

From: Savannah Dao
Sent: Fri, 4 Jun 2021 11:41:18 -0400
To: T9PublicHearing
Subject: submitting testimony for next week's hearing

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.

Hello,

My organization would like to submit written testimony in advance of next week's hearings. Is it possible to submit our testimony via email and not appear to orally deliver it?

Thank You,

Monica Sobrin

they/she pronouns

Legal Intern, Day One

legalintern@dayoneny.org

dayoneny.org | [@DayOneNY](#) | [Facebook](#) | [Day One+](#)

Day One

P.O. Box 3220

Canal Street Station

New York, NY 10008

P 212.566.8120 / 800.214.4150

F 212.566.8121

W www.dayoneny.org

This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of e-mail transmission. If verification is required please request a hard-copy version. This message is provided for informational purposes and should not be construed as legal advice or opinion.

From: Savannah Dao
Sent: Wed, 9 Jun 2021 16:12:50 -0400
To: T9PublicHearing
Cc: Andrew Sta. Ana
Subject: Day One Testimony - Title IX
Attachments: TIX Testimony.pdf

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.

Hello,

Attached is testimony from Day One for this week's Title IX hearings. Please let us know if you have any questions.

Thanks,

Monica Sobrin

they/she pronouns

Legal Intern, Day One

legalintern@dayoneny.org

[dayoneny.org](#) | [@DayOneNY](#) | [Facebook](#) | [Day One+](#)

Day One
P.O. Box 3220
Canal Street Station
New York, NY 10008

P 212.566.8120 / 800.214.4150

F 212.566.8121

W www.dayonyeny.org

This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of e-mail transmission. If verification is required please request a hard-copy version. This message is provided for informational purposes and should not be construed as legal advice or opinion.



TESTIMONY OF ANDREW STA. ANA, DIRECTOR OF LAW AND POLICY, DAY ONE, to THE UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS (OCR), on TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, IN RELATION TO PRESIDENT BIDEN'S EXECUTIVE ORDER ON GUARANTEEING AN EDUCATIONAL ENVIRONMENT FREE FROM DISCRIMINATION ON THE BASIS OF SEX, INCLUDING SEXUAL ORIENTATION AND GENDER IDENTITY

JUNE 9, 2021

Thank you to the U.S. Department of Education's (the Department) Office for Civil Rights (OCR) for holding this *Virtual Public Hearing on Improving the Enforcement of Title IX of the Education Amendments of 1972*, in relation to President Biden's Executive Order on *Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*.¹

My name is Andrew Sta. Ana and I submit this testimony on behalf of Day One. Our mission is to partner with youth to end dating abuse and domestic violence through community education, supportive services, legal advocacy and leadership development. Day One believes that the Department of Education can play a pivotal role to ensure that students are receiving quality education free from gender discrimination.

Day One is the only New York organization committing its full resources to address dating violence among youth 24 years of age and under. We work to create a world without dating violence by delivering a combination of services that includes social services and legal advocacy for young survivors of relationship abuse, leadership development for teenagers, and preventative education for students in kindergarten through college. We appreciate the opportunity to share our experiences and perspective on the importance of strengthening protections for student survivors of dating violence.

Day One works to ensure that all of our services for youth are delivered within a framework that acknowledges the intersectionality of identities and complex dynamics of intimate partner violence, healthy relationships, and consent. Through our legal department, we help in assisting many New York City student survivors in obtaining accommodations and accountability in their schools, ensuring that our clients receive their education in a safe environment free from harassment. We train school administrators, staff, and teachers about their obligations under Federal, State, and local laws to provide student survivors with the tools they need to continue their education after experiencing violence.

Dating violence among young people is a serious and widespread issue. According to the 2017 Youth Risk Behavior Survey, 10 percent of New York City public high school students report experiencing physical violence in a dating relationship within the past year and 15.4

¹ Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity; 86 Fed. Reg. 46,13803 (March 8 2021).

percent report experiencing sexual dating violence within the past year.² The New York City Domestic Violence Hotline receives an average of 1,400 calls from teenagers every month.³ Nationally, women aged 16-24 experience the highest per capita rate of intimate partner violence, triple the national average.⁴ Through our work with student survivors, we have seen that students experiencing dating violence often fall behind in school, experience an increase in absences, and/or never graduate. Our testimony focuses on the unique experiences of young survivors in school settings, which informs our belief that strong protections for young survivors are essential to upholding all students' rights to a quality education.

In September 2017, former Secretary of Education, Betsy DeVos, rescinded previous guidance regarding Title IX and campus sexual misconduct. In November 2018, the Department of Education introduced new proposed regulations and opened a notice and comment period. These regulations went into effect in August 2020. The Title IX protections that existed prior to August 2020 played an important role in many of our client's pathways toward safety and healing, providing an option for our clients to hold the person who caused them harm accountable and receive much needed accommodations to continue to access their education. While we welcome regulations that would strengthen Title IX and provide more protections for survivors of sexual violence, we were deeply troubled that many of the August 2020 regulations did the opposite and would cause further trauma and harm to survivors. We offer the following suggestions as the Department drafts new proposed rules to replace the rescinded 2020 promulgated rules:

1. **To ensure students maintain agency and authority over their experiences, Title IX regulations should discourage compulsory escalation of complaints absent student consent.**

For Title IX to be accessible to students, it is imperative that survivors are able to make choices about who will be informed of their experiences. Survivors need to feel they have access to safe and supportive Title IX protections and civil administrative remedies to prevent disruption to their education. The Department should discourage procedures that effectively create a *de facto* mandated reporting protocol. Rather, the Department should ensure student autonomy over their experiences to maintain access to Title IX remedies, and support a student's right to seek law enforcement remedies if a student chooses to do so.

Regarding law enforcement compulsory collaboration: when an incident is reported to law enforcement without the survivor's consent, they lose power, control, and agency over their story, which compounds the harm already inflicted. Overreliance on reporting greatly reduces the chances a survivor will turn to their school for help: in a 2015 survey of campus sexual violence survivors, 90% said that campus victims should retain the right to choose whether and to whom to report; 88% said that, where campuses required school officials to turn over rape

² New York City Department of Health and Mental Hygiene. Epiquery: NYC Interactive Health Data System - [Youth Risk Behavior Survey 2017].

³ New York City Mayor's Office, Mayor's Office to Combat Domestic Violence. (2007). 2007 Fact Sheet: New York, NY.

⁴ Rennison, C.M., & Welchans, S. United States Department of Justice, Bureau of Justice Statistics (2000). Intimate partner violence (NCJ Publication No. 178247). Rockville, MD.

reports to the police (without the survivors' consent), they believe fewer people would report to anyone at all.⁵ Consequently, survivors become unable to access Title IX -- mandated services and accommodations, such as disciplinary proceedings and school provided support services like counseling, academic accommodations, and emergency contraception. In effect, mandatory reporting protocols are antithetical to Title IX's purpose and gut its implementation.

2. To maintain fair and equitable grievance procedures consistent with civil litigation standards, the Department should return to a preponderance of the evidence standard as directed in the 2011 Dear Colleague Letter.⁶

Title IX is a civil rights law that provides administrative remedies to ensure students have equal access to education after experiencing gender-based violence. Replacing the clear and convincing standard with the previously instituted preponderance standard would potentially increase reporting, as survivors may feel more likely to be believed.⁷ Survivors of sexual violence often do not report their experiences out of fear of not being able to prove what happened or not being believed. Replacing the preponderance of the evidence standard with a clear and convincing standard "adds to the mix of reasons that discourage[s] complainants from coming forward."⁸

3. To encourage reporting and administrative accommodations, the Department should rescind requirements that all parties must undergo live cross examination to have their statements included in evidence analysis.

Live cross examination re-traumatizes survivors⁹ and the aggressive, adversarial questioning involved in untrained interviewing techniques is often ineffective in assessing the

⁵ *Resisting Mandatory Police Referral Efforts*. Know Your IX, <https://www.knowyourix.org/issues/resisting-mandatory-police-referral-efforts/> (last visited June 4, 2021).

⁶ See Russlynn Ali, Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ., *Dear Colleague Letter: Sexual Violence* 11 (Apr. 4, 2011), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>. See also Catherine E. Lhamon, Assistant Secretary for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ., *Dear Colleague Letter: Title IX Coordinators* (Apr. 24, 2015), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf> (clarifying the role and requirements of the Title IX Coordinator).

⁷ Deborah L. Brake, *Fighting the Rape Culture Wars Through the Preponderance of the Evidence Standard*, 78 Mont. L. Rev. 109 (2017), <https://scholarship.law.umt.edu/mlr/vol78/iss1/6>

⁸ *Id.* at 136. See also Elizabeth Sommer, *Use of Preponderance of Evidence in Campus Adjudication of Sexual Misconduct* 28–29 (Dec. 2015) (Masters Thesis, Northern Michigan University), <https://perma.cc/GQ3X-G3V5> (Masters thesis, reporting findings of interviews with student conduct adjudicators at one public university, reporting their belief that a higher standard than the preponderance of the evidence would deter victims/survivors from coming forward).

⁹ See Simon McCarthy-Jones, *Survivors of sexual violence are let down by the criminal justice system -- here's what should happen next*, *The Conversation* (Mar. 29, 2018, 5:28 am), <https://theconversation.com/survivors-of-sexual-violence-are-let-down-by-the-criminal-justice-system-here-s-what-should-happen-next-94138>

validity of sexual violence allegations.¹⁰ Lifting these restrictions enables student survivors to feel more comfortable reporting experiences of sexual violence, increasing the accessibility of Title IX accommodations.

4. To stop sexual harassment in schools, students, faculty, and staff must be adequately trained to identify behaviors that constitute sexual and gender-based harassment, including dynamics specific to dating violence.

Young people we work with experience both bullying and dating or domestic abuse while in school. Unfortunately, educational professionals often conflate these two issues and offer suggestions or assistance that do not specifically address gender-based violence and do not acknowledge the complexities of dating relationships. For example, young people have told us that teachers advised them to simply ignore an abusive intimate partner. This solution will often be ineffective when a dynamic of power and control is in place.

For example, when dating violence is present in an intimate relationship, one partner can potentially cause harm by manipulating a restorative or mediation process. That abusive partner may use personal or intimate details against a survivor as additional leverage. When these incidents are categorized and adjudicated as bullying cases, young people cannot receive the necessary remedies and accommodations provided under Title IX procedures and not anti-bullying policies, diminishing their access to a safe and productive education. Additionally, when the specific harms and risks associated with gender-based and intimate partner violence are not properly addressed, there is a higher likelihood of intimate partner violence escalating.¹¹ The Department should ensure that young people and professionals who work with young people are educated and trained on healthy relationships, consent, and the multitude of ways dating violence can manifest.

5. To appropriately remedy gender-based violence that negatively impacts a young person's education, survivors must be able to report off-campus incidents.

The 2011 Dear Colleague Letter encouraged schools to consider the effects of off-campus sexual harassment when evaluating whether there is a hostile campus environment.¹² This directive was amended in the 2020 promulgated rules, which required the complainant to be participating in or attempting to participate in an "education program or

¹⁰ Bruton, H. Hunter (2017) "Cross-Examination, College Sexual-Assault Adjudications, and the Opportunity for Tuning up the "Greatest Legal Engine Ever Invented", " Cornell Journal of Law and Public Policy: Vol. 27, Iss. 1, Article 4, <https://scholarship.law.cornell.edu/cjlp/vol27/iss1/4>.

¹¹ Zlatka Rakovec-Felser, "Domestic Violence and Abuse in Intimate Relationship from Public Health Perspective," Health Psychology Research: Vol. 2,3 (Oct. 2014) 1821, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4768593/>.

¹² See Russlynn Ali, Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter: Sexual Violence 11 (Apr. 4, 2011),

activity.”¹³ In New York City, where students are involved in off-campus activities or gatherings that may not fall directly under the school's purview but extend into the educational environment, it is important that survivors have the option of reporting off-campus incidents to receive necessary accommodations and support.

6. **To allow students to assert agency over their healing process.**
Restorative/transformational justice approaches should be offered alongside traditional procedures and remedies.

There is ample evidence of the benefits of alternative, non-punitive approaches to sexual violence where there is affirmative consent by all parties.¹⁴ Mirroring punitive approaches to address the harms of intimate partner and gender-based violence can discourage people holding historically marginalized identities from navigating these pathways. Title IX's purpose is to set forth a civil, administrative process, which is distinct from the criminal legal system. The Department should allow schools to develop and offer such alternatives to students reporting incidents of sexual misconduct or dating violence.

We are acutely aware of the ways Title IX regulations impact the young people we serve and we thank you for allowing us to comment on these essential regulations. We would be honored to partner further to examine these regulations in greater detail. Thank you for prioritizing Title IX and for your support of young survivors.

¹³ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. 106 §§ 106.30 and 106.45 (2020).

¹⁴ See Mary P. Koss et al., Campus Sexual Misconduct: Restorative Justice Approaches to Enhance Compliance With Title IX Guidance, 15,4 *Trauma, Violence & Abuse* 242 (April 27, 2014), https://www.jstor.org/stable/26876513?seq=1#metadata_info_tab_contents; Katie Vail, The Failings of Title IX for Survivors of Sexual Violence: Utilizing Restorative Justice on College Campuses, 94 *Wash. L. Rev.* 2085 (2019), <https://digitalcommons.law.uw.edu/wlr/vol94/iss4/12>; Madison Orcutt, Restorative justice Approaches to the Informal Resolution of Student Sexual Misconduct, 45,2 *Rutgers L. Rev.* 204 (2020), https://jcul.law.rutgers.edu/wp-content/uploads/2020/08/45_jcul_No2_FULL.pdf.

From: Savannah Dao
Sent: Thu, 10 Jun 2021 10:14:08 -0400
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing TESTIMONY OF ANDREW STA. ANA, DIRECTOR OF LAW AND POLICY, DAY ONE
Attachments: TIX Testimony (1).pdf

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.

Written Comment of Andrew Sta. Ana, Legal Director at Day One in New York attached.

Email Address: astaana@dayoneny.org

Monica Sobrin
they/she pronouns
Legal Intern, Day One
legalintern@dayoneny.org
dayoneny.org | [@DayOneNY](https://www.facebook.com/DayOneNY) | [Facebook](https://www.facebook.com/DayOneNY) | [Day One+](https://www.facebook.com/DayOneNY)

Day One
P.O. Box 3220
Canal Street Station
New York, NY 10008

P [212.566.8120](tel:212.566.8120) / [800.214.4150](tel:800.214.4150)
F [212.566.8121](tel:212.566.8121)
W www.dayoneny.org

This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of e-mail transmission. If verification is required please request a hard-copy version. This message is provided for informational purposes and should not be construed as legal advice or opinion.



TESTIMONY OF ANDREW STA. ANA, DIRECTOR OF LAW AND POLICY, DAY ONE, to THE UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS (OCR), on TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, IN RELATION TO PRESIDENT BIDEN'S EXECUTIVE ORDER ON GUARANTEEING AN EDUCATIONAL ENVIRONMENT FREE FROM DISCRIMINATION ON THE BASIS OF SEX, INCLUDING SEXUAL ORIENTATION AND GENDER IDENTITY

JUNE 9, 2021

Thank you to the U.S. Department of Education's (the Department) Office for Civil Rights (OCR) for holding this *Virtual Public Hearing on Improving the Enforcement of Title IX of the Education Amendments of 1972*, in relation to President Biden's Executive Order on *Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*.¹

My name is Andrew Sta. Ana and I submit this testimony on behalf of Day One. Our mission is to partner with youth to end dating abuse and domestic violence through community education, supportive services, legal advocacy and leadership development. Day One believes that the Department of Education can play a pivotal role to ensure that students are receiving quality education free from gender discrimination.

Day One is the only New York organization committing its full resources to address dating violence among youth 24 years of age and under. We work to create a world without dating violence by delivering a combination of services that includes social services and legal advocacy for young survivors of relationship abuse, leadership development for teenagers, and preventative education for students in kindergarten through college. We appreciate the opportunity to share our experiences and perspective on the importance of strengthening protections for student survivors of dating violence.

Day One works to ensure that all of our services for youth are delivered within a framework that acknowledges the intersectionality of identities and complex dynamics of intimate partner violence, healthy relationships, and consent. Through our legal department, we help in assisting many New York City student survivors in obtaining accommodations and accountability in their schools, ensuring that our clients receive their education in a safe environment free from harassment. We train school administrators, staff, and teachers about their obligations under Federal, State, and local laws to provide student survivors with the tools they need to continue their education after experiencing violence.

Dating violence among young people is a serious and widespread issue. According to the 2017 Youth Risk Behavior Survey, 10 percent of New York City public high school students report experiencing physical violence in a dating relationship within the past year and 15.4

¹ Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity; 86 Fed. Reg. 46,13803 (March 8 2021).

percent report experiencing sexual dating violence within the past year.² The New York City Domestic Violence Hotline receives an average of 1,400 calls from teenagers every month.³ Nationally, women aged 16-24 experience the highest per capita rate of intimate partner violence, triple the national average.⁴ Through our work with student survivors, we have seen that students experiencing dating violence often fall behind in school, experience an increase in absences, and/or never graduate. Our testimony focuses on the unique experiences of young survivors in school settings, which informs our belief that strong protections for young survivors are essential to upholding all students' rights to a quality education.

In September 2017, former Secretary of Education, Betsy DeVos, rescinded previous guidance regarding Title IX and campus sexual misconduct. In November 2018, the Department of Education introduced new proposed regulations and opened a notice and comment period. These regulations went into effect in August 2020. The Title IX protections that existed prior to August 2020 played an important role in many of our client's pathways toward safety and healing, providing an option for our clients to hold the person who caused them harm accountable and receive much needed accommodations to continue to access their education. While we welcome regulations that would strengthen Title IX and provide more protections for survivors of sexual violence, we were deeply troubled that many of the August 2020 regulations did the opposite and would cause further trauma and harm to survivors. We offer the following suggestions as the Department drafts new proposed rules to replace the rescinded 2020 promulgated rules:

1. **To ensure students maintain agency and authority over their experiences, Title IX regulations should discourage compulsory escalation of complaints absent student consent.**

For Title IX to be accessible to students, it is imperative that survivors are able to make choices about who will be informed of their experiences. Survivors need to feel they have access to safe and supportive Title IX protections and civil administrative remedies to prevent disruption to their education. The Department should discourage procedures that effectively create a *de facto* mandated reporting protocol. Rather, the Department should ensure student autonomy over their experiences to maintain access to Title IX remedies, and support a student's right to seek law enforcement remedies if a student chooses to do so.

Regarding law enforcement compulsory collaboration: when an incident is reported to law enforcement without the survivor's consent, they lose power, control, and agency over their story, which compounds the harm already inflicted. Overreliance on reporting greatly reduces the chances a survivor will turn to their school for help: in a 2015 survey of campus sexual violence survivors, 90% said that campus victims should retain the right to choose whether and to whom to report; 88% said that, where campuses required school officials to turn over rape

² New York City Department of Health and Mental Hygiene. Epiquery: NYC Interactive Health Data System - [Youth Risk Behavior Survey 2017].

³ New York City Mayor's Office, Mayor's Office to Combat Domestic Violence. (2007). 2007 Fact Sheet: New York, NY.

⁴ Rennison, C.M., & Welchans, S. United States Department of Justice, Bureau of Justice Statistics (2000). Intimate partner violence (NCJ Publication No. 178247). Rockville, MD.

reports to the police (without the survivors' consent), they believe fewer people would report to anyone at all.⁵ Consequently, survivors become unable to access Title IX -- mandated services and accommodations, such as disciplinary proceedings and school provided support services like counseling, academic accommodations, and emergency contraception. In effect, mandatory reporting protocols are antithetical to Title IX's purpose and gut its implementation.

2. To maintain fair and equitable grievance procedures consistent with civil litigation standards, the Department should return to a preponderance of the evidence standard as directed in the 2011 Dear Colleague Letter.⁶

Title IX is a civil rights law that provides administrative remedies to ensure students have equal access to education after experiencing gender-based violence. Replacing the clear and convincing standard with the previously instituted preponderance standard would potentially increase reporting, as survivors may feel more likely to be believed.⁷ Survivors of sexual violence often do not report their experiences out of fear of not being able to prove what happened or not being believed. Replacing the preponderance of the evidence standard with a clear and convincing standard "adds to the mix of reasons that discourage[s] complainants from coming forward."⁸

3. To encourage reporting and administrative accommodations, the Department should rescind requirements that all parties must undergo live cross examination to have their statements included in evidence analysis.

Live cross examination re-traumatizes survivors⁹ and the aggressive, adversarial questioning involved in untrained interviewing techniques is often ineffective in assessing the

⁵ *Resisting Mandatory Police Referral Efforts*. Know Your IX, <https://www.knowyourix.org/issues/resisting-mandatory-police-referral-efforts/> (last visited June 4, 2021).

⁶ See Russlynn Ali, Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ., *Dear Colleague Letter: Sexual Violence* 11 (Apr. 4, 2011), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>. See also Catherine E. Lhamon, Assistant Secretary for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ., *Dear Colleague Letter: Title IX Coordinators* (Apr. 24, 2015), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf> (clarifying the role and requirements of the Title IX Coordinator).

⁷ Deborah L. Brake, *Fighting the Rape Culture Wars Through the Preponderance of the Evidence Standard*, 78 Mont. L. Rev. 109 (2017), <https://scholarship.law.umt.edu/mlr/vol78/iss1/6>

⁸ *Id.* at 136. See also Elizabeth Sommer, *Use of Preponderance of Evidence in Campus Adjudication of Sexual Misconduct* 28–29 (Dec. 2015) (Masters Thesis, Northern Michigan University), <https://perma.cc/GQ3X-G3V5> (Masters thesis, reporting findings of interviews with student conduct adjudicators at one public university, reporting their belief that a higher standard than the preponderance of the evidence would deter victims/survivors from coming forward).

⁹ See Simon McCarthy-Jones, *Survivors of sexual violence are let down by the criminal justice system -- here's what should happen next*, *The Conversation* (Mar. 29, 2018, 5:28 am), <https://theconversation.com/survivors-of-sexual-violence-are-let-down-by-the-criminal-justice-system-here-s-what-should-happen-next-94138>

validity of sexual violence allegations.¹⁰ Lifting these restrictions enables student survivors to feel more comfortable reporting experiences of sexual violence, increasing the accessibility of Title IX accommodations.

4. To stop sexual harassment in schools, students, faculty, and staff must be adequately trained to identify behaviors that constitute sexual and gender-based harassment, including dynamics specific to dating violence.

Young people we work with experience both bullying and dating or domestic abuse while in school. Unfortunately, educational professionals often conflate these two issues and offer suggestions or assistance that do not specifically address gender-based violence and do not acknowledge the complexities of dating relationships. For example, young people have told us that teachers advised them to simply ignore an abusive intimate partner. This solution will often be ineffective when a dynamic of power and control is in place.

For example, when dating violence is present in an intimate relationship, one partner can potentially cause harm by manipulating a restorative or mediation process. That abusive partner may use personal or intimate details against a survivor as additional leverage. When these incidents are categorized and adjudicated as bullying cases, young people cannot receive the necessary remedies and accommodations provided under Title IX procedures and not anti-bullying policies, diminishing their access to a safe and productive education. Additionally, when the specific harms and risks associated with gender-based and intimate partner violence are not properly addressed, there is a higher likelihood of intimate partner violence escalating.¹¹ The Department should ensure that young people and professionals who work with young people are educated and trained on healthy relationships, consent, and the multitude of ways dating violence can manifest.

5. To appropriately remedy gender-based violence that negatively impacts a young person's education, survivors must be able to report off-campus incidents.

The 2011 Dear Colleague Letter encouraged schools to consider the effects of off-campus sexual harassment when evaluating whether there is a hostile campus environment.¹² This directive was amended in the 2020 promulgated rules, which required the complainant to be participating in or attempting to participate in an "education program or

¹⁰ Bruton, H. Hunter (2017) "Cross-Examination, College Sexual-Assault Adjudications, and the Opportunity for Tuning up the "Greatest Legal Engine Ever Invented", " Cornell Journal of Law and Public Policy: Vol. 27, Iss. 1, Article 4, <https://scholarship.law.cornell.edu/cjlp/vol27/iss1/4>.

¹¹ Zlatka Rakovec-Felser, "Domestic Violence and Abuse in Intimate Relationship from Public Health Perspective," Health Psychology Research: Vol. 2,3 (Oct. 2014) 1821, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4768593/>.

¹² See Russlynn Ali, Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter: Sexual Violence 11 (Apr. 4, 2011),

activity.”¹³ In New York City, where students are involved in off-campus activities or gatherings that may not fall directly under the school’s purview but extend into the educational environment, it is important that survivors have the option of reporting off-campus incidents to receive necessary accommodations and support.

6. **To allow students to assert agency over their healing process.**
Restorative/transformational justice approaches should be offered alongside
traditional procedures and remedies.

There is ample evidence of the benefits of alternative, non-punitive approaches to sexual violence where there is affirmative consent by all parties.¹⁴ Mirroring punitive approaches to address the harms of intimate partner and gender-based violence can discourage people holding historically marginalized identities from navigating these pathways. Title IX’s purpose is to set forth a civil, administrative process, which is distinct from the criminal legal system. The Department should allow schools to develop and offer such alternatives to students reporting incidents of sexual misconduct or dating violence.

We are acutely aware of the ways Title IX regulations impact the young people we serve and we thank you for allowing us to comment on these essential regulations. We would be honored to partner further to examine these regulations in greater detail. Thank you for prioritizing Title IX and for your support of young survivors.

¹³ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. 106 §§ 106.30 and 106.45 (2020).

¹⁴ See Mary P. Koss et al., Campus Sexual Misconduct: Restorative Justice Approaches to Enhance Compliance With Title IX Guidance, 15,4 *Trauma, Violence & Abuse* 242 (April 27, 2014), https://www.jstor.org/stable/26876513?seq=1#metadata_info_tab_contents; Katie Vail, The Failings of Title IX for Survivors of Sexual Violence: Utilizing Restorative Justice on College Campuses, 94 *Wash. L. Rev.* 2085 (2019), <https://digitalcommons.law.uw.edu/wlr/vol94/iss4/12>; Madison Orcutt, Restorative justice Approaches to the Informal Resolution of Student Sexual Misconduct, 45,2 *Rutgers L. Rev.* 204 (2020), https://jcul.law.rutgers.edu/wp-content/uploads/2020/08/45_jcul_No2_FULL.pdf.