Attached please find my comment in the above referenced proceeding.
Thank you,
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FACE Vice President
Intake/Outreach Committee Co Chair
In this comment, I will address the need to uphold the 2020 Regulations regarding fair and impartial Title IX investigations and the need for cross examination to determine the credibility of both complainants and respondents and when determining responsibility ensure that no student is found responsible and sanctioned with life altering consequences as a result of a false or baseless allegation.

When Title IX was first applied to campus sexual assault via the Dear Colleague Letter championed by now President Biden, a stated goal was to tackle, reduce and eliminate sexual assaults and harassment on college campuses and thus ensure non-hostile, comfortable learning environments for all students. This was a lofty and laudable goal paved with good intentions. The road of good intentions regarding Title IX guidance, however, was fraught with disastrous consequences and co-opted by ideological rhetoric and at times unfounded hysteria by activist groups about a problem that painted college campuses as “rape factories” and male students as predators. The pendulum swing that began with the 2011 DCL finally began to swing back toward more rational discussions during the regulatory process that resulted in the 2020 Regulations where all parties were heard via Notice and Comment submissions and the Department underwent careful and lengthy hearings and listening sessions for over a year and a half. While the 2020 Regulations are not perfect, they went a long way toward providing fair and equitable proceedings for all students and mechanisms for ensuring a search for the truth of any allegation.

I will focus here on my personal experience talking to over 1000 families (along with hundreds more covered by my co-Chair) since 2016. Families that come to FACE for support recount harrowing experiences of false, baseless, misguided accusations that resulted in biased proceedings and gross due process violations as well as personal life altering consequences
of suspensions and expulsions where the truth would have been readily discoverable in a fair proceeding that tested the credibility of complainants.

There is an oft quoted and soundly debunked statistic that only 2-7% of sexual assault allegations are proven to be false. In fact, even the author of that statistic has cautioned that it was derived from a limited study of two small commuter community colleges and should not be used in a larger sense. Additionally, Brett Sokolow, (Director of ATIXA) has stated that in his experience with college Title IX administrators nearly 40-50% of campus sexual assault allegations are probably baseless, in part at least due to the prevalence of alcohol combined with sexual activity. It is time for the OCR to clearly and loudly dispel the myth that false accusations are exceedingly rare and unworthy of discussion.

False accusations exist and to deny this is to deny the powerful and protecting emotions of human nature. My comment focuses on numerous FACE fact sets (anonymous) to highlight examples of why a complainant would file a baseless complaint and how often it happens. Also, the harm caused by the “Start by Believing” campaign championed by then Vice President Biden was devastating to respondents and flies in the face of human nature to lie or exaggerate to cover up personal embarrassment, parental disappointment or disapproval, infidelity, hurtful breakups, academic failings, jealousy, conflicting cultural norms, gender fluidity, and at times to exact revenge on another. And, students with disabilities and those on the Autism spectrum were harmed by procedures that failed to protect them from charges of harassment by being “creepy” or failing to understand social cues.

I hope the fact sets provided by FACE families speak for themselves and give pause to those in the Department who would roll back due process protections and overturn the right of respondents to question their accusers, especially where those accusers can hide behind the cloak of anonymity.

Cultural Norms:

Complainant was from a conservative religious family in a country where premarital sex is not only frowned upon but subject to criminal prosecution. Respondent was an American college student at their shared university.
The couple dated for one year and frequently engaged in sexual relations. Shortly before graduation, respondent was informed that he was being investigated for sexual assault throughout his relationship with complainant since due to her religious commitment she would never have consented to sex. Despite numerous witnesses, text messages and other evidence that would have supported a finding of no violation respondent was expelled and denied his degree weeks before he was to graduate with honors.

Infidelity:

Complainant and respondent engaged in several consensual hookups after female complainant broke up with an ex-boyfriend who also attended the same college. The breakup was not mutual and there was evidence to prove that the hookups were an effort to make the ex-boyfriend jealous in hopes of rekindling the relationship. The ex-boyfriend declined to participate in the proceeding despite telling the single investigator that the complainant was a compulsive liar and emotionally unstable. Respondent was expelled without the opportunity to question the complainant and denied the opportunity to have a hearing before impartial participants.

Gender Exploration:

Respondent was a freshman college student who had recently been hurt by a breakup with a high school beau of 2 years. Two hallmates who were openly gay (Lesbians) suggested that respondent engage in sexual activity with them in a threesome to “get over” her boyfriend and explore her sexuality. After some drinking respondent engaged in sexual activity with the two other girls but later regretted the encounter and denied that she was bisexual. After respondent started dating a male hallmate, the females filed a Title IX complaint that the threesome was non-consensual and that respondent lured them into the encounter to help her get over her ex-boyfriend. Respondent was suspended for a semester and denied the ability to participate in a study abroad program causing severe depression and an attempted suicide. After being harassed further by the complainants when she returned to the college after her suspension, respondent withdrew from school. In this case, the “victim” was the respondent and the college had no interest in protecting her.
Bias against Male Athletes:

Respondent was a Black top athlete at a large southern university with hopes of playing his sport at a professional level after graduation. Complainant was a White freshman student at the same university who had a “crush” on respondent according to all of her friends who had documented texts about the eventual sexual encounter. Complainant filed a Title IX claim after rumor of the hookup was made public and she feared for her “reputation” and disapproval from her parents. Despite overwhelming evidence that the complainant was merely “tipsy”, the school upheld the claim of sexual assault due to incapacitation and respondent was expelled losing his education and dream of playing professional sports.

Revenge:

Respondent was a second-year law student at a top university and had been in a relationship with another law student. After realizing that her boyfriend was becoming emotionally controlling and potentially violent, respondent ended their relationship. Soon after, the boyfriend filed a Title IX complaint against respondent claiming that she was sexually aggressive and had assaulted him throughout their relationship. When respondent tried to explain that the situation was actually diametrically opposite and that it was she who feared for her safety, the school disallowed her complaint as retaliatory. After an investigation by a single investigator, the respondent was issued a no contact order that was so cumbersome that she could not continue her education without running afoul of its terms that restricted her movement both on and off campus in the city where she lived. Eventually, she left school and has never finished her degree. In this case, an equitable process and hearing would have tested the credibility of the complainant and exposed the truth.

Students with Disabilities:

FACE has supported numerous students who were accused of Title IX violations of unwanted touching, creepy behavior, encroaching on personal space, and other supposed harassing behaviors. These cases are particularly disheartening, especially considering the push on college campuses to admit these students as part of diversity, equity and inclusion. Only in cases where the student had an advocate specially trained regarding Americans with Disability Act legislation did respondents stand a
chance of a fair process. Often, the students were made to appear before investigators without an ability to understand the charges against them or to effectively advocate for themselves. Some of these cases eventually resulted in litigation against the colleges and showed an appalling disregard for even a modicum of human understanding on the part of college administrators.

Academic Failings:

FACE has supported hundreds of students and academics who were accused of Title IX violations by complainants who had motivation to lie about or exaggerate situations they claimed constituted harassment or unwanted attention. In these cases, evidence of academic dishonesty or failing grades were powerful motivators to accuse and even in situations where the cases were proven baseless careers were ruined and personal lives destroyed. Only with adequate investigatory procedures and robust forums to judge credibility in front of impartial panels can these complicated cases be fair. Universities are often conflicted when cases like these involve their own educators, TA's or staff.

In conclusion, the 2020 Regulations promulgated under the prior administration have proven to be imperfect over the past year but have also proven to provide the protections of due process of law that all students deserve from their educational institutions. The prevalence of sexual harassment and misconduct at institutes of higher learning is obviously unacceptable and must be eradicated. But so too is the importance of treating all students fairly with compassion and yet an aim of discovering the truth of any allegation before the imposition of crushing life altering and at time even life ending consequences. You will hear vastly divergent opinions on the need for hearings and some form of cross examination to determine credibility and both arguments will sound equally compelling. Perhaps this is because there is a vast difference between accusations that range from violent sexual assault, harassment, stalking etc. and the often complex and confusing aftermath of sexual encounters that are all too common in the college hookup/casual sex without benefits culture that pervades higher education today. It is not time to “throw the baby out with the bathwater” to discredit the careful though imperfect work that was done for the first time according to the requirements of the Administrative Procedure Act rather than haphazard letters of mere guidance that never
had the force of law. A change in Administrations is not justification enough to void an entire regulation that perhaps is better served by reasoned modifications that serve everyone rather than political ideology.