

From: (b)(6)
Sent: Fri, 11 Jun 2021 10:00:51 -0400
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing; Title IX Regulations in the Postsecondary Educational Environment
Attachments: Document5.docx

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United States Department of Education

Title IX Public Hearings, June 7-11, 2021

Statement of Ronald K. Henry

June 10, 2021

Thank you for the opportunity to present testimony regarding the essentiality of Due Process in Title IX proceedings. Today, I am not going to focus on what I know. Instead, I will focus on what the courts have told you and what you know.

You know that Due Process is the essential protection of the individual against arbitrary use of power by institutions.

You know that due process is doubly important to historically marginalized populations such as LGBT individuals, disabled individuals, especially those with impaired social skills, and minority students, especially Black male athletes, who were disproportionately targeted during the “Dear Colleague” letter regime.

You know that Equal Protection must be given to both accusers and the accused.

You know that accusers and accused persons are both students and entitled to equal protection against sex discrimination under Title IX.

You know that the traditional deference given to colleges by courts has been squandered and lost by the Kangaroo Courts that followed the “Dear Colleague” letter regime.

You know that over 700 litigations have been filed because of Kangaroo Court college proceedings.

You know that colleges have been hammered by trial courts and appellate courts because of their abuses under the “Dear Colleague” regime.

You know that the regulations that went into effect in August 2020 have sharply reduced claims of unfairness by both accusers and accused persons.

You know that the August 2020 regulations are working to protect both accusers and accused persons with essentially universal agreement that the August 2020 regulations are better than the “Dear Colleague” regime.

You know that the 2020 regulations were needed to provide safeguards against a resumption of biased training.

You know that the 2020 regulations were needed to provide safeguards against biased investigators and biased adjudicators.

You know that the 2020 regulations were needed to stop the inherent bias and conflicts of interest found in “single investigator” models.

You know that “Victim-centered,” “Trauma informed,” and “Start by Believing” are transparent efforts to inject bias into the investigative and adjudicatory process.

You know that “trauma” exists not only for the person pointing an accusing finger, but also for the person toward whom that accusing finger is pointed.

You know that there is no person who can be called a “victim” until after an impartial investigation and impartial adjudication.

You know that the victim is often the falsely accused person.

You know that institutions have equal obligations to all students, both accusers and accused.

You know that schools failed to give equal resources and support to both accusers and accused students.

You know that biased investigations and biased adjudications have wrongfully destroyed careers, and caused suicide attempts and completed suicides.

You know that I could continue far beyond three minutes with a litany of abuses that you know sprang from the “Dear Colleague” regime and a litany of ways in which the 2020 regulations reduced abuses.

You know that the question presented in these hearings is simply whether you will allow blind ideology to override the truths that you already know.

You know that Justice Ruth Bader Ginsburg was asked about whether criticisms of college Title IX codes were valid and answered, “Yes.”

You know that Justice Ginsburg continued, “It’s not one or the other. It’s both. We have a system of justice where people who are accused get due process”

You know that the Supreme Court would gladly take an opportunity to hammer your Department for its role in creating the Kangaroo Courts.

Respectfully submitted,

Ronald K. Henry

From: (b)(6)
Sent: Fri, 11 Jun 2021 11:54:45 -0400
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Title IX Public Hearings

United States Department of Education

June 7-11, 2021

Statement of Protectors of Minority Rights

Most of the public narrative surrounding the Title IX regulations has centered on a single portion of the cases--- white cisgender women accusing white cisgender men. This is a false narrative.

Anyone who has studied the demographics knows that the due process protections found in the existing regulations are singularly important to historically vulnerable populations, including:

LGBT individuals;

Disabled individuals, especially individuals with impaired social skills such as certain autistic individuals;
and

Minority individuals, especially Black male athletes.

Each of these groups of individuals is already under-represented in colleges and their numbers are at risk of further decrease through discriminatory enforcement of Title IX policies involving allegations of sexual misconduct. These individuals also are at risk of discriminatory enforcement in the K-12 population which reduces the chance of these individuals ever even getting into a college.

The problem of unfair Title IX enforcement against vulnerable groups also applies to staff and faculty as seen in the Alyssa Reid matter at James Madison University. <https://www.globenewswire.com/news-release/2021/05/03/2221843/0/en/Watch-NCLA-Sues-James-Madison-Univ-and-U-S-Dept-of-Education-over-Weaponized-Title-IX-Investigation.html> ; <https://titleixforall.com/female-survivor-lgbtq-advocate-sues-james-madison-university-for-due-process-title-ix-violations/> ; <https://www.youtube.com/watch?v=BrkZXqH3ji0>

Due process exists to protect the individual against the arbitrary exercise of power by institutions. While the due process protections in the current Title IX regulations are important for protecting the individual rights of all persons, those due process protections are particularly important to vulnerable populations such as LGBT, disabled and minority individuals. These individuals are at heightened risk from all sides. Personal biases mean that these at-risk populations are more likely to be the subject of an allegation. Investigator biases mean that these at-risk populations are more likely to face stereotyping and discrimination during the investigative process. Adjudicator biases and institutional

biases mean that these at-risk populations are more likely to suffer an unfair adverse decision by the adjudicators and institutions. Even judicial bias can come into play since a vulnerable person may be less likely to receive relief in court after an unfair institutional adjudication.

Only by faithful adherence to the full due process protections of the current regulations will it be possible provide protection against bias, stereotyping and discrimination against vulnerable populations.