Attached in PDF format below are my written comments for the Title IX Public Hearing regarding Sexual Harassment and the 2020 Regulations.
Total pages attached 28
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Thank you, Colleen Farmer
Written Comments for Title IX Public Comment - Sexual Harassment
2020 Regulations

Submitted June 10, 2021 via T9PublicHearing@ed.gov
Colleen Farmer, BSN, RN

Dear Office for Civil Rights,

Here are my proposals, followed by my comments and supporting data.

My proposals to the OCR

1. End the unscientific use of “trauma-informed” training of those on our college campuses because it is, “loosely constricted, is based on flawed science, makes unfounded claims about its effectiveness, and has never once been tested, studied, researched or validated.” Courts have said this about a “Start by Believing” or a trauma-informed approach; trauma-informed training materials caused those trained to make “an assumption ... that an assault occurred.” And It is plausible,” that Purdue “chose to believe Jane because she is a woman and to disbelieve John because he is a man.”

2. Support the current 2020 regulations and implement them fully and correctly! We do not need a new set of rules. We just need these rules implemented correctly.

3. Look at the appellate court lawsuits for due process protections and cross-examination! Cross-examination is a bedrock principle of our sixth amendment and it should be used in any process where a life altering decision is being made. Written questions are never an effective substitute for live cross-examination. Courts have emphasized that cross-examination is the best tool for determining credibility, which is often the primary issue you see in campus cases.
4. Eliminate the dual track Title IX system that is keeping all the same old, bad language of the Obama/Biden guidance, as a code of conduct. This is being used and applied improperly by the schools and colleges harming the most vulnerable campus groups! This was not the intended purpose of the 2020 regulations.

5. The current 2020 Regulations again need to be enforced properly with school/colleges being more transparent and showing the public what training is being provided, to whom, how, what and where.

6. All schools need to be directed to change their language from “victim/survivor” to complainant/accuser or some neutral term.

7. All campus adjudication must start from a presumption of innocence, and include due process protections.

I would like to express my strong support for the 2020 amendments that were made to the regulations, titled “Nondiscrimination on the Basis of Sex in the Education Programs or Activities Receiving Federal Financial Assistance,” that were published in the Federal Register on May 19, 2020 (85 FR 30026) and implemented August 14th, 2020. Strong due process protections are essential and they protect all vulnerable campus groups!

As a nurse, I work in an emergency room and have cared for people who have been raped, sexual harassed and assaulted. I have also worked as a nurse on a college campus and have participated in the Title IX process with students who have had Title IX complaints made against them. I have attended Title IX training in the state of New York provided by the NY State Police Victim’s Crime Unit. I have continued to educate myself on this topic. I will also share why we need to end the confusing, unscientific neurobiology “trauma-informed” training of all those involved with Title IX cases. College staff, investigators, campus police, law enforcement and medical providers should not be using trauma-informed training, because it does not allow for someone who is trained to start from a presumption of innocence.
I have a vested interest as a woman, a mother of a daughter, sons, an emergency room nurse and a former college campus employee. I believe all this experience has given me a unique perspective and I would like to see a system that protects ALL students! The DeVos Rules were adopted after a two year process of “notice and comment” addressing the main complaints expressed about the Obama-era guidelines. We have yet to see how effective these regulations may or may not be, since they were just put into effect on August 14th, 2020. Add to that many campuses have been working remotely due to Covid.

The “2011 guidance, it was handled very differently. It was very much an internal process, there was very little consultation with outside groups and what consultation there was tended to be with advocacy groups and was done at the highest levels rather than with staff. with experience working with the issue.” Those words were spoken directly from Howie Kallem, the previous chief regional attorney for the Office of the Civil Rights Department of Education in the DC enforcement office who spent five years as the leader of the Title IX policy team when he helped coordinated the development of the OCR’s original guidance on sexual harassment. The 2020 process was much more transparent.

We have seen evidence and it is clear; we cannot return to any of the 2011, 2014 Obama-era guidance. Not only were those who were accused unhappy with the process, complainants were also very, “Dissatisfied with how universities handled their allegations, identified victims began to file complaints with the federal Office for Civil Rights. Advocacy groups such as End Rape on Campus and Know Your IX launched campaigns to further encourage the filing of complaints. Over a five-year period, the number of sex-related (Title IX) complaints increased from 391 cases in FY2010 to 2,354 cases in FY2014, representing a dramatic six-fold increase.”

The “Six-Year Experiment in Campus Jurisprudence Fails to Make the Grade” shows complainants identifying, “Shortcomings... at every stage of the process: incident reporting, investigations, adjudications, and sanctioning. At three institutions -- the University of Alabama at Birmingham, University of New Mexico, and University of Wisconsin-Whitewater -- the identified victims emphatically stated that
universities’ flawed procedures had a more traumatic effect than the original sexual assault.” Due process protects us all; no matter our gender identity, or sexual orientation, complainant or accused. We need to give the new due process protections implemented in the 2020 regulations time, so we can evaluate their effectiveness, instead of rushing to change them back to a system that clearly was not effective in protecting “victims.”

The Biden/Harris OCR has published guidance stating, “For sexual harassment that allegedly occurred before August 14, 2020, OCR applies the regulations that were in effect before that date...” That has already been challenged in court. “In Doe v. Rensselaer Polytechnic Institute, a male student accused of sexual assault (the female complainant saying that she had been too intoxicated to give her consent) argued that the school’s use of the Obama guidelines rather than the stricter DeVos rules amounted to sex discrimination against him, and the court agreed. In other words, the court seemed to be saying that the DeVos rules could be applied retroactively to ongoing cases, even if they had been initially filed before the DeVos rules came into effect.” This decision increases the risk of legal challenges by respondents against their schools for using old Obama/Biden procedures. Court cases continue to clearly show the regulations by the Obama/Biden administration were broken and unfair. We should not return to those regulations, as they do not allow for due process.

A number of court cases have affirmed that cross-examination, or, at least, some direct questioning of an accuser by the accused or his representative is fundamental to a fair procedure. “In a 2018 case, Doe v. Baum, the University of Michigan expelled a male student, after he was accused by a female student of having sex with her, when she was too drunk to give consent. The university expelled John after a three-person panel found that Jane’s account was “more credible” than his. John, who said the sex was consensual, sued, and a federal appeals court ruled in his favor, on the grounds that he had “never received an opportunity to cross-examine [Jane] or her witnesses. When the university’s determination turns on the credibility of the accuser, the accused or witnesses, that hearing must include an opportunity for cross examination,” the court found.”
We have heard a lot about how traumatizing cross-examination is for the accuser, but this is a process that is affecting two sides both the accuser and the accused. Those accused, labeled and charged by their schools or colleges with titles of “rape” or “sexual assault” are being treated as criminals on their campuses. This is supposed to be a fair and equal process. Campuses advocates crying out saying, “Oh, this is just an educational process, there is no need for cross-examination.” “We don’t want this to resemble a court process.” Consider this, these campus processes have resulted in lifelong, damaging effects, sometimes irreparable to accused persons educational, social and economic future!35

When you look at this survey and its results, (Washington Post and Kaiser Family Foundation Survey) 44% of women think when they give a guy a "nod in agreement," that isn't enough for consent, 24% of women surveyed agreed that “sexual activity when both people are under the influence of alcohol or drugs...” “Is sexual assault,” and 35% of women felt “sexual assault accusations are often used by women as a way of getting back at men.”20 This survey shows us there are real life consequences in being trained to “Believe the Victim.” When a nod of the head, having a drink or an angry partner is all that separates someone from a rape or sexual assault charge, it seems any school, college or TIX administrator would want to get this right because the potential for harm is very high! Both accused and accuser are at risk and cross-examination is a bedrock principle of our sixth amendment and it should be used in criminal matters, but also in any “educational processes” when someone is being called a rapist. Why wouldn’t our American colleges want to uphold American constitutional rights? Written questions are never an effective substitute for live cross-examination. Courts have emphasized that cross-examination is the best tool for determining credibility, which is often the primary issue you see in campus cases.

We should not return to the failed system that was created by the Dear Colleague Letter (DCL). Every person accused and every person assaulted deserves the due process protections offered by the current 2020 regulations. Lets give the new regulation the time they need to be properly implemented to see how effective they can be!
Appellate Decisions-Violation of the Right to Cross-Examination

Insufficient hearing process; Insufficient notice; Lack of cross-examination;
Inadequate credibility assessment

John Doe v. Claremont McKenna College (2018) 18 California Court of Appeals, 2nd District, Division One
Lack of cross examination; Inadequate credibility assessment

Lack of cross examination; Inadequate credibility assessment;
Potential sex bias

John Doe v. The Regents of the University of California, et al. (2018) 20 California Court of Appeals, 2nd District, Division Six
Insufficient hearing process; Inadequate investigation; Lack of cross-examination

John Doe v. University of Southern California (2018) 21 California Court of Appeals, 2nd District, Division Seven
Insufficient hearing process; Inadequate investigation; Conflicting roles of college officials; Lack of cross-examination; Inadequate credibility assessment; Improper use or exclusion of witness testimony

John Doe v. Kegan Allee et al. (2019, USC) (2019) 22 California Appeals Court, 2nd District, Division Four
Lack of cross examination; Single investigator model 16

John Doe v. Ainsley Carry et al. (USC) (2019) 23 California Appeals Court, 2nd District, Division Four
Lack of cross examination; Single investigator model; Improper review of appeal
Citations for my introduction

30. The Center Square Richard Bernstein / Real Clear Wire Dec 16, 2020Legal experts say Biden’s pushing ahead to the Obama past on campus rape could be a mistake _ Nation.pdf


Below is article I wrote that has been published, on ending the unethical use of trauma informed training as well as additional comments and information to further support why we need to continue with implementation of the DeVos 2020 Regulations.
Healthcare Providers are Being Indoctrinated with ‘Trauma-Informed’ Myths

https://www.saveservices.org/2021/05/healthcare-providers-are-being-indoctrinated-with-trauma-informed-myths/

Colleen Farmer, BSN, RN

I have been a Registered Nurse for the past 32 years and I have worked in the emergency room for the last 25 years. I love my job and love taking care of my patients. I am concerned, however that my coworkers—nurses, doctors and physician assistants—who recently completed the “Trauma and Sexual Assault Survivor Support Training” course were immersed in biased theories that are not scientifically supported.¹

What is a trauma-informed approach?

To be “trauma-informed” means you take a “victim-centered or a “Start by Believing” approach to the care you are providing.² There are two parts to a trauma-informed approach.

The first step “recognizes the presence of trauma symptoms, acknowledges the role that trauma has played... and how trauma interferes with one’s ability to cope.”³ These trauma informed principles then allow healthcare providers to assess and modify care with an “understanding of how trauma affects the life of an individual...” so we can “avoid triggers and re-traumatization.”³

There is nothing new about healthcare providers recognizing the role of trauma in the care of our patients. We see trauma every day in an emergency room, and I would argue that our role on how to handle trauma has not changed. Our goals have always been to recognize where our patients are, be kind, caring, sensitive, supportive and empathetic while being a good active listener to all of our patients.

Nursing care has always looked to promote a safe environment, trustworthiness, and transparency while being respectful, using clear instructions, effective communication and always encouraging our
patients to voice how they feel, empowering them with choices and being a part of their own care plan as we always have.

**Trauma-informed theory is not scientifically proven**

The second part of a trauma-informed approach is the “science” of neurobiology. It is explained as a stressful or life-threatening event that causes a “flood of hormones... resulting in a complete shutdown of bodily function.” This state of mind is referred to as “paralysis, tonic immobility or freezing.” The “trauma physiologically impedes the victim’s ability to resist or coherently remember the assault resulting in an impaired memory or fragmented memory recall due to the disorganized encoding that occurred during the incident.” Various experts state, the “talk on fragmented memory and tonic immobility is unsupported by prevailing scientific research findings.”

Many scientists, psychology professionals, and groups have published papers explaining how trauma-informed concepts are unsupported. The US Air Force Office of Special Investigations, for example, sounded the alarm calling for the end of “trauma-informed” training. Regarding the use of trauma-informed training methodology (FETI), the Air Force Office stated that it is “loosely constricted, is based on flawed science, makes unfounded claims about its effectiveness, and has never once been tested, studied, researched or validated.”

“There is no scientific evidence to support the idea that a trauma-informed approach should be offered as a valid clinical method for working with victims of trauma.” Simply stated, the science of neurobiology is not empirically supported.

**The flaws and failures of trauma-informed training**

- In trauma-informed training, tonic immobility is not only applied in life threatening situations but also expanded to include low-level, non-contact incidents or stressful incidents.

- Current trauma-informed training teaches that a patient who remembers every detail of an incident or a patient who remembers little to nothing of an incident both indicate a trauma has occurred.
When we make the assumption that trauma is the only possible cause, this can lead to misdiagnoses, because providers are discouraged from looking at other possible causes of memory loss such as mental illness, drug/alcohol problems or other factors. In defining trauma the Journal of Adolescent Health states, “A trauma-informed approach does not necessarily seek disclosure…” however, as clinicians, we need to seek the truth in order to properly treat, diagnose and care for our patients.

- In cases of sexual assault, trauma-informed, victim-centered, or “Start By Believing” training teaches us to view the patients as a “victim” vs. an alleged victim. Not only is this presumptuous, it violates both our legal and sworn ethical codes to remain neutral and impartial in our collection of evidence in our role as a sexual assault nurse examiner (SANE) provider. Not only are nurses and doctors being trained in this debunked science, but also our law enforcement, court personnel, judges, attorneys, staff and students on college campuses and more.

- When trauma is used as a preconceived assumption to justify inconsistent behavior, our objectivity as a SANE nurse or provider becomes compromised, as relevant evidence might be excluded. Trauma-informed training often emphasizes that documentation should “corroborate the victim’s account.” Training that suggests SANE nurses or providers corroborate a patient’s account of events, leading us to discredit inconsistencies in a patient’s story places us in the role of judge and jury, which is not our job. This violates our legal and ethical duties requiring us to remain neutral. As clinicians, we should follow scientific and lawful procedures to collect all evidence, without bias, to ensure quality of care for those who allege they have been assaulted. Our charting and reporting of events in an accurate, fair and complete way, is essential to providing good quality care for our patients.

- Trauma-informed training, care, approach, or theory, has become so broadly used and poorly defined it has the unfortunate effect of turning almost anyone into a “victim” or “survivor.”

- New York State trauma-informed programs have included trainings led by Dr. James Hopper. Dr. Hopper has stated, “Focusing on the brain...I’m able to... truly change lives, institutions, and ultimately
cultures.” Effective trauma-informed...methods are essential to treating victims justly...and holding perpetrators accountable. Hopper's real intent appears to go well beyond what any science would support.

- A Washington Post and Kaiser Family Foundation Survey found 44% of women think when they give a guy a "nod in agreement," that isn't enough for consent. 24% of women surveyed agreed that “sexual activity when both people are under the influence of alcohol or drugs...” “Is sexual assault,” and 35% of women felt “sexual assault accusations are often used by women as a way of getting back at men.” This survey shows us there are real life consequences in being trained to “Believe the Victim.” When a nod of the head, having a drink or an angry partner is all that separates someone from a rape or sexual assault charge, we need to be very diligent in factually documenting all potential evidence. In these types of cases, the potential for harm in “corroborating a victim's account” is very high.

The high stakes of trauma-informed policies

Currently, college and university lawsuits are the best place to see the failures of trauma-informed training. The training has been well established for the last decade. It is on our campuses, where the seed of “believe the victim” began and has grown to become the cultural movement of #MeToo. More and more due to the biases of trauma-informed training, courts are denouncing victim-centered philosophies. They are showing they support “clear standards for admissibility of scientific evidence in court.”

Trauma-Informed training does not meet this standard and has been questioned in many court cases. “Misuse of trauma-informed policies was clearly evident in Doe v. University of Mississippi. The court found trauma-informed training materials caused those trained to make “an assumption ... that an assault occurred.” Even the Association for Title IX Administrators, a prominent agency that leads the way on campus policy and training, had this to say about trauma-informed training, “You will need to assess whether you can afford to have a non-empirical, biased training on your resume in this age of litigation.”
Where do we go from here?

The “Trauma and Sexual Assault Survivor Support Training” that New York healthcare providers have attended was based on the flawed concepts of neurobiology outlined above. We need to question why medical professionals are being “trained” in unsupported scientific theory! The title of the training itself should make us question the goal of what is being taught and why we as medical professionals received training and instruction from college advocates, who work from a “survivor-centric” viewpoint that lacks transparency, accountability and is fraught with conflicts of interest.15

We need to end the unscientific “trauma-informed” training of all professions. It is extremely important that we, as nurses and providers conducting evaluations in cases of rape, sexual assault or sexual violence adhere to methods that have been scientifically validated.16 We would not want to see rape cases thrown out of court due to the use of this flawed training. We are capable of recognizing “real” trauma without the unethical use of trauma-informed training.

Citations:


2. Center for Prosecutor Integrity Start by Believing: http://www.prosecutorintegrity.org/sa/start-by-believing/


4. Jim Hopper PhD: https://www.jimhopper.com/

5. The Bad Science Behind Campus Response to Sexual Assault by Emily Yoffe September 8th, 2017:


9. FACE Families Advocating for Campus Equality, Trauma Informed Theories disguised as evidence: https://static1.squarespace.com/static/5941656f2e69c3ffdb5210aa/t/5ccbd3c153450a492767/c70d/1556861890771/Trauma-Informed-Theories+Disguised+as+Evidence+5-2.pdf


14. ATIXIA Training Materials Paul Smith's College Building Partnerships among Law Enforcement Agencies, Colleges and Universities: Developing a Memorandum of Understanding to Prevent and Respond Effectively to Sexual Assaults at Colleges and Universities https://www.paulsmiths.edu/title-ix/training/

15. Paul Smith's College Coordinated Community Response https://www.paulsmiths.edu/care/

17. Has EVAW Been Moderating or Covering its Tracks? By James Baresel February 16, 2021: http://ifeminists.net/e107_plugins/content/content.php?content.1497


Is Sexual Harassment or Assault a Crime or and Educational Process on a College Campus?

SUNY remarks to OCR Re: Docket ID ED-2018-OCR-0064 January 29, 2019 by Kristina M. Johnson, PhD Chancellor “The State University of New York, “SUNY and its campuses care deeply about preventing and responding to harassment and assault in a way that makes education as accessible as possible, treating crimes and violations seriously."

Governor Cuomo said this when signing the Enough is Enough Law, "Today, New York is making a clear and bold statement: sexual violence is a crime, and from now on in this state it will be investigated and prosecuted like one. With this law, we will better protect every student that attends college within our borders..."27

Assembly Member Deborah Glick, Chair of the Assembly Higher Education Committee, said, “This law enacts a set of clear, fair and effective policies to combat sexual assault on campus. It will help the many students, who are victims of sexual assault, rape, domestic violence, stalking and other heinous acts...” 27

Carol Robles-Román, President and CEO of Legal Momentum, said, “The bill is an important development in keeping our young people safe and in combating sexual assault crimes.” 27

“On April 4, 2011, Vice President Joe Biden faced a crowd at the University of New Hampshire and announced, "We are the first administration to make it clear that sexual assault is not just a crime, it can be a violation of a woman's civil rights."

Every one of these statements indicate what is happening on our college campuses is criminal and heinous and if that is the case we should not be adjudicating these cases on our campuses! If this is an “educational process” no student deserves to be labeled and charged with “rape” “sexual assault or violence” and treated as criminal on their campus, and then left unable to defend themselves against the use of
trauma informed training that does not afford them the presumption of innocence or due process on their campus. The Association for Student Conduct Administration “ASCA’s white paper states, "the expelled student may suffer damaging effects, sometimes irreparable, to his educational, social and economic future...!”28,29 Every person accused deserves the due process protections offered by the current 2020 regulations. Due process is the essential protection of any individual against the arbitrary use of power by any institution, especially any marginalized group or person!

27. Governor Cuomo signed his “Enough is Enough” legislation to combat sexual assault on college and university campuses July 7th, 2015

28. The ASCA Law and Policy Report (LPR) is written by Gary Pavela LAW AND POLICY REPORT Thursday May 1, 2014 No. 487
https://www.theasca.org/Files/Publications/LPR487May12014.pdf

Case Examples of Problems with the Previous Obama/Biden 2011, 2014 Guidance

Student 1 Summary of TIX experience

A young woman (Jane) walks into campus security at 10:45pm on a Sunday night and makes an accusation that she was sexually assaulted six days prior. She was offered medical attention, to talk with the police and refused both. She was allowed to have her previous boyfriend and friend(s) with her for support. The counselor on call was contacted and spoke with the young woman. Various people she interacted with offered her more help/counseling on multiple occasions through that night and the next day, which she refused.

This was a he said she said case, no drugs, no alcohol, no sexual intercourse. A no contact order was delivered to John Doe in the middle of the night. The next morning the young man met with Associate Dean of Students/ Senior Deputy TIX director’s in his office. The dean said “you are being charged with sexual misconduct” and you can make a statement at a later date. We know this to be true because this call was legally recorded four days later when the Dean reiterated what he previously had said. He then explained to John there was “inappropriate touching” and he “did not get affirmative consent.”

Shortly after this meeting John was abruptly pulled out of his lab class and told he was suspended. He was escorted to his room by three security men to gather his belongings, while signs are being hung on all the buildings that there was a campus sexual assault. A mass email warning was sent to everyone on campus, asking them to report information.

That night the assault was on the news and in the newspaper. John was treated as guilty the moment he was accused! This was not the fair and equal process the college promised. Imagine how you would feel, your friends watching you be escorted away like a criminal. You don’t even know why this is happening, you only know an accusation was made and no one wants to hear your side of the story.

Jane’s roommate’s statement talked about the night of the supposed incident. Her roommate reported Jane “was mostly annoyed” “upset and frazzled ... The roommate states the next day Jane “told me that she had been thinking about the night before and she told me the more she had been thinking about it the more it bothered her... She was not thinking about reporting it at that point and I brought up the counseling center. She wasn’t opposed to it but she didn’t think she would need the counseling center.

The next day everyone was home on break and Jane texted her roommate:
• Jane; “I tried to talk to my mom today about the John thing. That conversation did not go how I thought it would.”
• Roommate; “what happened?”
• Jane; “She told me I need to be more careful with guys.”
• Roommate; “I’m sorry she didn’t react well sometimes parents need time to process before they come to terms and react the way you want.”
• Jane; “I thought she would get upset or mad or something like that but instead she made it seem like it was my fault. You know it wasn’t right?”
• Roommate; “I am sorry she did not react well…”
• Jane; “I was teasing him earlier that day and I did kiss him and stuff…” “Does this count as sexual assault?”
• Roommate; “According to Department of Justice: Sexual assault is any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault.”
• Jane; “So Yes?”
• Roommate; “Honestly, yes I would think it would count.”

The incident report states Jane “tried to tell her mother that she had been sexually assaulted.” And she reported her mother told her “that because it was not rape, Jane just needed to be more careful with boys.”

John and his father were allowed to return to the campus pick up more belongings two days after the accusation. They spoke with the Title IX director about the unfair treatment, being labeled guilty without any presumption of innocence, and the fact that no one wanted to hear his side of the story. They asked how was it that he was just suspended and they simply believed her? How is it that she alleged something happened and was immediately given the title “victim/survivor” What process had already determined she had “survived” something? The Title IX director stated, “There was a lot of pressure from the Federal Government and that this is just how things work.”

John and his father started to drive home with most of his belongings when the Title IX director called less than thirty minutes after they left. She said John could return now to the college to attend classes but he could not return to his townhouse. This one interaction, John and his father talking reasonably with the Title IX director seemed to make a difference in how John was perceived. Maybe he was not the “serial rapist” they were treating him as. This was the only glimmer that John might be heard. It did not last long.

The school said there would be an investigation. Shouldn’t an investigation occur before someone is charged? In this case the college had it covered, when deciding if they would be moving forward with a case they only accepted “evidence in support of the complaint.” It definitely seemed like John’s guilt was
John was told on a Thursday afternoon at 4:30pm he had to submit a statement no later than Monday knowing only the accusers name, date, place and that he was “charged” with “rape” and “inappropriate touching.” While this was “only an educational process” per the college you still have to consider anything you say can be used against you in a court of law. It was clear the college itself had not treated John fairly and there was no presumption of innocence.

**Try to find a lawyer in one day.**

A few other key facts learned along the way;

- Jane's story changed and the story grew worse with each person she spoke. When she finally reported she would only do it with the ex-boyfriend at her side ...

- The Title IX director's summary of events falsely stated that the “complainant indicated that she was very angry and when respondent texted her and said “I had fun tonight” that Jane’s responding text was, “you can’t do that stuff. You can’t hold me down and force yourself on me.” The only text messages that were supplied at all for evidence were from John and the actual text on the night in question after he walked her back to her dorm was, “I really enjoyed spending time with u (smiley face emoji) and Jane’s response to that was “Thanks”

- The Dean/Deputy "Selects, trains and advises the student Conduct Review Board" but it was the Dean/Deputy who had decided John was guilty by accusation ... The Dean/Deputy was trained to “believe the victim,” a trauma informed approach that is “based on flawed science,” “loosely constructed,” and “makes unfounded claims about its effectiveness, and has never once been tested, studied, researched or validated.”

- The investigating officer's daughter was a friend with the complainant. This officer also wrote a chapter in the Previous Title IX directors book who showcased John’s college campus as a premier example of how a college can “eradicate" sexual violence.

- 10 days after the accusation John’s roommate received notice that he would be getting a new roommate. Its sure feels like the school predetermined John’s guilt.

John submitted his statement and waited. After some time he was allowed to view what we think was most of the “investigative” materials. The investigation only consisted of statements against John by Jane and her friends. John was then allowed to write one more statement in response to what he had viewed.
John had NO hearing to attend, NO cross-examination in person or written, John was not allowed to know who was on his hearing panel judging him. There was no verbal questioning of John by the college or the investigator at any time. How does a hearing panel make a life altering decision without ever meeting, talking, or interacting with the accused? They made a judgment based solely on information that the college required be supportive of the complainant.

Even within a system that states it is “educational,” it seems when you are labeling someone as a “sex offender” or “rapist” it would be important to hear him or her speak ... how do you come to a conclusion without ever meeting or interacting with one side?

I do believe cross-examination would have made a difference in the outcome of this case, as it is the best tool for determining credibility! Written questions are never an effective substitute for live cross-examination. I think this case is a prime example of why cross-examination is a needed requirement in the new Title IX regulations.

John was found responsible by the college. The effects and impact of being wrongly accused are real. The stigma and vilification of being labeled a “sex offender” cannot be underestimated. The inability to fully clear one’s name can cause extreme pain and embarrassment. Being accused changes your ability to return trust and it is difficult to return to being the valued person you were before the accusations. There are definably changes in personality and social behavior due to the loss of a previously untainted reputation, a loss that cannot be repaired in the absence of clear exculpatory evidence of innocence. Self blame, suicidal thoughts, paranoia, anxiety, mistrust, social withdrawal and isolation are all commonly seen in many who have gone through similar “educational processes. “It is not only the person accused that suffers this is a life altering event for the whole family and even friends.

Please ask yourselves What is the difference between being labeled “guilty” in a civil or criminal proceeding or being found “responsible” on your college campus of “rape?” Because the consequences of being suspended or expelled, having marks on your records, being judged and labeled by your college campuses has caused irrevocable harm to many students!

Betsy DeVos took the time and did her homework on this! It is clear the previous Obama/Biden system was broken. Please be supportive of the 2020 regulations and give them the opportunity they deserve!

Sincerely, anonymous and forever changed
Student 2 Student Letter to the School

I am writing this because I am concerned that my rights have been violated, I am being denied a fair process and it appears the school is violating its own policies. An accusation was made against me and I was immediately suspended and removed from the campus without any opportunity to defend myself. It sure feels like I am being treated as guilty and not as innocent until proven guilty. The college handbook states, Our college “seeks to ensure that the rights of an individual guaranteed by state laws and the U.S. Constitution” and I will have “The right to an investigation and process conducted in a manner that recognizes the legal and policy requirements of due process and is not conducted by individuals with a conflict of interest.” I was first notified by my teacher, Mrs. X (also the Dean of Student Life) that I violated the college sexual policy in the hallway of the college, near the doorway of the class I was on my way to attend. Mrs. X having both of these roles seems like a major conflict of interest, but what I found even worse was the fact that other students were walking by in the hall and had the opportunity to hear what was being said to me. On top of that my accuser was also there and able to see and possibly hear what was being said to me. Campus safety was also present and after Mrs. X spoke she handed me a paper with charges against me. I was told I needed to leave campus immediately. I live in farther away and asked if I could have five minutes to set up a ride. I was told no and was escorted by campus security off the campus in front of my class, accuser and others. I am not sure who saw what. This was shocking, painful and embarrassing. The college has now made me a target and labeled me as a sexual predator in front of my peers over an alleged incident. The stigma attached to this label cannot be underestimated. It does not seem that any investigation was even done before I was suspended.

The college policy says, “When the Dean of Student Life (or designee) judges the continued presence of a student would be dangerous, either to him/herself or others, the Dean of Student Life (or designee) will order an immediate investigation...” “The Dean of Student Life (or designee) may suspend the student immediately upon receiving the outcome of the investigation...”
Can you please answer these questions?

- Who did this investigation? And what was the outcome?
- What was the reason I was suspended? I would like to see the results of this investigation in my conference.
- How do you have an investigation and only know one side of the story? It seems the college skipped this step and suspended me based on just an allegation because they already gave me the charges against me.
- “What did I do to warrant an immediate suspension? The college policy states, “Sexual misconduct or bias-related violations that result in serious physical or psychological injury shall be considered offenses of sufficient gravity to warrant immediate interim suspension of a student prior to a hearing.” I have never harmed anyone or been in trouble at the college or in school. What did I allegedly do that resulted in serious physical or psychological injury?

I am very worried about completing my classes and my finals. I have been a good student and worked hard and I am being told that I will receive an incomplete in my Typography class.

My father has talked to a lot of people and lawyers. We both have been doing a lot of reading about Title IX. This is what we have learned, It seems that the college is following the old 2011, 2014 guidance. The most up to date federal guidance on sexual violence or Title IX was issued on September 22, 2017 by the Office on Civil rights.(OCR) I will provide a link for your reference. As you probably know the Department of Education (DoE) withdrew the 2011 and 2014 Dear Colleague Letters (DCL) for placing “improper pressure upon universities to adopt procedures that do not afford fundamental fairness.” And it was felt “many schools have established procedures for resolving allegations that “lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused, and are in no way required by Title IX law or regulation.”.....
What about this students’ right to an education? What about the trauma inflicted on this respondent by his teacher/Dean of Student Life? This student had no hearing process, no cross-examination. The schools clearly have their own priorities in what rules they want to follow. They often seem to forget this is a process that is affecting two lives the accuser and the accused the system is supposed to be fair and equal for all.

Student 3
Campus Safety Officer Facebook post - “I will progress in the career of Public Safety and at all costs do whatever it takes to protect the students on the campus of ________, for they are the main reason I do what I do. Campus security across the nation should be at an all time high, taking every precaution necessary to ensure the safety of everyone. Never stop training for the unpredictable, for you never know what may come about in today's world.”

Campus Safety Officer - Day 1 posting on Police Facebook webpage when a student on his campus was alleged accused of “not getting consent”

You’re a scum (full name)! You’re NOT what ____ University is about. You’re not what ____ University Athletics is about (mad face emoji) I hope you rot and you don’t ever come back to ____ University! Hope you’re expelled from ____ University and get what you deserve, no forgiveness here! We’re ______ not Louisville!

Who wants this potential Safety Officer as an investigator on their case or panel? This officer seems to have taken the “Believe the Victim” oath and training. What happened to presumption of innocence? This student should be presumed innocent a constitutional right and neutral civil liberty, but affirmative consent on campuses places the burden of proof on the accused. This is not upholding our constitutional rights and values here in America. The 2020 regulations removed the word “victim” or “survivor.” The use of these words themselves implies guilt of the person who stands accused. All schools need to be directed to change their language from “victim/survivor” to complainant/accuser or some neutral term.
Problematic Implementation of the 2020 Regulations by Colleges and Universities

Many colleges and universities have never implemented the DeVos Regulations properly! They have set up dual Title IX tracks to go around the 2020 Regulations, keeping all the old language, policies and practices intact calling it **Non-Title IX Misconduct**. Posted below is part of a NYS Colleges’ Sexual Misconduct and Interpersonal Violence Policy that attempts to describe the dual TIX and Non-Title IX track.

“Definitions and Behavioral Examples of Prohibited Conduct (Title IX Sexual Harassment and Non-Title IX Misconduct)"

“This policy prohibits the following forms of misconduct, collectively referred to throughout the policy as “Prohibited Conduct”. Due to certain requirements in the May 2020 Title IX regulations and the College’s desire to define and address Prohibited Conduct consistently with its institutional values and practices, the definitions of Prohibited Conduct set forth below are grouped into two general categories, as follows: 6 **Title IX Sexual Harassment** (i.e., Quid Pro Quo Sexual Harassment, Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, and Domestic Violence, Dating Violence and sex-based Stalking that fall within the scope of Title IX); and **Non-Title IX Misconduct** (i.e., Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking that fall outside the scope of Title IX, Sexual Exploitation, Sexual Coercion, and Retaliation, as defined below).”

Colleges are adding to the confusion of Title IX. First many of the colleges do not know how to implement the Title IX processes as you can see from all I have submitted. Many colleges seem determined to keep previous 2011 and 2014 guidance alive. When trying to follow these college policies with two Title IX tracks it is very confusing and the process is not clear or understandable for the average person being charged with a Title IX violation. Those accused are often unsure if they are supposed to be in a Title IX or Non-Title IX track. When an accused person is told they need to go though a Non-Title IX path how would they know if this was the right or wrong path? They could read all the confusing and contradicting materials the schools have posted on their
website. The schools have complicated the process in the effort to keep the old 2011, 2014 Guidance language as their student code of conduct. Only those who might figure out they need a lawyer and can afford one, might get the help they need to navigate this Title IX nightmare, if they happened to hire the right lawyer.

This dual track Title IX system is WRONG! Keeping the old Obama/Biden guidance as a code of conduct was not the intended purpose on how to implement the 2020 regulations. These dual tracks are more likely to harm the most vulnerable campus groups.

Colleges have also gone out of their way to continue to hide the Title IX training being done, for those who are investigating and adjudicating cases of sexual misconduct. What do these colleges have to hide? Why do they not want the public to see the training? Some colleges require a log in to access the training, therefore the public does not have access to the training. Other colleges teamed up with agencies like Association of Title IX Administrators (ATIXA), which then lists an overwhelming amount of training materials that would take an abundant of time for someone to review. There is so much training materials you would not know what training is being focused on.

These practices are wrong and the colleges and universities need to end them. The 2020 Regulations need to be given a fair and proper chance, be implemented correctly and then let's see where we are!

Trauma-informed approaches do not allow for the presumption of innocence, a neutral civil liberty, and our constitutional right. The concern to provide justice for "victims" on our campuses seems to have trumped concern for avoiding wrongful findings of responsibility. Lets return to seeking truth and facts. Colleges are making life-altering decisions based on unethical and the unproven theories of trauma informed approaches. Decisions being made on a college campus are not "just a slap on the wrist" and statements like "it's just a disciplinary or learning process for the student "or "they are not going to jail" really minimizes the long term implications of these life altering decisions. I ask is it not more important to make sure you are doing right by all the young people in your charge? Let's correctly implement the current 2020 Regulations we already have!
My public comment

I am a registered nurse with lots of experience working with trauma in an emergency room and on a college campus under Title IX. I want to share why we must support the current 2020 regulations, their due process protections and why we need to end the confusing and unscientific neurobiology of “trauma-informed” training of all those involved in Title IX cases.

Currently, college and university lawsuits are the best place to see the failures of trauma-informed approach. This training has been well established on our campuses for the last decade. More and more due to the biases of trauma-informed training, courts are denouncing victim-centered philosophies and they are showing they support “clear standards for admissibility of scientific evidence in court.”

“In Doe v. Purdue it was found that schools could be discriminating against accused men if they adopt a “start by believing” approach!” The “federal appeals court found that Purdue University might have discriminated against a male student on the basis of sex, believing his female accuser’s version of events while barring the young man from presenting evidence on his own behalf. The unanimous court decision written by Amy Coney Barrett said, “It is plausible,” that Purdue, “chose to believe Jane because she is a woman and to disbelieve John because he is a man.” The alleged victim, never submitted a statement of her own. The university itself pursued the case on her behalf. How do you “believe” someone without ever speaking to him or her or hearing from them directly?

Colleges should not be using “Start By Believing” methods as they biased and working from a “survivor-centric” viewpoint that lacks transparency, accountability and is fraught with conflicts of interest. Many experts state, the “talk on fragmented memory and tonic immobility is unsupported by prevailing scientific research findings.” The US Air Force Office of Special Investigations, has sounded the alarm calling for the end of “trauma-informed” training stating that it is “loosely constricted, is based on flawed science, makes unfounded
claims about its effectiveness, and has never once been tested, studied, researched or validated.”

In another court case Doe v. University of Mississippi the court found trauma-informed training materials caused those trained to make “an assumption ... that an assault occurred.” Even the Association for Title IX Administrators, a prominent agency that leads the way on campus policy and training, had this to say, “You will need to assess whether you can afford to have a non-empirical, biased training on your resume in this age of litigation.”

We need to end the unscientific use of “trauma-informed” training of those on our college campuses, as well as our police, law enforcement and medical health professionals. We need to support the current 2020 regulations that were put in place, allowing for due process protections and cross-examination. We would not want to see rape cases thrown out of court due to the use of this flawed training.

Citations for My Public Comment

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