

From: Susan Horning
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To: T9PublicHearing
Subject: Title IX Public Hearing Testimony
Attachments: Title IX OCR testimony.pdf

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Title IX Public Hearing Testimony

Under current Title IX law, an institution must promptly respond to all allegations of sexual harassment that affect a person's ability to participate in the education program. The primary goal is to restore the complainant's access to the education program. Title IX law is not intended to subjectively address students' feelings of safety, nor to punitively punish a respondent found responsible. If a student is a victim of a crime, they should seek redress through the criminal justice system.

With that goal in mind, the August 14, 2020 amendment has been effective. It mandates a fair, prompt, equitable response from the institution with proper notice of the allegation. It provides clarity and uniformity to the process institutions must take to guarantee strong due process protections essential to both accusers and accused persons, especially those identifying as LGBTQ, disabled or minority that have been vulnerable to biased treatment in the past.

The current Title IX regulation allows the alleged victim to have full autonomy how the institution will address their complaint. Victim-survivors can receive extensive supportive measures designed to preserve access to their education, and they decide whether to follow an informal resolution or formal complaint process. The live hearing supports complainants by allowing them to choose a victim-rights advocate to assist in telling their full stories, challenging the credibility of their alleged perpetrator, and revealing the truth, all cognizant of the sensitive issues involved.

Inappropriate amendments to the current regulation would include:

1. Consent defined as affirmative consent; an impossible standard with no definable boundaries
2. An overly broad definition of sexual harassment that deviates from the Supreme Court *Davis v Monroe* definition
3. Inclusion of sex discrimination occurring outside the United States
4. Inclusion of off-campus housing as an institution's "education program or activity."
Why should an institution have jurisdiction over conduct in an apartment, hotel or personal home?

5. The use of a biased approach such as a trauma-informed response in the investigation or adjudication phase of the grievance process. The science of trauma-informed is inconclusive.
6. The use of transformative or restorative justice. Why should a respondent to an unfounded allegation accept accountability due to perceived oppression and social injustice?
7. An amnesty provision, which only encourages under-aged drinking and unfounded allegations
8. A transcript notation policy; a person's educational record should not be scarred for life after a quasi-judicial process

Prior to last year's amendment, institutions did not treat complainants and respondents equitably; there was deliberate indifference, stereotyping and rush to judgment. The current regulation is procedurally sound. The Department should not take steps to rescind, cutback or broaden this rule. We need to give it a chance! It restores equity with fair and balanced protections for all students. Without the due process protections in the current regulation, an institution's response to an allegation of sexual harassment may be deemed unconstitutional, erroneous or unreliable.

Susan Stewart

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