From: Beatriz Chong
Sent: Thu, 10 Jun 2021 15:50:34 -0400
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing

I am the mother of a male accused of nonconsensual sexual contact at a University during the final weeks of his senior year. After a single investigator model process he was suspended (post-commencement after he left school) and later expelled. His diploma was withheld for 2.5 years, only to be released during a pre-litigation settlement which also necessitated the withdrawal of a formal OCR complaint and which had followed through to the point of "investigation complete, pending review." During the ordeal, my son **attempted suicide and was Baker Acted** for three days. Our family has endured tremendous emotional, psychological and financial strain because of the lack of oversight, fairness, due process and discriminatory practices sometimes employed against those accused of sexual misconduct on campus.

First of all, I would ask that the department uphold the prohibition against the so-called single-investigator model §106.45(b)(7)(i). This unfortunate practice too often leads to abuses because of personal biases. This was the exactly the case in the process against my son, who was investigated, tried and adjudicated by a single person with a history of social media posts in favor of victim advocacy which likened men to oppressors and college campuses to "hunting grounds" for sexual predators. Bias is the very opposite of neutrality which is essential to procedural fairness. It undermines the result of a contested process as well as the credibility of the accuser, and it strips the accused of the right to be presumed innocent until proven responsible**. Advocacy of a group of people, including perceived victims, is a bias that must be recognized and protected against.** There is a real need for advocacy, but NOT in the quasi-judicial role of Title IX investigators and administrators.

I wish to express emphatic support for the **express definition of sexual harassment** under the

curent regulation. In many cases, including my son's, sexual contact between parties involve voluntary sexual activity ("hook-ups") which at some point, in retrospect, are determined to have
become
non-consensual. Sexual harassment and assault crimes are very serious matters that deserve to be prosecuted to the full extent of the law by the enforcement bodies that count with the experience, expertise, and authority to do so. To discriminate against
the males accused of such conduct by accepting accusations as fact simply because of perceived historical imbalances of sexual power goes against the very essence of the values of equality and justice Title IX laws are designed to safeguard. As a mother of
3 girls and 5 boys, I have seen the transformation of the sexual roles during the past few generations and can safely say that girls are now equally or more sexually aggressive than their male counterparts. Therefore, harassment definitions should not assume
weaknesses or vulnerabilities that the genders have spent decades trying to erase. I ask the Department to limit itself to the competencies it was created for and. thus, to support the Davis v. Monroe definitions and standards for responsibility in safeguarding
against harassment.

Thirdly,
the provisions in 106.45(b)(1)(iv),
page 61497, column 3, and
106.45(b)(2)(i)(B),
page 61498, column 1,
are closely related and equally important to any semblance of fairness and justice which are the goal of any Title IX proposal. Without this presumption, justice is illusory, and equal protection is a sham. The presumption of innocence should not be something
one forfeits when seeking a higher education, I acknowledge and support the need to safeguard victims and to punish the guilty, BUT there is a need for proof BEFORE a person is considered a 'victim' or a 'survivor.' And the only way to assure that this burden
be met, is to adopt and respect the presumption of innocence or not-responsible. It was a heart-breaking moment when my son called me immediately after his interview and said of his investigator (who also happened to be the Title IX director/coordinator and
decision maker at his school), "She acted as if she already decided I was guilty... She sneered at my answers... She was the most condescending person I have ever encountered…"

My
son's accuser went to his bedroom voluntarily. She stated that she was not inebriated and that she communicated to him that she was "ok" with "everything but sex" (the later understood to be vaginal intercourse). S kissed him, put her mouth on his penis, gave
him a hickey (all by her own statements) and participated without objection in events on the night, even though
he

was too drunk to give consent according to university policy. After her encounter with my son, the accuser, in her own statement recounted 'making-out' with another male and having sex with a third that same night. It was my son, however, who was deemed a sexual predator based on ZERO evidence other than the word of the accuser and her close friends who were neither present during the encounter nor had witnessed any interaction between my son and the accuser. In violation of due process laws (which are not overridden by FERPA in matters of sexual harassment/assault as clearly stated in OCR documents and guidelines) the unrelated testimony of an unknown witness was used against him to determine a "pattern of behavior" and later formed the basis of a subsequent accusation following his appeal of the adverse decision. He had no opportunity to review or defend himself against the written testimony that was submitted, unsigned, and never subject to scrutiny via investigation (much less via adversarial questioning on behalf of the accused.) Throughout the entire investigation, inclusive of when he was questioned, he did not know precisely what he was being accused of. He was only informed that a named student had accused him of violations of the university sexual misconduct policy and was referred to what they said were the pertinent clauses of the policy.

I am determined to fight the bias against young men that is rampant in our universities. Had the current law, now under review, been in place at the time of the investigation of the allegations against my son, he would have been known the precise allegations against him so that he could present a proper, accurate, and informed response (LIVE HEARINGS §106.45(b)(6)(i). He would have been provided access to the evidence and given the opportunity to rebut it before any investigative report was written (§106.45(b)(5)(iii), (vi), (vii)). He would have been able to question the fact that text messages between the accuser and friends submitted as evidence 7 months after the alleged assault, said to have been sent within 12 hours of the alleged assault, were screenshot within hours of having been sent (screenshots of messages that have the date of "today.") Who screenshots conversations had within hours and submits them 7 months later as evidence? Had he been allowed to cross examine the witnesses and evidence by any means, someone would have had to explain this (§106.45(b)(6)(i)). Somebody would have had to explain why my son was never allowed to see his accuser's original statement and was only ever granted access to the Title IX officer's summation of her statement and interview that had undergone editing by the actual investigator (per email evidence obtained through a FOIA request following an OCR investigation- closed because of a negotiated pre litigation settlement with the university). If the current due process protections were in place, he would have had the assurance that the same person who was conducting the investigation could not be the person who also made the decision and who had oversight over the process. (§106.45(b)(7)(i)). As it were, the same person was the investigator,

the prosecutor, and the decision maker in this case- and she also happened to be the Director/coordinator of the Title IX department. Imagine that- responsible for all, accountable to none!

Had the current process protections been in place, the accuser could have had access to ***all*** the measures of protection available merely by making the accusation. She would have access to counseling, schedule accommodations, housing accommodations, special considerations in classes, etc. (§106.44(a); 106.30). And my son would have still been subject to the investigation, albeit one that recognized that he had rights too, and that neither student's word weighed more than the other's (SEX DISCRIMINATION §106.45(a); BIAS (b)(1)(iii); EQUAL TREATMENT (b)(1)(i), (iii)). Both students would have faced equal scrutiny as is only equitable when civil rights to equal access to education are on the balance. Moreover, even if the investigation had resulted in my son being found not responsible, the young woman would have still had access to all these measures, and my son's presence on campus was not an issue because he had already graduated and moved 700 miles away. Proponents of the roll back of due process protections may claim that this is for the protection of victims, but I fear this is about wanting to punish. Title IX cannot be used as a disciplinary cudgel, nor to punish past generations for allowing sexual assault to be "swept under the carpet." Title IX is a civil rights equal access protection law, *not* a disciplinary measure. For that we have the criminal justice and civil litigation system that do indeed have established protections for all parties involved. To say that due process is not needed in Title IX processes ignores the equal access to education rights and property interest rights of degree candidates accused and sanctioned at the whim of an oft personally motivated employee.

There are thousands of mothers, who like me have seen their sons or daughters railroaded by a process that offered them no chance at all to retain their good name and reputations- a process dedicated to trying to amend past gender-based inequities at the expense of turning a blind eye to reverse gender discrimination. I guarantee that no matter what happens in this review, we will not be silent. We will continue to ask the Department, and when the need arrises, the courts to ensure that the rights of our sons and daughter accused of serious offenses are not trampled upon. We will continue to expose, even at the expense of our own privacy, the abuses of power and violations of civil rights. I urge the panel to thoroughly review the letter of the law and to recognize that the complaints about it are unfounded. Nothing in the law under review undermines the rights or the protections of victims of sexual assault. Moreover, the law strengthens protections for all.

Gratefully
yours,

Beatriz
Chong