From: Grace Casteel
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To: T9PublicHearing
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Attachments: Title IX Written Public Comment.pdf

7 June 2021

To the Department of Education's Office of Civils Rights,

Thank you for the opportunity to comment on Title IX federal law. Since the establishment of Title IX, the regulations and guidance has undergone changes but none as threatening as the regulation changes under Betsy De Vos. This includes, among other actions, rescinding Obama's Dear Colleague letter and implementing policy that traumatizes and prevents victims from coming forward. We would like to raise concerns about the current guidance and urge for changes that create a trauma-informed, survivor-centered Title IX policy.

First, rebuilding trust with the survivor community is key to creating an ideal policy. The current public hearing is a good starting point, but when the policy does change it must reflect what was said and discussed by the people coming forward and giving insight. In November of 2018, the Office of Civil Rights released the first Title IX guidance published by OCR to go through a formal notice-and-comment process since 1997, unlike guidance issued by the Obama administration in 2011 and 2014 that lacks the force of law. These policy changes were made after one listening session (in the four years of the Trump Administration) and 125,000 public comments were submitted with a majority opposing the rule change. This conversation can't stop after the current hearing period of June 7-11, 2021. **There must always be space for survivors and other stakeholders to share their experiences and opinions.** Allowing more opportunities for public comment is crucial to rebuilding trust and ensuring regulation changes reflect the needs of the stakeholders. This includes treating survivors as the experts in guiding policy changes. *That being said, public hearings should be held at accessible times for all stakeholders. The current hearing is being held during the finals week of many University of California students, one of the largest public university systems in the U.S. Stakeholders' schedules should be taken into consideration when planning public hearings in order to create an accessible commenting process.*

Secondly, **in order to create a policy that supports all survivors we must center voices that have been historically marginalized.** This includes members of the LGBTQ+ community, BIPOC community, low income, undocumented individuals, and disabled folks who have long been shut out of the narrative.

Thirdly, live cross-examinations required by California case law are a traumatic experience for many survivors. While the UC system has attempted to make this a less painful process by creating the position of "question asker" in which a designated advisor is permitted to ask questions for both parties, this is still a very unnecessary rule forcing survivors to recount traumatic events. While the cross examination is voluntary, if the survivor refuses to participate any other statements they made will be blocked from evidence if the credibility of the party is a determining factor or if the hearing officer needs to make a credibility assessment of a witness. This rule can also work for perpetrators who don't possibly want incriminating statements or confessions eligible for evidence so they choose to opt-out of cross examination**. We urge a change in policy to not require live cross-examinations for statements to be considered evidence.**

Finally, definitions of "sexual harassment" and "sexual assault" should be broadened. Sexual harassment is defined as a "school employee conditioning education benefits on participation in unwelcome sexual

conduct," "unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies a person equal access to the school's education program or activity" or "sexual assault, dating violence, domestic violence, and stalking."[1] This is too narrow of a definition of a hostile environment as "so severe, pervasive" which can exclude single-incident situations of sexual assault and domestic violence. As the UC noted in a 2019 public comment on the proposed changes under Betsy De Vos, "Because such conduct would apparently not constitute sexual assault or hostile environment sexual harassment under the Department's proposed rules, schools would have neither the obligation, nor the ability (under Section 106.45), to address it using their sexual harassment grievance procedures."[2] The 2011 Dear Colleague Letter issued under the Obama Administration offered a broader definition of sexual harassment: "A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX."[3] **In order to ensure the school can respond to a complaint, the definitions should be expanded to include single-incident situations.**

We advocate for a survivor-centered Title IX law that reflects the feedback received through public comment periods. We also advocate for trauma-informed guidance that encourages survivors to come forward and supports them throughout the reporting process. Title IX regulations should seek to include marginalized voices that are crucial to creating an equitable policy.

Sincerely,
Grace Casteel
Federal Legislative Advocate
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[1] https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf
[2] https://sexualviolence.universityofcalifornia.edu/files/documents/uc-title-ix-letter.pdf
[3] https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf