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Sent: Fri, 11 Jun 2021 20:48:12 +0000
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing (Comments from a Title IX Coordinator)

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OCR,

Thank you for the opportunity to submit comments on the Title IX regulations. As a Title IX Coordinator, my comments are framed from the perspective of a practitioner. I wanted to share a few comments on the following portions of the current Regulations:

- Off campus conduct
 - Institutions should have the authority to determine who/where the sexual misconduct policy applies to. Our institution continues to address off campus conduct, and the existence of two policies and procedures has been unnecessarily complicated for students, faculty, and staff. Before the regulations, we had one uniform policy.
- Definitions
 - The definition of sexual harassment has been so narrowed that campuses are not able to adequately address all concerns of misconduct until the behavior meets all three components of the definition. Arguably, if a student continues on with their education *despite* the sexual harassment, it could be nearly impossible to find responsibility for sexual harassment.
- Presumption of Innocence
 - Institutions are supposed to be neutral parties, and this provision unintentionally biases campuses. By including in letters that the Respondent is presumed innocent, Complainants can read that as the institution stating that they are not being truthful in their complaints. A more neutral way to address this same idea is to include a phrase similar to “no determination as to responsibility is made until after the conclusion of the grievance process.”
- Cross examination
 - Prior to the regulations, our process allowed parties to question one another and witnesses. Giving this role to advisors makes the process unnecessarily adversarial, and turns campus disciplinary proceedings into mini-courts. This removes the educational nature of our process, and the intended purpose of adjudicating conduct under a Code of Student Conduct. The ability to question can and should remain- with parties or a neutral party asking the question.
- “All or nothing” evidence and statements
 - This provision is problematic and dangerous. A Respondent could make an admission of responsibility to a Title IX Investigator, who is a university employee, and then if that same Respondent submits to cross, the statement cannot be used. This is impractical, and creates liability for campuses. Similarly, witnesses can participate in the Investigation and then have their statements thrown out because they do not attend the Hearing. Panels should have access to all of the information that is provided and

then use their judgment in how to weigh those statements and evidence if parties do not attend the Hearing/submit to cross-examination.

- Final Determination Letter
 - The Final Determination Letter includes sensitive information that should not be contained in a decision letter that is subject to FOIA or able to be shared publicly by the parties. The Department should revert to the Decision Letter required by VAWA/Clery as that document contains all pertinent information about the resolution of the case without sharing private, sensitive information about the Complainant and other parties.
- Informal Resolution
 - The Informal Resolution should remain an option. Students in our process have appreciated the autonomy they have in this process, and report better outcomes and satisfaction than students who go through the Grievance Process and Hearing.
- Employees
 - The policy including a live Hearing should not apply to employees. VAWA/Clery already outlines expectations that can be utilized in an employee complainant. For example, students are hesitant to attend a live hearing with their professors.
- Gender Identity and Sexual Orientation should be explicitly included as protected categories in any updated regulation.
- Posting training online has been burdensome, and companies are hesitant to have propriety information posted online. Previously, we made this material available to anyone upon request.
- Working definition of gender/sex based harassment & discrimination; expectations for resolution
 - It would be helpful if the regulations included definitions and expectations for addressing gender and sex based discrimination/harassment that is not sexual harassment in nature.

Thank you for the opportunity to submit this comment.

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