

DEPARTMENT OF EDUCATION

PUBLIC HEARING

SEPTEMBER 26, 2017

On the 26th day of September, 2017, the following public hearing was held at Salt Lake Community College - Miller Campus, Karen Gail Miller Conference Room, 9750 S. 300 West, Sandy, Utah, 84070, from 9:00 a.m. to 4:00 p.m., before Teri Hansen Cronenwett, Certified Realtime Reporter, Registered Merit Reporter, and Certified Shorthand Reporter in the state of Utah.

Collins Realtime Reporting - Dallas, Texas - 214-220-2449

P R O C E E D I N G S

MR. BRICKMAN: Good morning everyone. Thank you for being here. My name is Michael Brickman. I'm a special assistant in the U.S. Department of Education's Office of Postsecondary Education. I am pleased to welcome you to this public hearing, and I am joined at the table by Lynn Mahaffie, who is the Deputy Assistant Secretary for Policy, Planning and Innovation in the Office of Postsecondary Education.

This is the first of two hearings that we are convening to seek public input on postsecondary regulations and guidance that may be appropriate for repeal, replacement or modification, including regulations and guidance relating to federal student aid program and discretionary grant programs. The other opportunity to provide public comment is October 4th, 2017, at the Department's headquarters in Washington.

These hearings supplement other efforts to implement Executive Order 13777 entitled, "Enforcing the Regulatory Reform Agenda," and signed by President Trump on February 24th, 2017. This order established a federal policy to alleviate unnecessary regulatory burdens on the American public and directs all federal agencies to establish a Regulatory Reform Task force to evaluate existing regulations and make recommendations

1 to the agency head regarding the repeal, replacement or
2 modification.

3 The Task Force is also tasked with attempting
4 to identify regulations that eliminate jobs or inhibit
5 job creation; are outdated and unnecessary or
6 ineffective; impose costs that exceed benefits; create a
7 serious inconsistency or otherwise interfere with
8 regulatory reform initiatives and policies; rely in
9 whole or part on information that is not publicly
10 available; or derive from or implement executive orders
11 or other presidential directives that have been
12 subsequently rescinded or substantially modified.

13 Furthermore, the Task Force is directed to seek
14 input and assistance from affected entities. To that end
15 the Department has previously solicited written comments
16 from the public to help inform the Task Force's
17 evaluation of all of the Department's existing
18 regulations and guidance. Today we appreciate the
19 opportunity to hear in person your suggestions for
20 achieving these objectives.

21 The Department began work on reducing
22 postsecondary regulatory burden by establishing two
23 negotiated rulemaking committees to develop proposed
24 regulations to revise the gainful employment regulations
25 and to revise the regulations on borrower defenses to

1 repayment of federal student loans and other matters.

2 The borrower defense negotiating committee will
3 begin negotiations in November of 2017, and the gainful
4 employment negotiating committee will begin negotiations
5 in December of 2017. As a reminder, the deadline for
6 nominations for negotiators to serve on these committees
7 is this Friday, September 29th, 2017, and we look
8 forward to working with your respective communities on
9 these efforts.

10 Thank you for being here today and for
11 dedicating your time and expertise to this very
12 important process. Your perspectives are important to
13 the success of this work. As to the logistics of this
14 hearing, many of you have already signed up for times to
15 speak, and we will be calling your names at the
16 appropriate time. We have many time slots left today.
17 If you have not signed up and would like to speak,
18 please come to the table and see our ED staff. We would
19 be happy to give you a time slot.

20 Please note that this hearing is being
21 transcribed, and transcription will be posted to our
22 website in the next few weeks. Also this is a public
23 hearing, so please be aware there may also be people in
24 the audience who are videotaping or audio taping. We
25 welcome your written comments as well. If you have

1 comments here today that you would like to submit, you
2 can hand them to me or to our ED staff at the front
3 desk.

4 We have three scheduled breaks: One this
5 morning from 10:30 to 10:40, a lunch break 12:00 to
6 1:00, and a break in the afternoon from 12:30 -- I'm
7 sorry, from 2:30 to 2:40. If we don't have speakers
8 scheduled, those breaks may be extended at our
9 discretion.

10 We ask that you silence your cell phones while
11 in the room. You are welcome to use cell phones in the
12 lobby however. If you need any assistance, please speak
13 with ED staff at the front desk, and when you are called
14 to speak, please begin by sharing your name, and if you
15 are representing an organization, the name of that
16 organization. Thank you again for your participation in
17 this important effort. We look forward to hearing your
18 comments.

19 And with that we can start with the first
20 speaker, and just an apology ahead of time if I
21 mispronounce anyone's name. The first speaker scheduled
22 is Whitney Barkley-Denney for the Center for Responsible
23 Lending. Is Whitney here?

24 (No response.)

25 MR. BRICKMAN: All right. Well, if Whitney

1 joins us, she is welcome to speak. Next is Stephen
2 Graham with the Law Office of Stephen Graham.

3 MR. GRAHAM: Good morning. Thank you. My name
4 is Stephen Graham. I'm an attorney from Spokane,
5 Washington. We're a smaller law firm that does a lot of
6 representation for students on university campuses on
7 sexual assault allegations but also general disciplinary
8 matters, academic integrity.

9 So to tell you a little bit about my
10 background, I have been an attorney for about 22 years.
11 I first worked as a prosecutor for a number of years.
12 When I went into private practice, the idea of, you
13 know, working on these sexual assault cases at first
14 kind of seemed like something I wasn't necessarily
15 interested in.

16 And I kind of came upon this work by accident.
17 We would represent somebody, go to one of these hearings
18 with them, see if we could help, and I was really
19 shocked at the level of due process or the lack of due
20 process that existed on college campuses. We're taught
21 in law school that the level of due process that you
22 would receive would kind of scale depending on the
23 significance of the liberty interest.

24 And on college campuses, we had these young men
25 and women who were facing expulsion, and they would get

1 little more due process than they would get for a
2 parking ticket or speeding ticket. And when somebody is
3 kicked out of school, it's a real hardship for them.
4 They or their parents have spent, you know, a hundred
5 thousand dollars or more for this education. And if
6 they are wrongfully kicked out, they never finish that
7 degree. It's hard to get into any other school if their
8 transcript has been marked.

9 And the level of due process, the hearing that
10 we have, just really doesn't meet or match that sort of
11 importance.

12 A lot of college professors, even if they are
13 well intended, really struggle to play the part of a
14 judge. It's not easy for them to do. And even after
15 they have been doing it a number of years and receive
16 training, they make a lot of mistakes. You know, they
17 don't allow people to speak on certain subjects. You
18 know, it's a minimal part of due process, the right to
19 be heard. You know, they don't maintain the proper
20 records.

21 We have been involved in the court system
22 against Washington State University in Washington state,
23 and they have really struggled in the last few years, so
24 much that in Washington state, the courts have said,
25 "Okay. No more." And we now have administrative law

1 judges doing the expulsion cases in Washington state,
2 which really works well.

3 You know, the problem, you know, we really have
4 is when the schools want to go forward when the police
5 aren't done with their investigation. The police are
6 the ones that are, you know, testing for DNA. They have
7 all of the witness statements. A lot of times in
8 Washington they have video recorded interviews of the
9 witnesses. It's hard to obtain any of those records
10 while the investigation is going.

11 And we have the -- the schools just want to go
12 forward. They don't want to do any sort of
13 continuances. Under the Dear Colleague letter, they
14 felt mandated to kind of just railroad these cases
15 through without giving proper, you know, accord to the
16 rights of the defendant.

17 The -- you know, I can tell you a lot of
18 anecdotes of the different hearings we have. The -- a
19 lot of times there just seems to be an incentive built
20 into the system whereas these school officials would
21 just want to -- more interested in covering their back
22 side than in really giving fair due process to either
23 side.

24 We would -- obviously, in higher education a
25 lot of these administrators are extremely well paid. I

1 know the last president of WSU, when he left, he was
2 paid somewhere 800,000 a year. And a lot of these
3 administrators seem, you know, kind of more focused on
4 their own ambition and doing what's politically
5 expedient rather than what's right for these students,
6 so that's been a real frustrating part.

7 So we, you know, applaud the Department of
8 Education's, you know, reconsideration of that Dear
9 Colleague letter, the new Q and A that they have come up
10 with. Hopefully we'll have some permanent regulations
11 that will mandate more due process, such as the right to
12 have an attorney speak on your behalf, and I think
13 better training, if not trained lawyers making the
14 decisions, law-trained individuals making the decisions.
15 The right to cross-examine in some form the accuser.

16 A lot of times in Washington State University,
17 their idea of a hearing is, well, you can't subpoena the
18 accuser. And then the student disciplinary board
19 doesn't have any subpoena authority. So you can have
20 witnesses if you can, you know, ask them to come. But
21 there's really no way to require that.

22 So their idea of a hearing is, well, we'll just
23 have our investigator parrot back to the decision maker
24 what the accuser told us. And that's it. And we just
25 don't think that that's proper. And so we would

1 encourage more regulatory, you know, protections on the
2 behalf of the students.

3 I'll leave it at that. I want to thank you for
4 coming out to Salt Lake City and hearing us out in the
5 west.

6 MS. MAHAFFIE: Thank you.

7 MR. BRICKMAN: Next we have Justin --
8 mispronounce this -- Utherdad. Justin?

9 (No response.)

10 MR. BRICKMAN: Next we have Richard Saunders
11 representing himself.

12 MR. SAUNDERS: Yep. If I speak too quickly...
13 That's my second copy.

14 MR. BRICKMAN: Thank you.

15 MR. SAUNDERS: Will you hold me to five
16 minutes? Okay. My name is Dr. Richard Saunders. I
17 have been a higher education faculty member in three
18 U.S. states and am currently an academic dean at one of
19 Utah's public universities, but because my voice at this
20 public hearing represents my own view and neither my
21 employer nor the state, please understand I will not
22 name my affiliation. I speak rather as professional
23 historian who studies American social history, people of
24 the United States and the circumstances that affect
25 them.

1 I must clearly disagree with the ideological
2 assumptions behind Executive Order 13777 and oppose the
3 proposed reform the administration intends to implement
4 because it steadfastly ignores four historical
5 realities.

6 First, because it ignores the entire history of
7 U.S. education. Several years ago I studied the history
8 of public education as background for a book. States
9 created public education and public colleges after the
10 civil war and then enforced public ed in the school --
11 reinforced public ed in the school consolidation
12 movement of the 20th century.

13 Across the U.S. and largely independently, both
14 steps were replicated in every state. Why? Because
15 unregulated private education had completely failed to
16 prepare an adequately educated work force for its then
17 modern world. A comparatively few individuals did
18 succeed, but functional literacy rates in the U.S. only
19 reached 50 percent of adults in the 19 teens. Education
20 was neither widespread nor uniformly reliable in the
21 U.S. until state and federal governments established and
22 enforced educational standards and credentialing.

23 Second, the rule proposal ignores both the
24 purpose and broad outcome of regulation. The two things
25 the founders feared most deeply were a standing army and

1 corporations. For a century corporations grew without a
2 check. The entire 19th century unfolded on the premise
3 of nonregulation. As a result, the entire sordid
4 history of the American labor movement is grounded in
5 the fact that U.S. corporations have protected profits
6 and cut costs at the expense of their employees and
7 customers.

8 Corporate colleges have done exactly the same
9 thing in our day. The unrealistic promises and
10 exploitative practices of institutions like Corinthian
11 College and the self-styled Trump University defrauded
12 quite profitably at students' expense without
13 enforceable accountability.

14 From lawful public health ordinances to federal
15 court decisions, government regulations have always,
16 always, been the only force large and strong enough to
17 protect private citizens and hold corporations and
18 powerful private interests to account. Under the
19 constitution interstate commerce clause, only the
20 federal government has the stoke to adequately demand
21 accountability from for-profit institutions operating
22 nationally. Digital platforms make fraudsters slippery,
23 and governments cannot respond adequately at the state
24 or local level.

25 Third, because the country has recently tested

1 the privatization of education. Privatized local
2 education was tested in Michigan by Betsy DeVos. In her
3 native state Mrs. DeVos demonstrated an admirable
4 commitment to education reform, putting millions of her
5 own dollars into corporate-backed K-12 education. It
6 was a fair experiment that is proven an unmitigated
7 disaster for communities.

8 Investigative reports into Michigan schools
9 demonstrate not only the systematic failure of
10 privatization, but throw into glaring relief the genuine
11 harm done to employees and students under that
12 educational model. Neither the concept she has backed
13 nor the millions of personal dollars she poured into her
14 state have shown even a moderate social return on
15 investment.

16 In fact, if broad-based social improvement is
17 used as a metric, then as a social historian I have to
18 say I cannot find a single successful model of
19 large-scale educational privatization anywhere in the
20 United States. I can find thousands of failed ones,
21 both large and small.

22 Finally I oppose the federal executive's move
23 to legitimate corporatized education at the expense of
24 protecting consumers from predatory institutions because
25 it unambiguously dismisses the constitution itself to

1 advance an anti-constitution ideology.

2 The administration ignores both the country's
3 mission statement made in the Preamble and the clearly
4 stated charge in Article 1, Section 8. In both places
5 the framers said that the federal government was to
6 specifically promote the general welfare. Corporations
7 were never accepted by the framers as a means to promote
8 the general welfare.

9 In proposing the changes, the nation's
10 executive turns its back on we, the people and the
11 constitution its appointees publicly swore to uphold.

12 To conclude, if the country established public
13 education because broad-based private education failed,
14 if regulation has been the only effective safeguard for
15 the common citizen against the powerful and the corporate,
16 if educational privatization has been fairly tried and
17 has failed, and if the movement is a clear contravention
18 of the constitution itself, then clearly the proposal to
19 delay, weaken or abandon borrower defense and gainful
20 employment rules is not in the public interest.

21 Randy Weingarten spoke for teachers to the
22 Department this past July. She noted that from
23 preschool to graduate school, the students should be our
24 common ground. Their needs and aspirations must trump
25 profit and ideology. As an educator, as a community

1 member and as a parent, I wholeheartedly agree.

2 The educational future of -- the education of
3 future citizens and Americans consumer base should not
4 be judged or sacrificed on a profit margin. This
5 proposed rule change does not serve the country well.
6 Please do not allow the federal regulations currently in
7 place to be weakened. Thank you for allowing one
8 citizen a direct voice in government.

9 MS. MAHAFFIE: Thank you.

10 MR. BRICKMAN: Thank you. Is there anyone who
11 signed up for a time slot later in the day who would
12 rather speak now? And is there anyone here right now
13 who has not signed up who would like to speak?

14 (No response.)

15 MR. BRICKMAN: All right. Well, we will wait
16 for additional speakers to arrive, and if anybody else
17 would like to speak, please come up here.

18 MS. BARKLEY-DENNEY: Good morning. My name is
19 Whitney Barkley-Denney, and I am senior policy counsel
20 with the Center for Responsible Lending. We are a
21 national nonprofit that works to ensure fair, inclusive
22 financial marketplace that creates opportunities for all
23 responsible borrowers, regardless of their income.

24 Prior to joining the Center for Responsible
25 Lending where I led research and advocacy on student

1 loan issues, I worked as a staff attorney for a
2 Mississippi's school rights law firm, the Mississippi
3 Center for Justice. In my capacity at MCJ, I was the
4 alternate legal services negotiator for the 2013 Gainful
5 Employment Negotiated Rulemaking and the primary
6 negotiator for legal clearances for 2014 Programmatic
7 Integrity.

8 I am here today to strongly urge the Department
9 to continue to support a commonsense, robust regulatory
10 regime that protects the interest of borrowers and
11 taxpayers. This would include leaving in place rules
12 like the existing gainful employment and borrower
13 defense regulations.

14 The U.S. Department of Education's approval of
15 federal loans dollars is easily interpreted as a Good
16 Housekeeping seal of approval. In the eyes of students
17 and taxpayers, if the U.S. Department of Education is
18 allowing federal dollars, taxpayer money to be sent to a
19 school, that is an indication that the Department is at
20 the very least subjecting them to evaluations that
21 ensure that they're meeting their objectives and
22 adequately training students in their field of study.

23 This is especially important in training and
24 technical programs where students are seeking specific
25 and discrete employment.

1 We have seen what happens when the Department
2 fails to adequately regulate them. We can recite the
3 names and the stories by heart. Corinthian Colleges,
4 ITT, FastTrain, Marinello School of Beauty. These
5 schools were finally closed but only after years of
6 allegation of predatory behavior, terrible student
7 outcomes, and disproportionate borrower defaults. The
8 enforcement actions that led to their closure were, for
9 too many American families, too little too late. And
10 now this Department of Education is proposing rolling
11 back even those protections.

12 In August the Charlotte School of Law was added
13 to this inglorious roster, a school that had been dogged
14 for years by sky high tuition, dismal bar passage rates,
15 and low student placement percentages. And they were
16 closed only because the State of North Carolina stepped
17 in to protect their own students from this failed
18 institution.

19 In fact, just two weeks before their closure,
20 Charlotte School of Law announced to the press and
21 former students that a deal with the Department of
22 Education to restore student loan aid was imminent.
23 Because the school closure was so slow, students who
24 left the law school when their accreditation was first
25 revoked are now possibly outside the window for a closed

1 school discharge for their student loans. And given
2 that the announcement that borrower defense to repayment
3 will be renegotiated, one has to wonder, will these
4 students be stuck paying back loans from a failed
5 for-profit school that was given too many chances?

6 The issues with institutions like Charlotte
7 School of Law, ITT, and Corinthian are not new or
8 surprising. Students and taxpayers can expect more of
9 the same if we simply allow for-profit colleges to
10 continue operating in the same way they always have.

11 Over the past several years, research from the
12 center has consistently and clearly found that student
13 loan borrowers who attend for-profit colleges have more
14 debt and higher default rates when compared to their
15 public school peers.

16 In terms of the disproportionate impact on low
17 income individuals, our research found that an average
18 of 61 percent of students -- time? Oh, sorry. Who
19 attended all for-profit colleges in Colorado,
20 Connecticut and Maine rely on Pell grants, as a proxy
21 for low incomes, compared to 44 percent of students at
22 public peer institutions. In those same states, the
23 average for-profit borrower who graduates leaves school
24 with \$10,000 more in student loan debt than their public
25 school peers.

1 Unfortunately for many for-profit college
2 students leaving school with heavy loan debt haven't
3 graduated. Our research in two states, Connecticut and
4 Colorado, found that only 30 percent of for-profit four
5 year college students actually complete their educations
6 as opposed to 50 percent of those who attend four year
7 public colleges. It's little wonder then that those
8 for-profit four year students had nearly two and a half
9 times the loan default rates of their four year public
10 peers.

11 The sorry picture the for-profit industry in
12 this research reveals is hardly limited to a few states.
13 What we are finding as we compare non-profit and
14 for-profit schools state by state is that the problems
15 with for-profit schools are ubiquitous. They are not
16 contained to one school or one region, and they are not
17 improving. Instead, they are consistent across states
18 and across the country. High cost, poor outcomes, and
19 leaving students deeply in debt without the skills
20 necessary to show gainful employment.

21 Beyond showing that poor for-profit outcomes
22 fall disproportionately on the poor, research from CRL
23 and others has found that minority students and women,
24 in particular, are seriously overrepresented at
25 for-profit schools. The overrepresentation of women and

1 people of color in these institutions that leave
2 borrowers with unmanageable debt is even more concerning
3 when one considers that women, and particularly women of
4 color, are disproportionately affected by the student
5 loan debt itself.

6 In fact, a recent study by the American
7 Association of University Women has found that women
8 hold two thirds of the nation's outstanding student loan
9 debt. First generation students, students of families
10 and students of color are better served by much lower
11 cost community colleges and HBCUs that offer real
12 student services and remedial classes resulting in
13 better job completion and job prospects.

14 Of course, there are real people behind our
15 research. In May and June of 2017 CRL conducted focus
16 group inquiries with former for-profit students in
17 Florida. Here is what one student had to say.

18 "Strayer is like the University of Phoenix.
19 The people do everything for you. They do the loans for
20 you. They do all that for you. They don't care how you
21 are going to pay it back. You get this notion that you
22 go to school and you get this big degree and you get
23 this beautiful job. It doesn't work like that. When
24 you go to schools for profit, they aren't telling you
25 about the loans. They just want your money. They are

1 not going to sit here and say, 'Well, you just get this
2 right here, you are going to have this much interest and
3 you are going to have this much debt when you get
4 finished.'"

5 The gainful employment rules finalized in 2014
6 have already begun to improve outcomes in our nation's
7 for-profit colleges. Colleges have begun to eliminate
8 their worst-performing programs, to freeze tuition and
9 implement other reforms to improve outcomes for their
10 graduates.

11 However, here in Utah, we have a great example
12 of the urgent need for continued reform. At Broadview
13 University, a for-profit university with five campuses
14 in this state, a two year paralegal degree program costs
15 more than \$34,000 in tuition and fees, but graduates
16 from that program can't expect to make more than \$24,000
17 a year. It's little wonder that this school has a 20
18 percent three year cohort default rate.

19 The Department of Education has a
20 responsibility to students and taxpayers to assure that
21 they are not defrauded when they are attending a
22 Department approved school. And if they are defrauded,
23 the Department can and must make it right. Thank you so
24 much for your time and attention.

25 MR. BRICKMAN: Is there anyone else who has a

1 scheduled time slot who would like to speak? Or anyone
2 else who has not signed up and would like to speak?

3 (No response, and no one spoke from 9:36 a.m.
4 to 9:44 a.m.)

5 MR. LITCHFIELD: Larry Litchfield is my name.
6 I'm the vice president of academic affairs at Ameritech
7 College. It's a private for-profit college here in
8 Utah. I would speak on behalf of the proprietary
9 sector. I recognize that there are some actors. They
10 have been identified already as bad actors in the
11 education arena. In fact, at one point I did work for a
12 college that was purchased by one of those institutions.
13 You notice I said that in past tense. I no longer work
14 for that college.

15 So I just wanted to give a little bit of
16 information about our institution in particular just so
17 that you can understand that there are some proprietary
18 for-profit schools who really try to do a very good job.
19 We have been in business since 1979. We have gone
20 through a few changes in our structure and programs and
21 whatnot, but basically we have been trying to serve the
22 community as far as programs in health care. That's
23 exclusively what we operate in. Nursing is our largest
24 program.

25 We have a total population of about 600

1 students, again, most of which are associate degree
2 nursing students. We also have an RN to BSN degree
3 completion program that is exclusively online. We have
4 a dental -- or sorry, medical assisting program, a
5 dental laboratory technician program, and a recent
6 occupational therapy assistant program that we have
7 established.

8 Any time we put in a new program, we are
9 mandated not only by our accrediting body but by our
10 executives that we research very carefully to make sure
11 that this program is something that there is a need for,
12 that, A, we could have students that are interested in
13 the program. But even more important than that, by the
14 end of their program, they can go into the field and
15 have a -- and have a good paying job and fill a market
16 niche.

17 So having said that, obviously, one of the
18 processes we go through with our financial aid is to
19 make sure that students understand what the difference
20 is between grants and loans, make sure they understand
21 that the loans they will be paying back, how much they
22 will be paying back. In fact, with our nursing program,
23 they only get about 50 percent of the program as far as
24 federal government money is concerned. They have to
25 come up with the rest of the money either out of their

1 pocket or some other means.

2 So our -- I am trying to remember the latest
3 figures now. Again apologize in the fact that I wasn't
4 prepared to present today. So this is all just going
5 off the top of my head right now. As far as our 90/10 is
6 concerned, we are not even remotely close. We're about
7 58 percent is basically our level right now.

8 So we go through quite a process. We screen
9 our students very carefully. It's not a case of, if you
10 are alive, you are good for five. If you use a pen, you
11 are good for ten. We do not go by that model at all.
12 In fact, we have our students go home and really think
13 about it, if they really want to attend our programs or
14 not. And we don't accept all of the students. In fact,
15 most of -- or not most. Several of our applicants are
16 turned away. We just don't accept everybody.

17 We really do a very good job of educating our
18 students. We have very rigorous programs. They are
19 accelerated. We are here to fill a shortage in the
20 nursing program, especially in our state. The public
21 schools were not able to provide all of the nurses that
22 are necessary, and so we have stepped in to fill that
23 niche.

24 We make sure that our students are counseled
25 all the way through the process so they know exactly

1 what they are getting into, they know exactly what they
2 are signing up for, go through loan counseling before
3 they start. At the end of the program we go through the
4 exit counseling as well with our students so they
5 understand the amount of debt that they will have and
6 the repayment liability that they, of course, will have.

7 In terms of -- in terms of our outcomes, we
8 have, almost at any given time during the course of the
9 year, we have a retention rate that is over 95 percent
10 of our students. Our placement rates at the end of
11 graduation run anywhere from 90 to 95 percent. We have
12 employers in the community that are begging us for more
13 grads, and in fact, our graduates a lot of times are
14 preferred over some of the other schools.

15 We have, as far as our NCLEX pass rates are
16 concerned for first-time pass rates, right now we're
17 running at 92 percent. A year ago we ran for the whole
18 year at 95 percent first-time pass rate.

19 Again, I am not disputing the need for controls
20 because there were and there probably still are some
21 actors out there that are just run-away trains just
22 for -- heading for a crash. I get the fact that some
23 are just all about the money. They are businessmen.
24 They are not educators. They really want to just take
25 the students' money and just run them through as fast as

1 they possibly can. I get that.

2 I am not arguing that. All I am saying is, not
3 all of us operate that way. Some of us have some very
4 solid programs. We are very caring individuals. We
5 work very hard to make sure that our students are well
6 trained, well-educated and that they can go out and be
7 very successful.

8 And our nurses are up against all of the other
9 nurses in the community, and they all start at the same
10 rate. They don't have lower pay rates, and they can
11 make very good money for their families and support
12 their families and be able to pay back their loans. So
13 I appreciate your time. Thank you so much.

14 MS. MAHAFFIE: Thank you.

15 MR. BRICKMAN: Is there anyone else here that
16 still wishes to speak?

17 (No response, and no one spoke from 9:51 a.m.
18 to 10:25 a.m.)

19 MS. BITTER: Clearly I am new to this. So my
20 name is Caroline Bitter, and I'm from Salt Lake
21 Community College. I'm the assistant director of
22 compliance and training, and my director asked me to
23 come and sit in and listen. And she asked one thing
24 about gainful employment.

25 She was just kind of wondering if you guys --

1 if the Department of Education was going to be looking
2 at reducing the regulatory requirements for gainful
3 employment, if that is in the works, if that's in
4 consideration, because we are a community college. We
5 do credit and clock hour, so we have a fair amount of
6 programs that we do have to report on.

7 COURT REPORTER: I'm sorry. Could you spell
8 your last name?

9 MS. BITTER: Oh, Bitter like the taste,
10 B-I-T-T-E-R.

11 MS. MAHAFFIE: Thank you very much. And to
12 answer your question, yes. We have announced that we
13 are going to do a negotiated rulemaking to take another
14 look at the gainful employment regulations. All of the
15 Title IV regulations are done through a negotiated
16 rulemaking process where we bring in representatives of
17 various constituents to negotiate the rules with us.

18 And we have announced that, and as a matter of
19 fact, we have requested nominations for negotiators by
20 September 29th. So that's coming up very soon. So if
21 anybody is interested in being a negotiator, please
22 nominate yourself or your colleagues. And we will be
23 looking at that, and certainly through that process, the
24 regulatory burden will be a factor that we are looking
25 at. Thank you.

1 We'll do a 10 minute formal break now, and if
2 we don't have anybody by 11 o'clock, we'll extend the
3 lunch break to have it be from 11:00 to 1:00. We do
4 have people signed up to come at 1:00 in the afternoon.
5 Thank you.

6 (Recess from 10:30 a.m. to 10:58 a.m.)

7 MS. MAHAFFIE: Okay. We're going to go ahead
8 and break for lunch until one o'clock. We do have a few
9 people scheduled to speak at one. Enjoy your lunch.

10 (Lunch Recess from 10:59 a.m. to 1:00 p.m.)

11 MR. BRICKMAN: All right, ladies and gentlemen
12 we're going to get started again. We have a handful of
13 speakers ready to go. First, just a couple of
14 housekeeping items. The first item is to again,
15 remember this meeting is being transcribed, so we ask
16 that you please present clearly and speak into the
17 microphone so that your words can be accurately
18 reflected in the final transcription.

19 Next, we will have a brief break between 2:30
20 and 2:40, and we expect to quit around four. But if we
21 have gotten through most of our speakers, we may extend
22 that break. But we still will be concluding at four.

23 Once we start with the first speakers, if you
24 have not signed up yet and would like to speak, please
25 come find me or my colleague Lynn. And we'd be happy to

1 get you on the list. So with that, we have the next
2 speaker, who is Nicholas Wolfinger from University of
3 Utah. And I understand he would like to speak at the
4 lectern, and that's fine.

5 MR. WOLFINGER: Just so I have a place to put
6 my computer. Thank you and thank you for having me
7 today. My name is Nicholas H. Wolfinger, and I'm here
8 to talk about Title IX.

9 I'm a tenured professor at the U where I have
10 taught for about 20 years. My remarks today are an
11 excerpt from an article I published last month in
12 the magazine Quillette. Please ask me afterwards if you
13 like more information.

14 I support the broader aims of Title IX with
15 respect to gender equity in higher education. Indeed,
16 my 2013 book, "Do Babies Matter? Gender and Family in
17 the Ivory Tower," address the barriers that female
18 academics often face.

19 That having been said, I think the Department
20 of Education's 2011 letter to American universities, now
21 infamous as the Dear Colleague letter, has perverted the
22 original intent of Title IX by turning higher education
23 into a gigantic star chamber that tramples the rights of
24 faculty and students alike in a misguided crusade
25 against sexual violence.

1 The Dear Colleague letter authorized campus
2 tribunals against those suspected of sexual assault or
3 harassment using the lowest possible burden of proof,
4 the preponderance of evidence standard. This has
5 sometimes been called 50-50 and a feather.

6 The Dear Colleague letter also set up a federal
7 registry to shame universities and threaten them with
8 the loss of federal funds if they didn't show adequate
9 vigor in ferreting out perceived sexual harassment
10 through violence on their campus. The stage was thus
11 set for a witch hunt. Colleges had every incentive to
12 prove -- pursue any charges filed on campus no matter
13 how flimsy, and they needed to do this or face the wrath
14 of the federal government.

15 This is how I found myself facing charges last
16 year for telling a colleague that I had proposed to my
17 wife at a strip club. It didn't matter that I had told
18 her and several other colleagues this in the late 1990s
19 off campus and over drinks. It still showed up in my
20 complaint. I find it very probable that she was
21 actually offended. Instead, she was simply settling a
22 score.

23 The dossier my university presented against me
24 also included allegations of an unnamed reporter who had
25 called my academic department to complain about

1 something I had said to her. What reporter? I have
2 talked to hundreds of them in the course of my career.
3 What had I said? I don't have a clue. Potty mouth is a
4 good bet since it often is with me.

5 But I knew nothing. All I knew was that a
6 reporter called to complain. I didn't know the answers
7 to my other questions, and I never will. In fact, I
8 don't even know if I had ever even talked to this
9 journalist, or for that matter if she is actually a
10 journalist. All I know is that someone contacted my
11 department to complain about me, and the university saw
12 fit to include this evidence into official proceedings.

13 It is hard to imagine anything that could have
14 a more chilling effect on scholarly research and
15 teaching than the prospect that anyone can contact your
16 university to complain about anything you said at any
17 time.

18 I also stood accused of gender bias. What was
19 the evidence? At one point in a faculty meeting two
20 years ago, I had criticized my department at the
21 University of Utah. More specifically, I had shown
22 support for an outside committee that had criticized my
23 department. This indirect criticism of my department
24 was construed as gender bias because my department head
25 is a woman. It doesn't matter that she might have been

1 my best friend in the department for years.

2 Ultimately, I was exonerated after a review
3 process that lasted several months. And I was very
4 lucky. Many faculty careers have been ruined, and many
5 students have been expelled from college. My costs were
6 limited to all the time I wasted writing memos and
7 responses and the \$14,000 I paid in attorneys' fees.

8 Contrary to what Washington senator Patty
9 Murray and others have insinuated, reforming Title IX
10 isn't about giving rapists a free pass. Justice for
11 victims of sexual assault should come from the legal
12 system, not kangaroo courts that are ill equipped to
13 adjudicate felony charges.

14 Indeed, the relished pursuit of offenders for
15 non-offenses, just kissing one's sleeping boyfriend,
16 which was actually the basis of charges at Brandeis
17 University, charges like that are an insult to people
18 who have actually survived sexual assault.

19 Education Secretary Betty DeVos has proposed
20 sensible reforms to stop this miscarriage of justice
21 that has ensued from the Dear Colleague letter. It's
22 high time her suggestions were implemented. Thank you
23 for your time.

24 MR. BRICKMAN: Next we have Cheryl Kesson from
25 Champion College Services.

1 MS. KESSON: Hi. Thank you. My name is Cheryl
2 Kesson, and I am from Champion College Services. We are
3 a default prevention company located in Phoenix,
4 Arizona. And I am here to review some suggested changes
5 regarding five different regulations submitted in detail
6 by our CEO, Marilyn Hammer, in our written comments.

7 Our first suggested regulatory change is
8 regarding mandates for student loan payment application.
9 We suggest that we remove language that is harmful to
10 federal student loan borrowers who are making payments
11 in excess of the required monthly payment amount and
12 replace it with regulatory language that ensures
13 prepayments are applied to reduce costs and financial
14 burdens for students.

15 The current regulations give lenders and
16 servicers the discretion to apply payments in excess of
17 the required monthly payments towards future payments.
18 Not only is this against the law in some states but
19 encourages predatory practices that harms students.
20 Lenders and servicers should be mandated to apply
21 excessive payments to principal reduction unless
22 specifically instructed otherwise by the borrower.

23 Next is a suggested regulatory change for
24 mandates for default prevention plans. The current
25 regulations have no defined end date for institutions

1 that successfully reduce their cohort default rate after
2 being mandated to develop and implement a default
3 prevention plan.

4 Some schools that were mandated to have a plan
5 in place not only have their three most recent official
6 cohort default rates under the threshold, but they also
7 have several additional years under the thresholds.
8 These schools are not receiving notices to release them
9 from any mandated obligations.

10 Default prevention plans have to be malleable
11 in order to adapt to both the programs being taught and
12 changes caused by severe economic conditions. Mandates
13 should be lifted in a specific period of time for when a
14 school has been successful in lowering their default
15 rates under the thresholds. This reduces labor and
16 financial burdens for the schools, the Department,
17 auditors and taxpayers.

18 Our third suggested regulatory change regards
19 corrections for default statuses processed in error.
20 Beginning in 2014 the U.S. Department of Education
21 adjusted cohort default rates for those schools in
22 jeopardy of losing Title IV funding by excluding from
23 the calculation those defaulted loans where one or more
24 of a borrower's loans were in default status while at
25 least one of the borrower's loans remained in current

1 status for a period of at least 60 consecutive days.

2 A reasoning for the adjustments was that these
3 defaults were a result of poor servicing that led to
4 inappropriate default claims. The primary concern is
5 that corrections have never been made for both students
6 and parent student loan borrowers, even though they have
7 suffered severe consequences from these defaults.

8 The secondary concern is that all institutions,
9 not just those in jeopardy of losing funding, were
10 affected by these defaults that should have not been in
11 default status in the first place.

12 The request for regulatory changes is twofold.
13 One, a process for reversing default statuses needs to
14 be defined and two, a CDR correction process for all
15 affected institutions.

16 Our fourth is for mandates for third party
17 servicer audits. Third party servicers and the criteria
18 for their compliance audits have been defined in law and
19 regulation since 1994. Interpretations of these
20 definitions were applied consistently in statute
21 regulation and many versions of the student aid handbook
22 until July 9th, 2015, when the Department of Education
23 changed their compliance audit interpretation through a
24 Dear Colleague letter.

25 These changes from ED expanded historic

1 definitions and applications of very specific third
2 party functions directly related to student aid funding,
3 required additional functions, and included many
4 nonrequired functions and companies that had never been
5 subject to third party compliance audits before.

6 ED does not have the authority to substantially
7 change laws and regulation without a statutory change or
8 a negotiated rulemaking process. The thousands of
9 companies affected by these changes did not have an
10 opportunity to negotiate or give public comments.
11 Furthermore, the OIG audit guide lacks criteria and
12 guidance for these newly defined audits to be completed.
13 To date many functions that are defined as regulatory
14 requirements have been included in ED's training
15 materials, and yet in the most recent OIG audit guide
16 published in September of 2016, there is still no
17 clearly defined criteria for audits.

18 Our last topic is for the expansion of loan
19 servicing appeals. The -- we suggest that we expand the
20 criteria of loan servicing appeals to identify issues in
21 loan servicing. Since the beginning of the student loan
22 program, harmful situations have occurred to student and
23 parent loan borrowers with significant consequences to
24 the institutions serving the students and taxpayers. In
25 most cases these situations are discovered after a

1 significant amount of damage has occurred.

2 By expanding the criteria of loan servicing
3 appeals to identify issues in loan servicing, the
4 Department of Education will have pertinent knowledge of
5 issues earlier in the process and will be able to take
6 corrective actions to limit the damage and costs
7 involved. This will help ensure higher quality
8 servicing for students and reduce administrative costs.

9 Early intervention to ensure proper quality
10 loan servicing would have many benefits, including
11 preventing student loan borrowers from the severe
12 consequences of default, allowing schools to properly
13 respond to cohort default rates based on their
14 performance and not inflated default rates. And it
15 would save the taxpayers money because servicing current
16 loans is less expensive than servicing defaulted loans.

17 The goal of expanding loan servicing appeals is
18 to ensure proper quality loan servicing that protects
19 the fiscal interest in the borrowers' rate to a full due
20 diligence servicing period. Detailed suggestions for
21 all the amended regulatory language have been submitted
22 in our comments, and I have copies for you here today as
23 well. Thank you.

24 MR. BRICKMAN: Okay. Next we have Bob Collins
25 with Western Governors University.

1 MR. COLLINS: Good afternoon. Welcome to Salt
2 Lake City. My name is Bob Collins. I'm the vice
3 president of financial aid for Western Governors
4 University headquartered here in Salt Lake City. Thanks
5 for being in our back yard.

6 I have been an active financial ED
7 administrator for more than 35 years. I am active in
8 the state and national and regional association of
9 financial aid professionals, and I have also been a
10 member of several negotiated rulemaking sessions as
11 well.

12 I would like to go on the record of endorsing
13 the recommendations made by the National Association of
14 Student Financial Aid administrators. I'll submit those
15 with my comments, but I would like to speak to the
16 experimental sites initiatives.

17 Excessive student loan debt is a serious
18 problem for students and the economy. In an effort to
19 provide students with information that will help them
20 understand the impact of their borrowing, WGU launched
21 its Responsible Borrowing Initiative in July of 2013, by
22 providing more information to students about their loans
23 and recommending students only borrow what they need,
24 not the maximum allowable amount.

25 The ultimate goal of the RBI program,

1 Responsible Borrower Initiative, is to promote
2 responsible borrowing and reduce student loan debt
3 without waivers of law or regulation. With the simple
4 business process change, the results after four years
5 demonstrate a significant reduction in student borrowing
6 at WGU, lowering the average borrower indebtedness from
7 five years ago at \$21,000, a little over \$21,000, to
8 just slightly over \$16,000 for the most recent
9 graduating class of undergraduate students. Significant
10 reduction.

11 So in June of the 2012, the U.S. Department of
12 Education accepted Western Governors University as a
13 participant in the experimental sites initiative. This
14 one was to limit the amount students borrow in federal
15 loans. Schools accepted to participate in the
16 experimental sites have waivers of certain regulations
17 to experiment with the federal student aid delivery
18 system comparing the outcomes of the target group with a
19 control group.

20 This particular experiment would allow an
21 institution to establish a written policy where for
22 students enrolled in a particular educational program or
23 on some other categorical basis, it would reduce by at
24 least \$2,000 the amount of an unsubsidized direct loan
25 that the otherwise eligible student would receive.

1 So WGU wants to ensure incoming transfer
2 students have sufficient federal funds to complete the
3 program of study without exhausting eligibility based on
4 federal aggregate student loan limits before graduating.

5 WGU conducted research of empirical data to
6 analyze the persistence and graduation rate of WGU
7 incoming transfer students with significant amounts of
8 outstanding principal balance in federal student loans
9 from attendance at prior colleges.

10 So based on this empirical data on this
11 analysis, for new students starting on or after January
12 2013, the selection criteria for students in our target
13 group would be undergraduate students with an
14 outstanding principal balance of \$30,000 or more from
15 prior colleges. They would be limited to essentially
16 direct costs only, \$6500 per academic year.

17 For graduate students if they had a outstanding
18 principal balance of \$40,000 or more, they would be
19 limited to roughly direct costs of \$7500 per academic
20 year.

21 WGU continues in this limiting unsubsidized
22 loan experiment, and we have more than 12,000 borrowers
23 in that target group currently. And the idea is to help
24 inform the Department of Education with evidence-based,
25 data-driven decision making for revisions to future law

1 and/or regulations.

2 So as stated earlier, we participated in the --
3 we launched a Responsible Borrowing Initiative in July
4 of 2013 to recommend students borrow only unmet direct
5 costs. A majority, significant majority of our
6 students, accept the recommended loan amounts. Roughly
7 two thirds of our students accept what we recommend.

8 So in July of 2014, WGU implemented the unequal
9 disbursements experiment in situations when direct costs
10 will vary in the academic year. For example, certain
11 nursing programs have a one-time science fee in the
12 first term, and certain teachers college programs have a
13 demonstration teaching or practicum fees at the end of
14 the program. The unequal disbursement experiment allows
15 these students to pay direct costs when the costs are
16 due without borrowing in excess because of equal loan
17 disbursement rules.

18 Another situation occurs which require multiple
19 disbursements for one-term awards in the six month
20 payment period. Students in these situations need more
21 funding upfront for technology costs or other
22 education-related expenses, and the unequal disbursement
23 experiment accommodates those students, notwithstanding
24 the 75/25 percent split, the required split.

25 Additionally, students reaching their Pell

1 lifetime eligibility could use -- also benefit from
2 unequal disbursements without excessive borrowing.

3 The cumulative data is overwhelmingly
4 consistent with our initial intent. 74 percent of the
5 target group are in a nursing or teaching college. 79
6 percent of the target group accepted recommended loan
7 amounts. In other words, thousands of WGU students are
8 borrowing only what they need, and they get the money
9 when they need it.

10 Generally, the remaining 26 percent of the
11 target population have one-term loans. They are at the
12 end of the program or have met their lifetime
13 eligibility for Pell or need additional allowance for
14 educational costs.

15 It is important to note the multiple
16 disbursement requirement for one-term loans is a common
17 occurrence for WGU students. ED regulations on the
18 other hand allow a single disbursement for one-term loan
19 periods of four and a half months or less. If the loan
20 period is greater than four and a half months, the
21 multiple equal disbursement rule applies. Because WGU
22 has a six month payment period and six month term, we
23 must make multiple disbursements of equal amounts, even
24 though we charge tuition and expect payment in full at
25 the beginning of the term.

1 Unfortunately, the Department sunset this
2 experiment in June of 2016 because of the low
3 participation rates. Only 10 schools were
4 participating. WGU respectfully requests
5 reconsideration of this regulation for several reasons.
6 First and foremost, the experiment is doing exactly what
7 we expected, meeting the needs of students to pay direct
8 costs when those costs are incurred without over
9 borrowing.

10 Second, while we are one of 10 institutions, we
11 had nearly 12,000 WGU students that took advantage of
12 this and benefitted from this waiver. The initial
13 results and outcomes are compelling evidence of success.
14 Without this waiver, students are inclined to borrow
15 more than necessary.

16 Third, the one-term greater than four and a
17 half month loan period multiple disbursement rule simply
18 does not make sense in a nontraditional educational
19 model. WGU looks forward to working with the Department
20 to implement regulatory reform and to provide relief to
21 students as well as institutions and other stakeholders
22 while continuing to safeguard program integrity. Thank
23 you.

24 MS. MAHAFFIE: Thank you.

25 MR. BRICKMAN: And our final registered speaker

1 is Marion Noble, Families Advocating for Campus
2 Equality. After Marion speaks, if there's anyone else
3 who would like to speak, come and register.

4 MS. NOBLE: Hi. Would you be okay if I use the
5 podium?

6 (Discussion off the record about speaking at
7 the podium.)

8 MS. NOBLE: Hello. My name is Marion Noble.
9 Thank you for allowing me to share my experience of the
10 impact of Title IX on our family.

11 I am a survivor. I am a 30 year survivor. I
12 know what it means to be violated. I know what it's
13 like to be afraid to tell anyone what happened for fear
14 that I would not be believed. And even worse, that I
15 might be blamed for what happened. At the time I told
16 only one girlfriend that I had been raped by a man on
17 our second date. Back then women didn't feel safe going
18 to people in authority for help.

19 More urgently, however, I am also a victim from
20 which I will never heal completely. I have experienced
21 something far worse than my being raped. I have been
22 victimized by a corrupted Title IX process that
23 devastated our family and destroyed my son. Sorry.
24 That's why I needed the podium. My faith in humanity
25 and justice has been shaken to its core.

1 Six weeks into his freshman year, Charlie drank
2 hard alcohol to excess and had a sexual encounter with
3 Sally, a woman who attended the all-female sister school
4 next to his college. Charlie and Sally attempted to
5 have intercourse multiple times for close to two hours,
6 but Charlie was too drunk and was not able to maintain
7 an erection so the condoms kept falling off. Sally
8 admittedly gave him repeated oral sex to try to make it
9 work.

10 Sally, on the other hand, had not had any
11 alcohol to drink, although she later claimed she was
12 drunk, but her text message to her girlfriends would
13 prove otherwise. After sobering up, Charlie pretended
14 he was not able to recall having gotten together with
15 her the previous evening. He just wanted to put this,
16 his first sexual experience, behind him. So in the
17 morning a couple hours later Charlie texted Sally asking
18 about the previous night. Sally texted back, quote, we
19 did it 10 times, dot, dot, dot, and it was more than 10.
20 I just lost count.

21 Sally was cheery and made arrangements to get
22 together with Charlie in person that same day. When
23 they got together, she gave him a gift, a prized comic
24 book, something that they loved. They both loved
25 comics. Wrapped in cellophane, which she thought he

1 would really like. She later texted him about getting
2 together so that Charlie could teach her about DC Comics
3 and she could teach him about Marvel Comics.

4 That same day she revealed her feelings for
5 Charlie through texts she sent to two girlfriends. And
6 I won't quote them because it may be too -- she just
7 wanted Charlie. "I just want Charlie. Hee, hee, haw,
8 haw. But I have to hope for the best but prepare for
9 the worst," to one girlfriend. Next one, "I think he's
10 so hot," all in capital letters. She is going crazy.
11 Going -- he is so hot. Winkie emoji. "I just hope he
12 will go for me."

13 This is the same day that they had completed
14 their sexual encounter. She and Charlie got together a
15 few times privately but never again had another sexual
16 encounter. They remained on friendly terms and would
17 see each other at various dorm and campus parties.

18 She even added him to Snapchat a month after
19 the sexual encounter. She attended Charlie's 19th
20 birthday party, and that was four months after the
21 sexual encounter. She happily participated in throwing
22 him in the fountain at the school, which was a
23 tradition, birthday tradition for anybody who had a
24 birthday. She followed that with a warm wet embrace.

25 One can imagine that it came as a complete

1 shock to Charlie that five months after their sexual
2 encounter Sally filed a Title IX sexual assault claim
3 against him. Charlie was perplexed and horrified all at
4 the same time. The official letter from the Title IX
5 office informed Charlie that he had been accused of
6 sexual assault, but the letter was otherwise silent
7 about the factual basis or the particulars of this
8 accusation.

9 When he asked the attorney, slash, investigator
10 the college had hired to conduct the investigation, he
11 asked to see the complaint. She told him there was
12 nothing to see. So therefore, Charlie was never given
13 notice of what exactly he was accused of, and he had no
14 possible way of knowing.

15 The attorney, slash, investigator conducted a
16 total of three interviews of Charlie. All of these
17 interviews were conducted before he was ever told what
18 he was actually accused of, apart from the vague
19 categorization of, quote, sexual assault.

20 Meanwhile, the investigator passed along the
21 key elements of Charlie's testimony to Sally. Summaries
22 of Sally's testimony prepared by the investigator
23 clearly revealed how Sally kept changing her story to
24 directly counteract anything that Charlie said. All the
25 while Charlie was kept completely in the dark.

1 Once the preliminary report was issued two
2 months after the complaint was filed, Charlie was
3 finally given the specifics of the accusation. The
4 Title IX office refused nearly 100 percent of Charlie's
5 requests for additional questioning, including follow-up
6 questions of Sally and a re-interview of himself.

7 Not until Charlie read the preliminary report
8 did he become aware that there was one key witness
9 noticeably missing from Sally's witness list. A
10 girlfriend of Sally's had accompanied her the day after
11 their sexual encounter to both the on-campus health
12 center and off-campus urgent care. The absence of this
13 witness strongly suggested that this girlfriend's
14 testimony could have or would have further undermined
15 Sally's false allegation of, quote, rough sex and
16 bruising from Charlie supposedly holding her down to
17 assault her.

18 This girlfriend could have also shed light on
19 Sally's feelings for Charlie, given the amount of time
20 the two girlfriends spent together that day. But the
21 college refused Charlie's request to interview the
22 single most knowledgeable witness apart from Charlie and
23 Sally themselves.

24 In a he-said, she-said case where the lowest
25 possible standard of preponderance of the evidence is

1 used, the college's refusal to interview this key
2 witness deprived Charlie of even a semblance of due
3 process. The college review panel chose to disregard
4 the medical report that showed that Sally was lying
5 about her purported injuries. The medical report from
6 urgent care stated, quote, exam is unremarkable, end
7 quote.

8 Sally texted Charlie right after leaving urgent
9 care, and she said she was diagnosed with a ruptured
10 vain. The report stated, assessment, semicolon,
11 menstrual disorder, end of quote. This was certainly to
12 be expected since Sally had taken Plan B immediately
13 after the sexual encounter to avoid pregnancy, since she
14 didn't want to get pregnant with the condoms falling
15 off, and bleeding is a known and expected side effect
16 after taking Plan B.

17 Also, per California penal code 11160, medical
18 personnel are required to report any suspected sexual
19 assault to the authorities. And if they don't, they can
20 have their licenses revoked. No such report was made
21 because there was no suspicion of sexual assault.

22 Amazingly, while denying Charlie due process,
23 the college allowed Sally to admit into the record nine
24 additional pages she wrote of clarifications, in quotes,
25 and corrections, in quotes, to the testimony provided by

1 other witnesses.

2 Finally the attorney hired by the college to
3 serve as the investigator, one, conducted all the
4 interviews and prepared the preliminary investigation
5 report; two, prepared the final investigation report
6 from which the panel drew its conclusion; three, this
7 person served as the head of the three person review
8 panel along with two faculty members; four, had one of
9 the three votes in making the finding of responsibility;
10 and, five, drafted the written findings of the review
11 panel.

12 In other words, the college assigned to a
13 single outside attorney investigator, assigned the
14 multiple roles of police investigator, jury foreman and
15 judge. Charlie's fate was thus placed in the hands of a
16 single person, a person hired to manufacture a finding
17 of responsibility regardless of the facts.

18 Charlie never had the benefit of a formal
19 hearing held before the review panel. There was no
20 hearing at all. Incredibly, the Title IX office at his
21 college drafted a response to Charlie's appeal during
22 the summer, submitted it to the record as if Sally had
23 written it. Sally was unavailable. She was -- it was
24 during the summer. She may not even be aware the
25 college did this. In other words, the college Title IX

1 office acted as an advocate and counsel for Sally.

2 Charlie was ultimately found responsible and
3 suspended for one year. The finding came as a complete
4 shock. He believed that because the hard evidence
5 clearly showed the sex with her had been entirely
6 consensual, she wanted him as a boyfriend, there would
7 be no finding of responsibility. Charlie had all along
8 clung to the belief that the truth would ultimately
9 prevail and he would be exonerated.

10 When he was not exonerated, he could not wrap
11 his mind around how a kangaroo court could exist in the
12 U.S. and be permitted to completely ruin his life.
13 Charlie found that life was no longer worth living, and
14 he attempted suicide twice. We had hoped -- we had
15 hoped that since he was not expelled and instead faced a
16 one year suspension, he would ultimately recover from
17 the ordeal. But it proved too much for him to handle.

18 Living with the unjust finding on his
19 disciplinary record, the embarrassment he felt knowing
20 others might believe the findings were true, the
21 separation from his close-knit group of friends at
22 college, disappointing his late father who had devoted
23 his life to this college where he had served as a
24 college trustee, and the necessity of Charlie moving
25 back home, Charlie received months of intensive

1 psychotherapy.

2 Following his mental breakdown, he was
3 diagnosed with severe depression that included
4 debilitating panic attacks as well as PTSD tied to the
5 trauma of the corrupted Title IX proceedings and unjust
6 findings.

7 At the end of his suspension year, Charlie
8 insisted on returning to the same college that had
9 suspended him so he could hold his head high and show
10 the Title IX personnel who worked to ruin his life that
11 he could rise above this horrible miscarriage of
12 justice.

13 While back in school, Charlie learned from more
14 than one of Sally's girlfriends that they now regretted
15 their roles in the Title IX process and realized that
16 Sally had been lying all along. Sadly, this news came
17 too late to make a difference to the findings as they
18 had already been issued.

19 Charlie was able to complete the first semester
20 of his sophomore year despite mounting health issues,
21 but ended up in a full psychosis halfway through spring
22 term. Charlie was diagnosed with schizophrenia, the
23 most dreaded of all mental illnesses. According to a
24 psychiatrist and various psychotherapists, his diagnosis
25 was a direct result of the trauma he suffered in the

1 corrupted Title IX process and the resulting finding of
2 responsibility.

3 Sadly, Charlie had to be involuntarily
4 committed to a lockdown mental health facility.
5 Eventually he moved into an in-patient residential
6 treatment where our out-of-pocket expenses have been
7 \$26,000 a month. Schizophrenia has robbed Charlie of
8 his once brilliant mind, his sharp wit, his self-esteem,
9 his energy and motivation. He now has ADD and OCD and
10 therefore cannot concentrate. Once a prolific reader of
11 philosophy books, he is no longer able to read for
12 content.

13 His adrenal glands are failing, which means he
14 is producing almost no cortisol. Without cortisol he
15 cannot get out of bed or respond to the instinctive
16 fight or flight response necessary for survival. Given
17 all of these complaints, he cannot live independently as
18 he would fall into a deep slumber and never wake up to
19 eat, drink or take his many medications. He has already
20 been hospitalized for dehydrations and infections.

21 As you know, Mr. Biden has come out strongly
22 against Betsy DeVos's position to revoke the Dear
23 Colleague letter. Mr. Biden seems to believe that all
24 women will tell the truth when it comes to sexual
25 assault and that due process is not required in a

1 college administrative proceeding.

2 I for one tell you that Mr. Biden is greatly
3 mistaken. There is so much at stake for those accused
4 of sexual assault; their entire futures, education,
5 friendships, job prospects, their minds, that the Title
6 IX process at colleges across the countries must afford
7 them due process.

8 To say the Title IX process had a ruinous
9 effect upon our son and our family is an understatement.
10 Tragically, we are now mourning the death of the son we
11 once knew. It is hard to believe that our experience
12 with Title IX could be worse than his father's year-long
13 battle for life that included two craniotomies,
14 radiation, chemotherapy and nearly dying seven times
15 from brain hemorrhaging before he ultimately succumbed
16 to brain cancer in his forties when Charlie was only
17 five years old. But it is in fact far worse.

18 So I can tell Mr. Biden that I understand that
19 it is horrible to lose a beloved family member to brain
20 cancer at their prime as he did his beloved son. But I
21 can also say that Mr. Biden was blessed to lose his son
22 to brain cancer, rather than losing him 20 years before
23 his prime to a corrupted Title IX process that caused
24 our son to lose his mind. Once a naked accusation has
25 been made, that's pretty much the end of the road for

1 the accused.

2 I came up with a slogan. I accuse, you lose
3 would be an apt slogan on college campuses in today's
4 Title IX environment. My son's college viewed
5 subsequent regret for having engaged in sex the same as
6 having withheld the consent from the very beginning. It
7 made no difference to the college that the subsequent
8 regret was not expressed at the time of the sexual
9 encounter but five months later. Subsequent regret is
10 not rape.

11 Thank you for allowing me to address you. Much
12 needed reform in the handling of the Title IX complaints
13 has come too late to save Charlie. It is imperative to
14 fix a completely broken and unjust system that is
15 destroying so many young lives and families. Sorry for
16 my emotion. Thank you.

17 MR. BRICKMAN: Are there others wishing to
18 speak?

19 (No response.)

20 MR. BRICKMAN: All right. At this time we're
21 going to keep the session open. We will be here until
22 four o'clock in case anybody else comes who wishes to
23 speak. You all are welcome to stay here or we will let
24 everybody know if there are additional speakers.

25 (Recess from 1:38 p.m. to 4:00 p.m.)

1 MR. BRICKMAN: It is now four o'clock. This
2 hearing has concluded. Thank you for your
3 participation.

4 (Proceedings concluded at 4:00 p.m.)

5 C E R T I F I C A T E

6 STATE OF UTAH)

7 COUNTY OF SALT LAKE)

8 I, Teri Hansen Cronenwett, Certified Realtime
9 Reporter, Registered Merit Reporter and Notary Public in
10 and for the State of Utah, do hereby certify:

11 That the above and foregoing contains a true and
12 correct transcription of the public hearing that was
13 held by the Department of Education at Salt Lake
14 Community College, Miller Campus, Sandy, Utah, on
15 September 26, 2017.

16
17 Certified to by me this 3rd day of October,
18 2017.

19
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