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**Sent:** Thu, 10 Jun 2021 20:30:17 +0000  
**To:** T9PublicHearing  
**Subject:** Written Comment: Title IX Public Hearing (on behalf of the Campus Advocacy and Prevention Professionals Association)  
**Attachments:** CAPPa\_Title IX Written Comment.docx

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Hello,

Attached you will find a written comment from the Campus Advocacy and Prevention Professionals Association (CAPPa). Thank you for your consideration.

Best,

**Tayler Simon, LMSW**

She/her/hers

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## **Introduction**

The Campus Advocacy and Prevention Professional Association (CAPPA) is dedicated to providing space for campus-based advocates and prevention specialists to come together to share their expertise, develop best practices, and support each other as professionals in the field. CAPPA is designed for campus-based professionals who work to educate their campuses and colleagues about interpersonal/gender-based violence in all its forms, and those who advocate for and support students who have been affected by dating and domestic violence, sexual assault and harassment, and stalking. CAPPA is open to advocates and prevention professionals who serve any type of institution of higher education of all affiliations. We strive for both professionalism and solidarity within our growing field.

The current iteration of the Title IX regulations treats gender-based violence differently than other code of conduct violations. It disproportionately protects those accused of sexual misconduct while making it more difficult for survivors to make a report. Due process protections are important, but student survivors should feel comfortable seeking support and accommodations for their disrupted learning environment due to sexual harassment and sexual violence. Prior to the DeVos administration Title IX regulations and since 1997, the Department of Education had consistently outlined educational institutions' Title IX responsibilities to student survivors. This reliable guidance led to significant action by institutions to address sex-based harassment and support student survivors.

Drawing on previous guidance as well as a vision of an equitable future for survivors, we recommend the following:

### **Use of consistent definitions**

*Actual Knowledge:* Institutions should respond to harassment and be required to provide supportive measures (confidential and nonconfidential) to the complainant. Institutions must take reasonable actions when responding, rather than just avoiding a response (“deliberate indifference” standard).

*Location:* Schools have a responsibility to respond to all sexual harassment that impedes on students' ability to access their academic, professional, and social goals regardless of where incidents of misconduct happen. The current restrictions on location deny students the option of pursuing a Title IX complaint, which refutes their rights as students to pursue accountability and justice within their educational institutions. Students who have already been harmed from sexual harassment and assault should not be limited in their options for institutional recourse simply because of the location in which they were harmed. The large majority of campus sexual assaults, and other forms of sexual harassment, are committed by someone the victim-survivor knows, which means many incidents occur in off-campus housing, nightlife venues, and during school-sponsored study abroad and service learning trips.

*Definition of harassment:* The narrowed definition of sexual harassment implemented by the Trump administration proves to be a significant barrier to students. It takes many students a significant amount of time and emotional distress to decide to pursue the Title IX process, and it sends the message that survivors' experiences are not legitimate enough to be accounted for through this process. The current definition discourages student survivors from pursuing the process that exists to serve and support them, and they may then struggle to seek interim and supportive measures for the institution. Given the power imbalance favoring staff, faculty, and students of higher social status, sexual harassment does not need to be both pervasive, objectively offensive, and severe to drastically impede on a students' ability to succeed in classes, at work, in housing, and in social settings. Broadening the definition of sexual harassment will affirm students' experiences with this type of harm, encourage them to seek support, and educate educational communities on what is and is not acceptable when creating a supportive and healthy environment.

### **Encouraging preponderance of the evidence as the evidentiary standard in conduct proceedings.**

The regulations currently allow schools to choose between using the clear and convincing standard or the preponderance of evidence standard. Institutions do not have the investigatory methods to find students guilty or not guilty of violating criminal laws, which impedes institutions from meeting the clear and convincing standard without such structures in place. In addition, the preponderance of evidence standard is consistent with adjudicating civil rights laws and most civil actions and is more attuned with the Title IX standard of equality of the parties.

### **Providing different methods of alternative resolutions**

A response to a finding may include restorative justice or other alternatives to traditional student discipline. Too often survivors have been coerced by educational institutions into mediation, often reproducing and reinforcing power imbalances related to interpersonal/gender-based violence, especially for students of color, students with disabilities, and 2SLGBTQ students. Restorative justice and additional alternatives must be evidence-based and consistent with institutional practices, not just for responding to sexual violence. Participation should be truly voluntary for all parties, and they should be made aware that they are able to terminate the alternative resolution process at any time. Those facilitating these resolutions should be adequately trained to carry out these processes.

### **Develop Robust Protections Against Retaliation**

Although Title IX prohibits retaliation against those who report sex discrimination, student survivors—especially students of color, students with disabilities, and 2SLGBTQ students—often face punishment when they seek assistance and retribution from their institutions. These penalties include being disciplined for violations, such as substance use and sex on school grounds, that they must disclose to report. Student survivors have also faced retaliation from

their assailants, who file cross-complaints to discourage survivors, manipulate systems, and seek revenge. The Department's regulations should include these prohibited retaliation tactics as part of their definition of retaliation.

### **Opportunities to Uplift and Support**

Barriers to reporting to Title IX officials are additionally influenced by race. Current Title IX regulations do not require institutions of higher learning to collect data or report racial outcomes in disciplinary decisions. The ability for universities and the Department of Education to determine if any racial biases exist in who is reporting, who is being reported, and who is being disciplined can yield significant insights for prevention and education.

Students of color are significantly less likely to report to Title IX when cultural and racial barriers are present. Having an undiverse pool of Title IX investigators places hesitancy and perceived bias by students of color who are experiencing harassment on campus, resulting in fewer students of color expressing confidence in initiating the Title IX process. Increasing diversity on college campuses, including the Title IX office on universities is an elemental step in creating equitable experiences for students reporting harassment.

### **Conclusion**

We look forward to further dialogue with the Department as you incorporate these comments and others into your review of the current regulations. These comments are approved and submitted by the CAPPA Leadership Council on behalf of our membership.