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To: T9PublicHearing
Subject: Written comment: Title IX public hearing

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Thank you for providing opportunity for the public to comment on this incredibly important issue. The issue of sexual violence is one of personal and academic interest to me. I have [published an essay](#) about my personal experiences with sexual violence, and also [published my reactions](#) following the release of the 2020 Title IX regulations.

Title IX of the Education Amendments Act of 1972 was passed in response to the gender discrimination occurring in college admissions. Soon after, that law was utilized to equalize opportunity for women in interscholastic sport. In my opinion, Title IX was never intended to be a legislative vehicle by which colleges would be held responsible for adjudicating sexual violence, and I believe that is why the manner in which it is enforced continues to be so contentious—among advocates, academic, and policymakers. The law was not written to achieve those ends.

Institutions can and do adjudicate myriad infractions—ranging from noise violations and academic dishonesty to criminal infractions such as drug possession and sexual assault. Institutions should continue to adjudicate sexual violence with zeal. However, I remain unconvinced that it is the responsibility—or practical—for campuses to become quasi-courtrooms, nor do I think the U.S. Department of Education’s resources are best spent micromanaging these proceedings. With more than 5,000 postsecondary institutions in the United States, one can expect great variance in the amount of training and knowledge among those vested with responsibility to enforce Title IX on their respective campus. I teach legal issues in a student affairs/higher education administration graduate program, and I am unsure that the time we spend on this topic in class qualifies a professional to coordinate the incredibly specific requirements of Title IX. Likewise, many graduate programs do not require or even offer legal education to future campus administrators.

The training for those who serve on hearing panels is equally tenuous. At one institution, the training I received to become a panelist for Title IX sexual violence cases lasted one hour and was woefully inadequate—and I am someone who has dedicated part of my career to studying this law. Imagine how prepared a physics professor would be to serve in this vital role after just one hour of training. Contrast that with the narrowly defined, precise procedures that guide judges and juries in criminal courts that decide these same issues. Not only is the variance in the abilities of those carrying out Title IX requirements too great, the variance in how each campus defines sexual misconduct in its code of conduct is too great.^[1]

Some campuses spend close to \$1 million yearly on staff, training, computer software, and other items to remain compliant with Title IX. Some consulting companies have gotten rich from offering Title IX trainings to campus administrators. But what has that accomplished in reducing the number of campus sexual assaults? As a survivor, I personally am more concerned with what colleges can do to prevent sexual violence and less concerned with the particulars of how it is investigated afterwards.

During President Biden's tenure in the Obama administration, his office led the efforts to establish the "It's On Us" campaign, an innovative bystander intervention program. I encourage the Biden administration to shift its focus back toward prevention programming—rather than adjudication oversight via Title IX regulations that could perhaps be overturned again during the next administration and once again prolong the progress in the fight against campus sexual violence.

Action:

- I recommend the U.S. Department of Education maintain the U.S. Supreme Court's standard of notice and deliberate indifference, as set forth in *Gebser v. Lago Vista Independent School District* (524 U.S. 274).
- I encourage the U.S. Department of Education to maintain the due process safeguards that were built into the 2020 regulations. One, there have been [hundreds of cases filed by accused students](#) for due process violations, and many challenges have been successful.^[2] Though I empathize that the court-like cross-examination process can be traumatic for accusers, the setting in which the violence occurred cannot justify amendments to the requisite due process owed the accused. In other words, someone accused of sexual violence outside of an educational setting would enjoy full due process rights afforded via the criminal justice system. Likewise, a 20-year-old sexual violence victim who is not enrolled in an educational institution would not have the option to not undergo cross-examination should they seek to pursue a claim through the criminal justice system.
- The Drug and Alcohol Abuse Prevention Act (34 C.F.R. 86) requires that institutions not only implement but also assess and certify to the U.S. Department of Education that they have developed programs to educate students and employees about the dangers of drugs and alcohol. As I previously mentioned, campus administrators are trained as educators, not as judges and prosecutors. I firmly believe resources would be better spent—and yield more benefits in the fight against campus sexual violence—if the U.S. Department of Education shifted its oversight to monitoring the educational programming campuses implement to educate students about consent and what constitutes sexual violence. I encourage the Biden administration to work with Congress to pass a law, separate from Title IX and similar to 34 C.F.R. 86, that would tie federal funding to compliance with requirements related to sexual violence education and prevention programming.
- Title IX is a funding statute in which only the institution can be held liable for non-compliance. There have been too many stories of administrators knowingly ignoring and covering up allegations of sexual violence on their campus. At my own institution,

Louisiana State University, the president, athletic department, and several other individuals were complicit in failing to act on numerous reports of sexual violence—yet no one even was terminated from their employment. Just like many states recognize certain professionals as mandatory reporters if they suspect child abuse, I encourage the Biden administration to work with Congress to pass a law that would impose criminal penalties on any person in an educational setting who does not appropriately respond to reports of sexual violence.

Thank you again for allowing me the opportunity to share my thoughts on this issue, and thank you to the Biden administration for placing such high priority on eradicating sexual violence on our campuses.

^[1] See Jacob Gersen & Jeannie Suk, *The Sex Bureaucracy*, 104 Cal. L. Rev. 881 (2016).

² See *Doe v. University of Southern California*, 29 Cal. App. 5th 1212 (Cal. Ct. App. 2018) for a particularly egregious fact pattern in which a student was expelled because of a far-reaching interpretation of the university's student code of conduct. The student engaged in a consensual act with the victim and committed no act that would be considered criminal.

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