

From: Arno, Michael D.
Sent: Fri, 4 Jun 2021 10:24:32 -0400
To: T9PublicHearing
Cc: Suzanne Janitz;Michael D. Arno
Subject: Written Comment: Title IX Public Hearing (Hartwick College Comments)

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

June 4, 2021

Dear Members of the Office of Civil Rights:

Thank you for reviewing Hartwick College's comments concerning the current Title IX regulations. Hartwick College is a small, private, liberal arts institution in upstate New York. Like many institutions in higher education, we believe that the current regulations do not appropriately ensure educational environments are free from discrimination. Although well intentioned, the new regulations place restrictions on institutions and create loopholes that can, in turn, make campuses less safe.

Currently Title IX does not provide discrimination protections for LGBTQ individuals. Hartwick College encourages the Department to extend discrimination protections to this community. In *Bostock vs. Clayton County* the US Supreme Court recently ruled that Title VII must provide discrimination protections to gay and transgender individuals. This ruling ensures Title VII protections are applied equitably to all employees. At its core, Title IX is designed to ensure students have equitable access to educational programs. By not broadening the scope of Title IX to include LGBTQ protections, Title IX is not meeting its core intention. Recognizing that LGBTQ protections are afforded to campus employees under Title VII, it is only equitable that the Department extend these protections to students under Title IX.

Hartwick also requests the Department to redefine the definition of sexual harassment. We do not disagree or challenge the entirety of the Department's definition. Specifically, Hartwick agrees with parts one and three of the definition (i.e. sexual harassment is an employee conditioning the provision of an aid, benefit, or service in exchange for an individual's participation in unwelcome sexual conduct; and that sexual harassment is sexual assault, dating violence, domestic violence or stalking). Hartwick disagrees with part two of the definition which states that sexual harassment is "unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an institution's education program or activity." Sexual Harassment is not always severe, pervasive, and objectively offensive.

Demonstrated by multiple state and federal anti-harassment laws, such as Title VII, sexual harassment need not be severe, pervasive, and objectively offensive to create a hostile environment. Applying the Department's current standard, campuses are positioned to either not