

From: Margaret C. Valois
Sent: Fri, 11 Jun 2021 12:37:39 -0400
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing - The Importance of Cross Examination
Attachments: VALOIS COMMENTS TIX REGS.pdf

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Thank you for the opportunity to offer comments regarding the 2020 Title IX regulations. I participated on Monday, June 7, and a written version of my comments are attached. I did not have time to share the following information during the allotted three minutes, but the experience further illustrates the importance of cross-examination and why this element must remain if changes to Title IX regulations are made.

I am an attorney and an advisor for both complainants and respondents in Title IX matters. I recently represented a community college instructor in her complaint against a fellow instructor. The school completely mishandled the case – the matter should not have been investigated as a Title IX matter, as the issues fell outside the scope of the policy. Fortunately, because the current regulations require attorney conducted cross-examination of parties and witnesses, I was able to expose long-term gross wrongdoing by the school.

- The Dean of the College did not know the role of a mandatory reporter, if she is currently a mandatory reporter, or if she bore that responsibility prior to August 14, 2020.
- This same Dean received several student-made complaints of sexual misconduct perpetrated against them by this same accused instructor. The complaints go back several years. The Dean handled these complaints herself and failed to refer the students to the Title IX office or to advise them of their right to file a Title IX complaint.
- It appears that at least one of these complaints was resolved with a non-disclosure agreement between the school and the student, wherein the student was misled to believe her tuition would be forgiven in exchange for her silence.
- The instructor has not been suspended or dismissed, even though cross-examination revealed that he had been reprimanded for taking photos of his female students and sharing them, along with lewd comments, with parties outside the school. The accused continues to exhibit similar behavior, details of which were fortunately revealed during cross-examination.

- Questioning of witnesses exposed that the school is aware that this instructor groped one student's breasts under the guise of demonstrating technique for a particular medical procedure, and that continuously makes sexual comments and jokes in class. This is the very behavior that led students to complain to the Dean, and which the Dean failed to properly address.

The manner in which the school has concealed what is clearly severe and pervasive sexual harassment and assault is egregious. Witnesses stated that they had dropped out of the program due to this instructor's unaddressed behavior that violates the school's sexual misconduct policy.

The recipient school is in clear violation of Title IX. Had I not been permitted to conduct my own cross-examination of witnesses, the school would have been able to sweep their misdeeds under the rug yet again. Fortunately, those students that the instructor harassed now know that they have several avenues of redress available, including filing a complaint with OCR.

During the comment period this week, many people have complained about the burden of live hearings and the damage caused to complainants by cross-examination. However, both are necessary to reveal the truth of the matter at hand and to ensure that everyone involved is treated fairly. Basic due process requires that accused students have the right to face and question their accuser and the witnesses against them. In the Title IX arena, victims of harassment and assault benefit as well from this basic right. It is imperative that live hearings and cross-examination remain a valuable requirement of future Title IX regulations.

Thank you for taking these matters seriously and for listening to the many thoughtful comments shared this week.

Sincerely,

Margaret C. Valois, Esq.

Lynchburg, VA

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(434) 845-4529

TESTIMONY DELIVERED JUNE 7, 2020

My name is Margaret Valois. I am an attorney who represents both complainants and respondents in college and high school disciplinary matters. I want to discuss positive results achieved for both parties since the implementation of the 2020 Title IX regulations, specifically in regard to attorney advisors and cross-examination of parties and witnesses.

In serious misconduct matters, current Title IX regulations require live hearings in front of impartial decision makers, who determine whether the Respondent has violated the school's code of conduct. In my clients' experiences, these hearings, which advocacy groups have decried as too traumatizing for victims, have proven to be useful tools in helping retain a sense of control over their lives and situation. The hearings I have participated in have been well-managed and have benefited both Complainants and Respondents because they have an opportunity to be directly heard by the decision makers and to hear all witnesses and view all evidence. This creates a connection to the entire process, leaving students feeling more satisfied that they have been heard and taken seriously, regardless of the outcome. Under the previous Title IX policy, live hearings were not required, resulting in Complainants and Respondents feeling disconnected and uninformed during the decision making period. My clients have indicated that the live hearings have been positive events during their Title IX ordeals.

Cross-examination, a hot-button issue with the current regulations, and an element many courts have identified as essential to a fair Title IX adjudication, is a necessary tool for both Complainant and Respondent, and the best way to get to the truth of the

matter. My Complainant clients feel very empowered in their ability to question witnesses and the Respondent. Having an attorney perform cross-exam on their behalf has proven to eliminate fears and to build confidence. Respondents are likewise empowered by the ability to examine witnesses. Attorney-performed cross-exam helps the parties' maintain their dignity and protects their emotional well-being, resulting in fewer outbursts and further trauma, thereby allowing the decision makers to focus on facts and not the emotional toll these procedures take on all parties.

With the requirement for attorney-performed cross-examination, attorneys have a greater role in advising Complainants. Since the 2020 regulations went into effect, I have observed that Complainants are not only better prepared for Title IX hearings, but that they are also emotionally stronger having had a guiding hand that is adept at wading through complex policy and procedural rules.

Whether I am advising a Complainant or Respondent, the fact that attorneys now advise both parties during the stressful and often frightening Title IX adjudication process has resulted in a calmer, more efficient proceeding.

Prior to the implementation of the 2020 regulations, Complainants often attended hearings alone. Many indicated that they believed the school was their advocate, which, of course, cannot be possible in an impartial process. This resulted in Complainants feeling abandoned and angry at having to go it alone.

Having an attorney advisor puts both parties on equal footing during the hearing, which is much better for the Complainant. It also allows the school to maintain the necessary neutrality the 2020 regulations and the Clery Act require.

The live-hearing and cross-exam requirements have proven to be useful and necessary elements of the current Title IX regulations. They must be retained, to the benefit of both Complainants and Respondents.

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