

**From:** Buddy Ullman  
**Sent:** Thu, 10 Jun 2021 20:35:36 -0700  
**To:** T9PublicHearing  
**Subject:** "Written Comment: Title IX Public Hearing (Models for Investigating Title IX Complaints)"

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I am advocating that OCR begin a process to think outside the box in how to adjudicate Title IX disputes. Although I am aware that Acting Assistant Secretary Goldberg embraces [the idea that schools should return to “experienced-based procedures” in which “neutral faculty members or administrators” are assigned all investigative and adjudication functions in a TIX dispute](#), this is the failed single-investigator model that resulted in [>700 Title IX lawsuits](#) from wronged students as well as thousands of additional erroneous TIX outcomes that weren't litigated. The single-investigator model is deeply flawed.

I should know. I have experienced this single-investigator model personally. While a Professor at the Oregon Health & Science University, I was a respondent in a sham sexual harassment [debacle](#) that was investigated by a single “so-called civil rights investigator” using the “experienced-based procedures” that Ms. Goldberg endorsed in her January, 2019 *Chronicles of Higher Education* article and that were operative in the Obama administration.

Among many other deprivations, my investigator refused to apprise me of the charges against me or the names of the complainant and witnesses, would not allow me to present evidence, bring forth witnesses, or to defend myself in any way, and barred me from seeking assistance that I needed. Thousands of previous TIX respondents can relate to this lack of fairness and due process.

My investigator eventually reached six findings, all of which were incorrect, out of context, unsubstantiated by evidence, nonsensical, and derisory. Per the single-investigator model that Ms. Goldberg fancies, there was no appeal, no accountability, and no oversight, and I was punished and eventually terminated.

I was to learn ten months after my case was concluded that the original accusations against me were lies, the student complainant who had failed my course was in retaliatory mode, and her two Associate Dean witness benefactors were settling independent old scores.

My investigator was the prosecutor, detective, judge, jury, and executioner, and excuse the harsh personal assessment, but she was ignorant about Title IX guidance at the time, utterly incompetent, partial, sex-obsessed, and corrupt.

Title IX administration has dramatically improved with the current Rule. The Title IX investigator has been relegated to an evidence gathering role, which is appropriate, and

judgements are then conferred by a “supposedly” neutral decision maker. This paradigm, at least in theory, provides a checks and balances system that delivers some oversight and accountability, although I have concerns about the mechanism by which competence and neutrality of the decision maker will be assessed.

The biggest drawback to TIX compliance, however, endures. That shortcoming is the underlying amateurism of the Title IX investigators and coordinators themselves and the potential amateurism of the decision makers.

The TIX investigators and coordinators who populate campus TIX offices lack the tools, resources, training, and competence of their police counterparts, and unfortunately, are also too often lacking the impartiality and restraint of their judicial equivalents. These civil rights investigators, although often masquerading otherwise, are also not dispassionate, neutral arbiters of sexual misconduct disputes. Whether decision makers are unbiased and skilled remains to be determined.

TIX investigators and coordinators are also not neutral arbiters of Title IX disputes. They are campus functionaries whose jobs are primarily to protect higher education institutions and their administrators from personal liability. This conflict-of-interest prejudices outcomes of disputes. They are also beholden to a bevy of administrative superiors who have their own internal political agendas, sometimes nefarious, as happened in my TIX case.

Furthermore, TIX investigators are vocationally incentivized to concoct, embellish, exacerbate, and prolong, sometimes interminably, TIX cases because that’s how they earn their paychecks. TIX officials also lack subpoena power, cannot compel truth-telling of disputing parties and witnesses, and avail themselves of unscientific, debunked and/or biased [investigative approaches](#) that are christened with various prejudicial appellations such as trauma-informed, start-by-believing, or survivor-centered.

And finally, there has been no effective oversight mechanism for these campus inquisitions, especially for the investigators themselves. Overall, TIX investigations on college campuses have been substandard and plagued by procedural inconsistencies, missteps, ineptitude, and conflicts of interest.

The DeVos rule is not a panacea for overcoming these personnel failings, but it will provide an exquisitely detailed and uniform procedural blueprint that will confer fairness, consistency, reliability, and legitimacy to the TIX dispute resolution process, minimize the impact of the intrinsic downsides, and result in accurate outcomes with much greater regularity. The new rule is a huge improvement over rescinded Obama-era guidance (and I am a Democrat).

The best model for adjudicating Title IX disputes is to exploit outside expertise. Former Mayor Mike Bloomberg [has advocated an approach](#) that would create regional partnerships between prosecutors’ offices and schools that can offer a professionalism that will ensure that victims are treated sensitively and given appropriate support while respondents will be provided reasonable due process and other constitutional protections. This model, and similar ones, should be explored.

**From:** Buddy Ullman  
**Sent:** Wed, 9 Jun 2021 09:59:27 -0700  
**To:** Goldberg, Suzanne  
**Cc:** T9PublicHearing  
**Subject:** Acknowledgements of Multiple Comments

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Dear Assistant Secretary Goldberg,

I have submitted several comments regarding the OCR's Public Hearing on Title at [T9PublicHearings@ed.gov](mailto:T9PublicHearings@ed.gov) and have explicitly followed [DOE's instructions](#). I received an acknowledgement for my first written comment but not for subsequent ones.

Per your instructions that asserted “include the subject line “Written Comment: Title IX Public Hearing (topic of the comment),” I have focused each of my comments on one specific topic. Because I have multiple issues that I wanted to address, I have submitted multiple written comments. This seems to be what your instructions requested and makes perfect sense.

I presume that you will accept multiple comments from interested parties, and there is nothing in the instructions that suggests otherwise. Because “written comments” can be construed to be singular or plural, because I have put a tremendous amount of effort into each comment, and because I plan to submit additional ones on key issues, I am requesting clarification on this matter and would like to know why only my first written comment was accredited.

Thank you for all of your efforts on behalf of civil rights.

Buddy Ullman, Ph.D.  
Retired Professor of Biochemistry and Molecular Biology  
The Oregon Health & Science University

(b)(6)

**From:** Buddy Ullman  
**Sent:** Tue, 8 Jun 2021 21:14:15 -0700  
**To:** T9PublicHearing  
**Subject:** "Written Comment: Title IX Public Hearing (The Title IX Rule is Consistent with Executive Order 14021)"

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This public hearing was initiated in response to President [Biden's Executive Order \(EO\) 14021](#) entitled "Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity." Specifically, the President commanded Secretary Cardona that he, in conjunction with Merrick Garland, should review Title IX regulations to determine if they are consistent with the policy of his administration "that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity.

The new Rule is consistent with the EO. There may be sections of the Rule that people do not like, but the Rule does not discriminate on the basis of gender or violate EO 14021.

In contrast, the [courts have found](#) that the Obama-era Title IX guidance, as implemented, was discriminatory on the basis of gender. Moreover, although outside the scope of EO 14021, Title IX under the Obama administration was [clearly selectively enforced against Black and Brown boys and men](#). In this era of Black Lives Matter, the OCR should be very concerned about these data, as am I.

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**From:** Buddy Ullman  
**Sent:** Tue, 8 Jun 2021 20:41:59 -0700  
**To:** T9PublicHearing  
**Subject:** "Written Comment: Title IX Public Hearing (Definition of sexual harassment)"

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There has been considerable criticism of the revised definition of sexual harassment in the new Rule. I disagree with the criticism. The disapproval has been that the Rule's definition is too narrow, but this opinion is a red herring. One could say the opposite about the prior definition in the Dear Colleague letter, i.e., it was too broad.

The disparagement of the new sexual harassment definition concerns the wording of the Rule's second prong of the three-prong definition, specifically, the utilization of the conjunctive "severe, pervasive, and objectively offensive" standard rather than the disjunctive, prepositionally altered "severe, pervasive, or objectively offensive" specification (see section 106,44(e)(1) of the Rule). There are three reasons that I support the Rule's sexual harassment description.

1) It will eliminate a huge cohort of false, frivolous, and ludicrous sexual harassment accusations and certainly would have averted [my Title IX debacle](#), which was based on allegations that met all three of these adjectival descriptors. Brett Sokolow, President of ATIXA, postulates that [40-50% of sexual harassment accusations](#) on college campuses are likely false. From my experience with perhaps 100 Title IX cases, I think Sokolow's numbers are an underestimate.

On a personal note, the genesis of the Title IX complaint against me was a student complaint (the one female student who failed by course) that I had kissed her on the forehead in my office, an expanded definition of sexual harassment to say the least (the kiss never happened). I was eventually found to have violated our institution's sexual harassment policy because the Title IX investigator found that I had engaged in unwelcome wrist grabbing, as well as forehead kissing, among other things (these too were false, but that's another matter).

2) The second reason that I support the Rule's conjunctive definition is that the Office of Civil Rights/Department of Education employed the very language of the Davis versus Monroe County Board of Education decision of 1999 that was affirmed by five liberal Supreme Court justices, including feminist icon and my personal hero, Ruth Bader Ginsburg. Surely, we can appreciate that the Executive Branch should abide by Supreme Court precedent.

3) The conjunctive definition of sexual harassment will protect free speech on college and community campuses, reasoning that is discussed at great length in the Rule. In particular, it shelters Professors who are discussing difficult subjects in educational contexts from complaints, a key component of academic freedom.

In contrast, the archived definition of sexual harassment, 1) Any unwelcome request for a sexual favor; 2) any unwelcome sexual advance; and 3) any unwelcome behavior of a sexual nature that is also either quid pro quo or creates a hostile environment, although basically fine, was ubiquitously misused. However, many Title IX proceedings basically ignored the predicate of the rescinded definition, i.e., the quid pro quo and hostile environment part. Thus, the definition was misinterpreted, and frivolous accusations, e.g., wrist grabbing, a smile, shoulder touching, elbow contact, etc... could rise to the level of sexual harassment under Obama-era guidance. Many students were harmed as a consequence. The Rule precludes such misinterpretation.

I am asking that the definition of sexual harassment be preserved intact. The “severe, pervasive, and objectively offensive” description of the second component of the sexual harassment definition does not impact the other two elements, i.e., quid pro quo sexual favors and sexual assault/dating and domestic violence/stalking and will have little overall impact on Title IX enforcement on college and university campuses.

Buddy Ullman, Ph.D.

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**From:** Buddy Ullman  
**Sent:** Tue, 8 Jun 2021 09:38:06 -0700  
**To:** T9PublicHearing  
**Subject:** "Written Comment: Title IX Public Hearing (Evidentiary Standard)"

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I support a mandatory clear-and-convincing evidentiary standard in Title IX proceedings.

The Obama-era Title IX guidance mandated a preponderance of evidence burden of proof, while the Rule offers schools an option, either the preponderance of evidence standard or a clear and convincing evidence standard, but the burden of proof choice needs to be consistent among employees and students. The basis for offering the option is that in many schools, particularly ones in which staff members are protected by union contracts, faculty and staff are subject to the clear and convincing standard, while students have the lower standard of proof. DeVos thinks that having different benchmarks for proof for faculty/staff and students is unfair and has compelled schools to align the two standards. I agree.

I oppose, however, the option. My concern is about fairness and equitability. If two different schools adapt different standards, then the same set of facts and circumstances could enable a fair-minded investigator to reach vastly differently conclusions in a Title IX dispute, e.g., if the evidence favored one party over the other 60% to 40%, with vastly different consequences, i.e., expulsion versus exoneration. No single system of jurisprudence should enable such a disparity. If Title IX enforcement regulations mandate a consistent standard within a school, it should afford consistent standards among schools. Affording an option on the evidentiary standard of proof in Title IX proceedings to 4,000 schools is just wrong.

The preponderance burden of proof (>50%) is unfair for Title IX cases because they can ultimately result in termination or expulsion. It is unreasonable to posit that 50.000001% is significantly different from 49.999999% certainty, so the decision, fortunately now made by a neutral decision maker rather than an investigator, is basically guesswork and prejudicial. Excuse the harsh language, it's sinful in my opinion that the scholastic and future career of a student (or faculty) can be based on speculation.

Another drawback to the preponderance of evidence standard is quantitative, and this is an important point because many respondents in Title IX investigations, [myself included](#), were not allowed to present evidence. Thus, any evidence presented by a complainant, even false or ridiculous, is a preponderance (or at least a plurality). This evidence could include touching someone on the wrist, elbow, shoulder or head, and as ridiculous as these actions sound, all have served as bases for Title IX allegations. My "so-called" Title IX investigator found me responsible for [unwelcome wrist grabbing](#) (there was no wrist grabbing)!! Conversely, the clear and convincing evidentiary standard is a meaningful verification yardstick and much better suited for a proceeding in which expulsion or termination of a respondent could be the outcome.

As a consequence, I favor the clear and convincing burden of proof standard for all schools. Clear and convincing, as terms, are straightforward and unambiguous, and applying the standard to all cases makes it much less likely to have false positive outcomes, such as in my case.

**From:** Buddy Ullman  
**Sent:** Mon, 7 Jun 2021 12:10:04 -0700  
**To:** T9PublicHearing  
**Subject:** "Written Comment: Title IX Public Hearing (Presumption of Innocence)"

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The presumption of innocence is a hallmark of American jurisprudence since 1895. Innocence has not, unfortunately, always been a feature of Title IX proceedings until August, 2020 when the new Rule was implemented.

I am a former respondent in [a Title IX case](#) in which presumption of guilt, i.e., responsibility, was employed. I know this because the university didn't even bother to inform me of the nature of the allegations against me. The finding of responsibility in my case did not take into account my innocence. Neither did my appeal to the OCR in 2016.

I would recommend a requirement that all Title IX investigations must specifically ask a respondent at some point in the proceedings specifically whether (s)he is responsible or not for the allegation and that the respondent's response be recorded by the investigator and decision maker in official documents.

Keep the presumption of non-responsibility in any amended Title IX compliance Rule. It is vital.

Thank you.

Buddy Ullman, Ph.D.

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(b)(6)

**From:** Buddy Ullman  
**Sent:** Mon, 7 Jun 2021 11:37:45 -0700  
**To:** T9PublicHearing  
**Subject:** "Written Comment: Title IX Public Hearing (Cross-Examination and Live Hearings)"

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I am a former Title IX respondent to false sexual harassment charges but was found responsible anyway and eventually terminated. A synopsis of my case can be found [here](#). If there had been cross-examination of complainant and witnesses in a live hearing format in my Title IX complaint, the complaint would never have been filed and I would not have been terminated. Here are a few reasons why cross-examination in a live setting is critical for making Title IX proceedings legitimate and reliable.

Cross-examination is widely considered to be the greatest single legal engine ever invented for the discovery of the truth. Because the ultimate goal of any investigation is to ferret out the truth, cross-examination offers an enormous improvement to the fact-finding process and to the establishment of witness credibility over the previous paradigm. It is iniquitous to rob a Title IX decision maker of the most effective investigative tool in her/his armamentarium as many Rule opponents are trying to do. Cross examination and live hearings promote transparency, will winnow out false, frivolous, and unreasonable allegations, and maximize the integrity of an investigation compared to the clandestine model employed in the past in which testimony was behind closed doors, a process subject to mischief. The new paradigm will benefit victims and accused alike.

It is also important to note that Title IX only applies to <6% of American women, those privileged to attend colleges. If a sexual assault complaint is filed by a woman in the community, she voluntarily acquiesces to cross-examination in a courtroom because it is mandated by the Sixth Amendment of the United States Constitution. Permitting a supplementary and inferior fact-finding mechanism for resolving Title IX disputes for which only a small minority of women is eligible is inequitable, discriminatory, and unfair. Despite arguments by opponents of Title IX reform that a victim of sexual assault is disadvantaged by live hearings, most lawyers and reasonable people would assert that a victim is in the superior position in such a setting. Cross-examination and live hearings are an opportunity, not a shortcoming, for any violent crime victim, whether in a Title IX or courtroom setting.

Sexual assault and rape are unspeakable acts of violence and victimization that rob women of their power. Filing charges and facing down their perpetrators in safe surroundings, such as a live hearing, provides victims with the occasion to regain that power, and no survivor should be denied that prospect. There is no better mechanism to return that power than through confrontation of the perpetrator in a live setting, and denying a sexual assault victim that opportunity is wrong. We must promote the empowerment, and not the victimization, of women.

I submit that cross-examination is the single most important attribute in the Rule because cross-examination would surmount any other potential due process violation in a Title IX investigation. It is of tantamount importance.

Thank you.

Buddy Ullman, Ph.D.

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**From:** Buddy Ullman  
**Sent:** Mon, 7 Jun 2021 11:01:45 -0700  
**To:** T9PublicHearing  
**Subject:** "Written Comment: Title IX Public Hearing (Oral testimony to Buddy Ullman's OCR testimony)."

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This is a synopsis of my oral testimony that I provided in the public hearing today. "I am a former Professor of Biochemistry and Molecular Biology at The Oregon Health & Science University in Portland, OR and 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. Sound 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 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 not allowed to defend myself in any way, and I was gagged throughout the proceedings. Kim Jung-un would have 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 by my university and punished, I appealed to the OCR, which bestowed its stamp of approval for the procedures my university employed in its investigation of me. I also learned from the OCR that innocence was no defense in a Title IX proceeding. Thanks to the new Rule, innocence is, fortunately, an acceptable alibi to a Title IX accusation. Indeed, it's a presumption.

The current Title IX Rule is terrific and far superior to the Obama-era guidance to which I was subjected, and I am a progressive Democrat who loves the color blue. Unlike the rescinded guidance, the new Rule is meticulous, thoughtful, constitutionally and legally grounded, fair and equitable, and informed by the deficiencies of previous guidance, which, as you know, resulted in hundreds of court cases filed by students who had been wronged in Title IX cases.

Most pertinent to the subject of this hearing, the current Title IX Rule comports with the anti-discrimination policy set forth in President Biden's Executive Order 14021.

The same cannot be said for the Obama-era Title IX guidance that it replaced. Obama-era guidance suffered from being constitutionally unsound, legally dubious, and unfair, as hundreds of court decisions, and especially 23 circuit court verdicts, have attested. Obama-era guidance

would also violate President Biden's EO. 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. Black lives matter.

We cannot go backwards. Keep the new Rule.

Thank you."

Buddy Ullman, Ph.D.

Retired Professor of Biochemistry and Molecular Biology

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