

**From:** Ebony Manning  
**Sent:** Fri, 11 Jun 2021 15:48:06 -0400  
**To:** T9PublicHearing  
**Subject:** Written Comment: Title IX Public Hearing  
**Attachments:** 2021 - 6.11 OCR Comments.pdf

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Dear Department of Education:  
I am submitting these comments on behalf of:  
Katherine Bergeron, President  
Connecticut College  
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New London, CT 06320  
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Respectfully,

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Ebony L. Manning '98, J.D., LL.M.  
*She, Her, Hers*  
Associate Dean for Equity and Compliance Programs  
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*Connecticut College*



# CONNECTICUT COLLEGE

Katherine Bergeron  
*President*

June 11, 2021

Miguel Cordoba  
Secretary of Education  
U.S. Department of Education  
Office of Civil Rights  
Lyndon Baines Johnson Department of Education Bldg.  
400 Maryland Ave. SW  
Washington, DC 20202-1100

Dear Secretary Cordoba,

I am pleased to submit comments on behalf of Connecticut College in response to the public hearings on Title IX being held by the U.S. Department of Education's Office of Civil Rights. We appreciate the Department's efforts to improve the ways we respond to complaints of sexual harassment on our campuses. I hope this letter is helpful as you look to redefine current Title IX regulations.

Since the Department last issued Federal Regulations on this matter in 2020, Connecticut College has worked diligently to adapt our existing set of policies and procedures to address situations of sexual harassment in compliance with the new regulations. While doing so, we have recognized some issues the regulations pose for higher education institutions:

1. **§ 106.45(b)(3): Jurisdiction and Duty to Respond:** The regulations require that colleges must dismiss Title IX complaints related to incidents that occur off campus or outside of institutional programs and activities. This is deeply troubling, given what we know about how students interact and socialize within their locales, and has impacted our students, who feel unprotected by the college if something happens to them off campus.
2. **§ 106.30 (b)(3): Definitions:** The narrower sexual harassment definition also forces institutions to dismiss a case because it does not meet the standard under Title IX, instead requiring institutions to open up a new case under a different conduct process. This has led to more difficulty in educating our students and campus community about our policies and procedures, with many students left confused about their options.
3. **§ 106.45(b)(3)(vii): Required Live Hearings with Cross-Examination:** The 2020 regulations, while rightfully mandating equal treatment and due process protections for both parties, have had the unintended side effect of created quasi courtrooms that many institutions are not equipped to handle. For smaller campuses, in particular, this mandate has placed an undue burden on faculty and staff, to not only be well-trained but also spend a significant amount of time acting as judges to mediate the conduct of professional attorneys. The alternative of outsourcing or retaining the services of legal experts has resulted in considerable financial costs, which are even more difficult given the COVID-19 pandemics. Even where institutions might be able to train internal individuals to serve in these capacities, it would be extremely difficult to identify individuals who can serve in these capacities without the potential for conflicts of interest or situations where a student's educational options are limited—for example, if a student becomes reluctant to take a

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class or sign up for an activity led by an individual who previously cross-examined them in a hearing or served as a member of the hearing panel on their case.

4. **§ 106.45(b)(3)(vii): Legal Counsel for Hearings:** We continue to express our concerns regarding the cross-examination requirement and involvement of attorneys in the hearing process which, we believe, raises a considerable equity issue. The vast difference in socioeconomic status that sometimes exists between parties creates a class-based equity issue when one party can afford legal representation and one cannot. The support of our local pro-bono resources does not ensure equity due to grant funding, geographical catchment areas, and caseloads. We implore the Department to reconsider the requirement of live hearings and cross-examination by an advisor of each party's choosing. We have seen many students opt out of participating in these hearings due to these regulations, and this limits our ability to address instances of sexual harassment. If the hearings remain, we encourage the Department to allow for an alternative process, leaving it up to the individual parties to decide which option is best suited for their circumstances.

At Connecticut College, we have committed to providing our students with an educational environment free from sexual harassment by educating our community about gender-based discrimination and sexual harassment, which encompasses sexual assault and other forms of sexual violence. We ensure that our policies and practices are fair to all, no matter a person's sexual orientation or gender identity, and strive to treat every student with compassion, integrity, and respect. We are proud of this commitment and as such, ask that the Department of Education address discrimination based on sexual orientation and gender identity in the educational environment. Specifically, we would like to ask for legal protections against misgendering or the deliberate use of wrong pronouns when addressing transgender students, staff, and faculty.

Thank you for providing us with the opportunity to comment. We respectfully ask that you address the concerns we have raised and craft regulations consistent with our student-centered educational mission.

Yours,

(b)(6)

Katherine Bergeron  
President