

From: Shimabuku, Shimi
Sent: Fri, 11 Jun 2021 19:34:47 +0000
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing (Safe Horizon's Concerns about Title IX Regulations & Creating Trauma-Informed Processes/Systems)
Attachments: Safe Horizon DOE Title IX Comment.pdf

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Please see attached written comment.

Thank you,

Shimi

Stephanie "Shimi" Shimabuku, LMSW

Campus Sexual Assault Coordinator

Pronouns: she/her/hers

Safe Horizon - Community Programs

T: (646) 565-0635

Moving Victims of Violence from Crisis to Confidence.

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June 11, 2021

RE: Office of Civil Rights hearing pursuant to Executive Order 14021, Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity

I am submitting this comment on behalf of Safe Horizon to inform the Department of Education's review of regulations, guidance, and other agency actions under Title IX.

Safe Horizon is the nation's largest victim assistance nonprofit organization and offers a client-centered, trauma-informed response to 250,000 New Yorkers each year who have experienced violence or abuse. Our mission is to provide support, prevent violence, and promote justice for victims of crime and abuse, their families, and communities. I work as a Campus Sexual Assault Coordinator, and through my role I provide trauma-focused therapy to student survivors of sexual and intimate partner violence as well as conduct sexual violence prevention education on college campuses.

As an agency that prioritizes trauma-informed practices and care, we are primarily concerned that the new Title IX rule that went into effect in August 2020 prevents survivors from accessing needed supports on campus, potentially retraumatizes them, causes more harm if they do try to access supports on campus, and ultimately fails to reduce costs for all involved. And, in line with the entire purpose of Title IX, these rules fail to protect a survivor's right to equal access to their education.

Research shows that only about 10% of cases of campus sexual violence are ever even reported under Title IX. This means that almost all students who are victimized during their pursuit of education will not come forward to tell the school about it. As advocates, we of course do not believe that our goal should be to force everyone to come forward and make a report. However, we do believe that institutions have a duty to support their students should they disclose the violence confidentially or choose to move forward with a Title IX report. The goal of the Title IX hearing is NOT criminal prosecution and punishment, but rather, a determination as to if the student code of conduct has been violated. While a survivor may seek criminal prosecution in addition to a Title IX hearing, Title IX creates a separate avenue for support to ensure that the survivor has equal access to their education. The current Title IX presents specific concerns for us, which I'll share below.

Narrowed Definition of Sexual Harassment

Sexual harassment is extremely pervasive on college campuses. Almost half of all students experience at least one sexually harassing behavior, and almost 20% have experienced sexual harassment that either "interfered with their academic or professional performance," "limited their

ability to participate in an academic program,” or “created an intimidating, hostile or offensive social, academic or work environment.” Studies have shown that even what may be considered “minor” forms of sexual harassment, particularly gendered microaggressions or insults, can result in a myriad of negative effects including: withdrawal, isolation, lowered self-esteem, and depression, all of which can directly affect a student’s ability to pursue academic endeavors. Under the current Title IX regulations, schools are ***required*** to ***dismiss*** all complaints of sexual harassment except the very worst cases that “effectively deny” a student’s access to education - i.e., if a student has been forced to drop out of a class or out of school altogether. This means students might be forced to endure ***repeated and escalating levels of abuse*** without being able to ask their schools for help. By the time their school is legally required to intervene, it might be too late - they might have already fallen behind on critical coursework, been forced to withdraw from a semester, or been derailed from graduating altogether.

As experts and people who talk to survivors every day, we know that sexual violence takes many forms. A student should not have to endure abuse rising to the level of this definition in order to receive support from the campus and accountability from a student, faculty, or staff member who is causing harm in this way. It is important for institutions and communities to take a stand against all forms of violence. What message are we sending to young people? That a little bit of harassment is par for the course and expected to be endured? Developmentally, college students are often adolescents. The experiences they have as students - social interactions, relationship dynamics, sexual experiences, encounters with authority - form imprints that shape their expectations and beliefs about how the world works. We believe that the message we should be sending is that sexual harassment of any kind is unacceptable, and that those who perpetrate it will be held accountable. Further, if other young people are perpetrating the sexual harassment, early intervention is imperative before it rises to the level of severe, pervasive, and objectively offensive. These are teachable moments for someone who might be causing harm, allowing for course correction and education. We should not be inadvertently teaching that our institutions will turn a blind eye unless harassment and violence get REALLY bad.

School’s Obligation to Respond

We are also concerned about the changes to what triggers a school’s obligation to respond to sexual misconduct, specifically the change that it must involve conduct that occurred within the school’s own program or activity. While this may or may not mean schools do not have to respond based on geography, the shift is ambiguous, and we are concerned that off-campus and rampant online harassment and assault will no longer be adequately addressed by campuses. This is especially concerning to us as providers who work in New York City, where schools have documented that 70-80% of assaults occur off-campus. Limiting schools’ liability in this way puts survivors at risk and prevents them from accessing support and accountability in what might be the vast majority of incidents of harm.

Cross Examination and Live Hearing Mandate

Title IX investigations are not criminal proceedings, and as such, survivors are not entitled to the procedural protections that witnesses in formal court proceedings have during cross-examination. We fear that the potential for re-traumatization is extremely high with such a system, and the knowledge of this requirement has a significant chilling effect for survivors’ willingness to report. It also raises questions of access in that respondents or complainants with economic means can

afford access to a private attorney, while others may need to simply rely on a friend. This hardly seems like an equitable process.

In conclusion, we want to emphasize the importance of the Title IX process for survivors. Many students we have worked with have utilized Title IX to access counseling, class accommodations, connections to community-based organizations for ongoing support, a sense of justice, the ability to continue their education without having to experience ongoing intimidation and violence, and a belief that there are people in the world who will not turn a blind eye to their suffering. We have seen the importance of adequate guidance and training for Title IX administrators. And we recognize the value of due process, which should ensure predictability, fairness, and equity for all involved. Our collective aim should be to create safer campuses where all students can attain their education without suffering violence in the process; when violence does happen, supports and accountability are crucial to prevent further harm, mitigate the effects of the harm already experienced, and ultimately create safer, healthier communities going forward.

Safe Horizon strongly encourages the Biden-Harris administration to not only reverse Title IX elements that have created potentially retraumatizing processes for students who have experienced sexual violence, but include reforms that are rooted in anti-oppressive, trauma-informed principles. We believe that all students, regardless of sex, sexual orientation, race, class, religion, and ability, have the right to pursue their education free from violence. Our ultimate goal is to prevent violence from happening in the first place. The best way to do that is to empower students to seek support and justice if they choose, in ways that feel right and safe for them, while also creating learning cultures where violence is not normalized or minimized. Additionally, we call on this Administration to not just reverse recent rule changes but replace them with rules rooted in anti-racist, trauma-informed principles.

People who experience sexual assault, harassment, and other forms of violence such as intimate partner violence respond in different ways; there is no right way to be a survivor, and symptoms and trauma responses look different for everyone. Therefore, in order to facilitate healing and make individuals, families, and communities healthier and safer, we need to open doors, not close them and increase options and access to supports, not reduce them.

Thank you for the opportunity to submit comments. If you need any clarification, please contact Safe Horizon.

Shimi Shimabuku, LMSW
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Brooklyn, NY 11201

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