumatize students on our campuses when we ask them to report. The timeline and a reasonable time frame to complete this process is purposefully vague and creates no accountability to complete the process quickly to best serve students. But the process has and will absolutely continue to decrease the number of students who feel comfortable reporting, its antithetical to the goals of higher education to keep our students safe and to support them throughout their time at our institutions. Thank you for allowing me this time. I look forward to a survivor centered and trauma responsive future.

MODERATOR: Thank you. Next up is Kim G. Kim, please unmute your mic. Looks like Kim is having some technical difficulties. We'll be back in a few with the next commenter. Next

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up is Lindy. A. Good afternoon. You're all set.

LINDY A.: All right. Thank you. Hi. My name is Lindy Aldrich. And I may know some of you because for 13 years I was the deputy director of the Victim Rights Law Center in Boston. And I've recently started my own consulting firm called Ladder Consulting, where I will continue to translate the trauma-informed approach the systemic response in K through 12 campuses and with employers. There are numerous significant issues with the current Title IX regulations.

And I'd like to focus on one in particular today as it's an area I have passion for and I've focused on for 15 years. At the Victim Rights Law Center, I had the privilege of hearing thousands of survivor stories. Certain patterns began to emerge of the key needs a survivor has for disclosing to anyone and specifically when looking for resources, support, or to make a complaint. It is this victim

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reporting methodology that I worked with then Vice President Biden's office, and helped with the creation of the confidential advocate exemption for responsible employee status in the 2014 frequently asked questions document from the Department.

Survivors often need to speak with a confidential advocate support through issues of safety, privacy, and culturally specific needs. I've worked with survivors who have been shunned by their parents, fear being deported, or risk physical violence if their abuse or violence were discovered by parents, law enforcement, or even teammates. The current regulations deceptively dress up survivor agency without truly understanding when, how, and to whom survivors disclose. For instance, making the Title IX coordinator the hub of supportive measures by requiring them to reach out, does little to contemplate how survivors would ask for or need those measures.

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For rural or small institutions, survivors may fear telling the Title IX coordinator would mean a likely loss of privacy. With survivors from a marginalized population, fears of discrimination or retaliation from others finding out might be enough to never reach out at all. And while responsible employees are not required for campuses, without the training and community engagement, many campus employees will have limited knowledge of resources or accurate info about the process. Leaving survivors to figure out next steps on their own.

I understand there are no silver bullets in this process, but I encourage the Department to continue to explore giving institutions more discretion to create confidential systems, require training for employees on the basics, and returning Title IX to the trauma-informed processes that ease obstacles and encourage survivors to access the help they need. Thank you so much for having me

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today.

MODERATOR: Okay. Thank you. We'll be back in a few moments with the next commenter. Next up is Vermelle G.

VERMELLE G.: Can you hear me?

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

VERMELLE G.: Wonderful. Good afternoon. I would like to recount a story written by Joseph Roberts, currently a law student at Golden State University School of Law in his article, If Black Lives Matter, Due Process Must Matter, which appeared in the Washington Examiner last month.

In America, we like to think that the days of Black men being falsely accused of crimes at disproportionately high rates are behind us. But sadly, this is not the case, a real concern for me as a Black woman. A few years ago, Roberts was falsely accused of sexual harassment by two of his fellow --

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MODERATOR: Starting over. I'll reset the clock. Vermelle, apologize, we had some technical difficulties. If you don't mind starting over. I'll reset the clock. Vermelle, please unmute your microphone.

VERMELLE G.: All right. Can you hear me?

MODERATOR: We can hear you now. I've reset the clock for you.

VERMELLE G.: All right. Good afternoon. I would like to recount a story written by Joseph Roberts, currently a law student at Golden State University School of Law, in his article, If Black Lives Mattered, Due Process Must Matter, which appeared in the Washington Examiner last month.

In America, we like to think that the days of Black men being falsely accused of crimes at disproportionately high rates are behind us. But sadly, this is not the case. A real concern for me as a Black woman. A few years ago, Roberts

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was falsely accused of sexual harassment by two of his fellow Savannah State University students. One morning, he received a e-mail saying he was suspended. No further explanation. Moments later, a campus-wide e-mail alert with his picture was sent out to students telling them to call security if they saw him. All because he had been accused, not found guilty, but accused of sexual harassment.

Just two weeks ago, just two weeks before the day he would've become the first in his family to graduate from college, he was suspended on an accusation. No questions were asked, no evidence provided. While this can happen to students of any race or gender, the rate at which it affects our Black men cannot be understated. Harvard Law professor Janet Halley told the Senate Health Education Labor and Pensions Committee that, quoting, the rate of complaints and sanctions against male students of color is unreasonably high and that school

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administrators need to be on the lookout for racial bias, end quote.

From Emmitt Till to Walter McMillan, the bias belief that Black men are aggressive or dangerous, has been the catalyst for many false accusations. According to the about one-third of campus sexual assault cases in which the race of the accused student is known, Black students are four times as likely as white students to file lawsuits alleging their rights were violated during disciplinary proceedings. In fact, the Center for Prosecutor Integrity has found parallels between the treatment of Black men accused of rape during the infamous Jim Crow area as what's happening now in the adjudication of sexual assault cases.

Two years ago, things started to move in the right direction when then-Secretary Betsy DeVos issued new guidelines that instilled some basic fairness into campus sexual assault proceedings. Unfortunately, Roberts was falsely

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accused before the DeVos reforms were in place, and he was robbed of his right to defend himself. If the Biden administration rolls back these protections, it will return colleges to the days when being accused was the same as being guilty.

Removing due process from campus proceedings is unfair to all students and disproportionately harms our Black men. It is critical that the Office of Civil Rights takes all students rights into account. We've come to far as a country to go back to the days when one basic accusation is all it takes to ruin a life. If Black lives really matter to this administration, do not deny due process to our Black men who are trying to elevate their lives by obtaining a college education. Thank you.

MODERATOR: Thank you. We'll be back in a few minutes with the next comment. The next public hearing starts at 3:30. Comments from Bella F., followed by Derek W.

BELLA F.: Distinguished members of

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the Department of Education and the Office of Civil Rights. I personally thank you for taking the time and space to recognize student survivor voices, hopes, and needs. I speak to you today at 20 years old remembering incidents of sexual violence that happened five years ago when I was 15, and likely you will hear from a 15-year-old, maybe even a 14-, 13-, or 12-year-old because according to the Department of Justice in the United States, over two-thirds of sexual assault survivors are between the ages of 12 and 34. And for those under the age of 18, two-thirds of those survivors are between the ages of 12 and 17.

Sexual violence does not discriminate by age, by sex, by income, by school affiliation, and certainly not by political party. Sexual violence is pervasive. As reported by RAINN, one American is sexually assaulted every 68 seconds. After I was assaulted, I could not put a word or a term to the incidents. Only feelings of confusion, anger, fear, disbelief, and more

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confusion. Unable to understand or label what had happened, I, like so many survivors did not know what to do or how to receive help.

Unfortunately, my secondary institution did not make aware or accessible available resources or guides for students and survivors. Left to my own devices, I became part of the 38 percent of survivors who experience significant work or school-related problems post violence, and this led to further trauma and self-deprecation. There are millions of sexual violence survivors, yet sexual violence and its aftermath continue to be extremely isolating.

Had resources been more apparent, potentially via posters in restroom stalls and common areas, or annual trainings, and had the school provided a mandatory resource provider to outline potential steps to be taken, we might better support students and survivors and decrease a percent of those who needlessly continue to suffer post violence. I would love

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to live in a world in which we do not need to have these conversations. But because we do, because the cycle continues every year, we must also evaluate our preventative measures.

Fewer than half of all US states and territories require comprehensive sexual education despite its potential to promote healthy, respectful and safe boundaries in both platonic and romantic relationships. In contrast, in the Netherlands, sex ed begins at age 4, with the basics of love and respect. Research conducted on 12- to 25-year-olds who participated in these programs reported wanted and fun first sexual experiences as opposed to the 66 percent of Americans with the same demographic who wish they had waited.

At its core, sex ed adapted and integrated as early as elementary school builds core skills and concepts of communication highlighting Value and consent. De-stigmatizing and encouraging factual and accessible

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conversations in educational settings might also decrease the prevalent of sexual violence, or at the very least, lay the groundwork for students and survivors to receive resources if necessary.

Thank you.

MODERATOR: Thank you. Next up is Derek W., followed by Jennifer L.

DEREK W.: Ladies and gentlemen of the OCR, thank you for allowing me to speak with you today. My comments will be very brief. I'm calling to point out the importance of the new regulations introduced in August of 2020. The importance to male students of the prohibitions against sex bias and sex stereotypes, and also access to training materials. Before these regulations were in place, at a club event that was a part of school club, a student began touching me.

And when I brought this to the attention of the people in charge, I was asked if I really wanted to proceed because it was a male

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student. I would likely not be taken seriously. Had the regulations adopted in August 2020 been in place, I would hope that prohibitions against gender stereotypes and sex bias and also access to ensure appropriate training materials would have prevented that unfortunate incident from happening. And that is all I have to say. Thank you very much.

MODERATOR: Thank you. Next up is Jennifer L.

JENNIFER L.: Hello. My name is Jennifer Larios and I just graduated (audio interference) I am also a current member of the (audio interference) as well as (audio interference) 18, I experienced sexual harassment (audio interference) and sexual assault from my boyfriend at the time who was (audio interference) I decided to file a report with the school (audio interference) I was diagnosed with PTSD (audio interference) insomnia to suffering anxiety attacks. (audio interference) according

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to a study (audio interference) conducted, over 40 percent of survivors disclosed that they suffered PTSD. My school was able to provide accommodations to (audio interference) assignment extensions (audio interference) classes. These accommodations were the only reason I was able to graduate last month.

Without them, I would've had to seek a leave of absence from school, putting a pause on my education, and as a first-generation working class student, this wasn't an option for (audio interference) the new rule (audio interference) I was in the middle of my Title IX investigation and (audio interference) my case, luckily because I had reported in 2019, the new rule didn't impact me personally. Still, it's horrifying to think that had I waited just a little longer to report my assault, I wouldn't have been able to under DeVos (audio interference) the circumstances where a school is (audio interference) only allow schools to

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respond to reports of violence that took place either on campus and otherwise within an education program or activity.

Again, my assault happened off-campus and in a completely different state. My only other options for reporting would have been to go through a criminal investigation, (audio interference) could not have guaranteed educational accommodation. On top of that, as a person of color, I already face scrutiny by the police (audio interference) just like many other student survivors, I would have been forced into silence (audio interference) in addition to this, the rule removes the previously (audio interference) requirement for investigations without providing an alternate.

This means that schools can draw out their investigations indefinitely (audio interference) my case I started my Title IX investigation at the end of my sophomore year. And although I just graduated that investigation

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is still ongoing (audio interference) new rule is forcing survivors like me to undergo unnecessary, lengthy, and dramatic process (audio interference) ultimately leads to (audio interference) dropping out of an investigation or out of school entirely. Neither survivors nor respondents deserve to have an unnecessarily long investigation disrupt their education.

It is for these reasons that I believe the Department of Education (audio interference) action on Title IX (audio interference), every student deserves an education free from harm, regardless of whether violence (audio interference) and if a student does report, schools must provide adequate accommodations and carryout investigations in a timely manner for all (audio interference) Thank you for giving me (audio interference) share my experience.

MODERATOR: Thank you. Next up is Jennifer G., followed by Lauren L. Jennifer, you can go ahead and unmute your microphone.

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JENNIFER G.: Thank you. My name is Jennifer M. Gomez, and I'm a professor and sexual violence researcher. I will be speaking about the research relevant to the unintended harm of universal mandated reporting at universities, as well as an alternative of mandated support. Rape, including that which occurs on college campuses is harmful for many reasons. One of those reasons is that it takes away the agency and autonomy of the victim.

The victim didn't want to have sex but was forced to, and that's harmful. University policies, including Title IX, should be the opposite of rape. Whereas rape overrides what a victim wants, university policy should respect the victim's choice. So instead of universal mandated reporting that, like rape, takes the autonomy away from the victim, mandated support provides the victim with choices. This matters.

Number one, universal mandated reporting does more harm. Decades of research

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tells us that taking away choice from victims after they've been sexually assaulted negatively impacts their mental health. In other words, universal mandated reporting makes things worse. Number two, forced disclosure can have a chilling effect. Decades of research shows that when victims get to choose when and who they disclose to, they are more likely to disclose and more likely to engage in formal reporting processes, and more likely to utilize resources.

Since we know that disclosure is the first step in both getting help and identifying perpetrators and holding them accountable, the chilling effect of universal mandated reporting, again, makes things worse. This chilling effect might be greater for some. Minorities, including people of color, LGBT folks, and people with disabilities, are increased risk for campus sexual violence. Since they also experience discrimination on college campuses, minority victims may not trust the university's ability to

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properly address their sexual assault. Therefore, the chilling effect of universal mandated reporting, again, makes things worse.

At this time, it's especially bad for those who are already marginalized. Mandated support is a great alternative. Mandated support affects all victims, including undergrad, graduate students, law students, medical students, staff, administrators, and professors. All victims should know about and have access to university resources. Instead of universal mandated reporting, Title IX should require that when a victim discloses to me, a professor, I don't behave like a rapist and take their reporting choice away from them by sharing what happened to the Title IX director without their consent.

Instead, Title IX could require me to engage in mandated support, providing them information for all the campus resources including but not limited to the Title IX office,

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so the victims can seek out the campus professionals when they are ready. Therefore, changes to Title IX can meet institutional courage that leads not only to improve the victim's mental health, but also safer more equitable university campuses for everyone. In closing, universities should have nothing in common with rapists. Limiting who is a responsible employee can turn that truth into a reality. Thank you.

MODERATOR: Thank you. Next up is Lauren L., followed by Amy C.

LAUREN L.: The Women's Human Rights Campaign is a global non-partisan organization dedicated to protecting women's sex-based rights. The declaration on women's sex-based rights, which I'll call, the declaration, was created to lobby nations to protect women and girls on the basis of sex rather than gender or gender identity. By sex, we mean the biological differences between males and females.

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My name is Lauren Levey. I'm testifying as a signatory of the declaration, which has about 18,000 signatures. So let's be clear, when people talk about transgender athletes, what they mean is men and boys. Title IX was enacted to protect girls from discrimination based on sex not gender identity. Article VII of the declaration, consistent with Title IX, affirms women's rights to participate actively in sports on a single-sex basis to ensure fairness and safety for women and girls. I'd like to share three personal stories from signatories of the declaration.

First, I can't imagine how much more negative my school experience would have been if we hadn't had sex-segregated spaces in sports. The sexualized harassment from males was endless, you had to go along with it or risk ostracism. Sex-segregated spaces were a respite from the eyes and comments. No female was spared because she presented in a certain way. When I shaved

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off all my hair and wore my brothers' hand-me-downs, I still experience sexual harassment.

Second, my best friend in high school won several state high-school championships in track. Because of Title IX, she earned two full scholarships. If Title IX had been based on gender identity rather than sex, she wouldn't have been able to attend university. Third, if Title IX had been based on gender identity rather than sex, when I was growing up, there is absolutely no way my father would have allowed me to compete on the tennis and swim teams. It's as simple as that.

So, for girls to have an equal shot at education, abuse of girls by boys must bear consequences, and reports of abuse must be investigated seriously and not dismissed or discouraged or dealt with privately or otherwise covered up. We Americans love sports and we want them to be fair. A survey by MMA athlete Jake

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Shields with 5,000 responses found 86 percent opposed men in women's sports. In a TMZ poll out of 51,000 responses, 77 percent opposed men in women's sports.

The 80 percent majority is not wrong. They're not keeping an oppressed minority from having full civil rights out of blind hatred or fear. Men can participate in sports on the basis of their sex. Men are not women, and everybody knows that. Thank you.

MODERATOR: Thank you. Next up is Amy C.

AMY C.: The reason you do not have to worry about your job is because you're straight. That's what I told the EAP counselor as I tried to make sense of a mountain of paperwork. My attorney later called and asked, not that it should matter one way or the other, but are you gay? I explained that gay was not a label I identified with, but I am queer. She showed me a multi-page report that mentioned my

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being gay 20 times. It doesn't have anything to do with my job, but as most LGBTQ persons know, even with protections, you rarely feel safe.

I stand here before you today because I don't want my students to ever face opposition, dismissal, harassment, invalidation, hatred, or isolation because they happen to love someone as the same, both, or all genders, or because a doctor misidentified their sex at birth. I want to be able to tell my students that I will advocate for them, but that the law already does. I don't want to be attempting to deescalate a suicidal teen because the adult in their life charged with protecting them failed to do so.

I need you to strengthen Title IX so that there's no question about the equality and so LGBTQ youth are treated humanely and fairly. I often tell my students that the law protects you retroactively. Not in the moment. The way things stand now, moment by moment, people are gaining and losing rights and the result is

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catastrophic and endangers lives. Only one in five transgender youth report having had their pronouns respected by all or most of the people in their lives. Forty percent of LGBTQ youth reported having attempted suicide, and forty percent reported that they are unable to receive mental healthcare because they lack parental permission.

Schools are often the first and sometimes only access to mental healthcare students receive. But until Title IX is strengthened with guidance that came out reinforcing the 2016 Dear Colleague Letter, guidance that still stands because the law hasn't changed and the sex protections apply to gender identity, LGBTQ will continue to experience microaggressions, harassment, and abuse. And myself and other school psychologists will not be able to do the job they are ethically mandated to do. And more youth will die.

It really is that simple, that

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impacting, and the need is that dire. The DoE has told schools that they must not leave children behind. That they must evaluate students suspected of having a disability, that they must teach to state standards. The judicial branch dictates that there are limits of free speech, that public schools cannot favor or impart a specific religion on students, and that citizens cannot physically assault someone.

Why then is the Department of Education allowing LGBTQ students to be harassed, teachers to mis-gender students in the name of religion, and people to turn a blind eye to students who come in with bruises or worse yet have bruises arising from assaults on school campuses? We must do better. We must protect our youth. And Title IX, being strengthened, will do that. Thank you.

MODERATOR: Thank you. We'll be back in a few moments with our next commenter. Next up is Nathan B. You can go ahead, Nate. We can

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hear, you. Nathan, try again. It seems like there are some technical difficulties, Nathan, if you don't mind signing out of the meeting, signing back in. We'll try you again. Nathan B., try again.

Nathan, it appears there are still some technical difficulties. We'll try again in a little bit. We'll be back in a few moments with our next commenter. Nathan B., if you don't mind opening up your chat, we're attempting to help you with the technical difficulties. Nathan, go ahead and try again.

NATHAN B.: I am if you can hear me now.

MODERATOR: We can hear you. Thank you.

NATHAN B.: Excellent. Thank you for the help on this, and thank you for the opportunity to speak with you today. My name is Nathan Brittsan, and I am an American Baptist minister with a master of divinity. I'm also a

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plaintiff with the Religious Exemption Accountability Project, who is suing the Department of Education for modifying the religious exemption to Title IX. In 2017, I was expelled from Fuller Theological Seminary because I was married to another man, my husband, Jason.

We were married in the fall of 2016 in our progressive Baptist church where I served as an associate pastor. When I applied to Fuller, I was looking for the progressive evangelical education that they'd advertised. Because they had a nondiscrimination statement on their website at the time, which included sexual orientation and an LGBTQ group that met on campus at that time. I never imagined that they would expel me for being gay. I never imagined that they could expel me for being gay. If I had the constitutional right to get married, how was it legal that Fuller could expel me?

This is when I learned about the religious exemption to Title IX. What was most

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surprising to me was to see how much the religious exemption had been expanded over the years to the point of almost being meaningless. When I asked Fuller if they had been granted a religious exemption to discriminate on the basis of sex, they said they didn't even need one and referred me to the DoE website, which says, an institution's exempt status is not dependent upon its submission of a written statement to the OCR.

In other words, they told me, we don't even have to file any paperwork. In fact, the DoE website goes on to say that religious institutions that have neither sought nor received prior written assurance from OCR, may still invoke their exemption after OCR receives a Title IX complaint. Has a religious exemption become so broad that an offending organization can simply cry, sanctuary, when confronted with their discriminatory practices? It seems so. I believe the DoE needs to narrow the religious exemption as much as possible.

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As a firm supporter in the separation of church and state, this Baptist minister believes that the federal government should greatly minimize the number of ways that colleges and universities are allowed to discriminate with taxpayer dollars. It is simply not fair that colleges and universities who benefit from federal student loan programs get to say that federal laws of anti-discrimination don't apply to them and they don't even have to file any paperwork to do so. Please narrow the religious exemption to Title IX so that more students do not have to suffer the way that I did. Thank you very much for your time.

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

MODERATOR: Next up is Samantha S. Samantha, please unmute your mic.

SAMANTHA S.: Hi, everyone. Can you hear me?

MODERATOR: Yes, we can. Thank you.

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SAMANTHA S.: Great. Thank you so much for this time. So my name is Sam Skaller, and I'm the senior campus coordinator at the New York City Alliance Against Sexual Assault, and I'm speaking on behalf of this organization today. We are comprised of dedicated advocates, lawyers, preventionists, and student interns to prevent sexual violence and reduce the harm it causes through education, research, and advocacy.

In striving to accomplish our mission, we provide training, technical assistance, and consultation on the issue of sexual and gender-based violence in schools. And this includes K through 12, colleges and universities, and rape crises programs through New York State's Education Law 129B, also called Enough is Enough. So today we'd like to highlight three main points from our work on the ground. So first, the geographical restrictions of the new rule. Second, tech-facilitated abuse. And third, and encourage collaboration between schools and

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community-based rape crisis centers.

So first, the majority of the student populations we work with have experiences of sexual harassment that occurred outside of a school activity and have expressed concerns that this particular portion of the current rule limits the ability of Title IX to protect students who live off-campus or are enrolled in study abroad programs. In New York City specifically, the majority of students live off-campus. And according to the City University of New York, CUNY's 2018 sexual violence campus climate survey, the majority of sexual misconduct experienced by CUNY students took place off-campus. We therefore urge the Department of Education to ensure that students who experience sexual violence outside of a school activity have equal protections under Title IX as students who experience sexual violence on campus.

Now, second, the new 2020 Title IX regulations ignore cyber-sexual violence and

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tech-facilitated abuse. Now, understanding the depths of cyber-sexual abuse and tech-facilitated abuse remain an under-resourced and under-reported area in the field. Anecdotally, the Alliance can confidently say that the majority of students coming to us have experienced some form of tech-facilitated abuse, such as, but not limited to pornographic disruptions during mandatory remote classes, non-consensual sharing of intimate images, and heightened cases of cyber stalking.

We call upon the Department of Education to not only provide resources for the research and response to tech-facilitated abuse, but also to ensure that students who experience tech-facilitated abuse are protected under Title IX. And lastly, with the five seconds we have left, based on the many successful collaborations through New York State, we strongly encourage and recommend the Department of Ed to adopt a similar model of encouraged collaboration between schools

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and rape crisis centers on a federal level.

And in closing, we, on the behalf of the New York City Alliance Against Sexual Assaults and those we strive to serve strongly encourage the DOE to ensure that the diverse needs and experiences of students enrolled at city schools are considered in their review of the current regulations. We welcome any opportunity to provide additional input, and we thank you so much for your time.

MODERATOR: Thank you. Next up is Amit P. Amit, please unmute your microphone.

AMIT P.: Can you hear me?

MODERATOR: Yes. Thank you very much. You may begin.

AMIT P.: Great. My name is Amit Paley, and I'm the CEO of the Trevor Project, the world's largest suicide prevention and crisis intervention organization for LGBTQ young people. We work every day to save LGBTQ young lives by providing support through 24/7 phone, chat, and

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text platforms, and operating education, research, and advocacy programs. By prohibiting discrimination based on sex and thus, sexual orientation and gender identity in education activities, Title IX has the potential to dramatically improve the health and well-being of LGBTQ young people if properly enforced.

Tragically, our research and experience serving youth in crisis tells us LGBTQ youth in America's schools are experiencing high rates of discrimination and their mental health is suffering because of it. In our national survey on LGBTQ youth mental health we found that youth who reported having at least one LGBTQ affirming space had 35 percent reduced odds of reporting a suicide attempt in the past year. And the strongest association with reduced suicide attempts was for affirming schools.

Fortunately, the majority of LGBTQ young people, 62 percent, told us their school was affirming, but that leaves a lot of room for

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opportunity. A simple way schools can affirm trans and nonbinary young people is to respect their pronouns. Young people in our survey who told us that all or most people in their lives use their chosen pronouns all of the time attempted suicide at half the rate of those who did not have their pronouns respected. Sadly, only one in five trans young people reported receiving that level of respect.

One area of particular concern for Title IX is access to school athletics, especially after months of misinformation and the passage of several laws sidelining and attacking trans young people. Access to sports isn't just about fun and games. LGBTQ young people who participated in sports reported nearly 20 percent lower rates of depressive symptoms and higher rates of academic achievement. Unfortunately, we also found that transgender young people reported significantly lower rates of sports participation than their non transgender LGBTQ

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peers. And LGBTQ student athletes were much less likely to be out in their identities.

Under the Title IX, every student who wants to should be able to play and feel welcome as who they are. By ensuring that LGBTQ young people have access to a welcoming and affirming school environment, the Department of Education can improve student mental health and well-being and ultimately save lives. We hope that action is taken to stand up and support LGBTQ young people and let them know that they are deserving of respect and to have the ability to thrive the same as all students, regardless of their sexual orientation or their gender identity. Thank you so much.

MODERATOR: Thank you. Justin D., you are up next.

JUSTIN D.: Great. Can you hear me all right?

MODERATOR: Yes. Thank you.

JUSTIN D.: Terrific. My name is

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Justin Dillon. I'm a partner at KaiserDillon Law Firm in Washington DC. We've been doing this work since the early 2010s. We've represented students, mostly respondents, in well over 100 Title IX cases on campus at more than 100 schools nationwide. We've also litigated a lot of relatively high profile cases, including a successful Sixth Circuit case against Overland, and lawsuits against GW, Georgetown, George Mason, Marymount, and a variety of other schools.

I'm one of a handful of lawyers who I think is widely considered to be a kind of leading respondents' lawyers in this area. Although I have represented complainants as well. And so we -- that's just by way of background that we deal with these regulations every day. The new Title IX regulations have been a sea change for fairness on college campuses. And I do not think the parade of horrors that the people who opposed them thought they would be has come to pass. So I want to hit on a few specifically.

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And to be clear, I fully understand this is a partisan process and that you-all will try hard to undo the good work of the regulations. I hope you won't. And I'm going to try to convince you in my three minutes that there are certain ones you should keep. The notice requirements. Section 106.45(b)(2) requires schools to give a respondent, quote, sufficient details known at the time and with sufficient time to prepare a response before any interview. That's been hugely important. It used to be notice could be as little as, you are alleged to have committed sexual assault on this date several months ago. Please provide a response. So please keep the notice requirement.

Please keep informal resolution, which has returned autonomy to complainants. It allows them a choice in whether to resolve the case somewhere somehow other than the formal process. That is Section 106.45(b)(3)(ii). Next, you now under the new regulations, get a

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copy of the evidence against you. It used to be schools such as Notre Dame wouldn't give you that. You had to go into a conference room at the school. Now schools are provided to give it. You should keep that. 106.45(b)(5)(vi).

Please keep the live hearing requirement. That has been hugely important in keeping single investigators acting as sort of Javert: judge, jury, and executioner. And has shed a lot of light on the process and allowed much, much more fairness. That's Section 106.45 (b)(6)(i). And that's probably the single most important thing. Cross-examination, as we've seen it so far, has been gentle and not abused and gives both sides the opportunity to challenge the other side.

And then finally, the requirement that the decision have findings of fact that are rationale, 106.45(b)(7), should also be kept because if you're going to do something this serious, you need to explain your reasons. Thank

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you. Please keep those.

MODERATOR: Thank you. Will be back in a few minutes with our next commenter. Thank you. That concludes our public hearing for today. Next public hearing will be tomorrow morning at 9:00 a.m.

(Whereupon, the hearing in the above-entitled matter was concluded at 5:02 p.m.)

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U.S. DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

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PUBLIC HEARING ON TITLE IX

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TUESDAY
JUNE 8, 2021

+ + + + +

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

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

(9:01 a.m.)

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

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

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

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excellence through vigorous enforcement of civil rights.

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

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

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

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

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

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sensitive issues that are often involved.

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

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

In closing my remarks and in opening

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

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

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

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

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

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

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

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

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

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

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

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

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

MODERATOR: Thank you.

Next up is Abigail C. followed by Abigail T.

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

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

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

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

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

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

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

MODERATOR: Thank you.

Next up is Abigail T. followed by Micah S.

ABIGAIL T.: Hi. Is this working?

MODERATOR: Yes, it is.

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

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

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

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

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

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

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Thank you.

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

MICAH S.: Hi.

MODERATOR: Okay, you're good.

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

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

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compliment.

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

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

MODERATOR: Thank you.

Next up is Kamaria P.

KAMARIA P.: Hello. Can you hear me?

MODERATOR: Yes. Thank you.

KAMARIA P.: Thank you. Thank you

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHRISTINE A.: Can you all hear me?

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MODERATOR: Yes, we can.

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

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

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

Much of my assault occurred in public

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

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

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

Over the course of investigating my

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

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

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

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

MODERATOR: Ceciel Z., you're up

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next. Please unmute your mic.

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

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

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

CECIEL Z.: Can you hear me?

MODERATOR: Yes, we can. Thank you.

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

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

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

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

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

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

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

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

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

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

MODERATOR: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

MODERATOR: Thank you.

Up next is Alison H. followed by Daniel M.

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

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

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

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

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

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

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

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

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

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

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

MODERATOR: Thank you.

Daniel M., you're up.

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

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

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

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

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

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

MODERATOR: Thank you.

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

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

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

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

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

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

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

Any additional changes to the regulations should prioritize making it easier

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

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

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

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

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

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

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

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

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

MODERATOR: Thank you.

Next up is Twannetta W. followed by Barry J.

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

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

In addition, Black girls -- women of

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

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

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

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MODERATOR: Thank you.

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

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

MODERATOR: Yes, we can. Thank you.

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

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

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

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

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

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proven innocent.

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

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

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

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

MODERATOR: Thank you.

Next up is Denise M.

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

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

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in schools.

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

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

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

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or disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GREGORY J.: Can you hear me?

MODERATOR: Yes, we can. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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minute.

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

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

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

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

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

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

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

While we recognize the importance of

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

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

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

These standards turn our colleges into many courtrooms that require frequent, robust,

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and very often costly training. Our smaller colleges are such that Title IX responsibilities are very often an addendum to their job descriptions.

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

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

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

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

Colleges and universities could and

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should have responded courageously to this record by developing fairer Title IX procedures themselves. But absent court rulings requiring them to do so they proved almost entirely unwilling.

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

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

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

Indeed, lawsuits involving post

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

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

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

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

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lawsuits, provides a compelling, if unintentional demonstration of why the regulation's procedural protections are so important.

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

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

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

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

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unmute your mic and begin speaking.

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

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

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

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

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

First, some quick background. I received my PhD from one institution in 2009. But

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originally started working on the PhD at another institution.

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

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

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

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

I should point out too that this

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

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

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

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

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Second, faculty have far more power than students do. And that power is largely unchecked and unregulated. Grades are subjective. Faculty often support each other. And retaliation is often extremely subtle.

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

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

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

AMY C.: My name is Amy Cannava. And I'm a nationally certified school psychologist,

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and the Chair of the National Association of School Psychologist's LGBTQIA Youth Committee.

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

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

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

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

Title IX must be strengthened to ensure that all students are protected physically

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and psychologically, so that they able to learn. NASP has a longstanding commitment to advocating for the rights of the most marginalized, minoritized members of our society.

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

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

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

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

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Rejecting or refuting a young person's gender identity increases the risk of suicidality by 50 percent. It's really not that hard.

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

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

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

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identity, whether to avoid imprisonment or prosecution.

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

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

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

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

MODERATOR: Yes, we can. Thank you.

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

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regulations.

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

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

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

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

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

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

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

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

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non-shaming way.

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

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

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

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

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

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you.

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

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

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

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

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

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used to have for anonymous reporting, and also room to explore things like restorative justice.

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

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

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

We would also love to see robust protections against retaliation, which right now

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

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

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

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

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

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

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BETH L.: My name is Beth Lorenz. I'm a retired attorney. And as Co-Chair of the Intake Committee of FACE I've interviewed hundreds of accused students. In my personal capacity I've also served as a pro bono advisor to dozens of respondents.

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

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

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

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

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encounters.

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

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

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

And in light of the seriousness of the allegations and sanctions, it should not be controversial to require a hearing and cross-

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examination, so that decision-makers can assess the credibility of both parties before making a determination.

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

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

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

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

The student had still not been contacted by the Title IX officer, or provided

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any information about the complaint, and went to the Dean for help. But the Dean said he couldn't do anything.

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

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

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

When I spoke to him the following year he had not yet enrolled in a new school. Had the

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Title IX regulations been in place at that time this student would likely have stayed in college and graduated by now. Thank you.

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

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

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

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

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

I even declined a prestigious master's

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program that would have let me take classes at one of Harvard's grad schools, partly because I couldn't handle being physically close to that university.

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

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

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

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

In preparation for today I looked back on some of the emotional writing I did last

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summer. And every day that my Title IX investigation was in limbo I feared the Department would legally require my school to dismiss it. I did not feel like a student. I felt like a liability.

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

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

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

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

But many schools do not have the non-

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Title IX policy. And if I had attended one of those schools instead I might have withdrawn my complaint.

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

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

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

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survivor supposed to get the support that they need?

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

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

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

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

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

My name is Sarah Nesbitt. I am a policy and advocacy organizer with Know Your IX, a survivor of intimate partner violence on

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campus, and a recent, as of three weeks ago, graduate of Georgetown Law.

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

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

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

First, the Department should mandate clear and prompt notice of school policies and procedures related to sexual misconduct, which

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means having clear policies about what constitutes prohibited sexual misconduct, a carefully delineated reporting and investigation process, and prompt and unambiguous notice to all involved parties of their rights and their obligations, including deadlines, descriptions of the charges, and possible outcomes.

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

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

Dual and multiple investigator models, and panel style decision-making, for instance, are common models that provide

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complainants and respondents alike with the safeguards needed to protect against an erroneous determination.

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

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

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

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It seems the Department must adopt uniform procedural guidelines for investigating all student civil right violations, and hold decision-makers and parties to the same bar of honesty, fairness, and equity.

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

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

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

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

SARAH B.: Hello. Can you hear me?

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

SARAH B.: Excellent. Hello. My

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name is Sarah Barrett. And I am the Director of Training and Education for Clery Center, a national non-profit founded by the Clery family after the brutal rape and murder of Jean Clery in 1986.

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

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

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

By requiring advisors to conduct

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cross-examination the Title IX regulations remove an institution's ability to limit an advisor's participation. This is expressly advised against by the Department of Education within the preamble to the Clery Act, and highlights an inherent conflict in the function of an advisor of choice.

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

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

By not providing clear boundaries around how off-campus behavior falls within an institution's programs and activities the

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regulations create inconsistency in how institutions address these violations in their communities.

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

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

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

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

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MODERATOR: Next up is Theresa M.

THERESA M.: Am I --

MODERATOR: Theresa, please unmute your mic.

THERESA M.: Can you hear me?

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

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

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

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

Overwhelmingly the professional background of staff was in Women's Studies and

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Gender Studies. Only one of the 56 administrators I surveyed had real legal experience in a court of law where accusations or wrongdoing are handled formally and carefully, to protect both the accuser and the accused.

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

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

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

Pressure to get tough on campus sexual

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assaults rules often presumed guilt. As one Government lawyer observed, the college was going to find against the male no matter what.

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

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

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

Hundreds of courts have ruled against schools for these violations, a legal development

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worth the close attention of OCR.

As long as we have Title IX offices with ideological staff, inexperienced in protecting due process, and biased against those accused, schools need the due process requirements of the new rule, which I urge you to preserve. Thank you.

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

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

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

SUSAN D.: I came in as a guest.

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

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

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

SUSAN D.: Okay. So, I worked at Yale University for 13 years. And I supported Title

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IX programming, and was retaliated for doing so.

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

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

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

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

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

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

JOSEPH S.: Thank you, Joseph Storch for SUNY. As a nation, we've spent the past ten years with the Title IX pendulum swinging back and forth. Millions of college students have

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enrolled in a world in which we collectively have not yet sufficiently addressed harassment and violence.

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

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

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

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

Higher ed developed a meaningful opportunity to test evidence, cross-examination through the hearing officer or panel. Constitutional experts in multiple federal and state courts bless this as meeting due and fair

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process requirements. Yet the final rule barred it for public and private colleges alike, based on a two to one decision in the Sixth Circuit that applies to only four states.

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

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

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

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My hope is that the Department can craft a set of regulations that are fair, forward thinking, and provide a meaningful process with flexibility built in for implementation. This will be a great thing that the Department could do for our students. Thank you.

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

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

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

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investigator played detective, prosecutor, judge, jury, and executioner, that system essentially was a kangaroo court minus the court part.

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

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

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

And I'd like to give you an example of

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that, several examples of that. My clients in the racial justice clinic are overwhelmingly Black men. In addition to facing these allegations, they also face tremendous retaliation, racial retaliation on campus.

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

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

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

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Finally, I want to make a plea to the OCR, and that is to collect data on race. I think it is incredibly important that we do this. I don't know why we do not do this in the college and university context when we do do it in the elementary school and high school context. It is vital to know how Title IX is being applied.

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

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

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

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2020.

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

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

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

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students that have expressed not wanting to report to law enforcement because they didn't want to be, quote, on trial.

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

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

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

For others, the regulation seemed to re-traumatize our victims over again. And after they tell their story to an investigator, they

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have to now then be further traumatized when cross-examining occurs.

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

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

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

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

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the party or witness in reaching a determination regarding responsibility.

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

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

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

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admissions would come in.

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

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

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

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

SYDNEY O.: Can you hear me okay?

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Okay, I think we're good. Hi, my name is Sydney Ovitt. I just graduated from the University of Vermont a couple of weeks ago. I run a survivor advocacy organization, and I'm also a survivor myself.

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

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

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

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My investigation took over four months which was already a very heavy load, a heavy burden. The lack of communication from the office only made this process more unbearable for me.

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

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

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

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focus. If that could be something that would be reviewed, I think that would be great.

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

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

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

MODERATOR: Thank you. Next up is Patricia H.

PATRICIA H.: Good afternoon. My name is Patricia Hamill. I'm an attorney at Conrad O'Brien where I chair the firm's Title IX

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practice and have represented more than 200 college students and faculty members, mostly respondents, involved in Title IX proceedings.

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

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

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

Similarly, clear provisions allowing informal resolution should be preserved. Not

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every complaint should lead to a hearing. The main points of divergence among practitioners involve the scope of covered conduct under Title IX and the requirement of live hearings with cross-examination.

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

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

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

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in many jurisdictions.

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

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

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

Decision-makers should also be allowed to rely in either party's prior

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admissions and statements against interest.
Thank you very much for your consideration.

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

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

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

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

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

As a sexual assault survivor myself
who went through the Title IX formal procedure at

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Gettysburg College, I have first-hand experience as to how re-traumatizing this process is for survivors and the impact of this harm in regards to physical safety, mental well-being, and academic performance.

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

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

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stories.

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

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

The Department should instead outline

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general requirements for fairness, like standard timelines, equality mandate, as they did in previous guidance. For example, the Department should require that schools' disciplinary procedures be fair and allow both parties the same procedural rights.

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

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

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

I am requesting that the

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administration consider this recommendation to restore and strengthen Title IX protections against sexual harassment for students. The Department should take all necessary steps to ensure that survivors are supported throughout the Title IX process.

Thank you for your time and your consideration.

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

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

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

COMMENTER V8L: Can you hear me?

MODERATOR: Yes, we can hear you.

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

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we still face promises to take most of the rest.

But revered as a noble cause, the 2011 "Dear Colleague" letter firmly reminded schools of their obligation under Title IX to provide education and its benefits to all students, complainants and respondents alike, free from sex-based discrimination.

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

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

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My student's experience with campus Title IX revealed fundamentally unfair processes, including processes implemented that did not align with published school policies, those of which were often revised while kept from the students involved.

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

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wrongful restraint.

In that year, my child spent most days on the floor of his dorm bathroom in the fetal position, shower running to muffle his cries. At 20 he attempted to take his life.

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

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

MODERATOR: Thank you. Next up is Joy M.

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

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Council for Christian Colleges and Universities, the CCCU.

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

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

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

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

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The statute does not require an institution to seek prior approval from the Department of Education in order to claim the exemption. However, that was only clarified for the first time, though it had been the case all along, in the August 2020 regulations.

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

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

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Lastly, the courtroom-like process and the live hearing in particular do not suit an educational institution. I have heard from schools that the live hearing requirement has had a chilling effect on those willing to come forward with reports.

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

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

The CCCU will be submitting written comments that go into more detail, and we look forward to working with the Department of

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Education on these new regulations. Thank you.

MODERATOR: Thank you. Next up is
Ria T followed by Ryan T.

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

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

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

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kindergarten.

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

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

The same reasoning must apply to other federal statutes that similarly prohibit discrimination based on a person's sex, as the

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Departments of Justice and Health and Human Services have already recognized. That includes Title IX.

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

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

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

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Fourth, Seventh, and Eleventh Circuit have already held.

Thank you for the opportunity to testify today.

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

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

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

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

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

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from sexual violence or harassment between students across the street at a house party, for example.

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

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

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

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These procedural oddities, like OCR's all or nothing cross-examination mandate, and the treatment of non-responsive witness testimony, do not exist in any modern legal system that I'm aware of, created as if an experiment in some law school clinic.

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

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

While I believe some level of cross-examination or some procedural equivalent is wise to ensure fundamental fairness, I wonder if this mechanism can be built into robust investigation

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interviews rather than live hearings. If, however, we do want to continue to operate a live hearing model, I implore you to remove the procedural oddities mentioned previously as well as consider the following.

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

MODERATOR: Thank you. Next up is Angelina C.

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

Over the last year, my university has been the subject of many national media reports about the institution's failure to properly

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report allegations of sexual violence. Time and time again, media sources such as USA Today have shown that my institution has chosen to protect student athletes over survivors and engage in extreme victim blaming.

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

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

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

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happening at institutions everywhere.

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

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

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

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be clear and pervasive, and lastly, returning to the language a responsible employee rather than an official with authority.

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

Thank you for allowing me to be here today.

MODERATOR: Next up is Sandra P.

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

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so through processes that are fair to both those who report sexual harassment assault and those who face disciplinary action based on such reports.

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

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

We also recommend that new regulations restore the approach the Department used prior to 2020 on several key points. Ensure that recipients are obligated to address sexual

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harassment that limits, not only denies, students' equal educational opportunities.

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

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

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

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

Fair process in this context is important so that neither students who face

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disciplinary action nor students who report sexual harassment or assault, lose access to education because of bias, unjust outcomes, or an inability to be heard.

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

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

The rules should provide that the preponderance of the evidence standard governs

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whenever students' access to education is implicated on both side of the matter.

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

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

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

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

LAURIE C.: Hi, can you hear me?

MODERATOR: Yes, we can.

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

And I find that this is

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developmentally inappropriate. It's even egregious neglect, especially considering the epidemic of boys being diagnosed with ADHD and medicated.

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

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

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

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boys being vulnerable to sexual assault victimization.

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

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

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

Also many boys are coming from abusive homes where they're suffering developmental

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trauma. And this trauma causes them to act out in a way that is often misunderstood by teachers. Thank you very much.

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

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

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

Heidi, can you unmute your mic?

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

MODERATOR: We can hear you. Thank you.

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

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survivor support, and activism.

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

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

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

Today Title IX is a complicated, quasi-criminal process. School districts often engage counsel to manage claims and don't adequately explain the Title IX processes to

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complainants, including their obligations for student safety and protection from retaliation.

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

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

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

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These shields are frequently misapplied, whether by intention or ignorance, and leave K-12 complainants vulnerable and uninformed on important matters that adversely affect their safety and access to school resources.

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

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

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

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FATIMA S.: Hello, can you hear me?

MODERATOR: Yes, we can hear you, thanks.

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

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

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

The current structure is calling for a system that most HBCUs, historically Black colleges and universities, those smaller, less

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funded universities do not have the person power, the financial or institutional infrastructure to support.

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

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

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

The Title IX rule reminds us that sexual assault is damaging, but it's also the

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response that has the lasting impact. Right now, this law will provide a hall pass to skip out on being responsive to students who experience sexual and intimate partner violence on and off-campus.

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

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

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

The current Title IX laws are damaging to survivors but particularly Black and Brown survivors. And as we continue to unpack this, I

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really caution us to have Black and Brown voices, particularly those with trans identities, at the table making these decisions. Thank you.

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

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

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

The new regulations should make it clear that they are intended to prevent gender-based discrimination against both complainants and respondents. And the regulations shouldn't go beyond that. It is not the Department's place

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to establish requirements for due process or to make sure that schools' procedures are fair and balanced based on a status as a complainant or a respondent.

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

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

None of the conduct would be sufficiently severe, persistent, and objectively offensive to warrant discipline against any

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particular individual. So the complaint process required by 106.45, fixed as it is on determining whether an individual's conduct is sexual harassment, wouldn't apply.

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

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

I therefore urge the Department to develop a definition of sexual harassment in the new regulations that includes this sort of cumulative misconduct and to make it clear that it must be covered by the educational

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institution's grievance procedures. Thank you.

MODERATOR: Next up is Ashton M.
Correction, next up is --

ASHTON M.: Hi, I'm sorry.

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

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

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

Around the time that I realized I was
gay, I decided to cut my hair short and instantly
felt so much more at peace with myself. I was

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working in an on-campus job and was fired about a month after I cut my hair.

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

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

In my classes at BYU, I was taught that gay people who do not stay celibate will not get to highest level of heaven. Engagement and marriage were heavily encouraged at BYU, and something is assumed to be wrong with you if you

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don't date. But there is no space for LGBTQ+ students to date.

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

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

Religious universities need to be held accountable for the harm they have caused and

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continue to cause students like me. My hope is that the Department of Education will narrow the scope of religious exemptions so that less discrimination occurs. Thank you.

MODERATOR: Thank you. Next up is Andrew S.

(Pause.)

MODERATOR: Andrew, please unmute your mic.

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

MODERATOR: We can hear you. Thank you.

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

For the last 30 years I've worked with and studied boys, men, and masculinity. During that time, I've been honored to serve as the Board

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Chair of MaleSurvivor.org and as president of the Society for the Psychological Study of Men and Masculinity.

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

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

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

Now while the sexual assault and rape are more commonly perpetrated against women, we encourage the committee to remember that men,

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gay, bi, trans, and straight, are all victims too. We want to ensure that equal protections are provided to victims of all genders, not only those who are statistically more likely to be victimized during this time.

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

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

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

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Procedurally, Title IX, in my understanding, allows universities to require students to defend themselves when they choose to break university rules and allows universities to prevent any type of cross-examination or dialogue about what occurred between the claimants.

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

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

But I do not believe that decision-

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makers can automatically or should automatically believe the victim. I believe that policy must be designed and implemented to ensure fairness to all involved parties, regardless of their gender, regardless of the stereotypes they may fit. Thank you.

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

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

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

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

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them.

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

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

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

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

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

Why report when, to victims, they're

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the ones having problems with their education or they're the ones having issues with class changes, changes up in routine and the route they even have to walk to and from classes or to dorms?

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

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

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

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

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

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

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

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

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

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

The 2020 DeVos Sexual Harassment Rule was a profound distortion of Title IX. Rather than addressing the barriers that leave students

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experiencing harassment not to seek help, the rule heightens those barriers.

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

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

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

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

The DeVos Rule also prohibits schools

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

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

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

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

We need the Department of Education to turn the page on this misguided approach by

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restoring longstanding department standards for addressing harassment, by robustly protecting student survivors from retaliation and by setting basis safeguards for fair disciplinary procedures while preserving flexibility for schools.

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

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

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

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

I'll keep my comments really short.

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Just had a couple of things here. I represent a middle-sized private liberal arts university in Oklahoma.

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

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

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

Complainants are simply unwilling to file a formal written complaint with that kind of process in front of them. My concern for our students is that this cross-examination presents

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a significant chilling effect in employee and student reports where informal resolution is simply not allowed.

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

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

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

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

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

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I am a parent whose child experienced sexual harassment while a college student. This sounds very clinical and polite, but for us it was a raw and terrible experience.

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

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

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

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

We depend on laws to keep our children safe. We depend on laws to prevent a person being

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targeted because of who they are. And we depend on laws to be a deterrent for those who prey on the vulnerable.

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

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

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

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

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

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Mink said she had a special burden to bear to speak for all women in the country. This is something I have been relating to quite a bit lately as an athlete, mom and coach.

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

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

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

As an athlete, I speak up for my fellow teammates. As a mom, I speak up for my daughter.

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As a coach, I speak up for my middle and high school girls whom I teach the life lesson to: hard work pays off.

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

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

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

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

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Let us put politics aside and stop polarizing this issue. Let us think about the actual humans involved on a daily basis, like myself and my daughter and many more and find a solution that does unravel the legend of passing names.

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

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

MODERATOR: Thank you. Next up is Lara K.

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

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That's when a bunch of boys chase girls around the playground and slap their bottoms. They make comments about the girls' bodies and laugh at them.

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

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

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

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

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Across the country our local affiliates partner with schools and others in their communities to provide the mentoring relationships, safe spaces and evidence-based programming that are proven to help girls succeed.

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

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

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

Number two, the Department should

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reinstate a well-established principle that school officials should respond to all sexual harassment in a timely manner and not wait until the misconduct continues and escalates to the point where a student suffers tangible academic harm.

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

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

Sexual harassment is already under-reported. Students need to feel comfortable coming forward for support if we are going to

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create safe school environments. 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 Joseph R. Feel free to unmute your mic and begin speaking. Thank you. Unmute yourself.

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

MODERATOR: We can hear you now. Thank you.

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

MODERATOR: No, you are free to begin.

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

And particularly and more specific, I stand against the possible appointment of Ms.

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Lhamon, for obvious reasons why.

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

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

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

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

But, as I said, in the wake of the

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previous administration -- I'm sorry, the two previous administrations, the Obama administration, the former administration.

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

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

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

PARTICIPANT: The trauma --

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

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One, reject the appointment of Catherine Lhamon and, two, keep the change in the amended proposals to the Title IX OCR regulations from the Trump administration. Thank you.

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

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

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

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

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

And I also -- the complaint that I put

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in my school after I was assaulted wouldn't have gone through at this point because I used the hostile environment as a way to push my case through.

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

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

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

And it's really concerning for them and it's really concerning for us because schools

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don't -- I mean, they have -- they had to change their policies so suddenly and so strictly, and it's been really hard for them.

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

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

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

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

MODERATOR: Next up is Commenter SW4.

COMMENTER SW4: Hello. I would like to spend my time today addressing all of us who've been survivors and survivors of multiple

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perpetrator sexual assault, also known as MPSA.

In the fall of 2020, I was the complainant in two separate hearings against the individuals who sexually assaulted me together. As an LGBT survivor, MPSA, my university didn't understand the complexities of the violence I faced nor were there individual relations to ensure that investigators, panelists and decision-makers were trained and unbiased.

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

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

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

I believe that with a new rule there could be mandated changes to ensure that equitable

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experience is achieved.

Additionally, with the new Title IX rule, we cannot treat multiple perpetrator sexual assault cases as though they're single perpetrator cases.

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

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

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

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

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During the two hearings against my assaulters, my university refused to consolidate the cases, leaving me with two hearings.

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

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

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

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

(There was a brief break between

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speakers at this time.)

MODERATOR: Next up is Lizette T. Feel free to unmute your mic and begin speaking.

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

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

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

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When I became a mother I believed and instilled those same values onto my child. I never imagined that my own child would potentially face discrimination, be refused access to public accommodations and not be allowed to participate in extracurricular activities, such as sports, because of his gender identity.

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

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

He is given every opportunity that his cis peers are given and he is thriving. The school reassured me that my child's privacy was

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protected under FERPA and that he would be protected under Title IX.

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

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

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

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

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This does not mean that my child has not faced bullying or discrimination. It just means that my child's schools -- I apologize. It just means that the school's policies or efforts have not been the cause of this.

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

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

MODERATOR: Thank you. Next up is Richard L.

RICHARD L.: Can you hear me?

MODERATOR: I can hear you now.

RICHARD L.: Okay, do I begin?

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

RICHARD L.: My son was in his senior

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year at a prestigious private liberal arts college. He was set to graduate, then on to dental school.

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

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

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

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

And as you know, Title IX findings of

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guilt must be disclosed. My son has been unable to find another college to accept him. Unable to complete his degree, his dreams of dental school are over.

He went from a bright future to seasonal and part-time work at FedEx. He is on medication now for PTSD.

We are in the process of suing the school just to get the degree he earned. So far our legal costs have exceeded \$100,000. If you lack the financial means, you have no legal recourse.

The Title IX system has been broken since the 2011 Dear Colleague letter. It serves neither the respondents or claimants. It has not decreased sexual assault on the campus.

Betsy did her best to restore fairness and balance with the changes she made. I fear if Catherine is confirmed, she will do as she did in 2011, circumvent the legislative process to broaden the definition of sexual assault and further eliminate due process for respondents.

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My suggestions to improve the broken Title IX system: one, raise the level of guilt from preponderance of evidence to clear and convincing.

Number two, investigators must be independent, impartial with absolutely no ties to the school.

Number three, permit cross-examination; let counsel for claimants and respondents speak.

Number four, all accusations must be reported to the police.

Number five, eliminate alcohol on campus.

Having the Title IX finding of guilt on your record has lifelong consequences. In many ways, it's worse than a felony conviction. It must be disclosed. Any future educational is ended. Possibility of employment with federal, state, military, law enforcement is over.

If you do get into a health profession school, obtaining licensure is impossible after

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you check the box. This is a terrible ordeal for any young man to deal with.

Minority men of color are disproportionately affected by Title IX. Can you imagine the hurdles they will face?

I've asked Catherine, DOE OCR many times through many avenues, how can you justify the social warrior agenda where results in loss of due process, civil rights, educational pursuits?

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

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

MODERATOR: Next up is Julie D. Feel free to unmute your mic and begin speaking.

JULIE D.: Good afternoon. This is Julie Donelon with Metropolitan Organization to Counter Sexual Assault. MOCSA is the only independent rape crisis center serving the Greater Kansas City Metropolitan Tri-state area.

MOCSA's mission is to improve the lives

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of those impacted by sexual abuse and assault and to prevent sexual violence in our community. We work with over 20 local colleges and universities and more than 30 public and private school districts in the area.

In 2019 we provided education and prevention about sexual violence to more than 65,000 members in our community. More than a third of the survivors we serve are under the age of 25, most of them are students.

We regularly support survivors and families who are navigating the Title IX investigation. We have seen firsthand the far-reaching negative impacts the changes and the regulations have had on student survivors in limiting their equal access to education by creating additional barriers to safety.

Today I will address two main areas of concern, the impact on student survivors and recommendations for alternative guidelines.

The first concern is changing to the definition of sexual harassment. The new narrow

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definition of sexual harassment requires the victim of harassment or violence to prove that their experience was so severe and pervasive and objectively offensive that it effectively denies a person equal access to the recipient's education program activity.

The narrow definition hinders schools' ability to adequately respond to students' reports. Based on this definition, some Title IX coordinators in our community believe that they cannot investigate unless the harassment continues and becomes worse.

This puts student survivors in a state of panic, feeling unsafe especially when harassment comes from an educator or classmate, that they must continue taking a class where they're being in school with.

We believe that the standard definition of sexual harassment from the 2011 Department of Education Dear Colleague Letter better allows students to adequately respond to sexual harassment and violence in a prompt and

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preventative manner.

This definition states that harassment creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school program.

The second concern are the changes to the standard of evidence and hearing process. Schools are not institutions within the criminal justice system. Yet these new guidelines attempt to move educational institutions in this direction without providing the resource and expertise therein.

Survivors deserve to have a system within their school that ensures their safety and the safety of other students. The purpose of this type of investigation is to maintain safety and allow all students to continue accessing education after experiencing violence.

By changing regulations to mirror the criminal justice system, survivors face increased barriers to safety and schools are unable to hold

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perpetrators accountable and puts other students at risk.

Title IX regulation should be the same for -- the same standard of evidence, sexual misconduct.

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

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

MODERATOR: Next up is Jo Q. Feel free to unmute your mic and begin speaking.

JO Q.: My name is Jo Quest-Neubert. I live and teach in Cambridge, Massachusetts. I'm speaking today as a public school teacher of the past 18 years, a transgender person, an advisor to a middle school GSA and the parent of a gender expansive child.

In order to ensure that schools are safe and inclusive places for trans and gender expansive youth, we need federal level policies protecting the rights of students of all ages to be addressed by their chosen names and pronouns

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regardless of parent or guardian consent.

Many state laws require parent or guardian consent to change students' legal names. A federal level policy requiring student -- school and district student information systems to have preferred name or nickname fields that populate the student names in other educational technology platforms is a critical step towards ensuring that all transgender and gender expansive students are referred to by the names that reflect and affirm their identities.

Transgender and gender expansive young people are an extremely vulnerable population and are at high risk for suicidality and substance abuse.

According to 2017 research from the University of Texas at Austin, transgender adolescents are twice as likely to have suicidal thoughts as the general population and they are up to four times as likely to engage in substance use.

However, with support, outcomes for

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trans students increase dramatically. More recent research shows that having even one context in which a chosen name could be used was associated with a 29 percent decrease in suicidal thoughts.

This finding aligns with research from a Trevor project which shows that just one accepting adult can reduce the risk of a suicide attempt by 40 percent.

While trans and gender expansive young people need and deserve acceptance and support from their parents and guardians, it is the moral imperative of schools to provide that support whether or not families can.

Therefore, schools must be places where students' chosen names are used in order to provide the affirmation and safety they need to learn and grow.

We need federal level policies that support the use of chosen names including mandate that student information systems include a preferred name or a nickname field in which

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students can supply their chosen name and which would populate the display name for other school-based educational technology platforms.

It is critical that this opportunity is available to students of all ages and grade levels and without parent or guardian consent precisely because it is those students who would not get parent or guardian consent who are most at risk if their identities are not honored in school.

A federal mandate for preferred name fields in student information systems is an opportunity to protect and support some of our most vulnerable students. Thank you.

MODERATOR: Thank you. Mark S., you're up next. Feel free to unmute your mic and begin speaking.

MARK S.: Hello. This is Mark S. Can you hear me?

MODERATOR: Yes, we can hear you.

MARK S.: Okay, thank you. So my name is Mark. I am in San Francisco, California. I

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work with a nonprofit organization called the Global Initiative for Boys and Men.

And I've also been, through that work, working with other nonprofits including one called SAVEservices.org which has been -- this whole idea of campaign for due process and the presumption of innocence for college students is extremely, extremely important.

It's something we feel very strongly about, so I just want to keep this very high level and get my comments on the record.

I just feel that due process is something that our country was founded upon. And what we have seen in the 2010 sort of number of cases on college campus where college students were accused of a crime were, in fact, not given their due process and kicked out of school.

And if you can imagine how hard that would be for somebody. You know, their parents probably started saving for college when they were babies. They work all those years in school. They get to college and then they get kicked out

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of college without any due process whatsoever.

And so I think the regulations around instilling due process and the presumption of innocence is so important for our college students. And to just look at the gender aspect of this a little bit, there have been a number of lawsuits filed against colleges and universities.

It's typically the people who are -- the people suing were male students. We know that colleges and universities have become majority female. They're now approximately 60 percent of graduates are female; 40 percent of graduates are male.

So there's a huge slant already against men and male students at the college level. And now this is just one more thing. If they think they're going to go to college and they're, oh, boy, if somebody accuses me of something my life could be ruined and there's nothing I can do about it.

I mean, that just makes it even harder for our boys and young men who are trying to get

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ahead in life. So I just would really stress that we need to have very strict due process and we need to make sure that everyone is taken seriously at all sides of a serious accusation.

We're talking about some serious issues, they can be accused, and the person who makes the accusation should absolutely be taken 100 percent seriously. But a student who is on the receiving side of that should also have the right to be taken seriously.

And in the last ten years, we've seen a number of students who weren't and it's costed colleges and universities a heck of a lot of money.

So the fact that all those lawsuits went through, including one student who couldn't talk about how much money he wanted -- he showed himself on Facebook with a really expensive sports car -- shows you that there's a lot of money involved in this.

So anyway, that is my statement.
Thank you for listening.

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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 Amy B. Please go ahead and unmute your mic.

AMY B.: Can you hear me? Sorry.

MODERATOR: Yes, we can. Go ahead.

AMY B.: Okay. Okay, my name is Amy Bogost. I'm an attorney that represents victims of sensitive crimes. I also teach Title IX and train and try to recruit pro bono attorneys.

I also train and teach at tribal colleges and universities throughout the country. I have represented several students in K-12 and in universities and colleges.

The one thing that I have heard constantly from all of these survivors is that no matter how old they are, they tell me that I know -- if I knew how bad this process was, I would have never gone through this.

This is both before and after the

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implementation of the new rules. Now it is even worse. I have heard from many of the college Title IX offices that victims are not even coming forward.

There is fear of the unknown and through many claimant surveys around campuses we know that not much has changed. In fact, it has gotten worse.

This is in spite of the fact that we know that when a victim or survivor comes forward, it is always better, for purposes of mental health and their ability to not drop out.

However, many times when I have represented victims in higher education, the accommodations and the Title IX offices has made it so inadequate for these victims that they do drop out and many of them end up in the hospital with mental illnesses that come from being a survivor.

These DeVos Rules were implemented in record time, and they're very troubling. One of the worst issues is the need for cross-

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examination.

When this was first implemented many of the colleges and universities had no idea what the term advocate meant. And still, so many do not understand this term.

Some of the larger institutions are hiring lawyers to act as advocates. Many small institutions cannot even hire more staff and advocates. These are adding a huge expense to schools that are unnecessary.

More importantly, to traumatize victims by forcing cross-examination is not even the purpose of Title IX. The essence of Title IX is for gender equality, similar to the other civil rights laws that were implemented in the Civil Rights Act of 1964.

But of particular concern is the current bar to consider any information provided by witness unless the witness appears at hearing and submits to cross-examination.

It is imperative that we make Title IX accessible. However, more importantly, we need

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to have more education on prevention of sexual assault, sexual harassment and gender equality. There must be education to further the goal of Title IX.

Instead of spending money on advocates for cross-examination, we need to put those resources in education, training, prevention, have faculty, staff, students and administrators truly understand what this law is.

Many times higher education is all about trying to be adverse to litigation and in doing everything they can to prevent potential litigation instead of educating those that truly need this education of what Title IX even is and to make Title IX offices and administrators more accessible for the student survivors that need Title IX administrators to help them through this challenging time. Thank you.

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

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

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MODERATOR: This concludes the public hearing for today. The next public hearing will begin at 11:00 a.m.

(Whereupon, the above-entitled matter went off the record at 5:01 p.m.)

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OFFICE FOR CIVIL RIGHTS

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PUBLIC HEARING ON TITLE IX

+ + + + +

WEDNESDAY
JUNE 9, 2021

+ + + + +

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

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

(11:00 a.m.)

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

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

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

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excellence through vigorous enforcement of civil rights.

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

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

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

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

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

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sensitive issues that are often involved.

Third, on the Department's role in addressing discrimination based on sexual orientation and gender identity.

These are all critically important as sex discrimination in all forms can disrupt and derail students' opportunities to learn, participate, and thrive in and outside of the classroom. In this hearing, and in all of our efforts, we are eager to hear and learn from your diverse experiences, expertise, and insight.

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

In closing my remarks and in opening

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

MODERATOR: Thank you, Suzanne. The first commenter will be Garry A., followed by Tracey V.

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

The requirement for college universities to conduct live hearings to review

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alleged Title IX violations in some instances, and some situations, is understood to be the most appropriate means to review facts of allegations.

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

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

Secondly, direct cross-examination is a difficult element in educational process and campus hearing. While campus individuals may be trained in processes related to Title IX, campus

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individuals are not equipped to manage courtroom-type procedures in a manner that assures justice, as opposed to required cross-examination.

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

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

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

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your time.

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

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

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

Over the last four years, our students and staff at It's On Us have watched the Department of Ed, under Secretary DeVos, engage in regulatory changes that systemically gutted the rights of student survivors and left our nation's college and university campuses unsafe for all.

Therefore, we urge the Department of Education to replace the harmful Title IX

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

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

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

The definition must include sexual harassment, intimate partner violence, domestic

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violence, sex-based stalking, sexual assault, rape, and harassment based on sexual orientation, gender identity, gender expression, parental status, pregnancy, childbirth, termination of pregnancy, or related conditions.

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

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

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

Fifth, the Department should eliminate and prohibit the use of live cross-examination Title IX hearings. Under the DeVos regulations, student survivors have dropped their cases, because they did not want to undergo live cross, as it would've added simply to their trauma.

It's On Us believes that any cross-examination process to be conducted by a neutral third party who receives questions from one or both parties in writing, and grants flexibility to allow for any inquiries to be conducted either through written questioning or -- written question-and-answer or verbal questioning

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conducted solely by that neutral third party, without the other parties involved.

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

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

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

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

GILLIAN C.: Hello. Can you hear me?

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

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

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limited time, I will focus on two.

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

This greatly increases the risk of re-traumatization. It is completely unnecessary and frankly abhorrent. A neutral hearing officer is fully capable of asking questions of both parties and facilitating the portion of the hearing where parties submit questions to each other.

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

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

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

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

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

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

The second thing I'd like to mention

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is that you must require schools to handle complaints of sexual harassment within a prompt and equitable timeline.

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

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

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

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

With the DeVos regulations allowing schools to disregard a reasonably prompt timeline, recipients who are already inclined to drag out investigation --

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

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

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

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

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

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(Pause.)

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

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

MODERATOR: Are you just trying to listen to the hearing, Stephanie?

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

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

STEPHANIE F.: Thank you.

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

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

JEN E.: Good morning. Thank you so much for the opportunity to speak. My name is

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Jen Euell, and I'm the director of the Student Advocacy Resource Center at the University of Montana. We provide support counseling and advocacy to any students who have experienced identity-based harm at UM, including survivors of sexual assault.

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

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

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

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positive outcome of the changes.

However, in our experience, the live hearing process has not only been retraumatizing to our clients, it has actually inflicted new trauma, as they've been forced to hear new details of the assaults they've experienced from the mouths of the alleged perpetrators.

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

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

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And of course, the respondent's representative holds the ace card in many ways, as one of their goals is simply to delay any potential finding. And if the hearing must be rescheduled because the representation has been banned from the hearing, the process will certainly be seriously delayed.

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

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

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Overall, as we look to create the best process to reach Title IX's goals, we urge the administration to center the voices of diverse survivors of sexual harassment on campus, and the creation of a new, more timely and equitable process. Thank you.

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

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

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

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

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2020.

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

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

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

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

The policy is currently silent

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regarding this matter. Principal parties do not need to participate in the interview process currently. Otherwise, it would appear that the districts would merely fill a role of collecting valuable information from the complainant's and respondent's attorneys, which could possibly be used against the district during litigation.

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

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

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

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

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

MODERATOR: Thank you. Next up is Mary H.

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

MODERATOR: You're good.

MARY H.: All right. Thank you so much for having me. I'm here on behalf of Save Women's Sports. My name is Mary Higgins. I'm a

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

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

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

Men are winning women's national championships, world championships. They're crushing biological women and girls, competitors, in their own sports. Men are taking world records, crushing women's national records. And

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they are taking girls' and women's scholarships. Without banning men from women's competitions, there will soon be no women's sports.

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

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

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

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

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

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

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

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

First, in order to make the process more trauma-informed, investigators and those who work in Title IX office should be required by law to receive more training on how to communicate with those who have been affected by trauma.

Furthermore, in order to have more

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

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

Throughout the process, Title IX investigators must clarify their definition of a word with those reporting, in order to avoid them from misusing a term, which can lead to inaccuracies in the report. During my investigation, I misused the word incapacitated, to which -- I was then ruled as an unreliable source in my own investigation.

I also believe that complainants and

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

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

That goes into my next point of making the process more student-focused. There needs to be more Title IX training for students and faculty at campuses that teach them about their rights and processes.

Title IX needs to provide easily-accessible resources that translates the process into shorter and more comprehensible language that even non-native speakers can understand.

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They also need to clarify that any and all Title IX offices are non-confidential.

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

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

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

There needs to be systematic changes to stop these problems from happening, but it starts by listening to students and victim-survivors and allocating more government funding to this problem. Thank you.

MODERATOR: Thank you. We'll be back

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in a few moments with our next commenter.

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

MODERATOR: Good afternoon. Next up is Courtney B. Courtney, feel free to unmute your mic, and begin speaking when you're ready.

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

My team has had the privilege of training thousands of higher ed and K-12 administrators since the release of the regulations in May, as well as walking with them daily through implementation of the regulations. In addition, we have a team member married to a K-12 administrator with Title IX responsibilities.

There's no question that the regulations have had the most impact on K-12.

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We've sought feedback from our clients and community partners from some of the largest districts to some of the smallest, across 38 states.

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

The first two comments reflect that, in short, K-12 does not have the infrastructure to absorb the formal requirements of the regs. They are not staffed and resourced to do the work in the manner prescribed, where it takes at least three people working on every case, while those same administrators are being pulled away from endless other responsibilities.

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

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

Second, the Q-and-A is similarly ill-suited for the K-12 environment and unwieldy in practice. It is overly complicated and unnecessarily time-consuming for administrators who are already adhering to safeguards and manifestation and expulsion hearings. Moreover, the regulations do not adequately address overlapping or contradictory federal and state laws.

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

Finally, we suggest that any revisions

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

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

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

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

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harassment. Thank you.

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

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

MODERATOR: Good afternoon. Next up is Conrad M.

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

Conrad, you can unmute your mic at this time, and begin speaking.

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

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

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

The young lady who accused him met with him two weeks after they had slept together, and informed him that she did not feel that she

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had given him consent. He was floored, devastated. Didn't understand what that really meant.

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

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

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

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was holding them both responsible, equally.

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

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

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

There are a lot of feminist groups out

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

So I looked at him and said, so let me get this straight. You're going to throw my son under a bus, even though you don't agree with what's being done? And he just stared at me and basically said, there's nothing we can do.

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

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

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

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

(There was a brief break between

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speakers at this time.)

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

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

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

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are made to the Title IX regulations. That's all I have to say.

MODERATOR: Thank you.

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

MODERATOR: Good afternoon. This concludes the 11:00 to 1:00 p.m. session. The next session begins at 1:00 p.m.

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

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

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

What I've noticed that we've missed is

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

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

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

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

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(Pause.)

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

JEFF P.: My name is Jeff Peed, and I'm speaking to the U.S. Department of Education's Office on Civil Rights, for the purpose of improving enforcement of Title IX of the Education Amendments of 1972.

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

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

Second, when thinking about Title IX, there should be major considerations given to parents and guardians about their rights. Parents and guardians are the primary teachers

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and deciders of their children's education. They send their children to school to learn, and do not necessarily consent to controversial topics such as queer theory or sex outside of marriage being taught.

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

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

Additionally, Title IX protections for girls' sports are important, and must be honored based on sexual biology and not gender identity. Males and females need to compete separately, due to issues of fairness, risk of physical injury, and privacy. Protecting

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women's and girls' rights to sports does not stop transgender athletes from competing in sports on teams that align with their biological sex.

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

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

Kathryn, go ahead and unmute your mic and begin speaking.

KATHRYN H.: I'm Dr. Kathryn Holland, a professor and research expert on sexual violence, and I urge the OCR to address mandatory reporting policies for sexual violence in higher ed. Most schools require nearly all employees to report any instance of sexual violence they learn about, to the Title IX office, even if the survivor does not want to report.

Reporting is essential when a survivor wants and consents to the report, but these policies have led to harmful practices. An

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erroneous assumption is that when an employee learns about sexual violence, the survivor intentionally disclosed with the goal of reporting to the university or receiving specific supportive measures.

However, employees learn about sexual violence in many ways. Often the survivor is not seeking any formal actions from the institution. Students reveal experiences of violence during class discussions and assignments.

I teach about sexual violence, and some students disclose, as a way to reflect on and connect to the course material. And these are beneficial educational experiences, giving students a chance to learn more about sexual violence and how it affects people's lives.

Do I tell my students that they must not discuss violence unless they want me to report? Do I simply stop educating students about sexual violence to avoid such situations? How do I reconcile reporting requirements with the fact that I am bound by FERPA to protect my

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students' privacy?

Employees may also learn about violence that survivors reveal during activist events, like Take Back the Night, or on social media, such as using hashtag-MeToo. The intent of such disclosures is to empower survivors and promote public awareness. Requiring employees to report violence they learn about in these ways discourages them from participating in antiviolence activism, and silences survivors.

Faculty are also being required to report violence they learn about in their research. I study the implementation and effectiveness of formal support systems for college sexual assault survivors, such as reasons why survivors choose not to report, and how reporting systems can be improved.

During the 2018 notice and comment period, commenters who were arguing for survivors' rights cited my research to support their comments. I've also served as an expert witness for survivors in Title IX litigation. If

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I and other researchers are unable to protect participants' privacy, this will obstruct essential research on sexual violence.

A staff member at a community college in Oregon recently filed a lawsuit after her supervisor learned about and then reported her 30-year-old rape, that she asked them not to report.

These examples that I talked about today demonstrate that any mandatory reporting policy must include clear exemptions, when a reporter will not need to make a report, including information that is learned in academic coursework, at public awareness events, in social media posts, in IRB-approved human subject research, and violence that occurred prior to enrollment or employment. Thank you for your time today.

MODERATOR: Thank you. Next up is Stephen W., followed by Stephannie G. Stephen, feel free to unmute your mic and begin speaking.

STEPHEN W.: Hi, there. My name is

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Stephen Webber. I'm an advisor for Title IX. I started my own small organization with the pursuit of advising students and being able to provide free resources. It's called T9 Advising.

And today I want to talk about just the main thing, which is an active advisor. So this was something that was proposed in the 2020 final rule, and it's something that really needs to stay.

I mean, a lot of universities kind of get around it by pushing their hearings to different departments and then not allowing advisors to actually help their students.

The amount of times I've sat in a room advising a student and they're just unable to speak, because just of how nervous they are, and just the situations going on -- it's really helpless for an advisor to sit there and watch a student go through that.

And on top of that, most of the time, when we have to ask questions to the other side of the argument, you have to whisper it in the

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ear of your student, because they're the only ones allowed to talk. So this terrible game of telephone you have to play, just to get the hearing process done, that really needs to be reformed.

So the second part is also clear definitions. So the 2020 final rule also put in the definition for sexual harassment. I really enjoy that. I think we need to expand these definitions.

I think the Department of Education should focus on defining consent next. And if you don't like the definition that the previous administration came up with, by all means, change it.

But having a set standard is really important, because as an advisor who advises at different universities, I have to learn what the new definitions are every time I go and advise a student. So it's just -- it's not very effective, and a lot of these definitions are -- they don't protect students very well.

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So the next thing is to really show reports to students. A lot of universities conceal what the opposite side has said, so that's something that needs to be addressed. I think there needs to be more transparency.

And then, last couple things, just a promotion of local assistance. I've worked about -- a lot of the resources I give out are local assistance, and some universities aren't very good at that. So if I -- you know, not to name any names, but one university actually sent students to a website that was entirely in French. So, definitely need to focus on that.

So if you have any other questions or would like to reach out to me, I'm at T9Advising@gmail.com. I've written works about this, I've advised on cases, and I can talk about how the universities have incentive structure to deal out suspensions instead of other forms of punishment. So thank you for your time.

MODERATOR: Thank you. Next up is Stephannie G., followed by Cara B. Stephannie,

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please unmute and begin speaking.

STEPHANNIE G.: Hello?

MODERATOR: We can hear you. You may begin.

STEPHANNIE G.: Oh, great. Great. I am the Title IX coordinator at a public institution. I have three points I'd like to make. First, students were already reluctant to report sexual harassment allegations where there's a power differential, such as a complaint against a professor or a staff member.

When faced with a live hearing and the possibility of cross-examination by a professor's advisor, our students now refuse to file formal complaints. As the Title IX coordinator, under the new regs, I have the ability to file the formal complaint, but the case goes nowhere if the complainant refuses to participate for fear of the live hearing.

So sexually harassing behavior goes unchecked, because no action that could be perceived as disciplinary may be posed until such

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time as the respondent has been found responsible at the conclusion of a grievance hearing, which doesn't happen.

The second point I'd like to make is, excluding off-campus locations from Title IX jurisdiction is highly problematic, especially when most of the upperclassmen reside in off-campus housing.

It makes little sense that a sexual assault committed on campus is subject to the Title IX sexual harassment grievance process, but a sexual assault possibly committed across the street from campus, in off-campus housing, or in an -- or in an adjacent campus bar or restaurant, has the possibility of being handled differently.

My third comment is, as an investigator, these hearings should be conducted without -- or these investigations should be conducted without a presumption of responsibility or not responsibility on the part of the respondent.

When I speak with both parties, I try

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to present the visual, I have two empty buckets on each side. And as I receive information, and corroborate that information, I fill my buckets. And so there's no presumption either way. Thank you.

MODERATOR: Okay. Thank you. Next up is Cara B., followed by Patti M. Cara, feel free to unmute your mic and begin speaking.

CARA B.: Hello. My name is Cara Tuttle Bell. And today I'm speaking as a volunteer board member of Stop Sexual Assault in Schools, a nonprofit organization created by parents and a survivor, which is focused on preventing sexual misconduct in the K-to-12 environment.

I'm also coming to you today with over 15 years' experience working in higher education. I lead a college campus-based advocacy center which opened in in 2014, and has navigated the Title IX guidance and legal changes since the 2011 colleague letter, through the Obama-era White House task force to protect students from

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sexual assault, and now through the 2020 Title IX changes.

I speak from my experience working with over 1,000 student survivors, and as an education professional engaged in both compliance and student affairs.

From that lens, I urge you to -- from the 2020 regulations' definition of sexual harassment, so that students will not have to endure severe or repeated harassment before schools believe that they must take action.

Please consider the educational context and nature of these harms. And for consistency, consider using the definition from employment sex discrimination law.

Considering that many schools were already failing to address the wide range of sexual misconduct occurring in the educational environment, this narrowing of the definition of sexual harassment has further enabled schools to ignore sexist, harmful and escalating behaviors, that they must learn to sufficiently address, and

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could use your help in doing so, in order to ensure safety and equity for all students.

No school administrator should feel pressured to dismiss a complaint because it is not clear that a student has suffered enough. I urge you to require and incentivize schools to require developmentally-appropriate bystander intervention, consent education, and healthy relationships education throughout the elementary and secondary education years.

Current public education standards fail American students at preparing them for social, romantic, and sexual interactions, resulting in college prevention and health staff trying to catch up as quickly as possible with their incoming first-year students to try to prevent and reduce sexual harassment and assault in higher education, when all citizens, on- and off- and around our various campuses, would benefit from comprehensive sexual education which includes consent, boundary-setting, and healthy relationships dynamics being introduced to

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adolescents and children long before they reach young adulthood.

Whether our K-through-12 attend college or enter the workforce, this preparation will help address gender and sexual harassment across communities and industries.

Please remove the requirement or option for live hearings, which are unnecessary and unfamiliar in an educational and employment context, and inappropriately likened student conduct and civil rights policies and procedures to criminal matters and procedures.

As it's been consistently demonstrated and emphasized, the increasingly legalistic and adversarial nature of schools' procedures, the very steps required to enter student protection, subject students and families to unnecessary trauma and harm. It's entirely possible to offer due process to respondents without these requirements. Thank you.

MODERATOR: Thanks. Thank you. Next up is Patti M.

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(Pause.)

MODERATOR: Looks like Patti's having some technical difficulties. We're going to move on to Meg B. Meg, please unmute your microphone and begin speaking.

MEG B.: Sorry. I'm actually early for my segment, and I'm not fully prepared. Can I cycle to the end of the line?

MODERATOR: Absolutely. Patti, looks like you're back on. If you can unmute your mic, you may begin speaking.

(Pause.)

MODERATOR: Patti, please unmute your mic and begin speaking, and also, open up your chat, because if you're having technical difficulties, we'll attempt to assist through the chat function.

We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Patti, we're ready for

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you, if you can unmute.

(No response.)

MODERATOR: Looks like Patti's still trying to get her microphone to work, so we're going to move on to Chelsea G. Chelsea, at this time, if you unmute your mic, you may begin.

CHELSEA G.: Hi. My name is Chelsea Gray. I'm a graduate student at George Mason University, and I was raped by another graduate student. And I wanted to bury the incident, but we worked in the same very isolated research facility. So I reported it to the Title IX office, in order to receive safety accommodations.

Under the current Title IX rules, George Mason can -- and I believe would have ignored my safety needs entirely, because I was raped off-campus.

Under the new Title IX rules, had my assailant refused to attend the hearing, the text messages sent from his phone admitting guilt the night of the assault, and begging for

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forgiveness, would not have been admissible.

The DeVos Title IX rules need to be repealed immediately. They make campuses unsafe by giving assailants an easy way to avoid sanctions. Just don't show up to a hearing, or just assault someone off-campus, which I don't think makes an equitable or safe campus.

And this is not really to say that the old timeline method was better. Despite very simple facts in my case, it took a full academic year for the Title IX investigation to conclude. I'm not sure what they were doing, but it was not investigating.

The Title IX process was so traumatizing that I seriously considered suicide. My grades suffered, and I considered dropping out. It has pushed back my academic and professional career by years. Even suspended, my assailant has suffered no professional consequences, and he used his suspension time to publish scientific papers.

I was repeatedly mistreated by

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university officials who did not take my needs or safety into account at all, and who repeatedly violated both university and federal law, with no accountability. And I believe this was in favor of him, because he had a lawyer and I did not. So they thought he would be more litigious than I would.

itle IX needs a serious overhaul, with an emphasis on accountability and transparency in institutions. Universities should be required to publish the average length of investigation time, and the findings and sanctions given in sexual misconduct hearings.

Universities consistently underreport sexual misconduct, and only sexual misconduct, and therefore should be required to publish regular climate surveys in order to understand the rate of both reported and unreported assaults, to give an accurate sense of campus safety.

And preponderance of evidence is the standard used for underage drinking and illegal

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drug use, and therefore should also be used for sexual misconduct. So please overhaul Title IX, and protect survivors. Thank you for your time.

MODERATOR: Thank you. Patti, can you please try unmuting your mic again?

(No response.)

MODERATOR: We're going to move on to the next speaker. Joanna, you are up next. Please unmute your microphone and begin speaking.

(No response.)

MODERATOR: Joanna, if you can, please unmute your mic and begin speaking.

(No response.)

MODERATOR: It appears Joanna may be having some technical difficulties. Joanna, please open up your chat, and we'll see if we can help you. In the meantime, let's try Patti again. Patti, if you can unmute your mic, please begin speaking.

(No response.)

MODERATOR: We'll be back in a few moments with our next commenter.

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(There was a brief break between speakers at this time.)

MODERATOR: Good afternoon. Patti, if you can unmute your mic and begin speaking?

(No response.)

MODERATOR: Next up is Meg B. Meg, when you're ready, unmute, and you may begin speaking.

MEG B.: Thank you so much. My name is Meg Bossong. I am one of the founding leadership council members of the Campus Advocacy and Prevention Professionals Association. I'm also the director of sexual assault prevention and response at a small private liberal arts college, though I'm speaking on my own behalf, and my institution will comment for itself.

I have been a professional in the field of sexual violence prevention and response, and in higher education, in particular, for over ten years. I wanted to offer three specific comments for your consideration.

The first is that, as you review the

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rules that were issued by the DeVos administration, informal resolution requires more guidance and more framework than what exists in the current rules.

There is vibrant research- and experience-informed practice for utilizing transformative and restorative justice practices with intimate violence. But throughout the last four to five years, we are consistently seeing a backsliding into the practice of mediation, as well as the use of informal resolution to inappropriately skirt institutions' educational civil rights obligations.

Second, as both commenters in both formal rulemaking and in this phase have said, the use of cross-examination and quasi-criminal hearings is inappropriate for an educational civil rights process.

First, I want to point out that it is a procedural requirement that sets aside this category of discriminatory behavior in higher education from both the same category of behavior

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in K-12 settings, as well as in Title VII employment settings, and from other discriminatory behaviors in higher education.

Second, it has had its intended effect, which is to create a process that is so onerous, hostile, and drawn out that when people have experienced -- who have experienced discrimination and counter it, they withdraw from trying to claim the rights that are granted under Title IX.

In my experience, even in a pandemic year, while my office saw the same number of students inquire about their options for accountability, every single person withdrew from engaging with the institutional process when they were presented with the new investigation and hearing model, as required by the rules, even as we were adjudicating four to ten cases a year in prior years.

A number of recipients are effectively fact-finding, making credibility determinations, and holding accountability processes that do not

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require adversarial cross-examination.

Finally, to move somewhat more broadly beyond the issue of intimate violence, as other commenters have no doubt pointed out, this review of Title IX needs to bring it into alignment with the Bostock ruling and Title VII, to make clear that the protections extended in employment setting apply in educational ones, as well, moving beyond biological sex as the basis for protection from discrimination. Thank you for your consideration.

MODERATOR: Thank you. Next up is Patti M. Patti, you can try to unmute your mic and begin speaking.

(No response.)

MODERATOR: Next up is Mary T. Mary, if you're ready, please unmute your mic and begin speaking.

MARY T.: Good afternoon, and thank you for providing us the opportunity to comment on this very important topic. I currently serve as the Title IX coordinator of a public school

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system, and I am concerned with the inability to address conduct that occurs outside of the confines of one of our programs or activities, under the new regulations. This has created a few issues, in my experience, in dealing with the new regulations.

Also concerned with the new definition of sexual harassment under the new regulations. The requirement to be severe, pervasive, and objectively offensive filters out a lot of incidents that we are not able to address under the new regulations, under our revised Title IX policy.

I think that both of these have a chilling effect on reporting, and effectively tie the hands of the Title IX office in addressing these incidents under Title IX and under our newly revised policies that are in compliance with the regulations that were released last year.

Again, thank you very much for the opportunity to comment and participate in this

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important process. This concludes my comment.

MODERATOR: Thank you. We'll be back in a moment with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Good afternoon. If anybody's waiting to speak, please open up your chat, so we can communicate with you.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Guadalupe A. Please open your mic, and you may begin speaking.

GUADALUPE A.: Okay. Good afternoon. My name is Guadalupe Arellanes Castro. My pronouns are she/her/hers. And I am one of UC Title IX's student advisory board members. I greatly appreciate your invitation for comments today.

I first joined the Title IX student advisory board because I believe in the law's role in ensuring that schools are providing students with educational environments free from

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sex-based discrimination.

Between adapting to new Title IX rules put forward by the previous Presidential administrations, Department of Education reforms, and finding ways to reach and work with students during the COVID-19 pandemic, educational spaces have faced a novel academic year.

As a Title IX student advisory board member, a PhD student, and a university instructor, I have witnessed the combined impacts of social, cultural, and legal forces on whether complainants feel safe enough to come forward, so that they can access resources, understand their options for potential redress, and make informed decisions about how to go forward.

Today, there are still far too many barriers to students reporting to and trusting in the Title IX process. Race, ethnicity, sexual orientation, and gender identity have always affected the handling of sexual violence cases. But intersectionality has not been front-and-

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center of these conversations for colleges.

The effects of anti-survivor, anti-trans, or otherwise xenophobic legislation and the rhetoric that accompanies it is often seen in classrooms and schools across the country, where students combat discrimination, fear, and harassment.

To file a claim, students who may already be experiencing trauma and a plethora of emotions, as a result of the harm they have experienced, must navigate a complicated investigatory process, often with little to no knowledge of how the Title IX process works or what their rights are. This confusion is exacerbated when requirements are in constant flux.

The newest regulations imposed a one-size-fits-all process, modeled on the courtroom. Schools, however, are not courts, and such a judicialized process has been discouraging for students, who understandably fear live hearings with cross-examination by attorneys permitted,

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not because of their credibility or culpability, but rather because of how retraumatizing processes like these can be.

As you consider improvements to these regulations, I want to remind us all of the goals put forward earlier this week by Suzanne Taylor, systemwide Title IX director for the University of California system, to provide schools flexibility and to create policies that align with their institutional values, to ensure the regulations will withstand future administration changes, so schools have the chance to build best practices on top of the foundations the law provides.

As I end, I want to thank you for giving students like myself a voice here. While I speak as an individual, my statements have been informed by countless conversation --

MODERATOR: Thank you. We'll be back in a few moments with our next presenter.

(There was a brief break between speakers at this time.)

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PATTI M.: Hello, this is Patti Meyer.
Did you want me to begin?

Moderator: You may begin, Patti.
Thank you.

PATTI M.: Sure. Thanks to Patrick for the workaround. I worked in -- I've worked in higher education since 1985, and in the early days of trying to help, and every year that I have been a student services professional, or later, as a professor in the classroom, I have had students come to me who are dealing with sexual harassment and/or sexual assault.

Things have changed a lot since 1985, and I was alarmed to learn about -- alarmed to learn about the changes made in Title IX. Many speakers have very succinctly named the concern about having educational institutions act as courtrooms. We're good at lots of things in higher ed. This might not be our strength.

The other block that existed before these rules were changed was the difficulty for someone who has undergone the chronic stress of

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being stalked or sexually harassed.

And I've dealt with men and women who have had perpetrators who were faculty, staff, students, who were men and/or women, and it's a pervasive problem that has to do with the way power rolls around in institutions.

Making the rule that cross-examination should happen would only make it difficult for everyone involved. And it's alarming that this law and these --

MODERATOR: Patti, we can't hear you anymore.

PATTI M.: Okay.

MODERATOR: We can hear you now. Please continue.

PATTI M.: Okay. Sure. So this is a little, I guess, recent historical perspective. It was hard enough to support people who had been assaulted -- it was even hard to support assaulters and harassers in an educational setting. But this is going to make it even harder. Thanks for your hard work, and for

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giving me the opportunity. Good work, Patrick.

MODERATOR: Thank you. We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Christina Z. When you're ready, Christina, unmute your microphone. You may begin speaking.

(No response.)

MODERATOR: Christina, you're all set. You may begin speaking.

(There was a brief break between speakers at this time.)

MODERATOR: Christina, go ahead and try again. Unmute your mic and begin speaking.

(There was a brief break between speakers at this time.)

MODERATOR: Christina, go ahead and try again. Unmute your mic and begin speaking.

CHRISTINA Z.: Can you hear me now?

MODERATOR: Yes, we can. You may begin.

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CHRISTINA Z.: Great. Thank you. My name is Christian Zuba, and I'm an attorney at the Chicago Alliance Against Sexual Exploitation, or CAASE, where I focus on providing representation to student survivors of sexual harm.

In my work, I've seen firsthand how the 2020 Title IX regulations harm survivors and make it more difficult for them to both come forward to seek help, and to access their education.

There are several ways the Department of Education can improve Title IX regulations to increase both protection for students and fairness in the process.

The Department should revise its definition of sexual harassment to include unwelcome sexual conduct, as the 2020 definition unjustifiably requires schools to limit which victims of sexual harm can be provided with assistance under Title IX.

The Department should require schools

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to respond to all sex-based harassment that is serious enough to interfere with a student's ability to participate in or benefit from a school program or activity, regardless of where it occurred.

As we at CAASE have seen repeatedly, many instances of sexual harm take place outside of school, and the location of the incident does not determine the effects it will have on the student's ability to access their education. Survivors should be supported, and their school should adequately respond to their reports of harm, regardless of where it took place.

Schools should be required to respond to harassment that they know, or should have known, about, as well as any sex-based harassment by employees that occurs in the context of their responsibilities to provide aid, benefits, or services within the institution's program or activity.

In order to protect students and uphold campus safety, the Department should

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eliminate the actual knowledge requirement mandated by the 2020 regulations. Schools should not be permitted to ignore sexual harassment simply because a student did not properly inform the correct employee.

Schools should also be required to offer supportive measures to the complainant as soon as possible. The Department should specify the school should provide reasonable supportive measures, regardless of where or when the harm took place and who perpetrated it, if the effects of that harm are interfering with the student's ability to access their education.

Some students struggle in school as a result of sexual harm they experienced previously, or unrelated to their school community. The student is experiencing an interference with their ability to participate in or benefit from their education program as a result of the harm they experienced. Schools should provide them support to preserve their access to their education.

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Finally, the Department should eliminate the rule that prevents schools from considering past statements by those unavailable for cross-examination.

In CAASE's experience, witnesses are sometimes unavailable, unresponsive, or unwilling to submit to cross-examination. It is unfair to require schools to disregard those witnesses' previous interviews or statements in those circumstances, especially as there is no subpoena power in these cases. Thank you for your consideration of our recommendations.

MODERATOR: Thank you. Next up is Annie H. Annie, feel free to unmute your mic and begin speaking.

ANNIE H.: Thank you so much. Good afternoon. My name is Annie Hightower. I am the director of law and policy at the Idaho Coalition against Sexual and Domestic Violence. I was the Title IX coordinator at Boise State University from 2013 to '17.

At the Idaho Coalition, I provide

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civil legal services for survivors of sexual violence, ages 11 to 24. Because of the age range I serve, nearly every case involves working with schools to ensure compliance with Title IX and advocating for approaches that allow my clients to continue their education.

One of the biggest and most long-term detrimental consequences I see amongst my clients is that they drop out of school after experiencing sexual violence because schools don't provide adequate support, they don't understand their obligations to respond to reports of sexual violence, or, since the enactment of the new Title IX regulations, they've put in place overly-complicated grievance processes that essentially require students to build their own case to prove what happened to them, and often subject those student to horrifying cross-examination processes.

Through my work with students and schools, I've seen the following negative impacts of the new regulations. At the college level,

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I've not had one case proceed through the grievance process. Students either choose not to proceed with their complaint when they discover they will be subjected to a live hearing and cross-examination, or after informal resolution processes inevitably fall through.

Schools should be allowed to use investigatory models that are already in use in most civil rights matters to assess if a policy violation occurred or not.

By not allowing institutions of higher education to do so, the Title IX regulations make processes more burdensome for reporters of sexual violence, and then further reporters are less credible than those in other types of matters, an assumption that is deeply rooted in gender bias against women and trans and gender non-conforming folks.

In the same vein, the impact of requiring schools to find that conduct is sufficient severe, pervasive, and objectively offensive cannot be overlooked. Again, this sets

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up the scenario in which reporters of sexual violence engage in processes that are more complicated and burdensome than for other civil rights processes.

Finally, schools have been put in the situation of creating different processes to govern the same conduct, depending on where the conduct occurred. For example, an assault that occurs in campus housing may be treated differently than one that occurs across the street, even though the impact is the same.

These processes are confusing and make no sense to people who have experienced sexual violence. If the purpose of Title IX is to ensure equitable access to educational opportunities, it should not matter where the conduct occurred.

Schools must ensure access to education and respond to all incidents as a report of sexual violence that potentially impact benefits and opportunities offered by the institution. The way they should respond should

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be straightforward, student-centered, and consistent, and not matter where the conduct occurred.

In close, we ask you to consider the many stories that you will and continue to hear about the new Title IX regulations and how they've chilled reporting and tied schools' hands in a way that negatively impacts people who have experience sexual violence, ultimately resulting in barriers to access to education. Thank you.

MODERATOR: Thank you. Next up is Kaleigh A., followed by Lorraine H. Kaleigh, if you're ready, please unmute your mic and begin speaking.

KALEIGH A.: Hi. My name is Kaleigh Alwood. I am an education major at the University of Arkansas. I'm here to talk to you today about preventative measures at the college level.

As a freshman attending the university of Arkansas, I was required, along with my classmates, to take a course that taught us, over

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a period of about an hour, about bystander intervention and methods that potential victims could use to avoid sexual harassment and assault on a college campus.

This was the only mandatory educational seminar that I attended in my current three years at the University of Arkansas.

Education to prevent sexual assault must be ongoing. It must be mandatory, and it must not be something that is simply checking off a box, which is what it feels like right now.

Students at the University of Arkansas have been given opportunities to attend further seminars, later in their career. However, these are optional, and they focus on bystander intervention and victim intervention, rather than focusing on consent education.

As educators, we know that education cannot stop at one instance. Students will not remember what they were taught in one hour. You have to continually repeat the point in different ways, to reach everybody.

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So I come here to ask you to please consider instituting -- to please consider instituting a program that would require semesterly trainings for all students at the university level on consent education, what consent looks like, how consent can be given, and when it can be taken away. Without this, everything will just continue. Thank you.

MODERATOR: Thank you. Next up is Lorraine H. Lorraine, when you're ready, please unmute your mic and begin speaking.

LORRAINE H.: Hi, there. My name is Lorraine. And I am representing Bay Area Women Against Rape. I'm an advocate, and I also have been a confidential advocate on campus at CSU East Bay in California.

In addition to my experience as an advocate, I am also a survivor of campus sexual violence. And that experience, you know, derailed my education. It took me almost eight years to earn my bachelor's degree. And to this day, I support students who have similar

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experiences.

Title IX, right now, is broken. I have never seen it work for a student survivor to guarantee what it is supposed to -- their equal access to education on campus.

Right now, survivors are not supported by their schools, and schools are allowed to ignore complaints of violence that happens on their campuses and also off-campus.

Because of the new requirements of Title IX, violence that happens off-campus is often not able to be acted upon in the same way that violence that happens on campus. The result is that student survivors are completely unsupported, left alone to deal with the consequences of the violence that they experience.

We're not protected. We're not able to access supportive measures easily from our campuses. And that needs to change, so that survivors can access the education that they are required to, that the government is required to

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protect for them.

And so I am asking that, with the new -- or that there are new Title IX guidelines, and that these guidelines are robust and create a reporting structure that students trust, and that there is a transparent process that students can access, that they know what to expect before they report to Title IX.

And these reporting procedures should be able to be decided by schools. Schools should decide what procedure works for them and their campus, that will be fair and equitable to all students.

But it needs to be easier. There needs to be a process so that students can stay enrolled, that students can graduate, because right now, you know, survivors are not supported in that way, and they are not able to graduate at the same rates as non-survivors. Thank you.

MODERATOR: Thank you. We'll be back in a moment with our next commenter.

(Pause.)

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MODERATOR: Next up is Rebecca. Rebecca, if you are ready, unmute your mic and begin speaking.

REBECCA B.: Thank you. Good afternoon. My name is Rebecca Berkowitz. I am the school policy attorney at the Maryland Coalition Against Sexual Assault or MCASA.

We are the federally recognized state sexual assault coalition. And our offices include the Sexual Assault Legal Institute where we provide direct representation to Maryland survivors, including to student survivors.

MCASA has already submitted written comments addressing the many harms and inadequacies of the August 2020, amendments. And in particular, we concur with the written comment submitted by the National Women's Law Center.

So I'd like to focus now on the need for new regulations regarding supportive measures for survivors. Because the current regulations don't require schools to offer any particular supportive measure and they don't give any

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guidance for how measures are to be implemented or enforced.

Left to their own devices, schools routinely fail to offer adequate supportive measures. Which leaves survivors without the help they need to stay in school and vulnerable to further harassment.

First, faculty and staff need to be trained on how to implement supportive measures. One Maryland college student was raped by a classmate and is currently going into month nine of her Title IX investigation. Still no hearing date has been set.

The lengthy process has tanked her academic performance. Her Title IX coordinator told her that she was welcome to reach out to professors to ask for academic accommodations. Placing her in the position of having to tell her teachers she was raped in order to get support.

She did ask one professor for extra time on an assignment and his response was basically, you know, I'm sorry this happened to

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you, but I really can't give you quote, special treatment.

Even without investigation, supportive measures are essential. As an example, of what can happen when no measures are in place.

One Maryland student was raped by a classmate on campus but chose not to pursue a formal investigation. Then in the months following her assault, her GPA plummeted. She was kicked out of her major and she eventually attempted suicide.

When she finally connected to Title IX, they refused to provide her with a letter of support for her request to make up work she had missed due to having PTSD, due to having been raped.

She was raped while she was a student. But Title IX said they couldn't help her because too much time had passed and they quote, can't tell teachers what to do. She wasn't able to graduate on time and she incurred thousands of

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dollars in addition tuition costs and student loan debt.

So the Maryland Coalition Against Sexual Assault and its Sexual Assault Legal Institute urge the Department to draft new regulations that require schools to proactively offer and actually enforce specific supportive measure including academic accommodations and financial adjustments.

Thank you for your time.

MODERATOR: Thank you. We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Good afternoon. We have one commenter waiting. Can you please open up your chat so we can communicate?

(There was a brief break between speakers at this time.)

MODERATOR: Good afternoon. This concludes this session of the public hearing. The next session will begin at 3:30.

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(There was a brief break between speakers at this time.)

MODERATOR: Good afternoon, folks. Our first two commenters will begin in just a few moments.

(There was a brief break between speakers at this time.)

MODERATOR: Thank you for your patience. First up is Jon M. followed by Nicholas W. Jon, feel free to unmute your mic and begin speaking.

(No response.)

MODERATOR: Jon, please unmute your mic and begin speaking.

(No response.)

MODERATOR: Looks like Jon might be having some technical difficulties. We're going to move to Nicholas W. Please unmute your mic and begin speaking when you're ready.

NICHOLAS W.: Hello.

MODERATOR: Yes, Nicholas, we can hear you. You may begin.

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NICHOLAS W.: Excellent. Thank you. My name is Nicholas Wolfinger and I'm here today to talk about Title IX. I'm a tenured professor at the University of Utah where I've taught for over 20 years.

I support the broader ends of Title IX with respect to gender equity and higher education. Indeed, my 2013 book, *Do Babies Matter?: Gender and Family in the Ivory Tower*, addressed the barriers that female academics face.

That having been said, I think that the Department's 2011 Dear Colleague letter to American universities has perverted the original intent of Title IX by turning higher education into a gigantic star chamber that tramples the rights of faculty and students in a misguided crusade against sexual violence.

The Dear Colleague letter authorized campus tribunals against those suspected of sexual assault or harassment using the lowest possible burden of proof, discourage cross-

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examination.

It also set up a federal registry to shame universities and threaten them with the loss of federal funds. The stage was set for a witch hunt. Colleges have every incentive to pursue any charges filed no matter how flimsy.

And pursue them they did. This is how I found myself facing allegations in 2016 for telling a colleague that I had proposed to my wife at a strip club.

It doesn't matter that I told the colleague and several other colleagues this in the late 1990s off-campus and over drinks. I find it probable that she was offended. Instead, she was simply settling a score.

The dossier by the university prepared against me also contained allegations of an unnamed reporter who phoned my academic department to complain about something I'd said in an interview.

It's hard to imagine anything having more chilling effect on scholarly research and

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teaching than the prospect that anyone can contact your university and complain about anything at any time.

Ultimately, I was exonerated after a review that lasted several months. I was lucky. Many faculty careers have been ruined and many students have been expelled. My costs were limited to the time I wasted and \$14,000. in attorney's fees.

Reforming Title IX wasn't about getting rapists a free pass. Justice for victims of sexual assault should come from the legal system, not kangaroo courts that are ill equipped to adjudicate felony charges.

Indeed, the relentless pursuit of offenders for non-offenses like kissing one's sleeping boyfriend, and that actually happened at Brandeis University, is an insult to people who've actually endured sexual assault.

Even a broken clock is right twice a day and Education Secretary DeVos implemented sensible reforms to stop the miscarriage of

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justice that has ensued from the Dear Colleague letter.

I urge the Department of Education to leave the DeVos reforms on the books. Thank you.

MODERATOR: Thank you. Next up is Jon M. Jon, if you could unmute your mic and begin speaking.

(No response.)

MODERATOR: We will be back in a few moments with the --

(There was a brief break between speakers at this time.)

MODERATOR: Jon M., you're up next if you could unmute your mic and begin speaking.

JON M.: Good afternoon. My name is Jonathan Mathis and I serve as the Title IX coordinator for Chemeketa Community College in Salem, Oregon.

Can you hear me now? Are you able to hear me?

MODERATOR: Yes, we can hear you. Thank you.

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JON M.: Good afternoon. My name is Jon Mathis and I serve as the Title IX coordinator for Chemeketa Community College in Salem, Oregon.

Can you hear me now? Are you able to hear me?

MODERATOR: Yes, we can hear you. Thank you.

JON M.: Okay. Good afternoon. My name is Jon Mathis and I serve as the Title IX coordinator for Chemeketa Community College in Salem, Oregon.

I'm speaking to you today from the land originally inhabited by the Kalapuya who are today represented by the Confederated Tribes of the Grand Ronde and Siletz Indians whose relationship to this land continues today.

To begin, I want to affirm the shared desire between our educational institutions and the federal government to create an equitable process for all parties involved in sexual misconduct cases.

Sexual harassment, sexual violence,

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and gender discrimination are traumatic and require colleges and universities to have a fair and equitable process to support those involved.

As a proud representative for community colleges, I would like to offer four suggestions for improvement to the current Title IX regulations.

First, I strongly recommend that any additional changes to Title IX should censure the lived experiences of historically marginalized student populations. And be written collaboratively with authors who have been trained in trauma informed approaches to ensure equitable educational environments.

Since these populations are disproportionally impacted by sexual harassment and sexual violence, their voices must inform the regulations designed to protect them.

Second, I suggest that we discontinue the use the term complainant when referring to someone who brings forward a report of sexual harassment or sexual violence.

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The term is closely associated with the word complain. Meaning those reporting incidents of sexual misconduct with the assumption that they are complaining to their institution. I would suggest that we instead use term adopted by the state of Oregon, reporting party.

Third, I strongly recommend discontinuing the requirement for live hearings to adjudicate Title IX cases. The possibility of hearings often creates a chilling effect.

In addition, requiring the hearings to be both live and verbal may unfairly impact students, staff and faculty who experience auditory or verbal disabilities.

Finally, I recommend that the Title IX rule be amended to be more inclusive than is currently written. In order for a person to be able to qualify for Title IX related services, the misconduct must clear the thresholds of being severe and pervasive and objectively offensive.

This leaves out many instances of

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sexual misconduct that still deserve to be addressed but may go unreported. As colleges and universities, we need to assure students and their families that we want to know about sexual misconduct within our communities. And we will work with them to resolve the reported concern and restore equitable access to their education.

Thank you for your time and consideration. I'm grateful for your service to our country and to making our educational institutions a safe place to learn and grow.

MODERATOR: Thank you. Next up is Wendy P. followed by Colleen F.

WENDY P.: Hi, can you hear me?

MODERATOR: Yes, we can. You may go ahead.

WENDY P.: Good afternoon. I'm Dr. Wendy Price and I'm a school psychologist at Whitman-Hanson Regional High School in Whitman, Massachusetts.

I'm also our school's faculty advisor for our Gender and Sexuality Alliance. And I'm

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the current president of The National Association of School Psychologists.

School psychologists are ethically obligated to ensure all youth of diverse sexual orientations, gender identities, and/or gender expressions are able to develop and express their personal identities in a school climate that is safe, accepting, respectful of all persons, and free from discrimination, harassment, violence, and abuse.

NASP has long advocated for needed practices and policies that support the safety and wellbeing of all students. Including those who are transgender and gender diverse.

We believe that civil rights of transgender students are protected as part of the U.S. public schools' obligations under Title IX of the Education Amendments of 1972.

This includes honoring a person's right to express gender identity and the right to modify gender expression when necessary for individual well-being and to have their gender

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identity affirmed and acknowledged.

In addition, NASP supports all students' rights to explore and question their gender identity. As such, we strongly urge the Department to revise the Title IX regulations to define on the basis of sex to include on the basis of sexual orientation, gender identity, transgender status, sex stereotypes, or sex characteristics, including intersex traits.

The desire to accommodate other people's discomfort does not justify a policy that singles out disadvantages of particular class of students.

In addition, we encourage the Department to release guidance that reinforces the fact that LGBTQ+ students are afforded protections under Title IX. And outline best practices on how schools implement policy and practices that protects the rights of all students.

The DoE must delineate appropriate ways to prevent harassment and discrimination and

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swiftly address when it does happen. Schools need guidance to develop policies and practices that prohibit remediate bullying, harassment, and discrimination on the basis of sex, including gender identity and sexual orientation. Ensure transgender and gender diverse students have access to facilities and activities including sports teams that align with their gender identity. Support the delivery of inclusive curricula where accurate and appropriate information about LGBTQ+ people, history and events are infused into classroom instruction when relevant. Provide accurate and inclusive professional development for staff on how to be a supportive ally and how to recognize and intervene when LGBTQ+ bullying and harassment occurs.

We urge you to take the necessary steps to protect the rights of all students and ensure that this protection is not subject to the beliefs of those in charge. And issue regulations that clearly and unequivocally state

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that Title IX includes discrimination on the basis of sexual orientation, gender identity, transgender, status sex stereotypes, or sex characteristics.

NASP looks forward to working with the Department. Thank you.

MODERATOR: Thank you. Next up is Colleen F. Colleen you can unmute your mic and begin speaking.

COLLEEN F.: Hi, can you hear me?

MODERATOR: Yes, we can hear you. You may go ahead.

COLLEEN F.: I'm a registered nurse, with lots of experience working with trauma in the emergency room and on a college campus under Title IX.

I want to share why we must support the current 2020 regulations, the due process protections and why we need to end the confusing and unscientific neurobiology of trauma informed training of all those involved in Title IX cases.

First, college and university

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lawsuits are the best place to see the failures of a trauma informed approach. This training has been well established on our campuses for the last decade.

More and more due to the biases of trauma informed training, courts are denouncing victim centered philosophies and are showing they support clear standards for admissibility of scientific evidence in court.

In Doe v. Purdue it was found that schools can be discriminating against accused men if they adopt a start by believing approach. The federal appeals court found that Purdue University might have discriminated against a male on the basis of sex, believing his female accuser's version of events while barring this young man from presenting evidence on his own behalf.

The unanimous court decision written by Amy Coney Barrett said it is plausible that Purdue chose to believe Jane because she is a woman and to disbelieve John because he is a man.

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The alleged victim never submitted a statement of her own. The university itself pursued the case on her behalf. How do you believe someone without ever speaking to him or her or hearing from them directly?

Colleges should not be using start by believing methods as they are biased and work from a survivor centric viewpoint that lacks transparency, accountability and is fraught with conflicts of interest.

Many experts state the talk on fragmented memory and tonic immobility is unsupported by prevailing scientific research findings.

The U.S. Airforce of Special Investigations has sounded the alarm calling for the end of trauma informed training stating that it is loosely constricted. Is based on flawed science, makes unfounded claims about its effectiveness and has never once been tested, studied, researched, or validated.

In another court case, Doe v.

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University of Mississippi, the court found trauma informed training materials caused those trained to make an assumption that an assault had occurred.

Even the Association for Title IX Administrators, a prominent agency that leads the way for campus policy and training had this to say. You will need to assess whether you can afford to have non-empirical biased training on your resume in this age of litigation.

We need to end the unscientific use of trauma informed training of those on our college campuses as well as our police, law enforcement, and medical health professionals. We need to support the current 2020 regulations that were put in place to allow for due process protections and cross-examination.

We would not want to see rape cases thrown out of court due to the use of this flawed training. We are hearing a lot about how traumatizing cross-examination is for the accuser, but this process is a process that's

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affecting two sides, both the accuser and accused.

Those accused labeled and charged by their schools or colleges with titles of rape or sexual assault are being treated as criminals.

MODERATOR: Thank you. We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is China W. China, if you're ready, you may unmute your mic and begin speaking.

CHINA W.: Good afternoon everyone. My name is Dr. China Wilson and I am the equity and civil rights compliance specialist with the Maryland State Department of Education.

Much of the portfolio that I overlook and that I oversee involves the compliance of Perkins V the methods of the administration protocols in regards to equitable practices around access and performance in our local school systems, our community colleges and our state

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operated programs. Meaning juvenile service education and adult correctional ed.

I appreciate the time before you today and wanted to just share that I really think there needs to be an additional focus on the K-12 system. Much of the regulation in Title IX focuses on the college environment.

And while that is certainly a need, and there's certainly, you know, the requirement to look at that arena, I believe we also need to look a little bit further at the K-12 system and the services that need to be provided, the guidance that needs to be provided to leaders in order to make sure that they are compliant with Title IX.

So I have two simple requests. Two simple recommendations. The first is to revise the Title IX regulations to include specific guidance for K-12 systems regarding issues concerning sexual misconduct and gender discrimination and the unique circumstances that exist in those environments.

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And then my second recommendation is that in addition to Title IX's focus on sexual misconduct, please provide stronger and equal emphasis on the protections provided under Title IX that prohibit gender discrimination.

Many times we focus on sexual misconduct, again which is important, but we also need to provide equal emphasis on gender discrimination.

And so those are the two recommendations that I have as you all look at revising this regulation and thank you for your time.

MODERATOR: Next up is Jennifer G. Jennifer, please unmute your mic and feel free to begin.

JENNIFER G.: Can you hear me?

MODERATOR: Yes, we can. You may begin.

JENNIFER G.: Thank you, sir. 2067 days ago I picked up my son from school and that was the day when my fight for justice began.

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My son informed me that he was sexually violated by two female classmates during his PE class. We both went into the office after school to report this to the principal and guidance counselor.

After 50 days went by without any investigation by the school employees, I contacted the superintendent of public schools. I delivered my concerns about the school employees who have failed my son and myself after reporting a sexual violation.

Still to this day the school district failed to report the crimes in 2016 to the State Department of Law Enforcement in which I possess five school police department incident reports.

And in one of those reports, it states that what my son described to the police officer appears to be criminal in nature. My son and I decided to speak numerous times at school board meetings only to be told, thank you, after describing the sexual violation.

Since my county school board was

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clearly incompetent, I began to reach out to the state governor and state commissioner for the Department of Education. Unfortunately, the continuity of discrimination went through two governors and two commissioners for the Department of Education.

When it comes to Title IX of the Education Amendments of 1972, a revision is imperative. It is well established that Title IX protects against discrimination on the basis of sex and that sexual assault is a form of sex discrimination.

I strongly recommend that when it comes to the reporting of a sexual violation directly from the victim to the school administration, that we eliminate the use of wide discretion and implement strict protocol for school administrators to adhere to.

In my state, the teachers are protected by the Educator's Code of Ethics. There is one sentence that fails to be mentioned in all 67 counties within my state Code of Student

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Conduct, sometimes known as Behavior Matrix or Discipline Matrix.

After discovering this failure, I decided to turn my pain into purpose. I created and have proposed King's Law several times to the Department of Education. Every child in America deserves to learn in a peaceful environment.

We need to emphasize for students as well, quote, keep your hands and other parts of your body to yourself, end quote.

Implementing King's Law and strict protocol for school administrators to follow will bring the much-needed change that we desperately need when it comes to public schools.

Thank you for your time. Have a beautiful day.

MODERATOR: Thank you. Next up is Richard K. Richard, when you're ready, please unmute your mic and begin speaking.

RICHARD K.: Hi. I just wanted to introduce myself really quickly. I was a criminal defense lawyer representing indigent

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defendants for ten years and I have been a law professor for approximately 40 years.

My focus has been the effective assistance of counsel and also changes in the rape laws. I'm most concerned about due process when it comes to the procedures that universities will be using in conducting the Title IX investigations.

As a criminal defense lawyer, I saw the damage that can occur by the simply start by believing because the police officers will always believe by the judges, by the prosecutors and sometimes wrongly convicted people would result.

There will be wrongful convictions because of this start by believing. So I do think that's a real concern. I also think that victim centered investigations present all kinds of due process issues because it shouldn't be the victim, the alleged victim, the accuser, who determines the appropriate ways that the independent objective investigator will be proceeding with witnesses to contact, what

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evidence to pursue. So I think that's a problem.

And then trauma induced, a focus on trauma induced testimony can also present damage. Because what that leads to is the investigator sometimes trying to fill in the gaps for the witnesses, for the accuser's failings to sort of think that well, the reason the accuser is saying something different this time than what she had said before was just because she has been traumatized.

Any trial attorney is fully aware of the absolute need for fundamental fairness and due process concerns. There has to be cross-examination of any accuser.

Witnesses sometimes might be mistaken. There might be memory lapses. They might be confused, or they might be simply lying. And the only way we can really determine the accuracy of an allegation is if we do have cross-examination.

Due process requires that the accused have a counsel to represent him or her and that

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there's full access to all of the evidence which may influence any fact finding.

This country's becoming increasingly aware that the public perception of the fairness of our criminal justice system is of paramount importance.

And so too in matters where an accused can be expelled by a university and a career and a future forever ruined, procedures providing for fair and thorough adjudication of any complaint must be absolutely adhered to.

Thanks very much. Again, it's Richard Klein.

MODERATOR: Thank you. We'll be back in a few moments with our next speaker.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Rachel G. Rachel, when you're ready, please unmute your mic and begin speaking.

RACHEL G.: Can you hear me?

MODERATOR: Yes, we can hear you.

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RACHEL G.: Great. The New York City Alliance Against Sexual Assault and Vida House co-chair on multidisciplinary New York State campus working group created in 2015 that is comprised of institutions of higher education, attorneys and rape crisis programs with years of expertise serving college and university populations.

The existing expertise in New York State was bolstered by the introduction of Education Law 129B or Enough is Enough in 2015. This is a comprehensive sexual assault law which addresses prevention and response to campus sexual assault, stalking and dating violence.

We commend OCR's comprehensive review of the Department's existing regulations and other actions related to Title IX to implement President Biden's March 8th executive order.

Given our vantage point, representatives of the working group would like to express the following views. First, we believe the narrow definition of sexual

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harassment as redefined in the Title IX rule that went into effect in August 2020 must be changed.

The rule defines sexual harassment where they have an institutional response as quote severe, pervasive, and objectively offensive. Which raised the threshold of what kind of harmful behavior demands intervention.

This leaves students to endure repeated and escalating levels of abuse until it sufficiently fits in that narrow definition. The new rule also narrowed the circumstances where a school is responsible to report as they are not required to address sexual harassment unless there's quote, actual knowledge received by a small subset of employees who have authority to respond to harassment.

We believe this must be changed so students retain the right to disclose an incident of sexual harassment to a school employee with whom they already have a trusted relationship and have that disclosure treated with the same seriousness as other disclosures.

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Along with the actual knowledge requirement, the geographical restrictions that limit a school's responsibility to only respond to sexual violence that has occurred within an education program or activity excludes students living off-campus or participating in study abroad programs from the protection of Title IX.

With many of the students we serve experiencing sexual violence off-campus and or online, we urge the OCR to expand schools' geographical responsibilities to include off-campus housing, tech facilitated abuse and study abroad programs.

We believe there must be clarification around the issues of advisors of choice. We have seen firsthand the inequity that persists when some students are able to hire attorneys in these investigations and others are not. Especially in schools that cannot afford to provide counselor reimburse.

We also continue to stand firmly behind the standard of preponderance of the

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evidence for all these cases.

In addition, we remain concerned about cross-examination requirements under the revised Title IX regulations and hope to see the religions exemption standard raised.

Finally, the new rule does not address tech facilitated abuse and cyber sexual abuse which are both areas we've seen as critically important. Especially throughout the pandemic.

We welcome more information about what the DoE will do with the comments shared and how it will be reported back out. Thank you.

MODERATOR: Thank you. Next up is Katherine H. Katherine, when you're ready, please unmute your mic.

KATHERINE H.: Hello and thank you for the opportunity to provide comments today. My name is Kate Hildebrandt and I'm a civil rights specialist and Title IX coordinator with the Oregon Department of Education. I'm here today to provide comments on discrimination based on sexual orientation and gender identity in the K12

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environment.

Oregon has prohibited discrimination based on sexual orientation and gender identity in schools since 2007. To assist schools in addressing discrimination, in 2016, Oregon released a guidance document to help schools best support trans students and we provide ongoing training and technical assistance.

Today I want to share with you some of what we've learned in Oregon in the past few years and some suggestions we hope OCR will consider in any future guidance.

First, names, pronouns, and gender identity. Students in Oregon may change their name, gender identity, and pronouns in school records without the need to provide legal or medical documents.

We trust our students to know themselves and their identity. And we suggest any guidance from OCR reflect a similar trust in K-12 students.

Two, student privacy. While many

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students may be ready to assert their sexual orientation or gender identity widely, others will only be ready to share their identities in certain settings. They may be ready to be out at school, for example, but not necessarily to their parents.

Guidance should address the intersections of parental rights and student privacy in the K-12 environment and should prohibit schools from revealing confidential personal information in any way that violates student's privacy rights.

Three, athletics. Students in Oregon may play on the athletic team that aligns with their gender identity. The Oregon School Activities Association's handbook also specifically addresses policies for nonbinary and gender fluid students. Allowing them to access these programs in a way that affirms their identity.

We find this practice very successful for schools and students across the state.

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Should OCR issue guidance, they should similarly address athletic opportunities for trans, nonbinary, and gender fluid students.

Four, educator and administrator training. A key finding of Oregon's LGBTQ2SIA+ student success plan was that students usually know where to report discrimination but do not trust that educators and administrators will actually do anything about it.

Any OCR guidance and regulations must address training for educators and administrators. And should go beyond simply stating that discrimination is wrong and that it must be reported.

Educators specifically need training on how to intervene in discrimination when it happens such as anti-bias or bystander intervention training.

And last, harassment and bullying. Oregon's biannual Healthy Teen Survey has found that Oregon student trans students experience higher rates of bullying, harassment, and school

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absence than their cisgender male or female peers.

Harassment and bullying based on sexual orientation or gender identity must be treated as discrimination and seriously handled. The Oregon Department of Education will elaborate further on these and other issues in our written comment.

And thank you again for this opportunity.

MODERATOR: Thank you. We'll be back in a few moments with the next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Samantha S. Samantha, when you're ready you may unmute your mic and begin speaking.

(No response.)

MODERATOR: Samantha, please unmute your mic and begin speaking.

SAMANTHA S.: Can you hear me?

MODERATOR: I can hear you now. You

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may go ahead.

SAMANTHA S.: All right. Give me one second. Hi everyone. My name is Samantha Sheppard and I work for the Louisiana Foundation Against Sexual Assault. The designated coalition for sexual assault in Louisiana.

I am the campus sexual assault project coordinator. Where I previously have been before this, I was a first responder to sexual assault in Baton Rouge, Louisiana, where there are many universities for almost two years.

I'm here to shed light to the empirical facts of sexual assault in the university space. Especially amid all the prevalent issues occurring in the state of Louisiana surrounding sexual assault and Title IX. Sexual harassment of students is widely prevalent in higher education, but most students do not report it to their schools.

In college, one in four women, one in fifteen men, one in four transgender, nonbinary and gender nonconforming students are sexually

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assaulted during their time as students.

In addition to this, one in three college women and one in six college men are survivors of dating violence or domestic violence. In addition to this, one in six women and one in nineteen men have also experienced stalking on campus.

However, few students report these incidents to their schools. Often because of shame, self-blame, fear of retaliation, fear of not being believed, fear of being ignored or disciplined, and fear of police. And this is very prevalent in Louisiana.

As I am sure you have all seen what is going on current state due to the current system. When student survivors do not come forward, they are often ignored or punished by their schools instead of receiving help.

This is especially common for women of color but especially, particularly Black women. Meaning this translates to the HBCU space. This also affect LGBTQ students, pregnant and

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parenting students, and disabled students due to their stereotype that labeled them as more promiscuous, less credible, or less deserving of protection.

When schools fail to protect survivors, they suffer in form of lower grades, lost scholarships and lost degrees. One in three college survivors end up dropping out all together because of the current system in place. And this has been all empirically proven.

Survivors of sexual assault need a rule that offers healing, dignity and justice. Including a safe and supportive learning environment. We need to protect and believe survivors. Student survivors need support, and they need to learn without discrimination or fear.

It is critical for the Department to hear directly from students, educators and other stakeholders like myself. Not only to hear us but to listen and truly consider how to restore civil rights protection under Title IX for

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student survivors.

Thank y'all so much for giving me this opportunity to speak.

MODERATOR: Thank you. We'll be back in a few moments with the next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Christian C. Christian, when you're ready, unmute your microphone and begin speaking.

(No response.)

MODERATOR: Christian, you may begin.

(No response.)

MODERATOR: Christian, it appears there are some technical difficulties. If you'll open up your chat, we'll try to help you out.

(Pause.)

MODERATOR: Next up is Carrie S. Carrie, when you're ready, unmute your mic and begin speaking.

(No response.)

MODERATOR: Carrie, if you can unmute

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your microphone, you can begin speaking.

(No response.)

MODERATOR: Okay, Carrie, if you could open up your chat, it seems there's some technical difficulties. We'll try to assist you through the chat.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Adele K. Adele, when you're ready, please unmute your microphone and begin speaking.

ADELE K.: Good afternoon. I'm Adele Kimmel, the director of Student Civil Rights Project at Public Justice, a national legal advocacy organization.

The Student Civil Rights Project uses litigation and advocacy to combat harassment and other forms of discrimination so all students can learn and thrive in school.

For years we've been representing student survivors of sex-based harassment including sexual assault in Title IX litigation

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throughout the country and administrative complaints filed with OCR.

The Department should replace the Title IX regulations promulgated by former Secretary DeVos with rules consistent with the text and purpose of Title IX.

For decades, the Department applied consistent substantive protections to students who experienced harassment based on sex, race, national origin, or disability.

The DeVos rules inexplicably treat sexual harassment complaints differently from complaints concerning all other forms of prohibited discrimination.

Now, federal funding recipients only need to address sexual harassment that is severe, pervasive, and objectively offensive and that occurs on campus or during an off-campus recipient activity.

And if the survivor files a Title IX complaint with OCR, the Department must use a deliberate indifference and actual knowledge

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standard in analyzing the complaint.

In deviating from its long-standing position, the Department gutted protections for survivors, reducing recipient's responsibility to address harassment and depriving OCR of critical enforcement power.

The Department must promulgate regulations that restore long-standing protections for student survivors and OCR's robust enforcement powers.

Specifically, the Department should one, explain that sex-based harassment includes sexual harassment, dating violence, domestic violence, sex-based stalking and harassment based on among other things, sexual orientation, gender identity, and gender expression.

Two, define sexual harassment as unwelcomed sexual conduct including quid pro quo sexual harassment.

Three, define actionable sex-based harassment as all quid pro quo harassment and any other sex-based harassment that's sufficiently

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serious to create a hostile environment.

Four, require recipients to respond promptly and effectively to actionable sex-based harassment that they know or should know about and any sex-based harassment by employees done in the context of the employee's responsibilities within the recipient's program or activity.

Five, explain that recipients must address sex-based harassment that may create a hostile environment in their program or activity regardless of where the sex-based harassment occurred.

And six, expressly prohibit common forms of retaliation against survivors who report sexual harassment such as punishing them for sexual contact on school grounds and disciplining them for conduct code violations they must divulge in order to report.

Thanks for considering my input.

MODERATOR: Thank you. We'll be right back with our next commenter.

Christian C., please unmute your mic

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and we'll give it another try.

CHRISTIAN C.: All right. Can you hear me now?

MODERATOR: Yes, we can. Go ahead.

CHRISTIAN C.: Great. Hi, I'm Christian Corrigan and I'm the Assistant Solicitor General for the state of Montana. And I'm here speaking on behalf of Montana Attorney General, Austin Knudsen.

Now someone once said that allegations of sexual harassment and sexual assault are complicated. That same individual who has been accused multiple times of sexual misconduct argued that victims deserve to be treated with dignity and respect and should be heard but that their story should be subject to appropriate inquiry and scrutiny.

That person was President Biden, and he was absolutely correct. Victims and accused students deserve a fair, impartial and reliable process to adjudicate accusations of sexual harassment in education.

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It's unfortunate that President Biden demanded due process for himself yet was responsible as much as anyone for denying that same due process to students across the country.

In a 2016 speech, he mocked the idea that sexual assault allegations might be complicated. He spearheaded the infamous 2011 Dear Colleague Letter that resulted in a Kafkaesque disciplinary disaster.

Over 600 lawsuits by accused students and widespread criticism from across the ideological spectrum. And one of the more tragic ironies is that the 2011 DCL, resulted in a disproportionate number of expulsions and scholarship losses for Black male students.

In fact, the only individual who bears remotely similar culpability for the Title IX fiasco is Catherine Lhamon. OCR became a biased institution under Ms. Lhamon's leadership.

With former and current OCR's investigators telling the media quote, the perceived message from Washington was that once

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an investigation into a school was opened, the investigators in the field offices were not meant to be objective fact finders.

Their job was to find schools in violation of Title IX. When Secretary DeVos began to fulfil her promise to clean up the mess created by the Obama administration, and restore fairness and due process to Title IX, former Vice President Biden called supporters of reform quote, cultural Neanderthals and even compared them to neo-Nazis.

But the list of Neanderthals is ideologically diverse and spans the partisan divide. It includes, for example, numerous law professors, many of them liberal feminists, a past president of the ACLU, The American College of Trial Lawyers, The American Council on Education, former Obama DHS secretary Janet Napolitano, The American Bar Association, The American Association of University Professors and even the late justice, Ruth Bader Ginsburg.

Vice President Biden and Ms. Lhamon

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put the interests of fringe activists over students, schools, and core American values. In contrast, Secretary DeVos's Title IX rules now require schools to respond promptly and supportively to allegations of sexual harassment while also providing due process to both alleged victims and alleged perpetrators.

To improve Title IX, OCR should vigorously enforce the new DeVos Title IX rules and defend the rights of all students. Thank you.

MODERATOR: Thank you. Next up is Carrie S. Carrie, when you're ready please unmute your mic.

(No response.)

MODERATOR: Carrie, can you try to unmute your microphone again?

(No response.)

(There was a brief break between speakers at this time.)

LIBBY M.: Hello, can you hear me?

MODERATOR: Yes, we can hear you.

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You can begin speaking.

LIBBY M.: Thank you. My name is Libby Munoz-Smith and I'm with the Fierberg National Law Group. We represent survivors of sexual assault on college and university campuses across the country.

I work for a Title IX attorney, Cari Simon. Previous OCR guidance recognized that harassment that was severe, pervasive, or persistent could limit or alter a student's access to their education.

During this time, it allowed flexibility for varying types and degrees of harassment and protected students' educations from being altered by it.

The DeVos era final rule dangerously heightened the standard for investigation of harassments such that schools must dismiss complaints of sexual harassment if they are not so severe and pervasive and objectively offensive that it effectively denies a person equal access to education.

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This sets an extremely high standard for schools to even begin to be able to investigate complaints. This is highly problematic.

First, many survivors make a concerted effort to avoid the harassment so that it doesn't get worse. Often altering their education experience to do so. But if it doesn't get worse, so bad that it is so severe and pervasive and objectively offensive it can't be investigated.

Further, this gives schools the discretion to determine what is severe and pervasive and objectively offensive. LGBTQ+ students, Black and Brown students, and students with disabilities are harassed at a much higher rate and their complaints of harassment are often taken less seriously due to behavioral stereotypes labeling them as hypersexualized or deviant.

The discretion given schools will mean their complaints will be dismissed at a much

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higher rate.

Second, if a student reports harassment or bullying and the school refuses to investigate it because under Title IX it is not so severe and pervasive and objectively offensive that it must be dismissed, is that student going to re-report?

They've already felt that the harassment is bad enough to report it and ask for help in the first place. The survivor is not likely going to come back and report a sensitive issue to the same authority who declined to listen in the first place.

There is already a serious chilling of reporting of harassment and assault, and this standard only further discourages it.

Finally, and most importantly, forcing schools to wait to investigate until the harassment is so severe and pervasive and objectively offensive that it effectively denies a student's education is a dangerously high standard.

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By this standard we are asking students to suffer so much for so long just so that they can be protected by Title IX. I would think that conduct meeting only one of those criteria would deny me equal access to my education.

Harassment, particularly of LGBTQ+ students, Black and Brown students, and students with disabilities is leading to marginalize students dropping out of school and committing suicide at an alarmingly high rate.

We must protect students and their access to education. This standard does not do that. Rather, it requires students to bear the harassment until it gets so bad, so severe and pervasive and objectively offensive that it might be too late. Thank you.

MODERATOR: Thank you. Be right back with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Good evening. This

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concludes this session of the public hearing.
The next session will begin at 5:30.

(There was a brief break between
speakers at this time.)

WILLIAM F.: My name is William Flack,
and I am a professor and chair of the psychology
department at Bucknell University in Lewisburg,
Pennsylvania.

I have conducted research on campus
sexual assault for over 20 years and I am a member
of The Administrator Researcher Campus Climate
Collaborative, abbreviated ARC3.

I have five comments. First, campus
misconduct procedures should give survivors
choices about getting justice. Not reproduce a
legal system that has failed them.

Requirements such as live cross-
examination should be abolished. Trauma
informed procedures and alternative approaches
such as restorative justice should be required to
be available on all campuses.

Second, because survivors should

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never have their autonomy violated, especially by those to whom they feel safe enough to disclose sexual assaults such as trusted professors, for example, mandated reporting should also be abolished and replaced with information sharing about available alternatives.

Number three, research-based campus climate surveys should be mandated at least every four years. Linked specifically to intervention and prevention efforts on each campus. And results should be recorded publicly online.

The ARC3 survey, a research based modifiable instrument available at no cost is one example of such an instrument.

Number four, institutions should be strongly encouraged to examine and change the systemic factors within their campus cultures that encourage and perpetuate sexual assault perpetration.

These include the kinds of male peer support networks that promote the abuse of women and gender minorities and that often function

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within but are not restricted to fraternities and sports teams.

Number five and finally, all efforts made by institutions to develop and maintain adjudication and prevention procedures should prioritize the participation of current students. Especially those assault survivors who are willing to be part of those efforts.

They have the experiential expertise required to help us better understand and ultimately eliminate this problem. Thank you. I appreciate your time and attention.

MODERATOR: Thank you. Next up is Carrie B. followed by Kevin C. Carrie, when you're ready, unmute your microphone and begin speaking.

CARRIE B.: Can you hear me now?

MODERATOR: Yes, we can hear you now.

CARRIE B.: I'm so sorry for my technical difficulties.

MODERATOR: That's okay.

CARRIE B.: Thank you for this

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opportunity to testify today. My name is Carrie Baker and I'm a lawyer and gender studies professor at Smith College in Northampton, Massachusetts.

In 2006, the Department of Education issued Title IX regulations allowing single sex education in many more circumstances than allowed for remedial or affirmative purposes in the previous Title IX regulations.

Under the 2006 regulations, to justify single sex classes for schools, public school districts need only show that the single sex classification is based on an important objective such as providing diverse educational opportunities.

While many provisions to counteract the 2006 regulation have been included in the single sex education Q and A guidance issued by the Office of Civil Rights in 2014, the 2006 regulation should be withdrawn, and the single sex education guidance should be updated.

Proponents of single sex education say

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that boys and girls are hard wired to learn differently. And that the most effective way to teach them is to separate them based on their sex and use different teaching strategies.

However, the practice of separating boys and girls in public schools is based on discredited theories that are rooted in outdated in gender stereotypes. Advocates of single sex education argue that girls' and boys' brains are different.

But in fact, neuroscientists have found few sex differences in children's brains beyond the larger volume of boys' brains and the earlier completion of girls' brains worthless. Neither of which is known to relate to learning.

According to the former president of the American Psychological Association, Diane F. Halpern, advocates of sex segregated education often justify segregation using weak, cherry picked or misconstrued scientific claims rather than valid scientific evidence.

There is no scientific evidence that

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single sex schools produce better educational outcomes than coeducational schools. In fact, evidence shows that sex segregation increases gender stereotyping and legitimizes institutional sexism.

One of the original goals of Title IX was to decrease sex segregation and decrease the use of gender stereotyping in decision-making by and about individuals.

The Bush administration's 2006 regulations significantly expanded allowable sex segregation in public schools. Opening the door to gender stereotyping in the treatment of boys and girls in American public schools.

I urge you to revisit these regulations and tighten up allowable reasons for sex segregation. Thank you.

MODERATOR: Thank you. Next up is Kevin C. followed by Elizabeth H. Please unmute your mic. Kevin, you're ready to speak.

KEVIN C.: Hello. Thank you for this opportunity. My name is Kevin Carmody. I am

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the Title IX coordinator at Alma College which is a small private liberal arts college in Michigan. I've done Title IX work since 2011.

I've also trained investigators hearing officers and Title IX coordinators at the national level. I'm also a doctoral student. My dissertation that I'm working on right now is about Title IX investigation process.

I wanted to talk and comment on the regulations from 2020 and some of the things that I've observed. I think that there are some things that add value and I want to note those. I think that there's some things that were in desperate need of clarification and I think there's some things that really need to be changed.

One of the things that I have found that has added value in the new regulations is the increased notice prior to a meeting or a hearing.

I think we still need some clarification on how to handle some situations

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such as when a respondent is the one who comes into my office and shares with me a potential allegation.

I don't know how I could possibly give that person notice prior to that meeting because I did not know that they were coming. But I still think that the increased notice adds some value.

I think the requirement to review and respond information prior to the hearing is something that I hear as a positive both from those accused and also from reporting parties.

I think that the focus on timeliness rather than 60-days timeline which felt arbitrary and ignored institutional size constraints. Additionally, talking with colleagues it was frequently waived as long as institutions documented some rationale for why a case took longer than 60 days.

I also think that the removal of the requirement to push forward with an investigation despite a criminal investigation is added value.

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I've had the experience of being threatened with arrest for doing my job as Title IX coordinator. I don't want that to happen to anyone else.

Things that I think need clarification. How we address sexual harassment, stalking, or intimate partner violence when some behaviors occur on campus and others occur off-campus.

The requirement that the incident happen on our educational program ignores the fact that, by definition, these are courses of conduct with multiple behaviors. And that we've had situations where we're left with two half cases and we're unable to address bad behavior that we are aware of.

Additionally, what to do with reporting parties who are not affiliated with the school at the time of the offense but have since either been enrolled or employed. Again, this has caused confusion and I think that this needs clarification sooner rather than later.

Then there are some things that I

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think desperately need to be changed. I know we've already heard tonight about the need to change cross-examination and I want to echo that.

It creates a more legalistic process which very few professionals in this field are trained for. And it goes against what we do well which is create an environment for education.

It does not meaningfully add to the ability of panels to make determinations of credibility. It also chills reporting. I've heard from a number of reporting parties that this is the reason that they did not report or did not want to move forward with the formal process.

I'm in the Sixth Circuit and I know that my colleagues that public schools are required by the courts to have some form of cross-examination, but any requirement should not be so prescriptive.

Courts have allowed questioning to move through the chair and I think that that would be less awkward. The pause that sort of happens

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where we have to --

MODERATOR: Thank you. Next up, Elizabeth H. followed by Paul S. Elizabeth, please unmute your mic when you're ready to speak.

ELIZABETH H.: I should be unmuted. Thank you. Good evening and thank you for allowing me to submit public comment to the U.S. Department of Education. My name is Elizabeth Hunter, and I am the named plaintiff in a lawsuit against the U.S. Department of Education regarding religious exemptions for private colleges. And the lawsuit is being brought by REAP LGBTQ.

I attended Bob Jones University from 2015 through 2019. The summer before my senior year, I tweeted on June 1st, happy Pride to all of my friends in the closet and out of the closet. You are brave and I am proud of you.

That tweet came to the attention of my school administration. For my support of same sex marriage and my LGBTQ friends, I was called

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into a meeting with the administration. My school leadership told me I must be homosexual because of my public support for LGBTQ rights.

I was given the choice of outing myself or losing my position as a student. Because of my beliefs in sexuality, I was put on disciplinary probation and required to pay a \$75 fine. I was required to attend mandatory counseling with the Dean of Women. I was also removed from my position in our campus TV media department, a student position I had worked in for two years and was a key part of my major and educational experience.

I experienced anxiety, depression and constant harassment and monitoring the rest of my senior year. And was noticed and possibly, almost missed my graduation due to this campus atmosphere.

Title IX did not offer me protection as a student. I was isolated and monitored by my school administration for the entire rest of my senior year as well as suffering anxiety and

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being completely closeted to all but a few friends.

I am asking the U.S. Department of Education to narrow Title IX exemptions so that other LGBTQ+ students at private institutions that accept federal money are not discriminated against and harmed due to their sexuality and gender orientation. Thank you very much for your time.

MODERATOR: Thank you. Next up, Paul S. followed by Michele D.

PAUL S.: Hello. My name is Paul Southwick, and I am the director of the Religious Exemption Accountability Project.

We have filed a lawsuit against the Department of Education relating to the religious exemption for taxpayer funded educational institutions that allows them to harm LGBTQ students while receiving government funding.

Religious exemptions to civil rights laws are something that are rooted in racism. And are a response to the desegregation of public

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educational institutions beginning with Brown v. Board of Education.

Many private religious colleges claimed a religious basis for maintaining segregationist policies or for continuing bans on interracial dating and interracial marriage. One of those institutions is Bob Jones University where our plaintiff, who you just heard from, Elizabeth Hunter, was a student.

Bob Jones University maintained its ban on interracial dating all the way through the year 2000. That's not that long ago. And it did so on the basis of its sincerely held religious beliefs regarding the separation of the races.

Government support for educational institutions that maintain racist policies was wrong then and it is wrong now. Government support for institutions that maintain policies on the basis of sexual orientation and gender identity were wrong and are also wrong now.

We call upon the Department of Education to narrow the scope of religious

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exemptions as much as it is able. During the Trump administration in the year 2020, the Department issued multiple new regulations regarding religious exemptions that expanded the scope of which educational institutions are able to claim them and whether or not there would be transparency.

Unfortunately, those new regulations have made it so that LGBTQ students deciding which colleges to attend are unable to determine whether or not their future college, which receives federal money, will be choosing to discriminate against them on the basis of their sexual orientation or gender identity.

So we ask at a bare minimum that transparency be increased, and notice be given to prospective students and their families. And additionally, the government introduced regulations that made it so that essentially any educational institution could claim a religious exemption. That should be narrowed as much as possible, consistent with the Title IX statute.

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So again, my name is Paul Southwick, director of the Religious Exemption accountability Project. And we thank you for your time.

MODERATOR: Thank you. We'll be back shortly with the next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up, Michele D.

(No response.)

MODERATOR: Michele, please unmute your mic.

MICHELE D.: Got it. My name is Michele Dauber. I'm a law professor at Stanford and I'm speaking in agreement with the comments of the National Women's Law Center.

In addition, I have two other requests. First, the Biden administration's revised Title IX regulations should provide standardized definitions of sexual assault, stalking, domestic and dating violence and affirmative consent and incapacitation in order

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to establish a floor below which schools cannot go.

At Stanford, we had years of highly publicized struggle over Stanford's efforts to define sexual assault extremely narrowly. Prior to the DeVos regulations, Stanford defined sexual assault as penetration through force or while a victim was completely unconscious. Everything else was labeled merely misconduct.

At that time, the vast majority of our peer schools defined sexual assault as sexual contact without affirmative consent.

The DeVos standard definitions resulted in Stanford for the first time defining sexual assault as any sexual act or attempted sexual act directed at the complainant without affirmative consent.

Based on my experience at Stanford, it is important that in revising the rule that OCR maintains a standardized definition and that it makes affirmative consent a part of that definition.

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There is no justification for having thousands of schools creating different definitions of sexual assault and there are many reasons to have a standardized definition. Including that it will help with the development of prevention education. It will ensure that victims do not feel invalidated due to using definitions that minimize harm and it will increase the equal treatment of LGBTQ victims by not allowing schools to require penetration as the sign of sexual assault.

Second, the revised regulations should require transparent data collection and reporting for federally supported colleges and universities. We need a national data collection similar to the Civil Rights Data Collection for sexual and gender-based harassment in higher education.

Such a data collection would include collecting and reporting out by each institution anonymized aggregate data showing the number of complaints, how they were handled, and the

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sanctions applied. As part of this data collection, institutions should be required to administer a uniform prescribed sexual harassment and assault climate survey at regular intervals no less frequently than every three years.

Transparent publicly available data will serve many purposes. It will hold schools accountable. It will aid research in prevention. And it will provide schools with any information they need to improve. Thank you.

MODERATOR: Thank you. Next up, Bernadette B.

(No response.)

MODERATOR: Bernadette if you could unmute your mic.

BERNADETTE B.: Am I now unmuted?

MODERATOR: Yes.

BERNADETTE B.: I'm so sorry. I couldn't see it. The disparate impact of the new Title IX regulations on marginalized students. I am Bernadette Brooten, director of the Brandeis Feminist Sexual Ethics Project and professor

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emerita Brandeis University.

The Feminist Sexual Ethics Project sponsors research and programs on sexual violence against Black, African American women, indigenous women, transgender and nonbinary individuals, lesbian, gay and queer women, women of East and South Asian origins, Jewish women and persons with disabilities. Please consult our website.

I have advised students through the Title IX process and counseled others. Sexual violence occurs in all demographic groups but differently in each.

For example, centuries of sexual violence against indigenous women is a military tool and against Black women within slavery and under Jim Crow result in many such women hesitating to report results by white men.

For many fear the authorities will not believe them. Centuries of state sponsored and citizen generated violence against Black and indigenous men make many women of these groups hesitate to report a member of their own group.

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The DoE in the 2020 Title IX regulations and accompanying discussion, dutifully report that certain categories of students are at heightened risk of sexual violation and even carefully summarized research on marginalized students complete with bibliography.

But does not take seriously the disparate impact of its regulations. I urge you to take the research fully into account. For example, the cross-examination requirement is a special hinderance to vulnerable groups at heightened risk of re-traumatization.

The right to face one's accuser in court is a foundational principle of criminal law, but not of civil law and certainly not of schools administrative hearing.

Further, bringing in outside counsel may help some survivors but not those who cannot afford an attorney. The 2020 regulations allow schools to use the clear and convincing standard of evidence rather than the less strict

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preponderance of the evidence standard.

Under the stricter standard, more perpetrators of sexual violence will persist with immunity, impunity. Survivors within the most vulnerable demographics are used to having their complaints disregarded. Once again, they will experience that their group is highly valued.

The 2020 regulation limiting school's jurisdiction over cases means that the severely harmed students whom I advised would have had no recourse, even though all concerned students were at the same school. Thank you very much.

MODERATOR: Thank you. We'll be back shortly with the next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: DeAnn Y. Please unmute your mic and please provide comments. Thank you.

DEANN Y.: I'm DeAnn Yocum-Gaffney. I'm a Title IX coordinator. The comment that I wish to provide is that the requirement for the direct cross-examination by the other party's

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advisor is very problematic.

I've seen a real chilling effect that that has on people coming forward with reports. I certainly want all parties to be able to ask questions, but I would recommend that those questions be funneled through the advisor of the hearing panel which we had done before and was much more effective and still allowed for all questions to be answered and in a way that provided that direct access, but it wasn't, it didn't quite as much, it didn't have such a chilling effect.

I also wanted to state that the definition of sexual harassment, the very restrictive definition, I find to be problematic in that it requires that, it removed the or instead of and in severe, pervasive and objectively offensive.

And the restriction that off-campus incidents be dismissed, I think is also a concern in that those off-campus incidents can have a very direct impact on whether or not another

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party has equal access to their education and so I would like to request reconsideration of that, of those matters.

Those are the main questions that I had. Again I'd like to just emphasize the direct cross is highly problematic, very chilling and I do not think advances equal access to education. The definition of sexual harassment under the regs that came into effect in August is highly restrictive. And again, I think does not provide equal access to education.

And so those are my comments. As the new administration looks to potentially revise those requirements and the rule making process. Thank you so much for the opportunity to speak.

MODERATOR: Thank you. We'll be back in a few moments with our next presenter.

(There was a brief break between speakers at this time.)

MODERATOR: Thank you. That concludes all the sessions for the public hearing today. We will return tomorrow at 11:00 a.m.

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(Whereupon, the above-entitled matter
went off the record at 7:00 p.m.)

U.S. DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

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PUBLIC HEARING ON TITLE IX

+ + + + +

THURSDAY
JUNE 10, 2021

+ + + + +

Virtual Public Hearing on Title IX of the
Education Amendments of 1972, at 11:00 a.m. EDT.

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P-R-O-C-E-E-D-I-N-G-S

(11:00 a.m.)

SUZANNE GOLDBERG: Welcome. I am Suzanne Goldberg, Acting Assistant Secretary for Civil Rights in the Department of Education. I am so pleased to welcome you to this virtual public hearing on Title IX of the Education Amendments of 1972.

The Office for Civil Rights is hosting this hearing to hear from you: students, educators, and other members of the public, about your experiences, insights, and expertise on Title IX, which prohibits sex discrimination in education programs and activities that receive federal financial assistance. I also want to thank all of you who have submitted written comments and all of you who will be sending in your written comments by the end of this hearing week.

As you may know, our mission in the Office for Civil Rights is to ensure equal access

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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

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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

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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

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hearing webpage for closed captioning instructions and for a link to submit a written comment.

In closing my remarks and in opening this hearing, I thank you for your interest and participation in this first-ever virtual public hearing on Title IX. On behalf of all of us in the Department of Education, I am grateful for your commitment to the essential and profoundly important work of ensuring equal educational opportunities for all of our nation's students. Thank you for being here.

MODERATOR: Thank you, Suzanne. We will now begin the hearing.

The first commenter will be Francisco N., followed by David B.

Francisco, will you please unmute your mic, and begin to provide comments.

FRANCISCO N.: Good morning, Assistant Secretary Goldberg. My name is Francisco Negron, Chief Legal Officer of the

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National School Boards Association.

Thank you for the opportunity to highlight the concerns of our member state associations and the nearly 14,000 public school boards across the country, serving over 50 million school children.

We share the goal of protecting students from all forms of discrimination while ensuring equity and excellence in public education. Our points today and others of equal importance are included in an accompanying letter to you.

I begin with respect to the May 2020 final rule on sexual harassment in schools. First, the Department should reverse the complex and formal Title IX investigative and hearing procedures as they apply to K-12. Educators need flexibility to address harassment situations consistent with the age of the student and the nature of the allegation.

And as school districts adjust

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attendance and operations returning from the pandemic, layering a new procedural framework onto established, often state-required complaint procedures is both confusing and cumbersome.

Similar to recent Title IX regulations such as the clear definition for sexual harassment have proven relatively helpful to school districts. We urge the Department to retain this consistency between legal standards for legal liability, established by the Supreme Court in Davis v. Monroe County, and OCR's enforcement standard.

Twenty-one years later, the Davis standard is widely understood by school districts, adopted in policy and training materials and accepted by courts. But if the Department returns to a different standard of enforcement, confusion will arise again, leading to both families and districts needlessly expending scarce dollars in litigation.

We also recognize that, as NSBA has

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explained to the Supreme Court in a pending case, school officials are often required to respond to harassing behavior impacting the school setting and affecting students, regardless of where the harassment happened. Clarification about this role, particularly after the Heitz Court's decision, will be helpful to school districts.

New regulations should also not include actual knowledge to a school district whenever any employee has noticed a sexual harassment, a requirement that operationally can be difficult for a district to implement, regardless of its policies and training. Again, readopting the Davis actual knowledge standard here will bring consistency and clarity to the rights and responsibilities of all.

Lastly, greater clarity in the area of gender identity, especially in the context of bathroom and locker room use, and athletics will be helpful. While the Administration has made its position clear, potential liability continues

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to exist for school districts, as we navigate opposing legal challenges raised by state legislation, athletic conferences and civil rights groups. Thank you for your time.

MODERATOR: Thank you. Next up, David B.

David B, if you could unmute your mic, and begin providing comment.

DAVID B.: Thank you, and apologies. Good morning. I am David Baime, with the American Association of Community Colleges, where I serve as Senior Vice President of Government Relations, and I'm pleased to be here this morning to present some of the views and the priorities that community colleges share on Title IX.

We will be submitting formal comments later this week along with the American Association to elaborate our views in greater detail than I'll be able to provide this morning. But before I start, I would like to just reiterate

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community colleges' interests across the country -- 1,044 community colleges and over 90 percent of them are our members.

I'd like to just reiterate the great interest and importance of Title IX for our campuses and their genuine desire to make sure that their environments are free of any kind of harassment on the -- of any of their programs and activities.

Community colleges have some features that make them different on balance from other institutions of higher education, that we ask the Department to consider as it promulgates new regulations in this area. First, the average age of the students is 28 years old. The median age of students is 24 years old.

This means that a great deal of the students' social concerns, priorities and the friends that they have are outside of the campus community. So that is a factor that relates to what Title IX should cover and how it should

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apply. In many cases, there are incidents between an individual student and a family member off-campus that does impact upon their participation at the institution.

Another thing is that our colleges are very thinly resourced. That's how we can deliver education for \$3,770 each year. So, any new administrative requirements should be viewed with an eye to the reality that community colleges do not have the same level of administrative depth that other types of institutions do.

Many of our colleges don't even have a general counsel, probably most of them don't have a general counsel on their staff.

Finally, our colleges do provide education -- settings because in part of their workforce role but also because of the vast geographic area that they're responsible for covering. And so that is something that also the regulation is going to need to take into account.

Two things I'd like to say, finally.

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First is that we do hope that the -- effort to allow the institutions to maintain and finalize their own disciplinary procedures with those of Title IX wherever is possible. We understand Title IX has its priorities, and will have its regulations. Colleges have their own interests in keeping all of their students safe.

So finally, we want to make sure the Department views our colleges as working with it in partnership to keep the campuses safe. They should not be viewed as being the enemy. They shouldn't be viewed as having a heavy hand. They should be viewed as true partners, because we both share the same interests. Thank you very much for having me this morning.

MODERATOR: Thank you. Next up, we have James M., followed by Larry M.

JAMES M.: I am James E. Moore. For the past 35 years I've been a regular faculty member, first at Northwestern University, and for most of my career at the University of Southern

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California.

The U.S. DOE's 2011 to 2014 subregulatory guidance documents did not have the force of law. However, they were simple for the DOE to implement, and delivered a frightening, real threat to institutional leaders, termination of all federal funding, including research, to universities failing to conform to this new guidance.

Because guidance is not a regulatory rule, it is notoriously difficult to challenge in channels. Unfortunately, the DOE's guidance required schools to abandon procedural fairness for students accused of sexual misconduct. The DOE took the immoral position that universities should punish more of their guilty students by adopting procedures that more frequently punished innocents.

We train bedrock principles of fairness. This unacceptable approach reduced the Obama Administration's DOE Office of Civil

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Rights to an executive branch exercise in McCarthyism. Red-baiting was replaced by unsubstantiated allegations of sexual misconduct, and expulsion from college became the new blacklist.

It is nearly impossible for an expelled student to matriculate into a new school. Hundreds of expelled innocent students sued their schools over the due process withheld from them. And they were more often than not successful with the court.

Civil judgments mounted against institutions doing the DOE's bidding. Isolated faculty efforts to hold institutions to due process were retaliated, which terrified school administrators.

I spent 26 years living in a student residence hall, guiding undergraduates. When I tried to insist my institution should continue to treat fairly, I'm confident my efforts led to termination of my resident faculty role by a

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former vice president, which isn't fair.

The Trump administration revoked and replaced the DOE's flawed and subregulatory approach. Instead, the Secretary of the Department of Education negated regulatory rules, seeking and responding to over 124,000 public comments in the process.

DeVos' new rule went into effect less than a year ago in August of 2020. It has the unequivocal force of law. President Biden has pledged to undo DeVos' reforms. In May, he nominated Catherine Lhamon who returned to her Obama Administration role as the DOE's Assistant Secretary for Civil Rights.

Tactically, Lhamon is probably the individual most responsible for the due process crisis DeVos sought to clear. Lhamon has demonstrated a capacity for overreach, and past disdain for constitutional guarantees that precludes her confirmation with the U.S. Senate.

It is crucial that President Biden's

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attack on DeVos' Title IX reforms be rejected. DeVos undertook to dismantle an injustice factory. And the new rules are a deliberate move from that. Thank you for the opportunity to speak.

MODERATOR: Thank you. Larry M., followed by Ruth P.

Larry, if you can unmute your mic, you can begin providing comment.

LARRY M.: Good morning. My name is Larry Mertes, and I am an attorney in Boulder, Colorado. A large portion of my law practice is devoted to representing respondent students who have been accused of sexual misconduct by their schools, colleges, and universities.

In April of this year, the University of Colorado held one of the first Title IX hearings under the new rules in Colorado if not the United States. I want to report back on that hearing, and tell you, for the first part of my comments, how well the University of Colorado

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handled that hearing.

I would tell you that the University of Colorado retained a retired Denver District Court judge with over 20 years of experience to serve as a hearing officer, and we held meetings and had clear policies and procedures of how the hearing was to be conducted.

In a situation where the complainant, the complainant chose not to appear at the hearing, her interests were still represented by an attorney, licensed in Colorado, who was also dean of the University of Colorado Law School. The procedure was marked by courtesy and candor. It was conducted over a nine-hour period of time, and then we received a written opinion.

My point in all this is that I know some commentators have said it's impossible for schools to have these hearings, it's an unfair burden for schools to put on these hearings. The cross-examination does not serve a good purpose and is basically a tool of intimidation.

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Again, I was in a situation where the person who accused my client was in a situation where even though she chose to abandon her role in the hearing, her advisor attorney conducted a very thorough cross-examination.

The process that CU provided at this time was a two-investigator model. And they were judge, jury, and early on, they were the executioner if your client was found responsible. Well that changed over time. I can tell you that it was a decided difference, to have the live hearing. And a lot more nuance was gone through.

I want to make two brief points. One is that I believe that there needs to be some clarification of a cross-examination, because in my particular case, this was brought under a student conduct policy applying Title IX rules. And the school adjudicated the rules as to cross-examination to allow all the content provided by the accuser to be allowed and considered when the accuser never showed up for the hearing.

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Second -- thank you. I believe my time is up.

MODERATOR: Thank you. Next up, Ruth P., followed by Sarah C.

Ruth, please unmute your mic, and begin providing comment.

RUTH P.: Hi, can you hear me?

MODERATOR: Yes, we can.

RUTH P.: Thank you. My name is Ruth Perrin. I am testifying on behalf of Network for Victim Recovery of D.C. in my capacity as Senior Counsel for our Campus Violence Project, and I'll elaborate on these topics further in writing.

Thank you to OCR for holding space for feedback on these important issues. Since 2012, we have provided free advocacy and legal services to 5,000 crime victims, 900 of whom were students, of 250 receiving Title IX legal assistance at District of Columbia at eight universities. My testimony today is informed by the experiences of NVRDC clients and staff.

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The spectrum of trauma experienced by students often leads to a decline in their academic performance and changes in their social lives and relationship with their communities, all while degrading their sense of safety on campus. Often students have no choice but to transfer schools or drop out entirely.

Of the hundreds of students served by NVRDC, I cannot think of a single one whose college experience was not negatively impacted in the wake of their victimization. NVRDC implores OCR to review the regulations in the context to Title IX service, ensuring access to education free from sex-based discrimination.

To address the harm caused by sexual harassment and work towards ending interference, OCR must interpret Title IX broadly. The current definition of sexual harassment is too limited. Its high and burdensome threshold means many students' harassment will go unaddressed. OCR must use a broad definition of sexual harassment

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so that schools are obligated to respond to harmful and disruptive conduct.

While most of legal players respond to off-campus sexual harassment, a student should not be left without options because someone else chose to assault or harass them in the wrong place. Regardless of where sexual harassment occurs, if it creates harm within an educational program or activity, schools should respond to it.

So other definitions allow for more oversight by OCR, ensuring due process protections for all students, because of the current narrow definition, schools that want to protect students have created separate policies to address sexual harassment that is not covered by Title IX.

These policies are completely unregulated, and could result in unfair and inconsistent processes for complainants and respondents.

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Our work with thousands of sexual assault survivors tells us that survivors are not a monolith, therefore school's responses must reflect their varied needs. Addressing sexual harassment should not use a one-size-fits-all approach, and instead should involve multiple options, including alternative resolutions for survivors to address the harm they've experienced.

Far from preserving equal access to education, the current limitations exclude access to a safe education for those who are disproportionately affected by sexual harassment. OCR must use this opportunity to restore public trust in Title IX, and the Department of Education, by effectively addressing sexual harassment in campus communities, including by mandating fair and consistent processes. Thank you.

MODERATOR: Thank you. Next up, we have Sarah C., followed by Andrew L.

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SARAH C.: Good morning. My name is Sarah Clegg, and I'm the Title IX Officer for Sonoma State University, one of the 23 campuses in the California State University System.

I have been working in higher education for 20 years, and can speak as somebody with direct experience supervising live Title IX hearings. I'm all too familiar with the frustrations that administrators and students feel trying to navigate a challenging and complicated system.

I'll center my comments in two areas, that the new regulations create barriers to reporting and participating in the Title IX process, and that they create inequity in live hearings.

The decision to allow cross-examination by non-neutral advisors is a change that deters reporting, legalizes proceedings, and undermines equal representation. It takes us further away from our goal of an educational

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practice, and moves us into a courtroom-like setting on our campuses.

It has a chilling effect on complainants' decisions to report or participate in the process, and this moves us backwards, not forwards, in addressing sexual harassment and gender equity. An administrative hearing can be an effective tool for resolution, but it's difficult to see how creating courtrooms on our campuses is beneficial to anyone.

Cross-examination also creates issues of inequity. Any cross-examination requirement could result in parties with more financial resources securing more favorable outcomes. On its face, the new regulation that requires universities to provide advisors seems to address this issue, but the way it's framed creates more questions than answers.

How are institutions supposed to staff that role? What training requirements should there be, and how do we ensure consistency and

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fairness? If the heart of Title IX is equity, this requirement drives us away from that goal.

Here in California, live hearings have been required for certain types of Title IX cases since 2019. And in the Cal State system, we allow parties to ask questions by submitting them to the hearing officer before and during the hearing.

This is an effective alternative, as it allows the hearing officer to reframe questions appropriately, ask needed follow-up, and bring forward information that might otherwise go unaddressed due to the undue stress of being questioned by somebody in an adversarial way. It's consistent with the equitable, fair and educational type of proceeding we aspire to.

Title IX coordinators are fully committed to doing their work in a fair and neutral way, but we also know firsthand that our cases are rife with trauma, high emotion, and issues of communication. The last thing we want

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is for students to experience further harm because of our process.

We seek to remove obstacles to educational success that sexual and gender inequality cause, and ask that we be able to do that work in a way that balances fairness and transparency with care and concern for all students. Thank you so much.

MODERATOR: Thank you. Next up, we have Andrew L., followed by Grace B.

ANDREW L.: Hello. I'm Andrew Lang. I am a Title IX graduate assistant, and a master social work student. This last year, I have been focusing on the issue of Title IX, and the effect that Title IX policy has on students and campuses.

As you know, there is what we mean, and what we hope to do about policy. There is what the policy is, and how we administer it. And then there is the effect the policy has. I hope to express what I see the effect to be.

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So I ask, who do we believe in a Title IX case? Guilty until proven innocent -- proven innocent, or innocent until proven guilty? The former implies the claimant, in the latter, we believe the respondent. Who do we call a liar? Who do we discriminate against?

Do we choose the respondent's side and assume the claimant is lying until they can prove what happened? No. That is damaging and traumatizing to the claimant. On the other side, if we assume the respondent is lying from the start, that is also damaging and traumatizing to the respondent.

This is evidenced by the comments we have heard throughout this week, whether it be from those who agree with recent changes to Title IX, from those that have advocated a reversal of changes.

This issue that I see is, how do we create a process that guarantees both the respondent and the claimant an educational

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environment free from discrimination based on sex, including retaliation from Title IX hearings on, of any form?

This week we have heard many issues that need to be addressed. Here are two issues that I would like to be addressed, social retaliation and punitive-focused process. The final rule explicitly states, respondents and claimants are not to restrict the ability for parties to discuss allegations or gather evidence.

It prevents -- prohibits gathering. Given that it was the school's responsibility to gather evidence and proof, this restriction should be removed. Both parties should not be discussing the investigation until after it is completed. Both parties need to be protected from slander or social retaliation during the Title IX investigation. After all, loose lips sink ships.

Both parties can have an advisor.

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They should be referred to counseling as a supportive measure. That way they can process and they can discuss the allegations that are against them or the ones they are bringing forth.

Therefore, there is no need for either party to be discussing or getting support for those that are not involved in the Title IX process.

Going back to my initial question of who do we believe, we have no reason to assume either party is lying. But we do know that something can happen, and it be perceived in two completely different ways.

Therefore, our job is to not make a legal verdict about what happened, but resolve the damage to both parties in a way that allows them to continue their education, without subjecting themselves to environments that are discriminatory.

Part of my appealing the story in one environment for both parties is to move away from

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guilty or not guilty verdicts, but to verdicts of responsibility. Title IX seeks to find a respondent responsible for doing the things that match what the claimant experienced.

MODERATOR: Thank you. Next up, Grace V., followed by Angela C.

GRACE V.: Good morning. My name is Grace Verbrugge. I am a rising senior at Gettysburg College, the Co-coordinator of Communications and Outreach for the University Survivor's Movement, the Co-founder of Survivors of Gettysburg, a trained advocate, and a survivor of multiple forms of campus sexual violence.

Today I would like to share with you the concerns voiced by the many survivors with whom I work on a daily basis. You heard from my colleague and friend Emma Love earlier this week that survivors and advocates across the country are requesting that the DOE revert to the preponderance of evidence standard.

I'd like to reiterate the importance

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of this change. And though I do not have time to discuss it at length, I'd like to say that we must prioritize justice and safety for survivors over the reputations of violent criminals who are already given the benefit of non-criminal proceedings.

In addition to the issue of standards of evidence, I'd like to share concerns voiced by survivors regarding sanction enforcement, particularly as it relates to no-contact orders. Many survivors have come to us to ask for help when their perpetrators continue to violate sanctions and measures set to protect them, because when they report said violations to their school, they are ignored or met with multiple warnings, rather than tangible action.

I'd like to tell you a story about a young woman named Sam. Sam just finished her first year at Gettysburg College, where she suffered repeated sexual harassment, both digitally and --

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MODERATOR: Hello, Grace? We apologize. Could you begin again where you left off? And please be mindful of sharing any personal identifiable information.

GRACE V.: Oh, sorry. Where did I end up leaving off before I was muted?

MODERATOR: Just go ahead and start again.

GRACE V.: Oh, okay. Good morning. I'm Grace Verbrugge. I am a rising senior at Gettysburg College, Cofounder of Survivors of Gettysburg, Co-coordinator of Communications and Outreach for the University Survivor's Movement.

I'm a trained advocate, and I'm a survivor of multiple forms of campus sexual violence. And I'd like to share with you some of the concerns voiced by the many survivors with whom I work on a daily basis.

Earlier this week, you heard from my colleague and friend, Emma Love, that survivors and advocates across the country are requesting

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So there is one young woman, I won't include her name, but she just finished her first

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year of college and she suffered repeated sexual harassment, both digitally and in person throughout the year.

She reported her perpetrator and obtained a no-contact order through the Title IX office, and he continually violated that no-contact order multiple times. And every single time that he did, this young woman sent an email to the Title IX coordinator reporting the violation with time-stamped evidence.

And each time, she did not get a response, and the perpetrator never received any further sanction. He is still a student, and she is still experiencing harassment today.

By refusing to sanction repeated violations with clear boundaries, schools are telling perpetrators that they can get away with continually intimidating and harassing survivors until they no longer feel safe at school, and eventually leave.

We recommend that the Department of

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Education increase oversight related to enforcement of no-contact orders and other sanctions with credible threats to take away federal funding for the schools that do not respond to reported violations of such orders, or respond only with repeated warnings.

In the same vein, I'd like to address the matter of accessibility and awareness. Most students that we work with say that they are unaware of how to file a complaint about their school with the Department of Education for failures to uphold Title IX protocols, with even more saying that they didn't know they could.

For those trying to navigate the DOE website, it is not always clear where they can find a complaint form. It's important that institutions teach their students how to find this form, and so we would ask that the Department of Education require that schools teach their students how to find the complaint form, and include it on the relevant portion of their

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websites, with the Title IX coordinator information. Thank you.

MODERATOR: Thank you. Next up, Angela C., followed by Maria P.

ANGELA C.: Good morning, Secretary Goldberg and everyone from the Department of Education. Thank you so for this opportunity.

My name is Angela Catina, the Title IX Coordinator for the University of New Mexico. I would also like to extend a good morning to all of my Title IX practitioner colleagues on the call. Your work matters, and thank you.

And then I want to begin by saying happy Pride Month. My focus is going to be mostly on trans and gender nonconforming students within our community.

There's an African proverb that says, when elephants fight, it is the grass that suffers. As people in power continue to discuss differences in the rights of queer people, and as Title VII and Title IX continue to diverge

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farther and farther apart, students are the ones who continue to be adversely impacted, all the while employees continue to have rights and protections.

These experiences of our gender nonconforming students are heartbreaking. They don't want to report. And the lack of report means that they are not then connected with the resources to ensure they have the support to succeed in their education.

With the continued rollback of their rights and protections, our gender nonconforming and trans students are afraid to access the campus gym and similar facilities. In discussing their fears, they mention the rape and murder of Brandon Teena, including the ways in which officials egregiously mishandled that case, which may have prevented his untimely death.

Three decades later, and Brandon's tragic rape and murder are as relevant today as they were then. The executive order on

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preventing and combating discrimination on the basis of gender identity or sexual orientation is a promising direction by the Biden administration.

We encourage the administration to continue, or to consider, excuse me, using more inclusive language to reflect the full spectrum of identities. This language can include terms such as self-affirming gender expression and self-identified gender identity.

These may seem like minor modifications, however the inclusion of self-affirming or self-identified conveys bodily and personal autonomy, most of which our queer family, friends and loved ones struggle with.

I understand each circuit is different, but should the Biden administration interpret Title IX to include Bostock reasoning, post-secondary institutions would greatly benefit from clear guidance on athletics, locker rooms and related facilities, at the minimum,

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creating a floor for post-secondary institutions to ensure we are creating a safe place for our LGBTQ+ community, would be a welcome guidance.

Thank you so much for this time, and I appreciate this opportunity.

MODERATOR: Thank you. Up next is Maria P., followed by Ewurama A.

MARIA P.: Good morning. Can you all hear me? Hello?

MODERATOR: Maria, you may now begin speaking.

MARIA P.: Good morning. Can you all hear me? Hello? Hello? Hello, can you hear me?

MODERATOR: Maria, we can hear you. You may begin.

MARIA P.: Oh, I'm sorry. Good morning, my name is Maria Posey, and I am a mother. I am speaking to you not as a lawyer --

MODERATOR: If you are unable to speak, please open your meeting chat and let us

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know so we can assist you with technology. In the meantime, we will move forward to Thalia C. Is she connected?

MARIA P.: You have Posey. Can you hear me?

MODERATOR: Yes, we can hear you. Our apologies.

MARIA P.: Oh, okay. Thank you. So, this is -- I am Maria Posey and I am a mother. I am speaking to you not as a lawyer, not as a higher education professional, and not as the victim of sexual assault or gender discrimination. Instead, I am speaking to you as a mother, as a woman, and as an American, committed to doing my part in helping to shape the kind of society that I want to raise my two boys in.

Issues of sexual assault and sexual identity are a matter of law, and they need to be clarified in our legal code. But these codes and these rules reflect the underlying values that we

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have as a society, as a country and as people, and we need to make our policies and laws aligned with those values.

Who do we believe? Who do we protect? Who do we make the laws for? These are the questions at the core of today's discussion and in so many other discussions. We need to write the rules and policies for the people.

We need to recognize the individual human beings behind actions, behind accusations. We need to understand the impact that different rules and laws have on individuals as people.

Only when we see the individuals and the multiple dimensions of an individual, that is often more nuanced than simple definitions of right and wrong, victim or accuser allow, only then can we truly create the kind of community and the kind of country that we all aspire to live in.

Right now, we are disproportionately writing laws and believing the accusers. We are

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representing people who are in a defense -- who are in an accusatory position, and we need to right-size this.

We need to understand that trauma that people who have experienced an unwanted comment, physical contact experience, and the multiple rejections that these people face on a daily basis when trying to report and figure out.

So in order to get to a society where all people are equal, we need to understand the unequal nature of today, and we need to take overt action to correct that.

MODERATOR: Next up is Thalia C., followed by Emily W.

THALIA C.: Hello. My name is Thalia Charles, and I'm a policy organizer with Know Your IX, an anti-gender and dating violence young -- sorry, okay.

Hi, hello, my name is Thalia Charles, and I am a policy organizer with Know Your IX, an anti-gender and dating violence youth and

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survivor-led organization. I am a rising senior at Lafayette College in Easton, Pennsylvania.

Today, I will be providing testimony about two issues faced by student survivors that are overlooked in the current Title IX rule, police involvement in the Title IX process and the punishment of student survivors.

Some student survivors have experienced police involvement in their Title IX cases. Two high school student survivors disclose, in our report, the cost of reporting, that their school resource officers, also known as SROs, were involved in the reporting or investigating process, and explicitly blamed them for their assaults.

Involving SROs in the Title IX process disadvantages students of color, LGBTQ+ students, undocumented students, and many others who may feel uncomfortable around police officers.

To remedy these injustices, the Department should prohibit schools from tasking

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campus safety or school resource officers for conducting sexual harassment investigations, and instruct schools not to wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation, and if needed, must take immediate steps to protect the student in the educational setting.

Many schools have gone beyond merely blaming student survivors for their assaults. They are actively punishing students for reporting. A student survivor who attended high school in Gwinnett County, Georgia, was suspended from her school after reporting her assault.

The survivor eventually moved out of the county to attend another school because she was being bullied and had to attend classes with her assailant.

Nude pictures that she had sent to her boyfriend at the time had been circulated to several school officials, including an SRO, and

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the school was using these photos to discredit her and her Title IX suit against the district.

This story is not an isolated incident. According to our report, 15 percent of survivors who reported to their schools were threatened with or faced punishment for coming forward. Schools' punishment of survivors will only scare students away from reporting instances of gender violence, and prevent survivors from seeking help.

To remedy these injustices, we recommend that the Department create regulations that address common forms of punishment by schools, such as the discipline of a complainant for minor student conduct violations or collateral conduct that must be disclosed in order to lodge a report of sex discrimination, or that is disclosed in an ensuing investigation or occurs as a result of the reported harassment.

Discipline of a complainant for violating the recipient's prohibition against

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consensual sexual conduct is a putative violation, is the sexual conduct that is the subject of the complaint, and referrals to prevent that could result in punishment of the complainant following the disclosure of a sexual harassment, such as education programs focused on altering a student's sexuality. Thank you.

MODERATOR: Next up, we have Melanie W., followed by Esmee S.

MELANIE W.: Good morning. My name is Melanie Willingham-Jaggers, and I'm the Interim Executive Director of GLSEN. My pronouns are they and she.

Thank you for the opportunity to be with you here today, and as well as Aaron and Esmee, from our National Student Council, to lift up the importance of federal protections for transgender, nonbinary, lesbian, gay, bisexual, queer and questioning youth in our K through 12 schools.

We also appreciate the opportunity to

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submit a written comment that is co-led by PFLAG National, the Human Rights Campaign, National Women's Law Center, National PTA, the American School Council Association and the National Association of School Psychologists.

An additional 68 organizations support our recommendations. Chief among them is a recommendation that the Department revise its Title IX regulation to define on the basis of sex, to include on the basis of sexual orientation, gender identity, transgender status, sex stereotypes, or sex characteristics, including intersex traits.

Over the last decade, GLSEN's National School Climate Survey has consistently found that more than half of LGBTQ young people experience discriminatory school policies and practices. In our most recent survey, 77 percent of trans youth report experiencing discrimination at school because of their gender identity. That's more than three out of four trans students.

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A majority report being prevented from using the bathroom that aligns with their gender identity, and being denied locker room access. And this was before states began legislating anti-trans discrimination in school sports.

When transgender students face discrimination in athletic activities, it's not only those who want to play sports who are impacted, it's also the trans students who are required to compete -- to complete physical education classes.

Trans students who are required to use locker rooms or facilities that don't align with their gender identity are more likely to avoid gym class because they feel unsafe, and are missing these required classes. Missing these required classes negatively impacts their likelihood of graduating.

We also know that it is all too common for LGBTQ youth to be harassed and assaulted at school simply because of who they are, and that

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many schools fail to respond effectively when that happens.

Eighty-three percent of transgender students were bullied based on their sexual orientation, gender identity, gender expression or a combination thereof.

When LGBTQ students report bullying to school staff, three in five were told to ignore it or say that school staff did nothing. One in five were told to change their behavior by, for example, changing the way they dress, and 7.3 percent were themselves disciplined.

If the well-established disparities in the use of school discipline hold, and I expect that they do, LGBTQ youth of color and those who are people with disabilities are over-represented among those being disciplined for reporting their victimization.

These experiences take a severe toll on LGBTQ students' well-being and academic performance. Those who experience hostile

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school climates report lower self-esteem, lower levels of school belonging, higher levels of depression, lower GPAs, and are nearly three times more likely to have missed school in the past month, compared to their LGBTQ peers, who have what every young person should have, a school experience free from discrimination.

I urge the Department to revise its Title IX regulations.

MODERATOR: Next up, Esme S., followed by Aaron B.

ESMEE S.: Good morning. My name is Esme Silverman. I use she/her pronouns. I'm a transgender female, a graduating senior from Oliver Ames High School in Eastern Massachusetts, a member of GLSEN's National Student Council, the former president of my school's Gender Sexuality Alliance, and most importantly, a community leader.

Being a community leader, and someone who has made it their life's mission to provide

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the LGBTQ+ kids with safe, affirming spaces, I have seen many different reactions towards transgender legislation.

I have seen the positive of transgender-affirming policies, the happy kids now able to fully express themselves, the relieved parents, not having to worry for their kids' safety, the people smiling because they're able to identify how they want in public.

And I've seen the negatives of anti-transgender policies, fear, anger, doubt, misinformation, suicide. It is imperative that every single person here understand that the most good, the most happiness comes from transgender-affirming policies. Title IX is groundbreaking, and sets the basis for equal treatment in schools across the country.

However, it is also important we highlight how Title IX rules could be improved. Far too many times, I have heard stories of discrimination, harassment, even assault against

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LGBTQ+ students for no other reason than their sexuality and gender identity.

When I first came out, the terror received during my most vulnerable moments was overshadowed by the lingering fear that I could be harassed or denied basic services, such as being able to use the correct bathroom. I was afraid, because I did not fully know I was protected, despite being in Massachusetts, a state with strong protections.

Not every LGBTQ+ student knows their rights. This has become clear. Some students are not allowed the basic convenience of using their preferred naming pronouns. It would mean the world to millions of LGBTQ+ students nationwide if you were to provide more guidance to individual states about protecting LGBTQ+ youth, as well as clearly defined protections on the basis of sexuality, gender identity and gender expression.

LGBTQ+ students would know they are

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protected under law, which would help alleviate fear. Students would be able to use their correct naming pronouns, and would have to worry less about their rights and more about learning.

Inclusive policies help alleviate stress and fear, and allow students to focus on growth, learning and living their lives, which is why it is imperative that the Title IX rule is updated to offer more concrete protection, that students will be 100 percent sure it applies to them. Thank you.

MODERATOR: Thank you. Next up is Arun B., followed by Madelaine M.

ARUN B.: Hello. My name is Arun Bhutamuni and I use he and his pronouns. I'm very lucky to live in a state with a fairly liberal population, but my experience as a trans student in public high school has still been pretty difficult.

Walking to school is always a challenge, even more so when I wear the clothes

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that I actually want to, since I don't conform to gender stereotypes. I wore a crop top for the first time since transitioning this fall, and I felt stares as I walked through the hallways, teachers doing double-takes and hushed comments from my classmates.

That same month, I fought to transfer out of a class because I felt unsafe. I had emailed the teacher several times, in hopes of working with her to make the curriculum and activities more inclusive, but she refused and ignored me when I told her I didn't feel safe.

I say I fought because my school's administration refused to let me transfer classes. It took several weeks to discuss my case until my parents stepped in. Even then, the administrators defended the teacher's behavior rather than trying to support me.

This definitely isn't the first time my school didn't prioritize a student's safety, and my school is definitely not an anomaly.

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After this incident, I felt no need or want to participate in my school community. In fact, I'm going to community college next year just to get away from it.

I've always been an active member in my school, participating in leading school clubs and in sports. But after having been denied so many times, it didn't feel worth it to keep trying. I knew my voice didn't really matter to the administration despite what they say, and so why would I prioritize a school that didn't prioritize me?

My joy for learning dissipated, and I stopped trying to work with the administration to get professional development on inclusion for teachers. I paid less attention to clubs and my grades started to slip.

I was constantly on edge in class, hyper aware of other students looking at me, and I doubted that I would get much support should my peers act directly against me, something that had

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already been proven to be true.

Last spring, a friend of mine was added to a group chat, its purpose only to talk about me. She sent me screenshot after screenshot of their comments, calling me derogatory names. A few of these students sat next to me in classes, and we'd never even talked. I reported this to my principal and the assistant dean, who promised the --

MODERATOR: Excuse me, Arun?

ARUN B.: -- take care of it.

MODERATOR: Excuse me, Arun.

ARUN B.: Yes.

MODERATOR: We have technical difficulties. Your line was breaking up. Could I ask if you could please begin again?

ARUN B.: Yes, absolutely. Do you want me to start from the beginning?

MODERATOR: Yes, please.

ARUN B.: Okay. My name is Arun, and I use him/his pronouns. I am very lucky to live

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in a state with a fairly liberal population, but my experience as a trans student in public high school has still been pretty difficult.

Walking to school has always been a challenge, even more so when I wear the clothes that I actually want to, since I don't conform to gender stereotypes. I wore a crop top for the first time since transitioning this fall, and I felt stares as I walked through the hallways, teachers doing double-takes and hushed comments from my classmates.

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This definitely isn't the first time my school didn't prioritize a student's safety, and my school is definitely not an anomaly. After this incident, I felt no need or want to participate in my school community. In fact, I'm going to community college to finish my senior year just to get away from it.

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Last spring, a friend of mine was added to a group chat, its purpose only to talk about me. She sent me screenshot after screenshot of their comments, calling me derogatory names. A few of these students sat next to me in classes.

I reported it to my principal and the assistant dean, who promised they'd take care of it. They'd call a few of the students' parents about it, but nothing ever happened after that. I knew that Title IX was meant to protect me, and yet I felt that I was always vulnerable, and a target.

A safer environment would be a huge game-changer for me. I wouldn't have isolated

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myself from the rest of the community like I did. With the support of the administration, I would continue to help make my school more inclusive. With a safer school, I could relax and engage fully in my classrooms.

High school is hard enough as it is. Both the added burden of defending myself and educating my teachers, administrators, and classmates, it's even harder to maintain the drive to be a good student.

With better regulations, future students won't just -- won't struggle just to survive high school, will actually learn, grow and thrive. Thank you.

MODERATOR: Thank you. Next up, Madelaine M., followed by Risa L.

MADELAINE M.: Hello. My name is Madelaine Matej MacQueen, and I'm a PhD candidate at Case Western Reserve University. I'm here to ask the Department of Education to strengthen Title IX protections for graduate and

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professional students who are pregnant and parenting.

Over the past year, I've served on my university's Title IX Committee for Pregnant and Parenting Students, as we draft a policy in support of such students. I have learned that the guidance from the Department of Education is minimal for this population, and Title IX officers are hesitant to make their university's policies more comprehensive than the minimum specified by the Department of Education.

The Department of Education provides schools with a document called, Supporting the Academic Success of Pregnant and Parenting Students, last updated in June 2013. The document focuses on class attendance and turning in assignments, both topics that are important for high school as an undergraduate, but not for graduate students.

In many cases, graduate and professional students have no classes or homework

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assignments, but have research projects, teaching assistantships and professional development opportunities. Instead of teachers, we have research supervisors, PIs, advisors and mentors.

Because there is no guidance for these responsibilities and relationships, it's easy for universities to deny pregnant and parenting students the same opportunities that their peers have.

Faculty and administrators can easily say, we didn't give you the assistantship you wanted because we had to give you an easy assistantship the semester you gave birth, or you can no longer do that research because you missed a few weeks.

I'm asking the Department of Education to protect the equal rights of pregnant and parenting graduate and professional students compared to their childless peers in terms of research projects, teaching assistantships and professional development opportunities which

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form the bulk of work in our programs.

Further, I ask the Department of Education to address the issue of parental leave and stipends. Many graduate and professional students function as employees. We're far into our careers, we work year round and we receive salaries minus tax withholding. However, we don't qualify for FMLA, and therefore our salaries aren't protected when we take parental leave.

At my university and at others, anyone who takes leave for a full 12-week semester loses health insurance for themselves and their families, and giving birth is the worst time to be without health insurance. Because we're classified as students and not as employees, it falls to the Department of Education to regulate our leave.

In your next document instructing schools how to support pregnant and parenting students, please think of graduate and

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professional students. Please protect our right to our stipend and health insurance when we take leave, affirm that we should have equal access to research projects, teaching assistantships and professional development opportunities regardless of our parenting status. Thank you.

MODERATOR: Next up, Risa L., followed by Jennifer B.

RISA L.: Hello. Good afternoon. Can you hear me okay?

MODERATOR: Yes, we can hear you.

RISA L.: Thank you. My name is Risa Lieberwitz. I am the General Counsel of the American Association of University Professors, the AAUP. I would like to thank the Department for convening this panel, and the panelists for their time.

Since its founding in 1915, the AAUP has been an active and influential voice in higher education. The AAUP defines and develops fundamental professional values, standards, and

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procedures for higher education, advances the rights of faculty in particular, pertaining to academic freedom, and shared governance, and promotes higher education for the common good.

The AAUP's comments today relate to faculty and institutions of higher education, including all faculty, librarians, and graduate student employees. The AAUP has consistently emphasized four elements that are essential to achieving gender equity in institutions of higher education, first, free speech and academic freedom.

Title IX regulations should make clear that right to free speech and academic freedom continue to apply in cases that do not involve assault or other forms of conduct, but are otherwise alleged to constitute a hostile environment.

Second, due process. Faculty, like students, need the protections of due process provided in grievance procedures. These

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procedures should be the result of faculty participation in the creation of university policies.

Third, faculty governance. For faculty, shared governance and/or collective bargaining processes are forums in which faculty participate in drafting Title IX-related policies and procedures, because these have a direct impact on the educational environment, and on faculty employment conditions.

Fourth, analysis of the sources of inequality. To achieve the goals of Title IX, gender equity issues should be addressed within the context of more comprehensive assessments of the bases for inequality, including race, class, sexuality, disability and other dimensions of social difference, both on- and off-campus.

Attention to these concerns will promote students' access to quality education, and equally important, the faculty's ability to provide it.

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The AAUP will also submit written comments with specific recommendations for amending the Title IX regulations to enhance these four elements to achieve gender equity in institutions of higher education. Thank you very much.

MODERATOR: Thank you. Next up, Jennifer B., followed by Sunny S.

JENNIFER B.: Thank you. Can you hear me okay?

MODERATOR: Yes. We can hear you.

JENNIFER B.: Thank you so much. I'm Jennifer Becker, the Deputy Legal Director for Legal Momentum, the first and longest serving civil rights organization in the nation dedicated to advancing and protecting the rights of women and girls.

For over half a century, we've worked to prevent and better respond to gender-based violence, and to achieve equity in education, recognizing that access to education is key to

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equity overall. We helped to craft the Violence Against Women Act and all of its reauthorizations as well as numerous other innovative public policy measures in defending gender-based violence and supporting survivors.

We have also litigated some of the first cases leading courts to recognize sexual harassment as sex discrimination, and brought other challenges that have helped to define Title IX scope, and reach the intended goal, including protecting access to education for pregnant and parenting students, and scrutinizing sex-segregated education.

Personally, I have over a decade of experience responding directly to sexual harassment and violence prior to my position at Legal Momentum, first as sex offense and child abuse prosecutor, and then as a Title IX coordinator for the largest public K through 12 school district in the country.

I know firsthand the impact of sexual

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harassment on a victim's life and education, and also the power of schools to positively diminish that impact. And I'm uniquely familiar with the ways in which schools implement policies, in preventing and responding to sexual harassment.

We're grateful for the opportunity to speak with you today, and for the Department's reconsideration of prior regulation. This administration can and should restore the strength of Title IX and improve the regulation so that the true purpose of Title IX is realized, and gender-based harassment is no longer a barrier to education.

The 2020 regulations on sexual harassment run afoul of Title IX's civil rights framework by calling for a process more burdensome than any other form of harassment and discrimination. This in itself is gender discrimination.

Mandating a process more burdensome for sexual harassment is inherently built upon

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the notion that sexual harassment complaints are more suspect than other forms of discrimination. This direct barrier --- more barriers than those parties that exist.

To restore Title IX's intended purpose to the regulations must start with reinstating long-established principles, the schools must respond to all sexual harassment, all sex-based harassment that interferes with a person's ability to participate in or benefit from the institution's educational programs and activities.

This has to include sex-based harassment, no matter where it occurs. There's no justification for excluding off-campus or online harassment. There must be a prompt address and resolution of complaints that includes supportive measures and accommodations as soon as possible.

And the recognition that education is founded on the element of equality underlies

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Title IX. The well-established principle that sex harassment and other forms of gender-based violence and sex harassment are acts of gender discrimination require this civil rights framework to be applied evenly for all forms of discrimination.

MODERATOR: Thank you. Next up, Sunny S., followed by Patrick M.

SUNNY S.: Good afternoon. Can everyone hear me?

MODERATOR: Yes, we can hear you.

SUNNY S.: Thank you so much. Good afternoon. My name is Sunny Slaughter. I am the Principal and CEO of Sunny Slaughter Consulting. My pronouns are she and her.

I am a former school board member of a K through 12 school district. I am also a federally certified law enforcement instructor consultant for the Department of Homeland Security, as well as a litigation expert investigator on cases involving sexual

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harassment, violence and discrimination, and I work and collaborate with organizations with a focused lens on sexual violence.

In 1857, Frederick Douglass gave a speech, where he said, "Power concedes nothing without a demand. It never did and it never will. Find out just what any people will quietly submit to, and you have found out the exact measure of injustice and wrong which will be imposed upon them."

Today's hearings require us to revalue what the institutional language embedded in policies, cultural norms, and operational practice, and the consistency in which educational institutions have normalized behaviors that are violent, traumatic, life-altering and often in silence and without real consequence.

But to be clear, these institutional systems that are of question are operating exactly as they were designed and intended by

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those with the most to gain. But for the audacity of hope, and to remove any semblance of quiet submission that I, on behalf of victim survivors and even those who have been accused, submit these demands for the measure that is due.

By the acts of congressional power for funding to and through the U.S. Department of Education, require ongoing federal insight, and immediate intervention by review and investigation into previous existing and future cases of discrimination, sexual harassment and violence for persons making a direct complaint to the appropriate body, or through a process of federal design for federal whistleblowers of anonymity and safety, that committees consisting of outside individuals across professions and expertise be convened with discretion to review such matters and make recommendations to the U.S. Department of Education to levy fines, withhold funding, and to make quarterly public announcements regarding institutions under

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investigation of federal violation of Title IX.

A platform be made of, to and for the public to view information regarding an institution's previous and existing, ongoing matters and remedies taken to address violations, and a separate line item be created in the budget to ensure the priorities of these changes are valued as an investment of Congress and the U.S. Department of Education.

I have asked for nothing that does not exist in some form or fashion already, so my exact demand to the most questioned question that I seek the answer to, is how exactly will you meet the demands for anything that you have been asked for today. Thank you for your time and attention.

MODERATOR: Thank you. Next up, we have Patrick M., followed by Jake B.

PATRICK M.: Can you hear me?

MODERATOR: Yes, we can hear you.

PATRICK M.: Good afternoon. My name

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is Patrick Mathis. I am the managing member of Title IX Solutions, LLC. We provide Title IX support services to colleges and K through 12 school programs throughout the United States. I am also a practicing attorney and longtime trustee of Illinois College and Midwest Liberal Arts College.

I would like to speak today regarding the importance of strengthening training standards for persons involved in Title IX proceedings. Currently, there are only general training requirements outlined in the regulations.

Title IX cases often have a lifelong impact on both the complainant and respondent, and consequently require well-developed factual information as well as carefully considered resolutions. Title IX personnel at many schools are also facing and stressed by the need to appropriately handle these serious cases.

Many schools currently engage

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experienced and well-trained Title IX coordinators, investigators, decision-makers and other Title IX-related personnel. These individuals may be school-based employees or external contractors. Yet, at other institutions, these individuals have limited training and experience.

This situation increases the risk of shortcomings in the grievance process, including investigations and hearings, and ultimately the final determinations of responsibility. To address these concerns, we recommend modification of regulations to include broadened and explicit training requirements and certification for all individuals, both internal and external, who may be involved in Title IX cases.

These guidelines would require training in Title IX broadly, as well as skills specific to the individual's role in the Title IX process. We would also encourage specific hour requirements or annual certification similar to

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the annual requirements for attorneys, accountants and law enforcement officers, which are required in many states.

We recognize that this proposal may impose an additional burden on schools to comply with the regulations, but the ultimate goal in every Title IX case is to ensure that the parties are treated equally and equitably throughout the entire process.

Incidence of sexual harassment and sexual violence are life-altering for many parties, and the regulations should mandate that these cases be handled by knowledgeable, trained personnel. Thank you for your consideration.

MODERATOR: Thank you. Next up is Jake B., followed by Jackie W.

Jake, if you can unmute your mic, and provide comments.

(Pause.)

MODERATOR: To the audience, please give us one moment while we assist the commenter.

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(Pause.)

MODERATOR: While we assist Jake, we're going to move ahead to Jackie W.

JACKIE W.: Hi, can you hear me?

MODERATOR: Yes, we can hear you.

JACKIE W.: Okay. Good afternoon. My name is Jackie Gharapour Wernz, and I'm submitting these comments on behalf of myself and Franczek, P.C., which is a boutique law firm in Chicago, Illinois.

Franczek represents educational institutions at all level. Our clients are primarily in Illinois, but we provide Title IX consulting and legal counsel as well as other federal legal support for students across the country.

Our firm's Title IX team also operates the TitleIXinsight.com blog, which focuses on legal compliance with Title IX. These comments are also influenced by experience as a former staff attorney from the Chicago Office of OCR.

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As an overarching concern, the Biden-Harris administration should focus on a balance that will allow educational institutions to play their proper roles as neutrals. Administrators at all levels want to do the right thing in these area spaces, but they have not been given clear tools on how to do so.

Although our firm works with mainly higher education institutions, these conversations have commonly focused on higher education interests, so the rest of my comments will be focused on K-12 issues. And we have three thoughts for you to consider as you work to create a better Title IX process for K-12 schools.

One, don't make K-12 schools an afterthought. Two, remember resource restrictions in K through 12, and three, consider state law. Third, the Department of Education should not regulate K-12 schools as an add-on or afterthought to higher education. K-12 schools

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are a unique environment, and sexual harassment does not look the same as in higher education.

An elementary school should not be asked to use the same standards and processes to adjudicate a complaint against a small child as though you'd address a complaint against high school or college students. We need guidance and a process that reflects the unique natures of concern of K-12 schools instead of being an afterthought.

Guidance also should be less prescriptive than the guidance for higher education may be. We represent the largest school districts in Illinois, but also some of the smallest, and their needs are different from each other.

That brings me to the second point, which is do remember resource restriction in K through 12. Most K-12 administrators are doing another job, if not multiple jobs on top of their Title IX work. And we need to keep that in mind

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when clarifying the differences between things like directly related and relevant evidence.

Also, requiring a separate Title IX investigator, initial decision-maker, and appellate decision-maker is not always a possibility for small K through 12 schools.

Finally, consider state law. States regulate K-12 schools at a much greater level than higher education. For example, there are specific rules for how to handle expulsions that would conflict with the Title IX rules, so we ask that you take those into account as well.

MODERATOR: Thank you. Next up, Jake B.

Jake B.? Jake, if you could unmute your mic. If you're having technical difficulty, please open your chat for assistance.

(Pause.)

MODERATOR: Okay. We'll be back in a few moments with our next commenter.

(There was a brief break between

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speakers at this time.)

JAKE B.: Good morning. Can you hear me now?

MODERATOR: Yes, we can hear you.

JAKE B.: Well thank you. I apologize for the technical issue. Should I go ahead and give my comment?

MODERATOR: Yes, you may.

JAKE B.: Thank you. Thank you so much. Good morning, my name is Jake Burkhart, and I'm a graduate and law student at the University of Indiana at Bloomington.

Our K-12 and post-secondary educational environments are essential to our community. Title IX protections deliver on the promise of every American being able to choose an education in a secure, a safe and supportive education environment. As an LGBT American working in higher education, I support the internal resolution process as an alternative for securing students' equal educational access.

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The current adversarial model has a high probability of retraumatizing sexual assault survivors, while giving up the thought of due process. The Department of Health and Human Services Office of Women estimates that one out of every five female college students are sexually assaulted during their time in college. These are the cases we know of.

We cannot give a precise number on the total number of college students, male or female, cisgender or transgender, who are sexually assaulted each year. We have to do better. We need to do better if we truly want to secure a learning environment to give every student an opportunity to succeed without of fear of sex-based discrimination.

I urge the Office of Civil Rights to consider three items in the revision process. Number one, clarify the role of sexual orientation and sex-based discrimination in Title IX. The January 8th memo by the Office of

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General Counsel set the clock back in sexual assault protection and victim advocacy for LGBTQ Americans.

I disagree with the memo's position and I believe that Bostock v. Clayton County gives greater precedence to interpret sex and include sexual orientation in Title IX. We have an opportunity to protect every American. We just have to be willing to make the next step.

Number two, Title IX investigations should remove the severe or pervasive standard. The severe or pervasive and objective sense of standard allows otherwise malicious and harmful discriminatory acts to avoid investigation under Title IX proceedings. The severe or pervasive standards allow colleges to make better determinations to protect each student's right to learn.

And number three, the Secretary of Education should fund a, or mandate a funding opportunity for the Institute of Education

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Sciences on Title IX implementation. We need more inclusive research on dating and domestic violence experienced by LGBTQI American college students.

We need to ensure that we are providing college administrators with empirical data and grounded research on supporting their LGBTQI college students in Title IX proceedings. These students are often the most silent in advocating for investigation.

I want to thank the Office of Civil Rights for holding these public forums, and I thank you for listening on my perspective, and hopefully continuing to advocate for our college students through Title IX. Thank you.

MODERATOR: Thank you. We'll be back shortly with our next presenter.

(There was a brief break between speakers at this time.)

MODERATOR: To the viewing audience, we will begin in five minutes.

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(There was a brief break between speakers at this time.)

MODERATOR: Thank you. We will now begin. The first commenter is Janet L., followed by Jeri C.

Janet, if you could unmute your mic.

JANET L.: My name is Jeanette Lim Esbrook. Is this who you're calling on?

MODERATOR: Yes.

JEANETTE L.: Oh, I'm sorry. You said Janet.

MODERATOR: I'm sorry. I apologize.

JEANETTE L.: Okay. My name is Jeanette Lim Esbrook, Vice President for Legal Affairs, representing the Clearinghouse on Women's Issues. I have 36 years' experience as a civil rights attorney, and a senior executive in the U.S. Departments of Education and Justice.

In Ed, I was OCR's acting assistant secretary during two administration transitions. I have led the development and promulgation of

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OCR sexual harassment policy, regulations, and investigative guidance. I have litigated sexual harassment cases as a Department of Justice attorney.

The Title IX regulations enacted by the former Secretary of Education, Betsy DeVos, has replaced these policies and guidance that were developed based on over 30 years of investigative and case experience with input from the public and educators.

Up until the 2020 regulation, the fundamental purpose of these documents was consistent with OCR's mission, to ensure equal access to education, and to promote education excellence through the vigorous enforcement of civil rights laws.

Providing a safe environment, free of sexual harassment, abuse, and intimidation, was a primary purpose of all previous guidance. But this purpose has been undermined by the DeVos regulation.

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The DeVos complaint process introduced costly courtroom-like requirements, which are not conducive to the learning environment that OCR and educational institutions strive to achieve. All students need to be confident in and feel protected from inappropriate conclusions in the complaint processes.

Investigations and discipline should be fair to all parties. The survivor and the accused rights should be given equal weight and attention. A courtroom procedure that intimidates both the harassed and the accused is not required to meet these standards.

Colleges, universities, and K-12 school systems have had many years of experience with disciplinary incidents, complaints and investigative procedures. OCR's review should seek input and advice from the experiences of these educational institutions to assist in the development of grievance, complaint and

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investigative procedures that will be efficient, fair and effective.

Essential to developing sexual harassment policy is the need to recognize the importance of power in the relationship between the parties. Power is a basic component of acts of harassment, assault, intimidation, and bullying. Power can simply be a matter of physical strength --

MODERATOR: Our next speaker will be Jeri C., followed by Alexa K.

Jeri, could you unmute your mic, please?

It looks like Jeri might be having some technical difficulty.

JERI C.: Here I am.

MODERATOR: Okay.

JERI C.: Good afternoon. I'm Dr. Jeri Cabot. I served as the dean of students for over 22 years at the College of Charleston in South Carolina.

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The College of Charleston serves approximately 10,000 students. I also served as the director of our women's studies program for several years and held other positions in student affairs. Throughout my years, I was responsible in whole or part for administration of Title IX as it applied to cases of student-on-student sexual misconduct.

My main comment today is about the timed resolution. Both sets of rules, that's the 2011 and 2020, are unrealistic about the amount of time administrators can devote to the training, preparation, and processing of Title IX cases. With regard to case processing, the 60-day target creates unrealistic expectation, and generates frustration and anger for all parties.

Colleges and universities operate within quarters or semesters, and within each block are key events for students and officials, midterms, finals, project deadlines, application deadlines, mandatory move-out dates.

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Conscientious students keep up with their academic endeavors. Conscientious professionals do not cut corners. Hence, the tested cases on any campus often take at least 120 to 150 days to resolve.

Deans of students and other similar administrators have many other duties besides Title IX. They are chair of behavioral intervention teams, honor code systems, write CLIA reports, handle all other aspects of codes of conduct, coordinate alcohol and drug prevention programs, survivor services, assessment efforts, reaccreditation requirements, et cetera, et cetera.

Our goals with regard to Title IX are to be prompt, adequate and trained, and free of bias. But unless you work for an institution which can afford to hire and train such dedicated staff, there are not enough resources to fulfill the requirement and goals.

And let us not forget that it's been

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the University of Michigan, University of North Carolina Chapel Hill, Columbia, Yale, University of Florida, University of Southern California, all institutions with greater resources than institutions like the College of Charleston, that have had complaints filed with the Department of Education that added even more time, to the distress of the individuals involved.

These roles have created a cottage industry in prevention programming, training hearing panels, investigators, and adjudicators. These entities charge hefty amounts for their programs. Paying for such programs and committing the time to complete the training are burdensome, and help increase tuition costs.

Please be sure to call in Jennifer Hirsch and Shamus Khan, authors of Sexual Citizens before drafting any new rules. Please create something like the National Institute of Alcohol Abuse and Alcoholism, AIM's Intervention Matrix for Sexual Misconduct Prevention.

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Thank you for your service, and for listening to a former practitioner.

MODERATOR: Thank you. Next up, Alexa K., followed by Dan R.

ALEXA K.: Hi. My name is Alexa Kupor, and I'm an incoming freshman at Stanford University. My high school was recently in the spotlight of myriad news reports detailing the resistance myself and other students have faced in attempting to call attention to a culture that allows sexual assault to thrive unnoticed and unpunished.

With little to no resources, an unnavigable website, and negligence and disrespect from school administration, we were left in the dark as to our federal rights and accommodation under Title IX and any options we had to use them.

Students like myself are constantly clinging to Title IX as a lifeline to maintain our education and future, and we must not only

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make these guidelines accessible and communicable, but also undergo reforms to fill in the egregious gaps left behind from the 2020 rule.

As an incoming college student, there are several facets of the current rule that prove most endangering. Firstly, under the current rule, colleges are able to ignore sexual harassment that is not reported to a small set of high-ranking school employees that students may not normally have close relationships with.

If I were to go to a residential advisor this fall, for example, to report assault, it may easily go unaddressed, unpunished, and essentially unnoticed. Under this rule, for example, Michigan State would have had no obligation to investigate Larry Nassar, because his victims reported abuse to athletic staff that are not mandatory reporters under the current rule.

The government cannot allow for abuse

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to go on without punishment or remedy because the one right person wasn't directly informed. Furthermore, under the current rule, schools must begin an investigation with the assumption that reports of sexual harassment are untrue, despite the lack of similar guidelines for other types of misconduct.

Also, the ability to choose between a clear and convincing or preponderance of the evidence standard allows schools to potentially hold students to a more intense discriminatory standard not applied to other misconduct cases, and reinforces the stereotype that people who report abuse have built their claims on lies.

It is a blatant example of bias, and simply lack of concern that governmental policies lack protections for survivors whose assault occurs at the wrong place, is reported to the wrong person, or takes place at the wrong time.

It is essential that the federal government stands as an example for effective,

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efficient, and informed policies that work to eliminate sexual assault and its consequential trauma at our nation's schools. I look forward to the day that these hopes come to fruition. Thank you for your time and consideration.

MODERATOR: Thank you.

Next up, we have Dan R., followed by Erin P.

Dan, if you could unmute your mic.

(Pause.)

MODERATOR: Dan, if you could nod and let us know you can hear us, we're waiting to see if you can unmute your mic.

DAN R.: Hello.

MODERATOR: Yes, we can hear you.

DAN R.: Oh, I didn't know that I was to sign on until 2 o'clock. My apologies. Is this part of my comment time?

MODERATOR: Yes. You can begin now.

DAN R.: If I could -- thank you. One moment. I don't, I actually don't have my text

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at hand. Just one, one quick moment, please.
Okay, I'm ready now, thank you.

Good afternoon. My name is Dan Roth, and I'm an attorney in Berkeley, California. In addition to my criminal defense practice, I've represented dozens of people in Title IX cases around the state of California.

Members of racial minority groups and immigrants are over-represented in my client base, making up nearly half of my Title IX cases. Anyone who practices campus discipline will tell you that campus tribunals are not built for fundamental fairness.

As we all saw last week, a Stanford Law student was almost prevented from graduating over a transparently baseless claim that a poster he had circulated in January harmed his fellow students. Had the case not been publicized, Stanford would have delayed his graduation and altered his life trajectory.

That is because schools take the path

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of least resistance, often to the detriment of folks who lack the resources to defend themselves against processes that both complainants and respondents describe as confusing, alienating and dehumanizing.

One of my Title IX clients is a rape survivor. Before the 2020 regulations were put in place, three of her fellow students accused her of sexually harassing them by masturbating in their graduate school class.

The initial Title IX investigation immediately showed two things. One, that the allegation was as false and ridiculous as it sounded, and two, that the complainants just hated my client. The inquiry should have ended then and there. Instead, the three complainants threatened to leave the small graduate program if my client wasn't kicked out, and hired a lawyer.

Threatened with the loss of a quarter of that year's enrollment in the program, this public university told my client, a week before

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the second half of the two-year program was to begin, that she couldn't attend class until the investigation was over.

They then pretended to investigate for the entire school year, leaving my client floundering in limbo, trying to make ends meet when she was supposed to getting a master's degree that she was never able to obtain.

U.S. District Judge Susan Illston rightly called the school's conduct appalling. This is the type of abuse the 2020 regulations were meant to prevent. Again, when given the path of least resistance, students with few resources will feel overwhelmed by the system. Institutions will take it every time.

As one California court has written, due process is the life blood of our Constitution. I am saying this as a progressive Democrat who has led chapters of the American Constitution Society in Boston, Columbus, Ohio and here in the Bay Area. I am frankly confused

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that this is up for debate, and that a democratic administration is considering bringing back a regime that no one would argue was working well.

The Trump administration was, for the most part, a shameful abomination of law and government, but even a stopped clock is right twice a day. And while the 2020 regulations are imperfect, the previous system created an awful set of incentives for institutions to trample the rights of those vulnerable students, the most vulnerable students in academia, those who are Black, Black-Mex, and economically disadvantaged.

Resuming these regulations will further deepen the racial economic divides in this country and strengthen the school-to-prison pipeline, which we as progressives ought to be dismantling, root and branch. Thank you for your time.

MODERATOR: Next up, Erin P., followed by Karissa P.

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Erin, if you could unmute your mic, and begin with your comments.

ERIN P.: Good afternoon. My name is Erin Pine. I am 25 years old, and a law student in my third year at Villanova University School of Law. I am testifying today to urge the Department of Education to refrain from further narrowing the Title IX due process protections.

Ladies and gentlemen, this is not a partisan issue. This is a call not to restrict the rights of sexual assault victims, but to restore the rights of respondents as was guaranteed by the U.S. Constitution.

Due process functions in both directions. It protects the accused as well as the accuser. But what it does not do is discriminate on the basis of the alleged crime committed. Let me be clear. I stand with victims, but I also stand with the 14th Amendment.

Over the past three weeks, I have

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spent my time combing through the 199 cases that have circulated through the courts and favored, at least in part, the plaintiff. These cases were wrought with due process violations, including failure to give notice, to properly inform the accused of their right to an advisor, and most commonly, failure to allow the accused the opportunity to confront and cross-examine their accuser.

Furthermore, educational professionals are ill-equipped and under-trained to moderate and rule on these issues. These hearings greatly affect the lives of those involved. They require time, thoughtfulness, and due process.

Fundamental fairness does not detract from the rights of sexual assault victims, or the justice that they deserve. It simply affords protection to those accused until they are proven guilty. Protect students, uphold the Constitution. Thank you.

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MODERATOR: Up next we have Karissa P., followed by Christina D.

Karissa, if you could please unmute your mic. Karissa?

(Pause.)

MODERATOR: Karissa is getting her speakers ready. We'll be with everyone in just one moment.

(There was a brief break between speakers at this time.)

MODERATOR: While we assist Karissa, we'll move forward to the next speaker.

Christina D., if you could unmute your mic, and begin providing your comments.

(Pause.)

MODERATOR: Okay. Okay, we'll move forward to our next speaker, Chris B. as in boy.

CHRIS B.: Hello, can you hear me?

MODERATOR: Yes, we can hear you.

CHRIS B.: My name is Chris Beyer. I work in a small private college in Nebraska as

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the Director of Residential Life. And I also serve as the Deputy Title IX Coordinator for the college.

There are two specific things I would like to see in the new guidelines. First, I would like to see the requirement for live cross-examination during the hearing to be removed. I find this requirement to be unnecessary and burdensome for everyone involved.

Participating in a Title IX hearing is an intimidating process for folks, and being subjected to live cross-examination can increase this. Being able to facilitate effectively the cross-examination in real time is also a skillset that very few of us have. And the cost of hiring someone who can do it well is significant.

If live cross-examination yielded better decisions I wouldn't object, but I don't see that it does. So long as investigators or hearing officers know how to appropriately question the claims before others and advise

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their students to know that they'll be questioned, we can feel confident that all of the relevant information needed from the parties before a decision is made rejects the need for live cross-examination.

So second, just feedback I have is I would like to see colleges have more capacity to take things from action against respondents who are in student reports, and specifically I would like to see the colleges be able to determine if and when it is appropriate for student employees to be suspended with pay from their student job if they are a respondent in a Title IX investigation prior to the formal investigation.

While of course there needs to be a process for employees with presumption of innocence, suspension from work with pay is a minor hardship, and some student workers --- RAs for instance -- are often in positions of high trust and leadership and have other levels of access. For instance, they might have access to

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students or even lots of students.

Depending on the nature of the allegations, in some instances it may be appropriate for colleges to temporarily suspend the student from their work responsibilities and alert security offices of that until there is a final decision that's been made. And I would like to see more latitude given to colleges to be able to make some of those interim decisions before a final resolution. Thank you very much.

MODERATOR: Thank you. For those waiting to speak, please open your chat so we can communicate with you. Next up is Jeff S., followed by Nicole H.

Jeff, please unmute your mic and speak when you're ready. Jeff, you can unmute your mic. You may begin.

It appears Jeff's having some issues with his mic, so we're going to move on to Nicole H.

Nicole, when you're ready, please

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unmute your mic, and begin speaking.

NICOLE H.: Hello, can you hear me?

MODERATOR: Yes, we can hear you.

Thank you.

NICOLE H.: Wonderful, thank you.

Good afternoon. My name is Nicole and I represent Government Affairs at Family Policy Alliance.

Family Policy Alliance is a leading national organization representing hundreds of thousands of Americans who support protecting opportunities and privacy for women and girls.

As a matter of first importance, Title IX is not the same as Title VII. The Supreme Court explicitly excluded other laws from consideration, as they stated in Bostock. Second, Title IX was clearly intended to ensure females have equal access to educational opportunities with males.

Prior to 1972, there were virtually no college scholarships available for women to play

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sports. Women were fortunate if they even had a sports team at their schools. They often had no locker rooms, no kind of uniforms or training equipment, no travel stipends, absurd practice schedules, and no championship opportunities. It's no surprise that only one in every 27 girls played sports.

Today, over 100,000 women play college sports, and about 3 million play high school sports. These opportunities are in large part due to Title IX. But women and girls still face challenges in this arena. In fact, during this year's March Madness, Americans were appalled when they found out female athletes were given inadequate workout rooms and hardly any media attention.

The NCAA publicly apologized for quote, dropping the ball, after denying women reasonable women reasonable access to proper equipment and facilities. If the Department of Education redefines Title IX, they won't just

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quote, drop the ball on equipment and opportunities for women and girls. They will kick them off of their podiums and out of the gym entirely.

Every girl should have the chance to compete on a level playing field. In today's world, that means one that is reserved just for girls. Males naturally possess physical advantages over females, and this natural advantage can result in them winning titles, scholarships and other opportunities that should be reserved for girls.

The Department of Education has a responsibility to protect women and girls, not steal their dreams.

And third, redefining sex would run counter to the explicit text of Title IX regarding same sex facilities. Title IX allows educational institutions to maintain separate living facilities for the different sexes, indicating binary, biological sex.

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Of course, this makes sense in the context of private spaces like locker rooms and showers. And no student should be forced into an intimate setting like a restroom or locker room with someone of the opposite sex. The Department of Education should not get to determine the first time a student is exposed to a member of the opposite sex while in the state of undress.

In conclusion, we urge the Department to adhere to the original legislative intent of sex in Title IX, ensure sports opportunities for females will not be stolen, and protect the privacy and dignity of women and girls by maintaining sex-specific facility. Thank you.

MODERATOR: Thank you. We'll be right back for our next comment.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Commenter JSJ.

Please unmute your mic and begin

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speaking when you're ready.

COMMENTER JSJ: Can you hear me?

MODERATOR: Yes, we can. Thank you.

COMMENTER JSJ: Thank you. I'm speaking anonymously as a mother of three children. My youngest child, now 11, was sexually assaulted by a teenage neighbor when she was eight. She was one of seven children between the ages of five and twelve who were sexually harassed or repeatedly assaulted by the same teenager in 2018.

We brought the case to the police in February of 2019. The county attorney's office conducted forensic interviews of the children in February through April. Criminal charges in the cases for five of the children were filed by the public prosecutor in May. The perpetrator was found guilty and sentenced in November of 2019.

As you can imagine, it was an extraordinarily stressful period. The crimes occurred in a small university town in New

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Hampshire on a cul-de-sac with only one outlet and one bus stop, with the same afternoon drop-off time for the elementary school bus and the high school bus.

The perpetrator occasionally attended elementary school, then with his younger sister, and also attended the same school with two of the victims. We asked the school system to provide Title IX accommodations during the criminal investigation.

Specifically, we asked them to require the parents of the perpetrator to drive their son to school, to ban him from the elementary school campus, and to require that he stop naming our daughter and calling her a liar in his school. Other parents also asked the school to ensure that their children didn't encounter the perpetrator in the hallways of their school.

The school system refused. Why? Because of the changes in the Department of Education Title IX rules. The superintendent

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provided us with a letter from the school district's attorney, who explained that the draft of the new Title IX rules no longer required school systems to investigate or respond to incidents of gender-based violence that occur off-campus.

Three of the victims, all of whom were happy, healthy children prior to the attacks, suffered panic attacks that spring. And while I was able to find \$300 at the time I needed to muddle through the process of obtaining a restraining order, others couldn't.

One parent simply let her daughter stay home. Another withdrew her child from a school-sponsored extracurricular activity. All of the victims were in counseling. All of us took time off work to drive our kids back and forth to school so they didn't have to take the bus.

The school's failure created a hostile environment that year, and also prompted my

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husband and I to search for new jobs and move our family out of state at enormous cost. Our situation was not unique. Most rapes of the K through 12 level take place outside of school.

Please change the Title IX rules as soon as possible, so that this doesn't happen to additional children or families. Thank you.

MODERATOR: Thank you. Next up is Karissa P. Please unmute your mic and begin when you're ready.

KARISSA P.: Hi. Can you hear me now?

MODERATOR: Yes. We can hear you. Thank you.

KARISSA P.: Great, thank you. My name is Karissa Provenza. I am a law clerk at Equal Rights Advocates.

Equal Rights Advocates encourages the Department to reexamine Title IX in the K through 12 context, and provide guidance with special attention to the practical differences between the K through 12 and the university setting.

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University rules cannot completely apply to K through 12 because of the obvious differences in the educational environment, the physical campuses, and the age and comprehension levels of students in K through 12.

Please include considering legal differences, such as the rights of students outside K through 12 education, and special relationships between K through 12 schools and students, as well as the considerations regarding mandatory reporting and other laws protecting rights.

Moreover, there are different opportunities in early education for intervention and culture change. These opportunities warrant attention in the guidance and regulations issued by the Department.

To be clear, we're not asking for different standards or rights to equitable education requirements. We are asking for clearer application of Title IX by those

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influenced by the actual campuses, environments and age groups specific to K through 12 students.

Next, Equal Rights Advocates strongly encourages the Department to explicitly assert who composes the class intended to be protected by Title IX.

We believe it would be appropriate in a sense of for the Department to clarify legislative history and intent, indicating that the class meant to be protected by Title IX are those individuals who have been historically discriminated against, based on their sex and gender, and placed at an unfair disadvantage because of that discrimination, namely women, girls and members of the LGBTQ communities.

In the last four years, we've also had several attempts to turn Title IX on its head, to be used as a weapon against the very individuals this civil right was intended to protect.

We ask the Department to put an end to these dangerous strategies, and to also make

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clear that states can indeed create stronger civil rights laws to protect those persons who historically face sex and gender discrimination.

Lastly, Equal Rights Advocates request that the Department clarify and make equitable the application of general administrative law concepts such as due process and on-campus Title IX proceedings. As we've seen here, those who promote a form of rape exceptionalism in order to make reporting sexual harassment and assault especially difficult and dangerous for survivors.

This exceptionalism puts those reporting such misconduct at greater risk of retaliation against them than those reporting any other kind of serious misconduct under student misconduct codes.

We therefore encourage the Department to emphasize that whatever due process is appropriate must go on not only to respondent, but to complainants also, and must not be greater

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or present more reporting hurdles than for other forms of serious misconduct.

In closing, the nation is in desperate need of guidance appropriate for students at their different ages and in their different school environments. That does not insult the integrity nor the legislative intent and purpose of Title IX. Thank you for your time and consideration.

MODERATOR: Next up is Jeff S. followed by Leticia B.

Jeff, please unmute your mic and begin speaking.

(Pause.)

MODERATOR: We're going to move on to Leticia B.

When you're ready, please unmute your mic and begin speaking.

LETICIA B.: Hello. Good afternoon. My name is Leticia Bustillos, and on behalf of the 170,000 members and supporters of the

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American Association of University Women, we are encouraged by President Biden's commitment to enforcing Title IX. However, changes are desperately needed to restore protections against all forms of sex-based harassment that were gutted by the 2020 amendment.

Beginning in 2017, the Department of Education rescinded multiple important guidance documents, and promulgated a new Title IX rule in 2020, that turns back the clock, reversing policies that were put in place to make it easier for survivors to report sexual misconduct.

It is therefore imperative that Title IX protections be restored and strengthened. To achieve these goals, we join other survivor advocate groups and civil rights organizations in calling on the Department of Education to include the following provisions in the new Title IX rule.

Define sexual harassment as unwelcome sexual conduct, require schools to respond to

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sex-based harassment regardless of where it occurs, require schools to provide a prompt, effective and reasonable response to sex-based harassment, allow schools to use non-investigative processes to resolve complaints of sex-based harassment, and allow states and schools to provide additional protections beyond those in the Title IX rule.

Additionally, we call for the inclusion of robust protections against retaliation that explicitly prohibit disciplining a complainant for collateral conduct that is disclosed in a complaint or investigation, disciplining a complainant for a false report because the school has decided there is insufficient evidence for a finding of responsibility, disciplining a complainant for discussing the allegation, and allow schools to dismiss without a full investigation, a complaint of sex-based harassment that is patently retaliatory.

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And to ensure fair disciplinary procedures, a new rule should require schools to resolve complaints using grievance procedures that are fair and afford both parties the same procedural rights, allow schools flexibility in implementing grievance procedures, allow schools to forego live hearings attended jointly by the parties in direct cross-examination, but not required by law, and allow schools that rely on live cross-examination to consider past statements by witnesses who are not available for direct cross-examination.

Last, to ensure that no type of harassment is singled out for uniquely burdensome standards or labeled as uniquely suspect, we also ask the Department to apply uniform standards for other forms of sex-based harassment, including harassment based on sexual orientation, gender identity, gender expression, transgender status, sex stereotypes, sex characteristics, parental status, pregnancy or related conditions, as well

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as harassment based on other protected traits, including race, color, national origin and disability.

I thank you for your time and consideration of our comments and recommendations. More detail is provided in our submitted written comments. Thank you.

MODERATOR: Thank you.

We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Commenter 57J, you're up next. Feel free to unmute your mic and begin speaking.

COMMENTER 57J: Hello, are you able to hear me?

MODERATOR: Yes, we can hear you. Thank you.

COMMENTER 57J: All right, I'm ready to proceed, thank you. Thank you for the

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opportunity to present testimony regarding the essentiality of due process in Title IX proceedings.

Today I'm not going to focus on what I know. Instead I will focus on what courts have told you and what you know. You know that due process is the essential protection of the individual against arbitrary use of power by institutions.

You know that due process is doubly important to historically marginalized populations, such as LGBTQ individuals, disabled individuals, especially those with impaired social skills, and minority students, especially Black male athletes who were disproportionately targeted during the Dear Colleague Letter regime.

You do know that equal protection must be given to both accusers and the accused. You know that accusers and accused persons are both students, and entitled to equal protection against sex discrimination under Title IX.

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You know that the traditional deference given to colleges by courts has been squandered and lost by the kangaroo courts that followed the Dear Colleague Letter regime. You know that over 700 litigations have been filed because of kangaroo court college proceedings.

You know that colleges have been hammered by trial courts and appellate courts because of their abuses under the Dear Colleague Letter regime. You know that the regulations that went into effect in August 2020 have sharply reduced claims of unfairness by both accusers and accused persons.

You know that the 2020 regulations are working to protect both accusers and accused persons, with essentially universal agreement that the August 2020 regulations are better than the Dear Colleague regime. You know that the 2020 regulations were needed to provide safeguards against the resumption of biased training.

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You know that the 2020 regulations were needed to provide safeguards against biased investigators and biased adjudicators. You know that the 2020 regulations were needed to stop the inherent biases and conflicts of interest found in the single investigator model.

You know that victim-centered, trauma-informed and start by believing are transparent efforts to inject bias into the investigative and adjudicatory process. You know that trauma exists not only for the person pointing an accusing finger, but also for the person toward whom that accusing finger is pointed.

You know that there is no person who can be called a victim until after an impartial investigation and impartial adjudication. You know that the victim is often the falsely accused person. You know that institutions have equal obligations to all students, both accusers and accused.

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You know that schools fail to give equal resources and supports to both accusers and accused students. You know that biased investigations and biased adjudications have wrongfully destroyed careers and caused suicide attempts and completed suicide.

You know that I could continue far beyond three minutes with a litany of abuses that you know sprang from the Dear Colleague regime, and a litany of ways in which the 2020 regulation reduced abuses. You know that the question presented in the hearing is simply whether you will allow blind ideology --

MODERATOR: Thank you. We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Commenter 8MD. Please unmute your mic and begin speaking when you're ready. Go ahead and unmute your mic, please.

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COMMENTER 8MD: Hi everyone. I appreciate this opportunity to share a parent's perspective on how the Department of Education can take steps to ensure that K-12 school districts are providing students with an educational environment that is safe, equitable and free from discrimination.

Over the past two years, I have been on the ground floor, working with and supporting a local student movement to address -- can you hear me?

MODERATOR: Yes. We can hear you.

COMMENTER 8MD: I'm sorry. I had started earlier.

MODERATOR: We heard you the whole time.

COMMENTER 8MD: I'm sorry. I'm having technical difficulties. Should I start again? Hello?

MODERATOR: Yes. You can go ahead and keep going. We heard you from the beginning.

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COMMENTS 8MD: I will start again.
I share with you my observations and experiences so that the system failures and common roadblocks at the public school districts can be addressed.

New Title IX rules and regulations are needed. But if the systems in place to maintain and enforce these rules and regulations are inefficient, then we continue to fail our students. Relying on the honor system, and assuming that school districts are proactively taking steps necessary to become Title IX compliant is a mistake.

Relying heavily on impacted school children and their parents to file a complaint with the OCR to have corrective action taken is a mistake. To assume that parents and students know their Title IX rights, and that school districts are willing to acknowledge and address the problem of sexual violence and discrimination is a mistake.

I suspect that of the 14,000 public

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school districts in the United States, that a majority are not Title IX compliant, in turn, failing to provide the approximately 55 million K-12 students with the basic protections and rights that the law was created to provide.

If the Department and the OCR are truly committed to ensuring that all K-12 school districts are compliant, then a more proactive and hands-on approach should be taken to audit, monitor, and enforce Title IX regulations. School districts must be held accountable, and ill-informed parents and students should not have to bear that responsibility.

The Department and the OCR must step in or the positive, systemic and cultural changes we desperately need will not be realized.

My last comment is more of a suggestion that might help engage school districts and foster Title IX awareness.

What if the Department considered creating another national program, similar to the

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Blue Ribbon Schools program, but one that acknowledges and awards schools for their Title IX compliance, the culture and climate of the school, and their prevention and intervention efforts, to name a few?

The problem we face as parents and students within our school districts goes beyond modifying Title IX regulations. We need additional support, a new approach, and top-down vigorous enforcement. Thank you.

MODERATOR: Thank you. We'll be right back with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Jeff S.

When you're ready, Jeff, please unmute your mic and you may begin speaking.

JEFF S.: Thank you. I am Jeff Simering, Legislative Director of the Council of the Great City Schools, a coalition of the nation's largest central city school districts.

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Many of the Great City school districts with the council submitted extensive comments on the Title IX proposed rules, however we were not privy to the multiple meetings held at the White House and the Education Department as the proposed rules were being developed and apparently all the higher education interests were consulted.

In fact, the Title IX regulatory process appears to have been driven by high-profile controversies at the higher education level with insufficient attention to K-12 implementation practices that have worked relatively well over multiple decades.

To be candid, I can't name one big city school district, Title IX coordinator, or general counsel that agrees with or supports the 2020 final regulation.

The Council therefore requests that the 2020 rules immediately be withdrawn within the context of elementary and secondary schools,

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and that the prior Title IX legal framework for K-12 education be reinstated in some form before the start of school year 2021-22, potentially through a K-12 interim final rule.

While the Council takes no position on Title IX regulations in the post-secondary context, we're open to considering universal applicability to, and revisions to Title IX definitions.

Let me underscore the unsuitableness of the formalized Title IX procedures for minor children in K-12 public schools. School children have neither the judgment or experience to make decisions like adults. Even the nation's court system has adopted different procedures for juvenile infractions.

A school-age child's physical, emotional, and mental development is not complete, and instructional support services in public schools are designed in recognition of the child's developmental stages. Adversarial

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procedures run contrary to the traditional environment in our public schools.

These procedures are not just inappropriate for school-age children, but they're cumbersome and they're costly and ineffective for school districts and staff.

Under the higher regulatory standard for sexual harassment and the required federal procedures, school districts now must operate multiple systems of disciplinary practices for different types of discrimination, for other forms of unwanted sexual behavior, to meet state requirements or other code of conduct violations.

The 2020 rules have doubled stamping requirements for school districts that now must have separate investigators and separate decision-makers in addition to Title IX coordinators and any appellate process.

These extensive judicial like grievance procedures add to the complexity of the process, delay timely incident resolution,

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require more staff training, and mandate formalized procedures even within any informal resolution.

MODERATOR: Thank you. We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Good afternoon. This concludes this session of the public hearing. The next session will start at 3:30.

(There was a brief break between speakers at this time.)

MODERATOR: First up is Lucas W., followed by Charlotte R.

Lucas, feel free to unmute your mic and begin speaking.

LUCAS W.: Hi. My name is Lucas Wilson, and I'm currently a PhD candidate in comparative studies at the Florida Atlantic University and a session last year at University of Toronto.

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I'm also a survivor of gay conversion therapy, which I underwent at Liberty University. To give you an idea of the damage done by way of conversion therapy, I want to note that in 2019, the UN Special Rapporteur on Torture affirmed that quote, Given that conversion therapy can inflict severe pain or suffering, given also the absence both of medical justification, of free and informed consent, and that it is rooted in discrimination based on sexual orientation or gender identity or expression, such practices can amount to torture, or the absence of one or more of those constituted elements to other cruel, inhuman and degrading treatment or punishment, end quote.

Moreover, according to UCLA School of Law, LGBTQ people who experience conversion therapy have 92 percent bigger odds of lifetime suicidal ideation. The very fact that this is a practice that goes uncontested and is promoted at Liberty University and a number of other

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religious colleges in the U.S. is sincerely terrifying, especially given how those schools are funded by the federal government.

Because of my deeply formative and damaging experience of homophobia at Liberty most profoundly communicated to me behind closed doors in conversion therapy for four years straight, I am now a plaintiff in a lawsuit brought against the U.S. Department of Education regarding the Title IX religious exemption, a lawsuit that is being brought forth by the Religious Exemption Accountability Project.

We began the lawsuit against, despite what some might claim, not as a religion. We are, instead alleging homophobia done in the name of religion. As such, I am speaking to you today because I would like the U.S. Department of Education to make a rule that narrows the religious exemption as much as possible.

Cultures of homophobia and conversion therapy programs are rampant at Liberty

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University and other Christian colleges across the U.S., and this homophobia and these conversion therapy programs are currently being funded by U.S. taxpayers.

We plaintiffs in the lawsuit want the federal government to prohibit funding that's, these schools have, that are anti-LGBTQ and have conversion therapy programs.

Please listen to those of us who have been subjected to sustained and directed homophobia. We are not in this lawsuit to end religious education. We are in this lawsuit rather to see to it that what happened to us on these campuses does not happen to other queer students.

We just want LGBTQ students to be treated equally, not face blatant and express bigotry, and to be able to view themselves openly. Please do the right thing, and stop funding these homophobic schools if they are to actively discriminate against LGBTQ students.

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Let these schools finance their homophobia on their own dime. Thank you.

MODERATOR: Next up is Charlotte R.

Charlotte, feel free to unmute your microphone and begin speaking.

CHARLOTTE R.: Can you hear me?

MODERATOR: Charlotte, go ahead and -
- we can hear you, but go ahead and turn off the live session as we can hear that in the background.

CHARLOTTE R.: Can you hear me?

MODERATOR: We can hear you now.
Feel free to begin speaking.

CHARLOTTE R.: Thank you. Good afternoon. My name is Charlotte Reynolds. I'm the Title IX coordinator for a public school district in Wyoming. Thank you for providing this opportunity to provide public input.

I'm speaking on behalf of my district when I state that K-12 schools need support, guidance and resources to support them in their

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efforts to meet the current and even the previous Title IX requirements.

Schools are reflections of their communities, and are often left to remedy the wrongs committed outside of our control, without the resources to do so. This is really a challenge, in a small rural district, that struggles to hire and retain qualified professionals to carry out the host of duties and services we are required and expected to provide for students.

I respectfully request that any updates to the current Title IX regulation include clear definitions of terms such as severe, pervasive, and objectively offensive, and clear guidance on how we should -- how we, quote/unquote, should know information that is not reported to us.

I truly believe K-12 schools do their very best to serve all students. But we need support and resources from those with expertise

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in how to serve victims and those accused.

Lastly, I would suggest that it would be invaluable, especially to small rural districts, to have low or no-cost training and special resources that we can access to ensure we are adhering to all federal laws, but more importantly, ensuring we are providing all students with equal access to our educational, quote/unquote, educational programs and activities. Thank you.

MODERATOR: Thank you. Be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Faith F.

Faith, feel free to unmute your mic when you're ready and begin speaking.

FAITH F.: Hi. Thank you. Can you hear me?

MODERATOR: Yes, we can hear you. You may go ahead.

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FAITH F.: So, my name is Faith Ferber. I am a survivor, a recently graduated social worker and an activist. And working with survivors for the past seven years, I've seen firsthand how students are left to struggle and suffer in the aftermath of experiencing violence.

There's been a lot of talk about cross-examination this week, but what I want to emphasize and what we have to recognize is that allowing the advisor of each party's choosing to conduct cross-examination doesn't serve the fact-finding process.

Instead, it's an intimidation tactic, that makes survivors less likely to want to report in the first place, potentially leaving them without critical accommodations needed to stay in school. I surely would not have gone through the Title IX process if this rule was in place when I was assaulted in undergrad, and I unfortunately have worked with countless survivors who have had to make that same

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decision.

The worst part of my Title IX hearing was when my perpetrator, who admitted in the hearing that he assaulted me, was able to read ten character witness statements from his fraternity brothers and girlfriend's sorority sisters, not only insisting my perpetrator hadn't done what he admitted to, but also disparaging my character, labeling me a liar and demanding that conduct charges instead be brought against me.

The hostility was humiliating, and it scares me to think of how much more intense that hostility would have been if one of his fraternity brothers also had the power to question me about the details of that night.

The Department of Education needs to require that schools utilize a neutral third party to conduct any cross-examination that occurs. Questions should be submitted in writing, and reviewed for appropriateness before being asked by the neutral third party.

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This upholds due process and supports quality fact-finding without unnecessarily burdening either party with biased questioning. What does allowing cross-examination by an advisor of each party's choosing achieve that cross-examination by a neutral third party can't? It opens the door to extreme intimidation, leading survivors to drop out of the Title IX process or choose to never report in the first place.

The current Title IX rule makes schools inherently less safe for students. Nearly 40 percent of survivors who report violence to those schools experience a substantial disruption to their educations, doing exactly what Title IX is designed to remedy.

It's crucial that the Department seriously consider how to provide a fair and equitable Title IX process that actually minimizes further traumatization. Changing the cross-examination requirements is a great place

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to start. Thank you.

MODERATOR: Thank you. We'll be back in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Sadie D.

Sadie, when you're ready, unmute your mic and begin speaking.

SADIE D.: Can you hear me?

MODERATOR: Yes, we can hear you. You may go ahead.

SADIE D.: Fantastic. Thank you so much. Okay. Good afternoon. My name is Sadie De Luca, and I'm a senior at Western Washington University. I have spent this past year volunteering as a wellness advocate on our university's Consultation and Sexual Assault Support Team.

During this time, I have learned the importance of trauma-informed practices when it comes to supporting survivors of sexual violence.

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The updated Title IX regulations do not incorporate trauma-informed practices, and because of this, do not provide adequate support to survivors.

One of the clearest examples of this is the new requirement for clear and consistent evidence. Studies have shown that the brain and body do not respond to traumatic memories in ways that are clear or consistent. And as a result, a survivor's processing of trauma may not take place in a way that conforms to this requirement.

This places an unfair and unachievable request on survivors who are already facing immeasurable challenges. Additionally, the new Title IX live hearing and cross-examination process also fails to be trauma-informed, as it unnecessarily places survivors of violence in newly traumatic situations.

The new regulations also fail to provide specific protections to the individuals most often targeted for violence. A study

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conducted over the past year by student researches at our university found that bisexual women and gender-expansive individuals are the students most frequently targeted for sexual violence.

By failing to provide protections for those most likely to be targeted, the new Title IX regulations do not effectively support survivors. To remedy this, Title IX regulations must be changed to address the following.

First, trauma-informed processes, this includes the use of the preponderance of evidence standard of proof, rather than the clear and consistent standard, as well as the elimination of the live hearing and cross-examination process.

Second, Title IX must provide more specific support to those individuals and groups who are most often targeted for violence.

Third, Title IX must utilize a broader definition of investigatable instances of sexual

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violence, enabling more inclusive support of survivors.

And finally, Title IX must incorporate the ability to investigate off-campus reports of sexual harassment. There are too many individuals in our nation and our schools who have undeservedly experienced violence and trauma in their lives.

Today you have a chance to actively support those individuals in a search for justice and healing. Today you have a chance to make a difference in the lives of survivors. So today I ask you, please take that chance. Thank you very much for your time.

MODERATOR: Thank you. We'll be back in a few minutes with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is William T.

William, when you're ready, unmute your mic and begin speaking. William, please

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unmute your microphone.

WILLIAM T.: Hi. This is Will Trachman. Can you hear me okay?

MODERATOR: Yes, we can. You may begin.

WILLIAM T.: Great. Thanks, everyone. My name is Will Trachman. I'm the former Deputy Assistant Secretary for Policy and Development within the Office of Civil Rights.

I spent three years there under the Trump administration. It was a privilege and an honor to work with some of the dedicated staff there, and I had the great fortune to work with folks on the Title IX regulation that was announced on May 6, 2020.

And because I have so much respect for the staff there, I know what dedication they will have in reviewing and deciding whether to keep or change aspects of the existing rule. I do request that, for the time being, while the rule is in place it be followed to its letter.

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I know that President Biden asked the Department to review whether to suspend part of the federal regulation. I would object to the idea that the agency can unilaterally suspend federal regulations.

In addition to that, I wanted to make a few points. One is that the reliance interests here are grave. Schools have been adapting to the new May 2020 rules for over a year now. I myself plan to speak to a group of administrative personnel next week on the new rules and how they function, what obligations schools have.

And the idea that the rules would be changed every time the presidential election occurs and there's a new person in the White House has to be daunting for schools who need predictability, reliability and consistency.

Then I want to talk about two issues which I think are reflective of some of the comments that have come in so far. In the new 106.44, it isn't as though a school can sweep an

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allegation of sexual harassment under the rug. Far from it.

In every case where the school has actual knowledge of an allegation of sexual harassment, there has to be a reach-out by the Title IX coordinator, a discussion between the Title IX coordinator and the complainant about supportive measures.

The Title IX coordinator has to respect the complainant's wishes and their request for supportive measures, and the Title IX coordinator has to explain how to file a formal complaint. That is literally every allegation of sexual harassment must be treated that way.

Under 106.45, we've heard some mentions of trauma-informed ideas on cross-examination. There's nothing about the rule that precludes a school from using trauma-informed practices as long as those practices don't conflict with the rule.

So for instance, you couldn't say all

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accusers are trustworthy and all of the accused are not, but that doesn't mean that you can't encounter trauma and account for trauma as part of your processes. And, of course, in cross-examination, no one is forced to undergo cross-examination. No one is forced to answer any questions they don't want to.

The rule explicitly protects people who don't want to undergo cross-examination by having an anti-retaliation provision. So there are many features of the new rule that are protective of survivors.

And the last thing I'll mention is that the mediation provision ends up giving schools a significant amount of flexibility to work through these rules and to adjust them as needed when the students agree and the school is in favor. So I urge you to keep the current rule. Thank you.

MODERATOR: Thank you. Be back in a few moments with our next commenter.

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(There was a brief break between speakers at this time.)

MODERATOR: Next up is Vince M.

Vince, when you're ready, unmute your mic. Vince, please unmute your mic.

MODERATOR: It appears Vince is having some technical difficulties.

Vince, if you don't mind opening up your chat and we'll see if we can help you.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Terri M.

Terri, when you're ready, unmute your mic and begin speaking. Terri, please unmute your mic.

TERRI M.: There we go. Can you hear me now?

MODERATOR: Yes, we can. You may begin.

TERRI M.: All right, thank you. Hello, my name is Terri Miller, President of Stop

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Educator Sexual Abuse, Misconduct and Exploitation.

Since 1996, SESAME is the leading national voice for the prevention of sexual exploitation abuse and harassment of students by teachers and other school staff. School employee sexual misconduct affects an alarming number of K-12 students.

I have my microphone muted. Can you

--

MODERATOR: We can hear you.

TERRI M.: All right. I'm sorry. Hello. This is Terri. I got interrupted by a mic announcement. Okay. Can I have my time started over because of the interruption?

MODERATOR: Sure thing. We'll restart the clock.

TERRI M.: Thank you very much. I appreciate that. My name is Terri Miller. I'm President of Stop Educator Sexual Abuse, Misconduct and Exploitation.

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Since 1996, SESAME is the leading national voice for the prevention of sexual exploitation, abuse and harassment of students by teachers and other school staff. School employee sexual misconduct affects an alarming number of K through 12 students, an estimated 5.5 million students in the United States today.

Every day, there are headlines of school employee sexual misconduct in our schools. Sexual misconduct can result in lifelong emotional, physical, and psychological consequences for victims, families and their communities. Students can't learn if they don't feel safe. Parents suffer the loss of family unity and healthy child.

Unfortunately, sexual abuse is a sensitive topic, surrounded by a veil of silence that creates many loopholes offenders can exploit to continue with their behavior, and allowing offenders to enter schools and get hired multiple times before being identified and convicted.

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Understanding educators must bear the cloud of shame and distrust upon them by bad apples. Dollars spent on settlements are dollars lost for education. Bad apples really do spoil the whole bunch.

Based on our experiences, we would like to offer our suggestions on how to improve upon the 2020 Title IX regulations, and how to further prevent school employee sexual misconduct in schools. Hearings may limit reports and further harm victims. Remove or reduce the required ten-day interview notice. It is unreasonable.

Sexual harassment definition is true strong. Many cases will not meet this new definition. Jurisdiction requirements are too strong. Complainants may drop out and respondents may leave, rendering the case null and void.

Additional recommendations include disseminate and enforce Title IX responsibilities

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in K-12 schools, clarify and disseminate information on the roles and responsibilities of Title IX coordinators, and more clearly emphasize that Title IX also applies to K through 12 students and schools, and to cases involving school personnel to student sexual abuse and misconduct.

Conduct a national prevalence survey that includes student and administration input on employee sexual misconduct. Work with the Department of Justice and Department of Education to develop a national database. Many states do not publicly release the records of teachers whose license have been revoked, cancelled, surrendered or suspended for sexual misconduct.

This issue allows offenders to gain new employment in other jurisdictions. Develop new employee misconduct and ethics training curriculum for teacher administrator preparation programs. Develop age-appropriate comprehensive student, staff and parent prevention --

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MODERATOR: Thank you. Next up is
Nora G.

Nora, please unmute your mic and
begin.

NORA G.: Hello. Thank you so much.
My name is Nora Gallo, Co-executive Director of
the Every Voice Coalition and 2020 grad from U.
Mass Amherst.

The Every Voice Coalition is a student
and survivor-led organization working to pass
student and survivor-written, survivor-centered
legislation on the state level to prevent campus
sexual violence and support survivors.

Since 2016, we are now active in 12
states with five bills already passed. What we
do is we work to empower students and survivors
to lead grassroots movements that are actively
bridging the gap between who is and who is not in
the rooms where decisions are made, which ensures
that young people have a seat at the table and
are leading conversations about what impacts them

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the most.

As a recent college graduate who works directly with students and survivors all across the country every day, we come to you with a unique and vital perspective of what students and survivors need right now.

We are proud to speak here today as representatives of our student and survivor-led coalition. We are constantly hearing from student survivors that Title IX changes are urgent, how the current rules limit access to education, cultivate hostile environments on campuses, and derail students' academic and long-term career goals.

Student survivors have the right to an education free from violence, to seek their education in an environment that is welcome to their needs.

Our policy priorities for what we would like to see in a new Title IX rule are outlined in the letter we wrote with Know Your IX

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and Rape on Campus and It's On Us, which will be submitted at the end of this week.

In our work, we see what happens when student survivors are those who are involved in addressing campus sexual violence making a change. Not only is the change then actually meeting their needs, but they are empowered with the knowledge they can raise their voices to demand change.

This ultimately benefits everyone. Change that is made is directly meeting their needs, and they are empowered to inform more effective future policy and change with time.

So today, I ask you, what would it look like if beyond today you found ways to hear from students and survivors, and receive their feedback in crafting a new Title IX rule? What would the outcome of that final rule be?

Student survivors are too often left out of these conversations, and further silence beyond the walls of just their institutions. And

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in this case, that resulted in a rule that hurt students, student survivors tenfold more than it supported them.

Just as you have set a powerful precedent of actively listening to and incorporating the feedback and needs of those most impacted reporting in these public hearings, we are calling on you today to continue this practice.

We ask you to not only listen throughout this week, but to raise the bar for what it looks like to incorporate the voices of those most impacted at the center of any change making. You may just see that it actually creates active change.

I want to thank you deeply for your time today. We really look forward to seeing what happens next. Thank you.

MODERATOR: Thank you. Next we have Olivia O., followed by Kristina P.

OLIVIA O.: Hello, thank you. My

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name is Olivia Ortiz. I am a graduate of the University of Washington School of Law, and against all odds, I am a graduate of the University of Chicago College.

In 2012, I sat across from my abuser in an informal mediation conducted by my dean of students. Several months later, I received legal counsel and filed a Title IX complaint against my school. My complaint was not resolved until I was in law school in 2018.

The Trump administration failed me, but so did the Obama administration. I wrote an article in 2016, published in the Yale Law Journal, about the impact that these suspended investigations, while necessary, have on individual complainants.

Because I complained against my school, I was forced out, and I received significant retaliation from my dean of students, including a threat to be removed from school because of the social media criticism against

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him.

Indeed, I believe that we should have systemic investigations, but survivors should not have to pay the price of retaliation from our schools, who deeply resent being held accountable for their violations of Title IX.

Today, I encourage you all to reinstate a rule that forbids informal mediation, like the one that caused me so much trauma, the one that caused me to drop out of school, the one that led me to file a complaint against my university, that after several years was ultimately dismissed.

In addition, I also encourage you to adopt a rule that is sensitive to people not only at elite institutions, but people at historically Black colleges and universities, historically Latinx colleges and universities, as well as women and girls incarcerated at -- colleges and universities, as well as high schools around the nation.

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The most vulnerable deserve support from the Department of Education, and I sincerely hope that this administration again values experiences of the individual as well as those of larger society.

I am excited to enter the profession of law, but again, the Department of Education failed me in my education, and I sincerely hope that they do not fail others as they failed me. I see this as a new opportunity for the Biden administration to hold schools accountable, and serve survivors, especially those who are most marginalized. Thank you again.

MODERATOR: Thank you. Next up is Kristina P., followed by Meg K.

Kristina, please unmute your mic and begin.

KRISTINA P.: I would like to begin by thanking the Department of Education and the Office of Civil Rights for providing this time to gather comments from people all over the nation.

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The opportunity to share is greatly appreciated.

I am a Washington State certified victim advocate who works primarily with college survivors of sexual assault. I have been working with student survivors for over two years and have witnessed firsthand how Title IX impacts individuals, for better or for worse.

I would like to focus on two areas for my comment, the exclusion of off-campus sexual violence that occurs between students from Title IX's jurisdiction, and the creation of more space for victim advocates to support student survivors in Title IX processes.

The exclusion of off-campus sexual violence from Title IX's jurisdiction is harmful and allows schools to ignore misconduct that could be happening just blocks away from the school, online or in study abroad programs controlled by U.S. universities.

This is especially concerning during a pandemic where more and more students have the

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opportunity to engage in remote learning that removes them from campus, and isolates them from on-campus resources and services.

Most schools have policies that investigate and sanction students who commit other forms of misconduct off-campus, and there should not be an exception for sexual violence or sexual misconduct.

Also, the current policy on advisors of choice is a policy that often shuts victim advocates out. In Washington State, victim advocates have privileged communication, and advisors of choice are not confidential roles, so victim advocates often cannot serve in that role, and therefore can't support student survivors during their Title IX hearings.

In Washington, a survivor has a right to have a victim advocate present during any criminal or civil legal proceeding in addition to legal representation. Survivors deserve to have trained victim support service providers

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available to them during all steps of these processes.

Thank you for considering these changes that will help create a safer, more equitable environment for all students on campuses.

MODERATOR: Thank you. Next up is Meg K., followed by Zoe E.

Meg, when you're ready, unmute your mic and you may begin.

MEG K.: Good afternoon. My name is Meg Kilgannon. I was honored to serve at Ed in the Faith Office during the Trump administration, and I'm now a senior fellow for education studies at the Family Research Council.

I listened to several hours of testimony offered in this forum and I've been struck with the passion so many people feel on this topic. Both men and women have made compelling argument about how Title IX affects their lives.

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And while I don't agree with all of the comments, I can understand why people advocate for the views they hold, and I very much appreciate their right to express their views. I'm grateful that our governing processes prioritize listening to comments from the public.

I hope those that have been sworn in as public servants will listen to all sides with consideration, especially those comments informed by values and experiences different from your own.

We at Family Research Council, an organization with hundreds of thousands of supporters across the country, urge that great care be taken when considering the needs of children in the K-12 setting.

Title IX is based on facts and facts alone. It distinguishes between men and women based on biological sex. Any other interpretation on the basis of sex harms women and girls, parents and families.

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Parents who send their children to schools, whether public or private, do not hand over their right to direct the education of their children at the schoolhouse door. Parents are the primary educators of their children. Parents are the best advocates for their children. The best schools and teachers strive to truly partner with parents so that together they can work for the good of the child.

Expansions to protections for students can therefore never be legitimate expansions or protections if they are expanded at the expense of parental knowledge and consent, not to mention the expense of other students and staff.

To interrupt the parent -- the bond between parents and children, to insert oneself between a custodial parent and his or her child for any reason is unnatural and unacceptable, period.

Policies such as keeping duplicate

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records that hide information from parents about their own child, allowing children to present themselves one way at school and deliberately keeping that information from parents, allowing name changes, allowing children to access opposite sex changing facilities and the like, all while keeping parents in the dark, such policies can never be called protection, and they are not in the best interest of anyone.

Further, the social transition of children directed by school officials should instead be considered medical treatment, because the reason for directing that behavior is usually alleged to be the mental health of the child.

Only parents have the right to direct the medical treatment of students. School administrators lack the medical training and professional competency to address those needs. Medical interventions are the responsibility of the parent and the doctor of their choosing.

Every child has dignity and value.

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Every child is born in exactly the right body. The protections enshrined in Title IX, including religious exemptions, benefit everyone just as they are. Thank you.

MODERATOR: Thank you. Next up is Zoe E., followed by Joel L.

Zoe, please unmute your mic and begin.

ZOE E.: Good afternoon. My name is Zoe Evans-Agnew, and I'm a senior student at Western Washington University, in Bellingham, Washington. I am part of my university's sexual violence prevention effort group on campus, where I work to educate students and support survivors.

For my senior thesis, I conducted a campus climate survey on the sexual violence experiences of students at my university. I plan to present these results at the American Public Health Association Conference in October.

Over a thousand students participated in this survey, which is a large sample size for a school of 16,000 students. In this survey, I

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found that 23 percent of students on my campus experienced sexual violence during college. This percentage is demonstratively higher than the percentage of students who submit a complaint to the Title IX office.

It is not that students are not experiencing violence, it is simply that they are not coming forward because Title IX is failing them. I deserve to feel safe and protected at my university, and the accountability process by the federal government neglects my right to an education.

To fix this process, I urge you to do the following four things. Number one, we need to broaden the definition of sexual harassment to include all forms of violence.

Number two, we need to do away with live hearings and cross-examinations, as it prevents reporting, and is not a trauma-informed process.

Number three, we need to require

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colleges to respond to sexual violence off-campus, and include this off-campus jurisdiction under Title IX.

And number four, we need to change the burden of proof to preponderance of the evidence. We are not asking for much. We are asking for a fair shot at our education, free of violence. Students do not deserve to be treated this way. They deserve support, validation and understanding when they are recovering from trauma.

In my survey, hundreds of students detailed how they were assaulted, and their stories were painful and violent. Hardly any of them saw justice. You have the opportunity to change that for students like me. Listen to the voices of survivors and act now. Thank you for your time.

MODERATOR: Thank you. Next up is Joel L., followed by Commenter VQ8.

Joel, please unmute your mic and

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begin.

JOEL L.: Hello. My name is Joel Levin. I'm the cofounder and director of programs for Stop Sexual Assault in Schools, SSAIS.

SSAIS was founded in 2015, as first national nonprofit specifically created to address widespread K-12 sexual harassment and assault. I'm also a parent of a student survivor who was sexually assaulted in a school program.

SSAIS hears regularly from families whose elementary and secondary schools have failed to respond promptly and effectively to reported sexual harassment. They feel bewildered and betrayed by the institution responsible for their student's safety, well-being and academic growth.

Just in the last year, hundreds of students nationwide have spontaneously formed Instagram groups to express anger and frustration at their schools' ineffectual response to sexual

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harassment complaints. They resort to social media groups out of frustration, due to their schools' inaction to reported sexual harassment.

SSAIS criticized the 2020 Title IX rule for reversing two decades of Department guidance upon which state education departments and school districts have shaped their sexual misconduct policies.

Schools are now compelled to navigate two tiers of sexual misconduct, Title IX and non-Title IX, with conflicting definitions, grievance procedures and accommodations. It's no surprise that students voice dissatisfaction when confused administrators offer inadequate and ineffectual responses.

It falls to the district Title IX coordinator to respond to all complaints involving possible sex discrimination, including sexual harassment. So it's critical that a coordinator has the necessary time, qualifications, training and independent

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authority.

The Department itself has found that the most egregious and harmful Title IX violations occur when a Title IX coordinator lacks adequate training or credentials. In too many school districts, this crucial role is delegated to a secretary, coach or office worker who then wrongly defers the responsibilities to district counsel.

We strongly urge the Department to overhaul this 2020 Title IX rule, and restore and amplify its guidance, beginning from 2001, especially the 2015 guidance on Title IX coordinators. The Department should set minimum qualification standards for K-12 Title IX coordinators, and dedicate adequate resources for training and technical assistance.

State education agencies should certify that all district Title IX coordinators have the most current knowledge of federal and state laws, regulations and policies relating to

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Title IX and gender equity, and ensure that all employees whose responsibilities may relate to Title IX have appropriate training.

The Department must step up its efforts in ensuring that Title IX coordinators are qualified, proactive leaders, working to end sexual harassment in their schools. Thank you.

MODERATOR: Thank you. Next up is Commenter VQ8. Please unmute your mic and begin.

COMMENTER VQ8: Hello. I would like to comment specifically on the requirement under the Trump/DeVos rules that victims of sexual assault can be directly cross-examined. My interest is informed by the experience of my daughter, who was raped as a freshman in college.

She went through a grueling 10-month disciplinary process. The school ultimately found in her favor and suspended the assailant, only to let him back on campus after one semester, without input from or notice to her.

Now, so first I'd say it's false to

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suggest that there should be the equivalent procedures in a Title IX case as there are in a criminal court. In a criminal case, the defendant could be locked in prison for many years. In a Title IX case, they can only be suspended or expelled from a particular school.

Potential for harsh cross-examination scares many rape victims from reporting, but at least in a criminal court, the examinations, as bad as they can be, are done by licensed attorneys and overseen by judges.

In a Title IX proceeding, there's no judge, and examinations could be done by an attorney, a fraternity brother of the rapist, the rapist themselves, or anyone they bring in.

This is an unacceptable emotional trauma to put on the survivor of sexual assault, and I believe will ultimately result in many women choosing not to report, and dropping out of school, and in more assaults by repeat offenders.

In addition to the emotional cost,

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women who cannot afford to hire an attorney will be at a huge disadvantage. I'm lucky to be in a position to have provided legal support to my daughter. But to put a ballpark on it, it cost me approximately \$30,000. This is not a cost that could be afforded by most, and would disproportionately affect the poor.

Any requirement for direct cross-examination, or anything such as restorative justice that requires or encourages a victim of sexual assault to come face to face with their assailant is both cruel and will result in fewer women coming forward, and more repeat assaults.

My other large concern is with the durability of Title IX decisions. Right now, when a wealthy student is found guilty of sexual assault in a Title IX case, his parents often hire attorneys to sue the school. They sue on technical grounds, that the school did not follow their own procedures.

This forces the school, if successful,

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to vacate the decision, leaving no protection for the victim, or the prospect of having to go through the entire process again. The more specific the procedural requirements in the rule, the easier it will be for lawyers to get these decisions overturned for children of the wealthy.

Thank you very much for hearing me today.

MODERATOR: Thank you. Next up is Adrian N.

Please unmute your mic, Adrian, and begin when ready. Adrian, please unmute your mic.

(Pause.)

MODERATOR: It seems Adrian's having some technical difficulties.

Adrian, if you don't mind opening your chat, we'll see if we can help you.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Shalither C.

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Please provide your comment now.

(Pause.)

MODERATOR: Shalither, please unmute your mic and begin.

SHALITHER C.: Oh, and I was trying to read the instructions to see what I'm supposed to be doing.

MODERATOR: This is your opportunity to have three minutes to speak. If you're just wanting to listen, we'll put the listening link in the comments section, if we could set that up.

SHALITHER C.: Yes. I would like to listen. Thank you. I'm sorry.

MODERATOR: No problem. Just open up to the comment section. We'll send the link to you in just a minute.

(There was a brief break between speakers at this time.)

MODERATOR: This ends this session of the public hearing. The next session will begin at 5:30 p.m.

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(There was a brief break between speakers at this time.)

JOE C.: -- evaluating accusations that is findings of responsibility, legitimacy, and avoids courts ordering the process to be repeated to the detriment of a complainant.

If the Department of Education is determined to amend these regulations, and we do not think that it should, the changes must be modest, and the Department must keep two principles in mind.

First, it must take the rights of accusers and accused students seriously. Two things are simultaneously true. Sexual misconduct occurs on college campuses, and some students are wrongly accused. Our national policy must be fair to all students.

Second, any regulation applying to public institutions must conform with the United States Constitution and applicable judicial authority.

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This means not only affording accused students sufficient procedural protections to satisfy the requirements of due process, but also ensuring that any rule or definition affecting verbal peer-on-peer harassment is complying with the First Amendment as set forth in the U.S. Supreme Court case of Davis v. Monroe County Board of Education.

The Department's policies must also abide by the jurisdictional limitations set by the U.S. Supreme Court in Davis, and the due process requirements set by the federal appellate courts that require the right to a live hearing and the opportunity for meaningful cross-examination.

And with that, I want to thank you all for your time.

MODERATOR: Thank you, Joe C. We had a little bit of technical difficulties in the beginning. If you don't mind, would you repeat the first minute.

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JOE C.: Sure. Good afternoon. My name is Joe Cohn. I'm the Legislative and Policy Director of the Foundation for Individual Rights and Education, or FIRE. Thank you for holding this important hearing.

In 2017, when the Department of Education rescinded the Title IX guidance, it set a goal of creating binding rules that were fair to complainants and respondents alike. Contrary to the hyperbolic assertions of critics, the final regulations accomplished this important goal.

The regulations provide a number of key protections for complainants, including supportive measures to help complainants pursue their education, an appropriate weight shift provision, and prohibitions on gag orders and retaliation.

The regulations also ensure that institutions take the rights of all parties seriously by requiring essential procedural

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protections like the right to a presumption of innocence, access to evidence in the institution's possession, a live hearing with the right to cross-examination by an advocate, and other important safeguards to help ensure that both sides are treated fairly.

Should I continue? Or did that cover everything that you needed repeated?

MODERATOR: That covered everything, Joe. Thank you very much.

JOE C.: Thank you very much as well.

MODERATOR: Next up is Nathalie F.

Nathalie, you can unmute your mic and begin.

NATHALIE F.: This is Nathalie F., I'm not sure if my name was on here incorrectly, so --

MODERATOR: That's you. I apologize.

NATHALIE F.: Okay, great. Well, I guess my question is based on, I guess, what was just said about following Davis v. Monroe County.

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Is -- do we really think that deliberate indifference is a good standard to create equitable outcomes, given that it is very difficult to prove deliberate indifference, and employees under Title VII don't have that higher standard?

Yeah, and also, the actual knowledge clause that is, that was established there is also, like quite high and difficult to prove. So I'm just wondering why the statement is agreeing that that is a fair standard for these sorts of cases.

MODERATOR: So Nathalie, this is your opportunity, you have two minutes left to provide any other comments for Title IX. We are not doing any Q&A.

NATHALIE F.: Okay. Yeah, I guess that's my statement. I'm just disappointed that this is not being looked at further, and this isn't, like in line with other sorts of employment. So, I'm not sure how that's going

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to be corrected, but given some of -- yeah. I don't know. That's all I have to say. Thanks.

MODERATOR: Thank you. We'll be back in a moment with the next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Jennifer R.

Jennifer, feel free to unmute your mic and begin when ready.

JENNIFER R.: Thank you. Excuse me. I'm an administrator for a small college, and the Title IX coordinator, and I'm also a lawyer in my home state.

My experience with the changes in Title IX have been pretty significant. Not only did it mean that, as a small college, we now have to train and/or pay for an adjudicator who has at least some strong understanding of the Rules of Evidence, and what might be admissible in a particular hearing.

And it's treating the Title IX process

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as more of a court case than an administrative hearing that's looking to comply with the rules and the policies of the particular college.

Here, not only is it a burden for the college, to have to train additional people with very specialized knowledge, and if we can't afford that, to hire someone on an hourly basis to review all the documents in the case, to spend the time adjudicating and then making the decision afterwards.

So it can be pretty burdensome, also, the obligation to hire an advisor for the party that doesn't have one. So, these things, I think that the Committee needs to take into consideration. But probably the most significant matter that disturbs me with the new rules is that, the issue of cross-examination in general.

Already we know that statistically, the vast majority of sexual assault cases involving campuses go unreported. There is a

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sense of shame, or a desire not to injure the other party and a variety of other reasons why complainants do not come forward.

And this has nothing to do with their sex. It could be either way, any gender can be affected by this. But the chilling effect of having to endure cross-examination, and particularly being put out there as someone who might be hurting the other party in some way by just simply telling their truth, I'm very much against.

With the subject matter -- excuse me, there's dogs in the background. With the subject matter of protecting people of -- transgender students and nonbinary students, I personally have family members who are both, that are both in the educational system.

And I'd like to know, in the future, you know, what other kind of guidelines are going to be added to make sure that our transgender students are protected nationwide, and our

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nonbinary students are protected as well.

And that really is the extent of my comments. So first, as an administrator, and second as a parent, I would like to know the answer to these questions and see that the guidelines make the -- see that the -- excuse me, see that the Congress makes the different changes to the laws and the administrative rules. Thank you very much.

MODERATOR: Thank you. We'll be back in a moment with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Gregory Z.

Gregory, go ahead and unmute your mic, and you may begin.

GREGORY Z.: Thank you. Good afternoon. My name is Gregory Zenion. I am the principal of Chariho Middle School in Wood River Junction, Rhode Island. I appreciate the opportunity to speak before you as the U.S. Department of

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Education reviews its regulations under Title IX of the Education Amendments of 1972.

I join the National Association of Secondary School Principals and others in asking ED to immediately rescind the 2020 amendments to the Title IX regulations and replace them with non-binding guidance for K through 12 schools, technical assistance and best practices to ensure the fair, prompt and equitable resolutions to reports of sexual harassment and other sex discrimination.

The 2020 amendments are unworkable and harmful. During the summer of 2020, I was provided a two-hour training from my district attorney on the 2020 amendments to Title IX. Although it was a good overview of the changes, it was enough. I've had two Title IX investigations in my middle school of about 1,000 students this year.

Both cases ended with informal resolutions, but the first one required over 30

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hours of staff time. The second required over 20 hours. Public schools do not have the personnel in place to conduct these kinds of investigations.

Our experience with the 2020 amendments is that we are unable to swiftly remove students from harmful educational environments because of paperwork, evidence, and notice requirements in the regulations.

In the past, we've relied on previous federal Title IX guidance to develop and solidify procedures to ensure that all Title IX complaints were addressed in an effective fashion that offered fair protections for both the accuser and the accused.

However, the new multi-layer process is an overwhelming undertaking by staff and may take 80 to 90 days to complete. It is also a striking difference in how school leaders can discipline students for incidents of sexual harassment versus any other school infractions,

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which has infuriated parents, led to further traumatization of students, and greatly frustrated our staff, who want to effectively address potential Title IX violations quickly.

We are also frustrated by the staffing required to conduct an investigation of sexual harassment. In addition to having a Title IX coordinator in each school building, there are various roles that must be assigned to other trained personnel, on a case by case basis, who are all free of bias towards or against victims and accused students.

While the provision requiring all to remain neutral with respect to the process generally is quite appropriate, mandating that every individual tasked with responsibility on a Title IX be unbiased, and therefore viewed by parents as neutral with respect to the individual complainant and respondent in every case may not be practical in many smaller or more rural K through 12 schools.

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Any individual likely tasked with the responsibility of either conducting an investigation or rendering decision, either at the initial stage or appeal stage, would be someone who has experience or primary responsibility in a building where they are connected with the students involved.

Thank you for the opportunity to provide comments to DOE on this very important issue. We will also be submitting my comments for the record. Thank you.

MODERATOR: Thank you. We'll be back in a moment with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Tom R.

Tom, you can unmute your mic and begin.

TOM R.: My name is Tom Rossley and I am from Chicago, Illinois. [REDACTED] was expelled in a he said/she said Title IX kangaroo

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court at a private college in Des Moines, Iowa, one month before his graduation in 2016.

The sex crimes prosecutor who was hired as an independent investigator, as well as the law professor that served as the hearing officer both stated in the reports that there was no real evidence that an assault had occurred on Jane Doe, that they just believed her and not [REDACTED].

[REDACTED], who had language-based learning disabilities that were accommodated in the classroom were ignored in the adjudication. As a trustee of the university, I complained to the board at how the whole situation was handled, and the board removed me from my position after serving the university as a trustee for nearly 23 years.

Ironically, [REDACTED] had also claimed that Jane Doe had sexually assaulted him in his car mere minutes before Jane claimed she had been assaulted.

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Nobody asked Jane Doe about the assault on [REDACTED], not the dean who told [REDACTED], if he made an official claim that he could be further punished, not the Title IX coordinator whose husband represented the university in Title IX issues, and not the sex claims prosecutor who was brought in to adjudicate this mess.

During the hearing that expelled [REDACTED] a month before his graduation, Jane Doe admitted to initiating the assault on [REDACTED] when he claimed to be falling in and out of consciousness. The Title IX coordinator, the law professor hearing officer, and the dean, who was seated next to the university's legal counsel, all heard her make that statement, and nobody blinked an eye.

She went on to graduate a year later. Maybe that's because Jane Doe was from a very wealthy family in Iowa and had incredible political connections. Unfortunately, we

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learned all of this too late in the game.

Her mother is an heiress to a retail fortune in the Midwest. Her mother is personal friends with a currently seated United States senator, who represents a state in the Eighth Circuit, the same circuit that denied our appeals, and Jane Doe herself is followed on Twitter by a past United States president. Think about that.

To this day, the entire administration and the entire board of trustees continue to bury the sexual assault on [REDACTED]. My point is that there is not a college in this country who is qualified to be impartial. They are only concerned with their own brand and reputations.

The interpretation of Title IX that mandates that colleges need to adjudicate rape and sexual assault is an extreme overreach of the law. It was [REDACTED] who was denied an education, not Jane Doe. Murder would certainly deny someone an education but there's not a

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single person who would believe a college should adjudicate murder.

I strongly believe that the Department of Education should not be in the business of adjudicating sexual assault and rape. When that occurs, call the police. You may never get your noses out of sexual assault on college campuses, but I will not stop fighting the overreach until you do.

My life's mission will be to expose the ineptitude and corruption in these college bureaucracies. I am confident that they will always be either inept or corrupt. This kangaroo court took place at Drake University in Des Moines, Iowa. Thank you.

MODERATOR: Thank you. Up next is Stephen S.

Stephen, please unmute your mic and begin providing your comments.

STEPHEN S.: This is Steve Snyder-Hill, and I'm a retired U.S. Army major, having served

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the combined total of 26 years in the U.S. Army and the Army Reserves. And I also happen to be one of the many hundreds of sexual assault survivors of the abuse perpetrated by [REDACTED].

(There was a brief break between speakers at this time.)

MODERATOR: Next commenter is Zoe L.

ZOE L.: Hi. My name is Zoe Levitt, and I'm a student at MIT, and I'm a survivor who went through the Title IX process just this last fall.

I'm here to speak first about timeline, and to ask the Department to use the 60-day timeline put in place by the Obama administration.

The Title IX process is extremely harmful to survivors, and the longer it drags on, the more it impedes students having access to their education. My case went on for six months, and during that time, I was unable to do summer research, and had to take a leave of absence from

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school.

And I know students at my school who have been, who have had cases drag on for up to two years, and that's absolutely unacceptable, and especially makes it hard for students to focus on school while they're going through a Title IX case. And so it's really important that schools are running these cases quickly, because they do have the capacity to do so, if they hire more people.

The second thing I would like to ask for is that the new regulations really emphasize the importance of support for survivors, because that's something that a lot of people really need, and training around faculty and staff in how to support survivors.

I know of students who have had professors stop talking to them just because they don't want to be involved at all when the school sent them information related to cases. And so, and other students who have been turned away from

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therapy, which they really needed. And that support is a really important part of keeping students in school.

And then, finally, the last thing I'd like to mention is that the -- for students looking to overturn cases or seek justice, the preponderance of evidence standard is really difficult because it means that the school has to be deliberately indifferent.

And there are a lot of ways where a school, while they try to, may be aware, and try to address the harm, but they do things that are wrong, such as make a biased decision. And students should be able to appeal the fact that a school made a biased decision. Thank you.

MODERATOR: Our next commenter is Hannah S. -- F.

HANNAH F.: Good evening. My name is Hannah Forys, and I am a recently graduated social worker in the field of sexual violence. I am also a survivor of childhood sexual assault.

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My assault was by a family member, and thus not covered under Title IX, but I emphasize with every survivor who has spoken over the last few weeks, who has had to continue to see their assailant, and worse, realize they are not protected by the systems in place. That pain is just as unbearable as the assault itself.

My personal and professional background have given me a front row seat to the epidemic that is sexual violence in this nation, in particular in our nation's schools. The Title IX changes made under the previous administration, making the process mirror a criminal trial, goes against the very nature of Title IX.

By removing the 60-day investigation requirement, schools can prolong the process until the perpetrator has graduated, or the survivor has dropped out, or transferred, because of the continued presence of their attacker.

These changes have and will continue

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to affect survivors who are already marginalized because of their race, ethnicity, national origin and emigration status, the LGBTQ community and disabled survivors, who already do not have access to their institution.

Survivors reach out to their school administration because they need to feel safe on their campus. They cannot feel safe with the perpetrator present, and thus the goal is not to prosecute but simply to ensure every student has the right to attend classes and extracurriculars without fear.

Confining it, an institution's responsibility to actions only in institutionalized property, in buildings, alienate high school students assaulted at away events or competitions. This excludes the violence perpetrated in off-campus housing at universities.

Sexual assault and dating violence are not confined to campus, and so neither should

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protections. Survivors deserve more than the bare minimum of what the law requires. These regulations should rely on best practices and survivor input, to ensure all students are protected and institutions are held accountable.

Last year, survivors across the nation watched the previous administration enact regulations that protect institutions first, and every single one of us felt it like a physical pain. It is within your power to right this wrong, and to stand with every student survivor in a resounding, no more. Thank you.

MODERATOR: Thank you. Our next commenter is Jeffrey M.

JEFFREY M.: Hello. Thank you for the opportunity to share my thoughts regarding the rights of accused in Title IX tribunals.

From 1987 until 1988 I took part in the U.S.-Soviet exchange at Moscow State University. My longtime girlfriend was a Soviet citizen and resident of suburban Moscow, and she

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had a promising job at a Soviet international trading firm.

On one of our dates, we went to a bar that accepted hard currency only, and on our way out, two KGB employees stopped us, and took my girlfriend for interrogation. The KGB refused to let me in to speak with the interrogators, and I was ordered to leave.

Ultimately they released her, and she and I left together. Later, I learned that because she had been with a foreigner in a hard-currency bar, it had been determined that she was a prostitute.

At the time, during glasnost, there was a big societal effort to identify and punish prostitution and criminality, generally. The KGB ordered my girlfriend's employer to note the finding of prostitution in her work papers, which would result in her losing her excellent job, being directed to more menial work, and destroying her career.

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As we consider chartering away from the August 2020 Title IX regulations, there are some lessons from this 1987 miscarriage of justice. A unitary investigator, prosecutor in the KGB determined my girlfriend's fate. Counsel was not provided.

There were no defense witnesses. Showing guilt beyond a reasonable doubt was not required. And there was no real presumption of innocence. Rather, there was a presumption of guilt, because she was young, attractive and in a foreigner's bar.

Most importantly, because the penalty that would be imposed was not a trip to Lefortovo prison, but instead a blot on her record, there was little procedure or due process expended on her behalf. But we were talking about her hopes for a good life, by Soviet standards.

Until August 2020, a U.S. Title IX accused could reasonably expect no active participation of counsel. The mandated standard

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approved was preponderance of evidence. Witnesses could not be compelled to appear by the college, and the accuser might not appear for questioning.

There could be a unitarian investigator-prosecutor-judge model, or one in which all were just influenced by the college's Title IX bureaucrats. And let's be honest about presumption of innocence. We were living in an environment of start by believing trauma-informed investigations. The accuser was given credibility just because that party had troubled to come forward first.

Of course, just like my Soviet friend, the accused in Title IX enjoys much less in the way of due process protections, that in the criminal context, because no one's going to prison, they are just losing their dreams.

The KGB was serving what it perceived to be a societal good, cracking down on prostitution, and they ran roughshod over process

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and independent rights to get there. Our societal good is to get -- is to rid campuses of the alleged rape epidemic.

When you take away enough procedural protections, miscarriages inevitably follow, in destroying young people's lives, dreams. Dreams, lives matter.

MODERATOR: Thank you. Our next commenter is David G.

David, if you could unmute your mic, and begin providing comment. David, your mic is open. Could you begin providing comments?

DAVID G.: I'm sorry, are you speaking to me?

MODERATOR: Yes.

DAVID G.: Okay, great. Good evening. I'd like to speak to you tonight about the potential effects of Title IX enforcement on students on the autism spectrum.

While this is a topic that unfortunately has not received as much research

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as it deserves, there's good reason to believe that autistic students are at elevated risk of being the target of false allegations.

There's one case that has been documented in the media where this has happened, involving a student at Navarro College in 2015. This student, like many people on the autism spectrum, has a deficit known as prosopagnosia, that makes it difficult for him to remember and recognize the faces of other people.

Because of that, he mistakenly identified a woman on campus as his friend, and he hugged her and kissed the top of her head. For this offense he was charged with sexual assault and kicked out of school.

I think hopefully we can all agree that this sort of innocent mistake should not be treated as the worst thing that a person can do, short of murder.

There's also good reason for concern that the affirmative consent standard in use at

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many schools can effectively discriminate against autistic students.

This standard in many cases requires that consent be enthusiastic. Supporters of it call it yes means yes, but in practice, yes may actually mean no, depending upon the nonverbal cues at play.

But one of the major impairments that's present in autism is difficulty reading things like facial expressions, tone of voice, body language, and the semantic and pragmatic aspects of language, more colloquially known sometimes as reading between the lines.

Therefore, an autistic man can fail to read these cues and generally believe that he has consent, when the woman may mean something else. And to treat this understanding, this misunderstanding as if it was a sexual assault is a great injustice.

I'll also note that many autistic individuals go undiagnosed until well into

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adulthood, and therefore don't have the luxury of being able to play the disability card. Therefore, really the only way to ensure that autistic students are treated fairly is to ensure that everyone is treated fairly.

In terms of solutions, we should be prohibiting the use of the affirmative consent standard and ensuring that we use an appropriately narrow definition of sexual assault that distinguishes between a violent crime and an innocent mistake. Thank you.

MODERATOR: Thank you. We will now pause to prepare for the next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Tito P.

Please unmute your mic and begin when ready.

MODERATOR: He's --

MODERATOR: Please unmute your mic, and you'll be ready to speak.

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(There was a brief break between speakers at this time.)

MODERATOR: Tito, go ahead and unmute your mic, and you may begin.

(Pause.)

MODERATOR: Looks like Tito had some more technical difficulties. We'll be back in a moment for next comment.

(There was a brief break between speakers at this time.)

MODERATOR: Tito, let's try again. If you can unmute your mic, you may begin speaking.

(There was a brief break between speakers at this time.)

MODERATOR: Tito, go ahead and unmute your mic, and begin speaking. Let me first confirm that we can hear you.

(There was a brief break between speakers at this time.)

MODERATOR: Tito, you can begin

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speaking when you're ready. Just make sure you turn your volume down a little bit.

Tito, turn your speaker volume on your computer all the way down and you can begin.

TITO P.: Yeah, I just did. Can you hear me straight now?

MODERATOR: We can hear you now. Feel free to begin.

TITO P.: Okay, thank you very much. So I had a couple of questions, which I'm probably, everybody's asking, and I'll be able to listen in after this conversation. But I was wondering about the timeline for changes, if there are going to be changes, what that timeline would look like, and how soon would they be allowed to be implemented.

Would they be reverted back to the last regulations or would they be complete changes? One of my, the biggest issues that we've had on our campus and a lot of questions of, with the, as it pertains to the hearing

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process, where if a formal complaint is filed, leading to a hearing process, that causes a lot of issues with people concerned on being victimized again by having to go through that process and the way it's set up now.

So there's a lot of questions around would that still be the same, and if not, what would that look like, as far as differences. That's -- those are all the questions I have. I don't want to up a bunch of time because I know you guys are getting a lot of questions, but those are some of the bigger ones.

And I'm sure that some of the ones, other ones that I wanted to ask are probably being asked, and we're hear about it, but those are some of the concerns that we see on this campus, and some other campuses that have reached out to me as well, as far as discussions, and just the process seemed to kind of -- a little bit stringent when it came to the complainant.

And I think that has turned some of

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the complainants away from wanting to file a complaint and receive services. And, actually, in some cases, not on our campus but other campuses, students have talked about leaving school because of that.

And also, when students go on field trips, we have a lot of campus field trips, and they leave the country, and not having that jurisdiction of, even over maybe a campus event, leaving the campus, leaving the country, them still not being part of that, the process when entering the country back in, from what the new regulations say.

So those are some of the concerns that students had and that I had, and some of our deputies had, excuse me, our investigators had on this campus. And so I will relinquish the rest of my time to whoever's next in line.

But thank you very much for your time and going through this process to, I guess, get the best outcome we can for people. Thank you

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very much.

MODERATOR: Thank you, Tito. This concludes today's sessions of the public hearing. We'll begin again tomorrow morning at 9 a.m.

(Whereupon, the above-entitled matter went off the record at 7:05 p.m.)

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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.

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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

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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

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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

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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

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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.

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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

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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

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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.

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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.

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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 Prangle and I am the Director for Policy for the

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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

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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

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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

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been 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

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the DeVos guidance. Nor is there a way to provide 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

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in my Title IX investigation I might still be on 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

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guidance immediately. This is not what due 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.

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When a campus is allowed to disregard behaviors 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

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community and creates an environment where sex 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.

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Unfortunately, my campus did not go in 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

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from having a robust student activist base on 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.

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MARLEY P.: Thank you. Thank you.
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 service for students who have experienced sexual misconduct.

As a recent college graduate who is now working to pass fitted 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 world limits access to education, cultivate hostile

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involvement in violent environments, cultivate hostile environments on- and off-campus and derail student academic and long-term career goals.

Student survivors have a right to an education safe environment. It is their civil right. Three minutes is not enough time for me to explain how the current Title IX rules atrociously harm students.

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

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silenced beyond the walls of their institutions. In most case that resulted in a rule that hurt student survivors ten-fold more than it supports them.

Just as you have set a precedent of actively listening to and incorporating the feedback of most of those most impacted through holding this public hearing, you'll probably learn today to continue this practice.

We ask you to not only listen throughout this week but to raise the thought of what it looks like to incorporate the voices of those most impacted at the center of every change made. 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

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speaking.

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

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against LGBTQ people and that Title IX 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

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with my assailant were some of the difficulties of my 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

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school and being safe on campus.

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.

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And therefore, I urge the Department 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

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survivors and all of them had one thing in common, 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

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meeting him.

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

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which survivors are insensitively interrogated 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

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they need to do it.

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 Srijeanthan 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.

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To be frank, the interpretations of 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

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advisors but only telling the advisors they can 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

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on Title IX makes no effort to acknowledge 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.

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In my state we really need to have 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.)

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MODERATOR: Good morning. Anybody 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

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Department of Justice. Our 2013 Department of 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

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small to midsized campus across the nation like 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

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dismissals based on failure to raise arguments in 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.

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MODERATOR: Thank you. Next up is 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

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medication when the male respondent had 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

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assault without any hearing and ordered him 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.

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After a court ruling required a live 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

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the Department should move forward. I am an 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

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opponent and would not be automatically excluded. 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

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respondent argued that they were entitled to this 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

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criminal defense bar to ensure justice and due 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

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provide accused students with detailed, written 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

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fairness to these proceedings. Without question 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

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Title IX rules, some school officials did not 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

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may not believe this but these students could be 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

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campus sexual misconduct projects at the ABA as 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

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charges, but they have far fewer rights than 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

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complainant's testimony. If cross-examination 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

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sexual misconduct, there is too much at stake to 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.)

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MODERATOR: Good morning. First up is 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-

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examination or the hearing officer must not rely on their statements in determining 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

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and the institution in the untenable position of rendering a decision that is forced to ignore 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

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adversarial cross more than met the requirement to provide a fair process.

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,

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Title IX for All, is home to the Title IX legal database, a comprehensive hearing house of 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

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greater degree of due process accused students less frequently find the need to sue for redress. 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.

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Relatedly, notice in the form of a prehearing phase that allows both parties to 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.

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The 2020 regulations are imperfect, but they are leaps and bounds ahead of the previous system in 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

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focus, my focus on my current work is on investigation and adjudication of campus sexual 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

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the previous administration removed longstanding protections for survivors, access to support 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.

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And in the course of our research we spoke to dozens of Title IX coordinators. They 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

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survivor movement. Being an advocate was not a role I wanted to take over but it was a role that 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

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June 2020, roughly a month and a half later, my abuser filed a Title IX case against me and used 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

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trauma that was caused.

If you think the trauma ended here, 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.

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What is happening to me has been occurring to so many survivors around the country 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

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the proud parents of 15-year-old twins. We fully support the DOE enforcing Title IX protections for LGBTQ+ 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

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so that all kids are able to learn and grow in school environments which are free from 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

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this happen. This is how it should be for every student. Proper placement based on gender 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,

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he is respectfully acknowledged just like all of his peers.

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.

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(There was a brief break between speakers at this time.)

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

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that balances the interest of all parties involved as compared to previous policies.

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.

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And courts have struck this down repeatedly as being inherently unfair. Live 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

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under a Title IX process.

If a school is going to exercise 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

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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

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that cannot speak for themselves.

I went through the proper channels to 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

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respondent returned to the bus ten days after launching the investigation.

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

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mental wellness. This affects my ability to do my job and takes away the healing and learning 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

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received, to receive formal training in sexual harassment investigation. I'm asking for a 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

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historically Black colleges and universities, tribal and Hispanic serving institutions, and 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

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effects of not only having been violated by their perpetrators, but also by the very institution 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

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basis about gender-based violence and harassment and thereby understood policy and development 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

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that are culturally competent, intersectional, and properly support student survivors' continued 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.

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The Department's longstanding guidance led to greater and more meaningful 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-

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based harassment that's sufficiently serious to create a hostile environment that interferes with 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

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to provide supportive services and accommodations to the complainant as immediately as possible but 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

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afternoon. My name is Sarah Axelson and I am Vice President of Advocacy for the Women's Sports 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.

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Far too often this legislation is presented under the guise of protecting girls' and women's 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

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provides invaluable and life changing benefits that are equally important to transgender girls.

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

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few moments with our next commenter.

(There was a brief break between 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

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who have an obligation, you have an obligation to protect.

Our most vulnerable and marginalized 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

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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.

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.

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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 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?

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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 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

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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.

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

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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 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

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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 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

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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 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

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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 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

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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 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

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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 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

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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.

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

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respondents.

If the Obama administration's approach favored complainants, and the Trump administration approach favors respondents, then ATIXA members inspire to provide a neutral, 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

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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 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

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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 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

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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.

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

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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 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

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in a few moments with our next commenter.

(There was a brief break between speakers at this time.)

MODERATOR: Next up is Megan S. Megan feel free to unmute your mic and begin with ready.

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,

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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.

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

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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.

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,

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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 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

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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 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

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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.

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

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comment 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.

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

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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 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

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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 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

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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 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

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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 used to undermine Title 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

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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 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

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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.

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

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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 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

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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 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.

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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. 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

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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 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.

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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 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

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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 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 testify. 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-

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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.

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

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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.

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

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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.

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.

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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.

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.

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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 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

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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 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

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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 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

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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 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

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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.

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

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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 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.

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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, 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

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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.

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

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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 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

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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 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

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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.

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

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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.

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.

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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 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.

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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. 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.

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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.

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.

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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 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

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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 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,

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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 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

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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 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.

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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 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

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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 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

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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 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.

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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 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.

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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 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

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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 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

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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 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

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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 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

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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, 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

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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.

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

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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 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

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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 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

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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 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

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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 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.

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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 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

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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 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

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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 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.

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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 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

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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 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.

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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 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

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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 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

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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 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

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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 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.

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(Whereupon, the above-entitled matter
went off the record at 5:00 p.m.)