



Transcript of Title IX Public Hearing Notice of Language Assistance

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U.S. DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

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PUBLIC HEARING ON TITLE IX

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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 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 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 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. 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 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

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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 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

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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 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

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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 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

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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 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,

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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 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

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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 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

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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 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

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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 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

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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 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

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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 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

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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 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

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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?

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

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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,

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I couldn't wait to wake up each morning and 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 passed in order to create an equal and fair

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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 woman should have to stand on the line, walk on the court, and share a stadium, and feel as if

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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 Allison Cipriano, and I am a doctoral student researching sexual violence policy and its effects on survivors in higher education. From

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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 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

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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 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

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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 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

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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.

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

MODERATOR: Yes, Karen, we can hear 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

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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 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

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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.

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

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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 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

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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 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

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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 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

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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 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.

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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 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.

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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, 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

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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 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

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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 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

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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. 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

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institution have jurisdiction over conduct in an apartment, hotel, or personal home? The use of a biased approach, such as a trauma-informed 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

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rule. We need to give it a chance. It restores equity with fair and balanced protections for all 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.

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Let me make an analogy. In the early 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 victims to go through the traumatic and flawed

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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.

MODERATOR: Thank you. We will be back for more comments in ten minutes. Philip

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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 organization in the US dedicated to advocating for the rights of youth born with differences in their physical sex characteristics, often

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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 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

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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 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

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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.

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?

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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 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.

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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 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

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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, 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

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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 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.

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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.

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.

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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 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, medals, scholarships, and opportunities to win or participate fairly and safely. In one

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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 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

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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 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

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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 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

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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, 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

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previous speaker who noted that there must be training in school resource officers. All too often they are the ones failing to protect 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

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playing field, and allowing males to compete in 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 competition not separated by sex, the great bulk

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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 & Miltenberg where I've been litigating Title IX cases representing male respondents for the past

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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.

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

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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 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

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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 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.

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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 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

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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.

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.

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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 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

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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 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

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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 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,

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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 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

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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 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

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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 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

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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 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

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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 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

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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 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

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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 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

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seriously as the violence occurring at the higher education level. Thank you.

MODERATOR: Thank you. Next up is 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, the Department is in essence, not providing

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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. Thank you.

JEN R.: Thank you. This is Jen

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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 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.

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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 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

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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 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

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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 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

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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 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

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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 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

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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 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

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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 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

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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, 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

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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.

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

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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 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

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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 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

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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 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

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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 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

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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 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,

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and even students withdrawing from their academic programs.

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

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before. Can you hear me?

MODERATOR: We can hear you now.

Thank you.

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 --

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MODERATOR: Selina S., you're up next.
Selina, you're up. Please unmute your 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 two spots, two spots that were taken by

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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 ensure that female athletes have the opportunity to compete and win. But less than 50 years after

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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 limited rights that are granted to students.

If we want students to be protected on campus from both forms of Title IX mismanagement,

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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 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

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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 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

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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 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

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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. 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

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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 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

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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?

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

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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.

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

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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 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,

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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 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.

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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 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,

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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 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

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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 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

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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 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.

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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 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

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flow from that success. Title IX was supposed to make sure that female athletes have these opportunities in athletics.

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

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you.

MODERATOR: Thank you. Next is 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

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report to any other official at an institution 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 numbers. The girls that are playing sports face

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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 training of schools before federal funds can be annually disbursed.

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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.

Nine, support legislation to enhance the roll-in of and training for Title IX coordinators. We look forward to partnering so

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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 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

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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.

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

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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 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

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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 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

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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-Fraze. 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, 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

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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 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

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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 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

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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 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

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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 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.

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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 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

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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 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

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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 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,

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though, actually undermine our policy objectives. Notably, this includes live hearings in cases with employee respondents because most school 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

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affirm that Title IX requires schools to treat transgender students according to their gender 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

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violence back in 2012. It's 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 we are entitled.

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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.

BUDDY U.: Can you hear me?

MODERATOR: We can hear you loud and

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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 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

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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.

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

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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, 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-

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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 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

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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?

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,

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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 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

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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 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

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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 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

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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 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

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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 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

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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 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

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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?

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

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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 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

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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 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

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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 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.

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

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school from the very beginning. I know that makes me very lucky, but it also means that it 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

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the school portals. So every time there's a 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 their race. Second, dreamers' discrimination

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

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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 against them. Thank you.

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

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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 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

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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 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

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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 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

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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 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.

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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.

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

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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 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

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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 --

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

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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 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

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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 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

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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 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

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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 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

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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 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

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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 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

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core skills and concepts of communication highlighting Value and consent. De-stigmatizing and encouraging factual and accessible conversations in educational settings might also decrease the prevalence 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

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

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anxiety attacks. (audio interference) according 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 is still ongoing (audio interference) new rule is

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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.

JENNIFER G.: Thank you. My name is Jennifer M. Gomez, and I'm a professor and sexual

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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 tells us that taking away choice from victims after they've been sexually assaulted negatively impacts their mental health. In other words,

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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 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

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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, 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

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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.

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

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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 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

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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 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

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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 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

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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 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

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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 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,

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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 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.

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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 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

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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 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

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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.

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

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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.

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.

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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 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

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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 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

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through New York State, we strongly encourage and recommend the Department of Ed to adopt a similar model of encouraged collaboration between schools 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.

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We work every day to save LGBTQ young lives by providing support through 24/7 phone, chat, and 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

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was affirming, but that leaves a lot of room for 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 peers. And

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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 Justin Dillon. I'm a partner at KaiserDillon Law

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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.

And to be clear, I fully understand this is a partisan process and that you-all will

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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 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

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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.

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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 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.)