Good Afternoon. My name is Heidi Goldstein. Today I speak as a founding and current Adult Advisor to BHS Stop Harassing, a grassroots student organization founded in 2014 in Berkeley, CA with a mission to change the culture of sexual harassment in the Berkeley Unified School District schools through education, survivor support and activism.

https://www.instagram.com/bhsstopharassing/?hl=en

I am a (b)(6) survivor who was assaulted at school and, as a result of the experience I tendered a complaint to the OCR in 2015 which initiated case (b)(6) an investigation into Berkeley Unified School District for failure to provide a prompt and equitable response to notice of sexual harassment/sexual violence which has allowed students to be subjected to a hostile environment on the basis of sex.

Through this, and my work since 2014 as a member of the Berkeley Unified School District Sexual Harassment Advisory Committee (SHAC), and as the board chair of the national non-profit Stop Sexual Assault in Schools (ssais.org), I have a wealth of experience with the Title IX process in the K-12 environment and good insight into the elements of the Title IX regulations that should be improved. I suggest OCR focus on the following three key elements to improve protections for K-12 students.

1. **Require LEAs to accept and acknowledge an independent Title IX advocate as a minor child claimant’s representative.** Today Title IX is a complicated, quasi-criminal
process. School Districts often engage counsel to manage the Title IX process investigation, adjudication and appeal phases, bringing into question the impartiality of the overseeing agent and likelihood of a fair outcome for the complainant. Where Districts implement Title IX in-house, staff is often inadequately trained in the processes of investigation, application of standard of evidence, and the LEA’s obligations for student safety and protection from retaliation during the investigation and adjudication phases specifically.

It is difficult to maintain true confidentiality in the K-12 environment. Inevitably, some version of the news gets out and students quickly choose sides -- the social retaliation is fierce and unrelenting: it drives complainants to skip classes or entire school days, retreat from extra-curricular activities and, sometimes, to drop out of school entirely. A student may not choose to share their predicament with parents or guardians. With an independent advocate, the student complainant has access to a knowledgeable resource, able to help them navigate the Title IX process, represent their interests to stay safe while at school, accessing the wealth of educational resources available; and a resource to provide informed options at every step. This is a necessary level of support most parents/guardians aren’t able to provide to a young person navigating an emotionally fraught, socially messy and administratively complex process.

2. **Provide extensive “Dear Colleague” style guidance to clarify how Title IX processes interact with FERPA, Section 504 and Individualized Educational Program (IEP) overlays when a Title IX complaint has been made.** It is not uncommon for school administrators to disallow or bury Title IX complaints, citing, incorrectly, superseding Section 504 (of the rehabilitation act of 1973) or (CA) Individualized Educational Program (IEP) requirements. Or, to refuse to discuss the progress or status of a case with the complainant and their representatives, citing FERPA (Family Educational Rights & Privacy Act of 1974) limitations. These shields are frequently misapplied, whether by intention or ignorance, and leave K-12 complainants vulnerable and uninformed on important matters that adversely affect their safety and access to school resources.

The level of agency and ability to advocate for their children varies widely across the continuum of parents/guardians of K-12 students. Coupled with the complexity of the law around Section 504, FERPA and the IEP-like protections, most parents/guardians are ill-equipped to dialogue with school administrators who throw up these barriers as reasons for non-engagement on their student’s Title IX complaints. Both school administrators and the public need a better understanding of how Title IX protections interact with these other civil rights protections.

3. **Change the 180 day incident reporting interval to include a more generous period of time.** K-12 students who have experienced sexual harassment/sexual violence need more time to come forward. Shame, confusion, embarrassment and the complicated, difficult to navigate Title IX processes -- often poorly explained or publicized by LEAs -- all introduce significant delays in K-12 student reporting. Recognizing this, California passed legislation in 2019 -- AB 218 --
that significantly expanded the statute of limitation to bring claims for incidents of childhood sexual assault that occurred at schools and went uninvestigated. AB 218 requires schools to investigate claims for incidents that occurred many years, even decades, in the past, and imposes hefty punitive fines where it is found that schools buried evidence or otherwise covered up or disallowed complaints, in violation of Title IX. Under AB 218 complainants have come forward in substantial numbers to bring resolution and closure to unaddressed incidents that have haunted them for years. Not all states have a law like AB 218 that gives survivors another chance to seek remedy and closure. Title IX regulations with a more generous interval for students to file incident complaints, mindful of the impediments that exist in bringing forward such claims, will enable all students across the US who have experienced sexual harassment or sexual violence at school to have their complaints addressed and resolved on a timetable respectful of their circumstances, not keyed to administrative convenience.

Thank you for your consideration.

Kind regards,

Heidi Goldstein

Sent from Mail for Windows 10
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