

From: Nick Down
Sent: Fri, 11 Jun 2021 20:28:13 +0000
To: T9PublicHearing
Cc: Michael Poliakoff;Armand Alacbay
Subject: Written Comment: Title IX Public Hearing (Protection of Academic Freedom and Free Speech).
Attachments: 2021-06 MBP Written Statement on Title IX Fl.pdf
Importance: High

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Hello,

On behalf of the American Council of Trustees & Alumni, we urge OCR to consider the below statement as you continue your discussions on reforms to Title IX of the Education Amendments Act of 1972. This statement is also attached.

Michael Poliakoff
President, American Council of Trustees and Alumni (ACTA)
Statement before the U.S. Department of Education Office for Civil Rights
June 11, 2021

For over 25 years, ACTA has proudly promoted academic freedom, academic excellence, and accountability at America's colleges and universities. **My statement today addresses the *absolute necessity* of protecting academic freedom, intellectual diversity, and freedom of expression for faculty and students by ensuring clear guidance on what qualifies as a Title IX violation.**

OCR should not revise Title IX without considering the importance of academic freedom in higher education. The university must remain a forum for rational debate and the free exchange of ideas. These ideals are the lifeblood of a vibrant democracy and are essential to intellectual growth.

The 2020 revision of the definition of "sexual harassment" in 34 C.F.R. § 106 was a significant improvement to existing regulations for colleges and universities, which struggled to interpret rules established in the 2011 Dear Colleague Letter. The inability to interpret what did and did not constitute sexual harassment, which the new 2020 regulations sought to improve, created a chilling effect on academic freedom and free speech at institutions across the country.

I would like now to illustrate the necessity for clear guidance. I call to your attention a 2015 investigation at Northwestern University. Professor Laura Kipnis published two controversial essays in *The Chronicle Review* highlighting a sexual harassment case and critiquing the institution's overreaching sexual misconduct policies.

Subsequently, several students filed a Title IX complaint against her, alleging that the professor's words chilled students' ability to report sexual misconduct. After the extensive and exhausting investigation, Northwestern found no evidence of wrongdoing and cleared Professor Kipnis.

In 2014, the University of Mary Washington's Feminists United organization took to the anonymous social media platform Yik Yak to vent their opposition to the university's decision to allow all-male fraternities. A few days later, the men's rugby team recorded an abrasive video insulting the group and posted it to the website. In response to the video, Feminists United attempted to file a Title IX complaint, but the university, rightfully so, declined to open an investigation. Feminists United then filed a federal complaint that was thrown out by a federal district court. This case, which is pending before the Fourth Circuit Court of Appeals, highlights the confusion surrounding actionable Title IX complaints and students' freedom of speech.

The situation prior to 2020 left many instructors and students understandably apprehensive about teaching or discussing topics that some might perceive as sensitive. This severely limits academic freedom and free speech on college campuses and hinders a teacher's ability to teach and a student's ability to learn.

One final comment: The newest Title IX regulations have been in place only briefly. President Biden issued his executive order mandating Title IX reform in March 2021, seven months after the latest regulations were implemented. This is not enough time to gauge the effectiveness of the new regulations.

Academic freedom, freedom of speech, and intellectual diversity are intrinsic to the mission of the university and lie at the very heart of a quality education. **ACTA urges OCR to hold these foundational principles in high regard as it continues to gather information on possible revisions to Title IX of the Education Amendments of 1972.**

Thank you again for allowing me the opportunity to speak before you today.

Thank you for your time,
Nick Down

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