

**From:** (b)(6)  
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**To:** T9PublicHearing  
**Subject:** Written Comment: Title IX Public Hearing -- gender discrimination and hostile environment

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1. Under the Obama administration, the Department failed to effectively respond to claims that the Department's guidance and actions were biased against respondents based on sex. This simply was not true – rather, it was how some schools interpreted and applied the guidance that arguably did so. However, by failing to effectively respond to such claims, the Department allowed a narrative to develop that, for instance, an OCR investigation could be evidence of gender bias. The new regulations should make it clear that they are intended to prevent gender-based discrimination against both complainants and respondents.
2. And the regulations shouldn't go beyond that. It is not the Department's place to establish requirements for due process or to make sure that schools' procedures are fair and balanced based on status as a complainant or respondent. Again, the regulations should only include provisions to ensure that both parties are not discriminated against based on gender, and leave it to schools to make sure that their procedures comply with federal, state, or contractual requirements regarding due process ... and that any failures by a school to comply with those requirements is due to the school's actions, not to OCR's regulations.
3. Finally, consider the not uncommon situation in which a number of people in a particular program, department, sports team, or club each make comments of a sexual nature towards the few women in the program, department, etc. None of the conduct would be sufficiently severe, persistent, and objectively offensive to warrant discipline against any particular individual, so the complaint process required by 106.45 – fixed, as it is, on determining whether an *individual's* conduct is sexual harassment -- wouldn't apply. However, the cumulative impact of the conduct could well be sufficient to create a hostile environment and have just as serious consequences for the targets as that created by sexual harassment as defined by the regulations. Yet, it is by no means clear that the regulations would recognize this as a form of discrimination covered by the general Title IX grievance procedures required by 106.8(c) – possibly leaving the targets of the conduct with no internal recourse against the program or department or against the educational institution itself. I therefore urge the Department to develop a definition of sexual harassment in the new regulations that includes this sort of cumulative misconduct and to make it clear that it must be covered by the educational institution's grievance procedures.

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