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Vincent Morrone

To whom it may concern,

There was a justifiable reason for the Obama Administration to address colleges that were not addressing sexual violence on the campuses. No college wants to have a sexual assault occur, which would make covering one up very appealing. If the person accused was a well-connected individual, or someone who brought the college money through a sports program, the colleges often put their own interests ahead of the students. Unfortunately, the way it was addressed fell short in many ways. Even under the Obama era regulations, we saw cases like Larry Nassar who was able to continue to victimize on their campus, once again showing that a college would often prioritize themselves. This needs to be addressed.

However, we also saw an explosion in lawsuits from students who were accused of sexual misconduct. When it was made clear it was in the college's best interest to *show* that they took sexual assault seriously, they often cut out basic due process and common sense. In cases where guilty students were punished without a fair hearing, the victim would once again have to deal with the investigation and sometimes were themselves sued. In many cases, for the innocent accused students who could afford it, they would have to litigate to expunge their record and be allowed to get their degree. Of course, the vast majority of wrongfully accused students (Some from false allegations, some for simply being the wrong person) were poor and minority students. In Boston College, a man had to go all the way through a trial to get his record expunged even though forensic, an eyewitness (who was friends with the victim), and video footage, cleared him of the charges. However, in a case where the student couldn't afford to maintain a costly lawsuit such as a young black man in Suny Buffalo State he had to beg online for another college to take him after he was dismissed without evidence. The student in question was cleared via DNA, but because he was a poor and a young black man, neither the police nor the Suny Buffalo State bothered to check his alibi. He was with friends at a restaurant with security cameras. In a case like this, regulations should have been able to protect the

student. The same with Marcus Knight, an autistic young black man with cerebral palsy who without a hearing or official complaint was suspended for fist bumps and selfies.

The new regulations must establish clear guidelines for colleges that are not able to be manipulated or interpreted. Many lawsuits arise because students are given an investigation report minutes before a sham of a hearing. A school should investigate all aspects of the case, and provide all evidence to both parties well in advance. A minimum of 10 days should be set, with extensions given for complex cases. A college should be required to interview all witnesses, and if they refuse or neglect, OCR should penalize them with heavy fines. This would be for both the complainant and the respondent.

The main purpose of Title IX is to provide access to education. Many schools evade a fair process by claiming the suspensions and expulsions are only educational. This is false. There is nothing wrong with punishing a student who has committed sexual misconduct, but if a college can't defend their practice as punishment, they should not be allowed to conduct the process. A tiered approach could resolve many issues.

#### Tier 1: Accommodations

A student should be allowed to ask for accommodations only. This means that they aren't looking to have a hearing or have the school decide a winner or loser, just basic adjustments. Removing them from a particular class, escorts to class, or basic no-contact orders. A student should be allowed to ask for accommodations as long as their case has basic credibility. Nothing would appear on their transcript. The college would not have to even advise the accused of the accommodations unless there is a no-contact order put in place.

#### Tier 2: Mediation

This could encompass both students agreeing to counseling, or privately allowing restorative justice with no loss of education. It can be used to allow one student to agree to leave the school or in certain circumstances, for a student to agree with a suspension with the promise of being readmitted and the record expunged. Both parties must be treated fairly. A school should never say, "Agree to a 3-year suspension or you'll be expelled" because that would mean they were judging the person guilty. However, they could show the evidence they have and advise a ruling against them that could result in expulsion if found guilty.

#### Tier 3:

An informal investigation. Here the school would investigate, but only the advocate for each student would ask any questions. There would be no formal hearing. If the evidence is shown to support the complainant by a preponderance of the evidence, they would be allowed to have the respondent removed temporarily or permanently, but it would not be reflected on their transcript. This would be a fair compromise in cases where a complainant doesn't want a live hearing, but the respondent is left with no access to education themselves.

#### Tier 4:

A formal hearing. A live hearing with either the opposing student's school-appointed advocate or their lawyer asking the questions. No hostile questions allowed. Clear and convincing evidence would be needed to remove the student and notate their transcript. If the evidence does rise to a preponderance, then the respondent may still be removed from the school, but no notation on the transcript.

In a case where a student is removed without the transcript notation, OCR should track to see if they are found responsible at another school. They would then be able to elevate the case to being noted on the transcript after a private hearing.

A school should have a record of the entire investigation from start to finish. An independent panel should be able to review the panel, all of the evidence, and agree with the decision. If the evidence isn't complete (Missing electronic communications, witnesses not questioned, CCTV footage not included) the school should receive heavy fines and must outsource their Title IX cases to private investigators with trained prosecutors and defense attorneys. Schools that take these cases represent the police, the prosecutor, the judge, and the jury, but also should represent the defense. Failure to do so should be punished by OCR.

Each case that comes to the college's attention should be recorded, and there should be a disposition at the end as to why it was closed. All parties should be made aware of the case and its disposition, so if a case was closed without interviewing witnesses, or conducting an investigation, the school can be forced to do so.

There has been confusion over the former regulations assertion that evidence of what someone has said can't be used as evidence if that person refuses to testify. This was intended to bar schools from using statements from an accuser who then does not submit to cross-examination or where the hearing panel doesn't ever hear directly from the complainant. This is different from an admission of guilt from a party who can simply choose not to testify in the hopes that the statement be disregarded. Clarification in the regulations should be made, without changing the fact that if a witness or party refuses to testify, their words cannot be used against the other party.

In a case where there is a police investigation, the school should only resolve the question that if true, is there a danger to the community and is there probable cause to believe the respondent is responsible. (Cases where several people were in attendance at a party and a

student says their DNA will clear them would be a clear exception here). If needed, an interim suspension should be issued. If the student's criminal case is resolved without a conviction, the school must then decide if there is enough evidence to proceed to a Title IX hearing. Many factors should be considered. Has the complainant transferred or graduated? Was the student cleared or was there simply not enough evidence for a conviction in a criminal court? A person acquitted may still face sanctions by the school if their presence can be seen as a danger, or if the complainant is still at school. A person cleared by DNA, eyewitness testimony, CCTV footage, or other evidence should be reinstated and assisted to complete their degree. All evidence used in the criminal case should be used, both incriminatory and exculpatory. A college should always cooperate with a police investigation, but not act as an agent of the police in an attempt to circumvent their constitutional due process rights. In other words, if the college has evidence such as security video, or the names of witnesses, they should provide that to the police. They should not attempt to interview the student without their lawyer present to attempt to get incriminating statements. (Telling a student even if they didn't do anything wrong if they apologize it will all go away.)

The school should take care in terms of telling either student about talking about it. A student, both complainant, and respondent should not be forced to stay silent for fear of expulsion. However, harassment should never be tolerated. If someone creates a hostile environment on campus by telling other students their accuser is lying or is a rapist, the college must protect both students.

Colleges should keep records that record how many complaints were made. The nature of the complaint. (If a college sees a high volume of complaints that even if true, would not be a violation of even a school misconduct policy.) They should also track the ages, gender identifications, orientation, race, and even economic status. OCR can then review to see if poor black students are given fewer rights, or if complaints against women are dismissed far easier. OCR should do a review whenever there is a lawsuit that claims something that should be a

violation. A college that hands a student the report fifteen minutes before a hearing, or refuses to even speak to potential eyewitnesses is probably doing it in more than one case. Fines should be based on if the college violated a regulation, not on outcome. For example, imagine a college has two cases where a student received no due process. Both cases involve a stranger rape where the student claimed they were innocent. Assume for the sake of argument that one student was convicted, while the other was cleared, both based on DNA. The college should be fined in both cases so the next time, they do it correctly. Remedy of expunging the record and taking steps to ensure the student gets their degree would be reserved for the innocent student.

OCR should not only create the needed steps for due process, but the steps to assure due diligence. A college's responsibilities of how to investigate should be spelled out in enough detail that if they attempt to sweep any case under the rug, they can be easily found. Both the complainant and respondent should be told at the beginning and end of each investigation how to file a complaint with OCR. If a college has violated either due process or due diligence, they should be fined and OCR should hire attorneys for both students to rehear the case fairly at the college's expense. Repeated violations should result in OCR hiring someone to oversee any cases where both parties are assigned attorneys at the expense of the college. These outside attorneys should not be hired directly by the college as that would create a conflict.

OCR should remember that the reason behind Title IX is to make sure nobody is denied access to education. This goal is not helped by turned colleges into the sex police, or by insisting a college achieve certain results. The Democratic Party once was seen as the party that believed in due process and civil liberties for all. It is a travesty that they seem to feel it's irrelevant to the current party. If Tara Reade had made her allegations against Joe Biden under the regulations that Catherine Lhamon first foisted on colleges, he would most likely have been expelled. Students, especially poor minority students without the means to hire lawyers, have been expelled for far less, even in cases where the 'victim' insisted there was no misconduct. There should be no return to old policies that do not work. Instead, improve upon the rights of all

students to help ensure access to education for everyone, not just privileged white students who can afford to litigate for their rights.

Vincent Morrone