

From: Julie Ann Rivers-Cochran
Sent: Thu, 10 Jun 2021 10:06:34 -0400
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing (Sexual Harassment)
Attachments: The Army of Survivors' Response to New Title IX Rules.pdf

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Dear
Secretary Cardona and Acting Assistant Secretary Goldberg,

Please
see the attached written comment regarding the 2021 Title IX Public Hearing.

Thank
you for the opportunity to be heard.

Sincere
regards,

The
Army of Survivors

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She/her

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June 11, 2021

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

Re: Written Comment for 2021 Title IX Public Hearing (Sexual Harassment)

Dear Secretary Cardona and Acting Assistant Secretary Goldberg,

Thank you for the opportunity to submit a written comment for the 2021 Title IX Public Hearing.

The Army of Survivors (TAOS) was created from a group of Larry Nassar survivors who wanted to ensure other athletes never endure what we have. Our abuse shed light on the systematic failures of a University and Athletic Department acting on reports of abuse. We, like most survivors, endured backlash, criticism, and re-traumatization for coming forward. That was under the old rulings that protected our rights. Under the Trump administration, illegal changes were made to the Title IX regulations that have rolled back survivors' rights. If we reported our abuse now, our coaches would not be required to say anything; our perpetrator would be able to cross-examine us; and there would be an option for mediation, which would likely have allowed our perpetrator to continue abusing people. The current rulings perpetuate the cycle of ignoring and silencing survivors. They let schools off the hook, shielding schools from liability. It may not be easy or cost-effective to do the right thing. But we owe it to, not only survivors, but all students to act justly. Our campuses and communities will not be safe until we do so.

We urge the Department of Education to restore and strengthen Title IX protections, ensuring survivors receive dignity, justice, and a safe and supportive learning environment where retaliation is not embraced as it is now under Title IX's current iteration.

TAOS recommends the following provisions be included in the forthcoming Title IX rule that the National Women's Law Center drafted for their written comment for the Title IX Public Hearing:

Restore and strengthen protections against harassment:

- **Define** sexual harassment as unwelcome sexual conduct, including quid pro quo harassment;
- **Affirm** that sex-based harassment includes sexual harassment, dating violence, domestic violence, and sex-based stalking, and harassment based on sexual orientation, gender identity, gender expression, transgender status, sex stereotypes, sex characteristics (including intersex traits), parental status, pregnancy, childbirth, termination of pregnancy, or related conditions;
- **Require** schools to respond to sex-based harassment regardless of where it occurs (including off campus or abroad), that interferes with or limits an individual's ability to participate in or benefit from an education program or activity;
- **Require** schools to address sex-based harassment that they know or should know about, as well as all harassment by school employees that occurs in the context of their job duties, regardless of whether the complainant faces further actionable harassment post-notice;
- **Require** schools to provide a prompt, effective, and reasonable response to sex-based harassment, including by providing supportive measures to complainants no later than five school days after receiving notice, and prohibit schools from conditioning a complainant's access to supportive measures on their agreement to a nondisclosure agreement or waiver of legal claims against the school;
- **Allow** schools to use non-investigative processes (such as a restorative justice process) to resolve complaints of sex-based harassment as long as participation is truly voluntary, the parties are able to withdraw at any time before the process concludes, and the facilitators are adequately trained;
- **Allow** states and schools to provide additional protections beyond those in the Title IX rule; and,
- **Clarify** that Title IX protects all persons, including those who are neither students nor employees, who seek to access or benefit from an education program or activity.

Develop robust protections against retaliation:

- **Explicitly prohibit** these and other common forms of retaliation:
 - Disciplining a complainant for collateral conduct that is disclosed in a complaint or investigation (e.g., alcohol or drug use, consensual sexual contact, reasonable self-defense, presence in restricted parts of campus) or that occurs as a result of the reported harassment (e.g., nonattendance);
 - Disciplining a complainant for a "false report" or for prohibited sexual conduct solely because the school has decided there is insufficient evidence for a finding of responsibility or because the respondent is found not responsible;

- Disciplining a complainant for discussing the allegations that gave rise to their complaint; and
- Disciplining a victim of sex-based harassment for misconduct charges the school knew or should have known were brought by a third party for the purpose of retaliation; and,
- The dismissal of a complaint of sex-based harassment that is patently retaliatory (e.g., a disciplined harasser a files countercomplaint against their victim) without a full investigation, .

Ensure fair disciplinary procedures:

- **Require** schools to resolve complaints using grievance procedures that are fair and afford both parties the same procedural rights, including by applying a preponderance of evidence standard;
- **Otherwise allow** schools flexibility in implementing grievance procedures, particularly when addressing complaints that, if substantiated, would not result in serious sanctions; and
- **Allow** schools to forgo live hearings attended jointly by the parties and direct cross-examination, where not otherwise required by law.

Thank you again for the opportunity to submit a written comment for the Title IX Public Hearing. Please consider our recommendations and contact info@thearmysurvivors.org with any questions.

Sincerely,

The Army of Survivors