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To: T9PublicHearing
Subject: Comments on Title IX

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Please accept these written comments on Title IX of the Education Amendments of 1972 during this week of virtual public hearings on this subject.

I appreciate the 3-prong standard for Sexual Harassment but still am challenged in the determination of "severe" expressive behavior (106.30 (a)(2)). A recipient must dismiss a formal complaint that does not meet one of the three types of sexual harassment, and two reasonable persons may not agree if certain expressive behavior that is pervasive and objectively offensive is also severe.

I appreciate the articulation in the new regulations of "educational programs and activities" (106.44 (a)) to specify "locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution." I further support the Department's inclusion of "under or within a recipient's educational programs and/or activities" as a jurisdictional requirement.

I appreciate the non-limitations on a definition of sex (rather than limiting sex to a binary) but recommend clarity in 106.30 to include prohibition of sex discrimination including sex discrimination based on sexual orientation and/or gender identity.

I affirm the Department's standard that the Title IX Coordinator be impartial, does not engage in prejudgement of the facts, and avoids sex stereotypes (106.45 (b)(1)(iii)). I also support the Department's stance that the recipient assumes the non-responsibility of the respondent (106.45 (b)(1)(iv)).

Our institution has experienced what may be understood as a chilling effect, not on reports but on the filing of Formal Complaints. Complainants have expressed hesitancy to file a Formal Complaint with its subsequent investigation and possible formal grievance process with attorneys and live cross-examination (even if the informal process is an option).

Sincerely,
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