

From: Sarah Hachmeister
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To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing
Attachments: Written Comment- Title IX Public Hearing 6.11.21.pdf

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Attached please find written comments regarding the Title IX Public Hearing.

Sincerely,



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June 11, 2021

Submitted to T9PublicHearing@ed.gov

Suzanne Goldberg
Acting Assistant Secretary for Civil Rights
Department of Education
400 Maryland Avenue SW
Washington, DC 20202

RE: Written Comment: Title IX Public Hearing

Dear Secretary Goldberg,

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) respectfully submits this written comment to proposed changes concerning the recent Announcement of Public Hearing; Title IX of the Education Amendments of 1972.

KCSDV is a state-level advocacy voice for survivors and a collaborative network of programs promoting safe homes, safe streets, and safe communities throughout Kansas. The 25 sexual and domestic violence victim advocacy programs that make up KCSDV's membership provide critical and survivor-centered direct services across the state. KCSDV provides statewide training and technical assistance on sexual violence and harassment prevention and response. Additionally, KCSDV has collaborated with Kansas colleges and universities to address the devastating sexual violence that disproportionately affects this vulnerable age group.

Given our mission and our desire for all students to have access to a safe and equitable learning environment, we strongly support the Biden-Harris Administration's policy that "all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation and gender identity".¹ Prior to the May 2020 rule, significant progress was made in addressing sex-based harassment, thanks to the determined efforts of advocates, activists, and student survivors, and the Department of Education's long-standing commitment to anti-discrimination. Unfortunately, in many ways the May 2020 rule undermined civil rights protections under Title IX. The Department's review and reconsideration of the May 2020 rule is a necessary step toward healing and safety for student survivors, accountability for perpetrators and institutions, and a future wherein sexual violence and harassment is not tolerated in our schools and on our campuses. We applaud the Administration's swift action on this issue and offer the following recommendations for any guidance, rules, or regulations issued by the Department.

¹ Exec. Order No. 14021, 3 C.F.R. 13803 (2021).

1. The Biden-Harris regulations and rule changes should recognize the realities of sexual harassment in schools and the magnitude of the cultural and systemic shifts needed to change these realities.

- a. Sexual violence and harassment impact far too many students:
 - 56% of girls and 40% of boys in grades 7-12 are sexually harassed in any given school year.²
 - 62% of women and 61% of men experience sexual harassment during college.³ More than 1 in 5 women and nearly 1 in 18 men are sexually assaulted in college.⁴
 - Men and boys are far more likely to be victims of sexual violence than to be falsely accused of it.⁵
- b. Students from historically marginalized groups are at greater risk:
 - More than half of LGBTQ students ages 13-21 are sexually harassed at school.⁶
 - Students with disabilities are 2.9 times more likely than their peers to be sexually assaulted.⁷
 - Nearly 1 in 4 transgender and gender-nonconforming students are sexually assaulted during college.⁸
- c. Sexual violence and harassment is vastly underreported. There are many reasons a survivor may choose not to report that they have been sexually assaulted or harassed. Among other reasons, student survivors may fear retaliation, they may not know what options are available to them, they may fear they will not be believed or taken seriously, and/or they may not want

² Catherine Hill & Holly Kearl, *Crossing the Line: Sexual Harassment at School*, AAUW (2011) [hereinafter *Crossing the Line*], available at <https://www.aauw.org/research/crossing-the-line>.

³ Catherine Hill & Elena Silva, *Drawing the Line: Sexual Harassment on Campus*, AAUW 17, 19 (2005) [hereinafter *Drawing the Line*], available at <https://history.aauw.org/aauw-research/2006-drawing-the-line> (noting differences in the types of sexual harassment and reactions to it).

⁴ E.g., David Cantor et al., *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct*, ASSOCIATION OF AMERICAN UNIVERSITIES 13-14 (Sept. 2015) [hereinafter *AAU Campus Climate Survey*], available at <https://www.aau.edu/key-issues/aau-climate-survey-sexual-assault-and-sexual-misconduct-2015>.

⁵ E.g., Tyler Kingkade, *Males Are More Likely To Suffer Sexual Assault Than To Be Falsely Accused Of It*, HUFFINGTON POST (Dec. 8, 2014) [last updated Oct. 16, 2015], https://www.huffingtonpost.com/2014/12/08/false-rape-accusations_n_6290380.html.

⁶ Joseph G. Kosciw et al., *The 2017 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools*, GLSEN 26 (2018) [hereinafter *2017 National School Climate Survey*], available at <https://www.glsen.org/article/2017-national-school-climate-survey-1>.

⁷ National Women's Law Center, *Let Her Learn: Stopping School Pushout for: Girls With Disabilities* 7 (2017) [hereinafter *Let Her Learn: Girls with Disabilities*], available at <https://nwlc.org/resources/stopping-school-pushout-for-girls-with-disabilities>.

⁸ AAU Campus Climate Survey, *supra* note 3 at 13-14.

to cause further disruption to their academic progress. Only 12% of college survivors⁹ and 2% of girls ages 14-18¹⁰ make a report to their schools or the police following a sexual assault.

- d. The impact of trauma poses significant challenges to student survivors, which can be further exacerbated by an ineffective response from their school. For example, 34% of college survivors drop out, which is higher than the overall dropout rate.¹¹ It is critical that student survivors have access to high-quality emotional support services and a trauma-informed path to pursue justice.

2. The Biden-Harris regulations and rule changes should restore and strengthen Title IX protections against sexual harassment for students.

- a. Restore longstanding protections for student survivors. The Biden administration must reinstate the well-established principle that school officials should respond to all sexual harassment that interferes with a person's ability to participate in or benefit from their education, respond to sexual harassment in a timely manner, and address all sexual harassment that may create a hostile environment for students in schools, regardless of where the harassment occurred.¹²
- b. Protect student survivors from retaliation. Title IX prohibits retaliation against those who complain of sex discrimination. Yet student survivors—and especially survivors of color—continue to face punishment when they turn to their schools for help in the wake of violence. Too often they are disbelieved, their trauma is minimized, or they are blamed for the harassment. The Title IX rule must make it clear that this type of treatment constitutes unlawful retaliation.¹³
- c. Ensure fair and prompt disciplinary procedures and school flexibility. DeVos's changes to the Title IX rule require specific disciplinary procedures for sexual harassment—and sexual harassment alone—that dissuade reporting, are unfair to complainants, and unnecessarily burdensome. The Title IX rule should restore fairness and equity, central to Title IX's purpose.¹⁴

⁹ Poll: One in 5 women say they have been sexually assaulted in college, WASHINGTON POST (June 12, 2015), <https://www.washingtonpost.com/graphics/local/sexual-assault-poll>.

¹⁰ National Women's Law Center, *Let Her Learn: Stopping School Pushout for Girls Who Have Suffered Harassment and Sexual Violence 1* (Apr. 2017) [hereinafter *Let Her Learn: Sexual Harassment and Violence*], available at <https://nwlc.org/resources/stopping-school-pushout-for-girls-who-have-suffered-harassment-and-sexual-violence>.

¹¹ Cecilia Mengo & Beverly M. Black, *Violence Victimization on a College Campus: Impact on GPA and School Dropout*, 18(2) J.C. STUDENT RETENTION: RES., THEORY & PRAC. 234, 244 (2015), available at <https://doi.org/10.1177/1521025115584750>.

¹² National Women's Law Center, *Guide to Title IX Public Hearing (June 2021)*, available at <https://docs.google.com/document/d/1kj6weOS4mWsFNQgF6ymRHLzg5ZVZIweiQQULg01WIgk/edit>.

¹³ *Id.* at 3.

¹⁴ *Id.* at 3.

3. **The Biden-Harris regulations and rule changes should define sexual harassment as “unwelcome sexual conduct” as well as require institutions to promptly and effectively respond to, take action to eliminate, and prevent the recurrence of sex-based harassment, specifying that:**
- a. Institutions must address sex-based harassment that may create a hostile environment in their program or activity, regardless of where it occurred;¹⁵
 - b. Institutions should respond to harassment that they know or should know about, as well as *any* sex-based harassment by employees that occurs in the context of the employee’s responsibilities to provide aid, benefits, or services within the institution’s program or activity;¹⁶
 - c. To ensure a “prompt” response to sex-based harassment, institutions should be required to provide supportive services and accommodations to the complainant as immediately as possible, but no later than five school days after a report is made;¹⁷
 - d. Institutions must take reasonable steps when responding to sex-based harassment (rather than just avoiding a response that is “clearly unreasonable,” which is known as the “deliberate indifference” standard);¹⁸

For far too long, schools and campuses failed to adequately address sexual violence and harassment and its impact on student survivors. The consequences have been grave and widespread. Under the Biden-Harris regulations and potential rule changes, Title IX will better serve as a strong check on schools, to ensure perpetrators are held accountable, survivors are safe and supported, and we move toward the total elimination of sexual violence and harassment. Only then will all women, girls, and gender-nonconforming students have full and equal access to education. We urge the Department of Education to immediately pass and promulgate the proposed regulations and necessary rule changes.

Respectfully submitted,

(b)(6)

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¹⁵ *Id.* at 4.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 4.