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To Whom It May Concern:

Attached, please find written comments relating to the Title IX “all or nothing” cross examination regulation.

Thank you for the opportunity to submit written comment during the public hearing of the Office of Civil Rights for the Department of Education.

Kindest regards,  
Wendy Lee Basgall



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Written Title IX Comments  
Southwest Women's Law Center  
Albuquerque, New Mexico

I am Wendy Lee Basgall and I submit these written comments on behalf of the Southwest Women's Law Center in Albuquerque, New Mexico, where I am a staff attorney.

The original and ongoing purpose of Title IX is to protect equal access to education. The Trump/DeVos changes to Title IX regulations has resulted in a roll back of Title IX implementation that takes us back decades to a time when few survivors reported sex-based harassment, retaliation was rampant and complainants were subjected to discipline for lesser ancillary rules violations which are disclosed during the reporting of the sex-based harassment incident, which can include ironically, discipline for sexual conduct that happens on campus. For any number of reasons, reporting sex-based harassment is difficult and has been made much more so given a lack of support for those reporting.

Something of extreme concern are procedural changes made to Title IX by the Trump/DeVos administration, particularly as relates to cross-examination of parties and witnesses. Known as the "all or nothing" cross examination regulation and effective in August 2020, it requires that all previous statements or testimony made by a party or witness, going all the way back to the actual incident, be removed from the record if that party or witness fails or refuses to answer a question while being cross examined. This "all or nothing" rule is fraught with problems and inequities in practice, due to the subjective nature of its implementation in each of the thousands of possible tribunals across the country, resulting in a willy-nilly collection of outcomes. Additionally, the strategic use of this rule by the parties (at the behest of their attorney or other advocate) to manipulate the process can turn the search for the truth and as a consequence, justice, on its head.

The purpose of the Title IX investigative process (including, but not limited to gathering evidence and the interview of witnesses) and hearings is to reveal the truth of the matter for the sake of both accountability for the accused and justice for the complainant, and for creating the safest possible experience for all. The due process of the accused is of course of the utmost importance, but the "all or nothing" regulation pushes that concept to the extreme at the expense of a fair process and support for the complainant.

We urge you to reconsider the "all or nothing" regulation and trust that the factfinders in these proceedings are able to fairly consider the rights of both complainants and those accused.

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