

**From:** Morgan McCaul  
**Sent:** Fri, 11 Jun 2021 19:41:29 +0000  
**To:** T9PublicHearing  
**Subject:** Title IX Public Comment - Survivor Strong  
**Attachments:** Survivor Strong Title IX Comment.pdf

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Dear Secretary Cardona and Acting Assistant Secretary Goldberg,

Please see the *attached comment*, submitted for the Title IX Public Hearing on behalf of Survivor Strong. Thank you for your consideration of our comment and recommendations. If you have any questions, please feel free to contact me via phone or email.

Warmly,  
Morgan McCaul

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**Morgan McCaul** (she/her)  
Director of Advocacy  
517-420-0035



June 11, 2021

The Honorable Miguel Cardona  
Secretary  
Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

Suzanne B. Goldberg  
Acting Assistant Secretary for Civil Rights  
Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

***Re: Written Comment for Title IX Public Hearing (Sexual Harassment)***

Dear Secretary Cardona and Acting Assistant Secretary Goldberg:

Survivor Strong is pleased to submit this comment regarding the Title IX regulations addressing sex-based discrimination including, but not limited to, sexual harassment, harassment based on sexual orientation, gender identity or expression, and pregnancy status, in response to the Department of Education's public hearing. We write to share our recommendations for changes to the Title IX rules that will better protect all students from all forms of sex-based harassment and discrimination.

Our organization was founded in honor of survivors; we provide community support as a catalyst for survivors' healing and we work every day to prevent gender-based violence. It is our mission to meet survivors where they are at in their journeys, provide education to individuals and institutions on how to create a culture that supports and respects survivors, and advocate for change to ensure equitable access to holistic healing and justice for anyone who is impacted by gender-based violence. We have seen, first-hand, the myriad challenges that survivors may face within and beyond educational environments and the critical role that institutions play in facilitating or obstructing their access to healing and justice. We are providing the following recommendations for the Department's review. As survivors, allies, and invested community members, we emphatically advocate for the establishment of rules that ensure all survivors have access to justice, healing, and dignity. These tenants are essential in creating a culture which centers equity, fairness, and student safety.

## **ACCESS TO ESSENTIAL INFORMATION**

We have identified a significant problem regarding the identification of Title IX Coordinators in K-12 educational environments. If the people responsible for ensuring student safety and support (a) do not recognize their designation, (b) do not recognize the expectations and responsibilities required of them per Title IX regulations, or (c) have not established or implemented appropriate policies in accordance with federal mandates, then students' access to their rights is obstructed before a hypothetical complaint is even filed. Professionals with Title IX responsibilities must be able to recognize their role and provide accurate information to students, and they must have adequate support to fulfill these obligations. Transparent information about their rights must be not only readily available, but proactively provided to all students and faculty.

While these are existing requirements under current Title IX guidance, we find the enforcement to be lax and support for schools to establish these preventative measures lacking. The addition of federal funding that is earmarked for professional development specifically for educating staff on their roles under Title IX, we believe, would be a step toward shifting the conversation around removing sex-based discrimination and harassment in schools from reactive to preventative.

## **ACCESS TO SUPPORTIVE MEASURES**

Given how institutional responses to sex- and gender-based violence and discrimination significantly impact both survivors themselves and set a precedent for a larger culture, we recommend the Department ensure that the provision of supportive measures and accommodations be implemented as immediately as possible. Each school day that passes after such services are requested may subject survivors to mental, physical, and emotional harm and further jeopardize their access to education. In alignment with our organizational philosophy, we also recommend that the Department explicitly permit states and local entities to provide protections for students that go beyond the scope of the Department's Title IX rule.

## **PROTECTION FROM RETALIATION**

Though Title IX prohibits retaliation against those who complain of sex discrimination, student survivors — especially students of color, students with disabilities, and LGBTQ+ survivors — continue to experience punishment when seeking help from their educational institutions. We recommend that the Department's regulations explicitly prohibit retaliation and allow schools to dismiss, without investigation, complaints of sexual harassment, dating violence, domestic violence, and stalking that are patently retaliatory (e.g., when a party is reported for sexually assaulting another student, insists that the sexual contact was consensual, is found responsible based on an investigation, and then files a counter-complaint that their victim in fact sexually assaulted them).



We recommend that these prohibitions provide sufficient latitude to encompass the various forms of retaliation a complainant might experience, while also listing specific examples of behaviors OCR would consider retaliatory (e.g., recommending that a complainant drop a course shared with the respondent instead of offering to remove the respondent, so-called “mutual” no-contact orders that put the onus of avoiding interaction on the complainant).

## **PROVIDING ROBUST OPTIONS**

While we believe that appropriations should be administered to ensure adequate resources for Title IX coordinators at K-12 and post-secondary institutions to identify themselves individually and to their communities, as well as access adequate training and support to ensure fair and equitable processes to students, we know that reporting to a Title IX office/coordinator is not right for every student. As an organization invested in the holistic healing of all survivors, we recommend that the Department of Education permit state and local entities to explore and invest in alternative processes that provide students the opportunity to seek justice and healing in accordance with what is best for them. Such processes should take care to prevent conflicts of interest, ensure equitable access and timely responses, and prohibit retaliation, and should be offered as an alternative to *or* alongside school investigation, but never with intention to lessen the school’s responsibility in facilitating the restoration of the complainant’s access to education.

The Department of Education’s interest in public comment on these matters shows Survivor Strong this administration’s willingness to look deeply and openly for insight from those most affected by this issue on how it can better be addressed. We are hopeful that the conversation which has primarily focused on the minutia of the grievance process can instead shift to the consideration of ways the state and its institutions can serve students in the prevention of gender-based violence. We believe that a renewed focus on training for both staff and the learning community, the immediate availability of meaningful supportive measures in the wake of violence, strong protections against the further harm caused by retaliation, and the broadening of what restorative measures are offered to victims of gender-based violence will build resilience among learning communities by empowering them to reduce the occurrence of harmful acts.

Survivor Strong is sincerely grateful for this forum and for your time, Secretaries Cardona and Goldberg. We excitedly await your implementation of the insights gained through this process and look forward to opportunities for partnership in the future.

Thank you for your consideration of the recommendations articulated above. If you have any questions, please contact Morgan McCaul ([morgan@survivor-strong.org](mailto:morgan@survivor-strong.org)).

Survivor Strong