

**From:** Shelby Schuppe  
**Sent:** Fri, 11 Jun 2021 20:00:56 +0000  
**To:** T9PublicHearing  
**Subject:** Written Comment: Title IX Public Hearing  
**Attachments:** Western Comment to Dept of Ed.pdf

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

To the Office of Civil Rights:

Please see the attached comment written and submitted by Shelby Schuppe, Title IX and Student Conduct Coordinator, on behalf of Western Colorado University.

Thank you,

Shelby



**Shelby Schuppe**  
*she, her, hers (what's this?)*  
Title IX & Student Conduct Coordinator  
Western Colorado University

Taylor Hall 301A  
O: 970.943.2616  
C: 970.901.0235

[www.western.edu](http://www.western.edu)  
[Title IX](#)  
[sschuppe@western.edu](mailto:sschuppe@western.edu)

June 11, 2021

To: Office of Civil Rights, Department of Education

RE: Office of Civil Rights Public Hearing pursuant to Executive Order 14021, Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity

Written and Submitted by Shelby Schuppe, Title IX and Student Conduct Coordinator, on behalf of Western Colorado University

Western Colorado University is a rural institution of higher education serving approximately 3,000 students from all across the United States, in addition to concurrent enrollment students and a newly established adult degree completion program. Western sits in the Gunnison Valley in Colorado with 360 views of the mountains, 200 miles southwest of Denver. The Title IX office consists of one Title IX coordinator with other staff contributing to deputy, investigator, advisor and hearing officer duties while maintaining their other full-time employment at the University.

The impact of the regulations enacted during the previous administration's tenure was felt nearly immediately. While the goal was to employ more due process rights for the parties, the regulations ultimately created undue burden for all involved and minimally increased due process rights for respondents, if they chose to utilize those rights.

### Resources

While not exclusive to the previous administration's regulations, the unfunded nature of Title IX disproportionately impacts small, rural universities. Western functions on limited resources and personnel, and performs well. However, the added stipulations to provide trained advisors and hearing officers who are required to conduct a court-like hearing process stretched our resources past a sustainable point. On small campuses, it is already taxing on the faculty, staff and students to place individuals in roles that can appear to be biased or one-sided, even if they conduct a Title IX case appropriately. It fosters adversarial relationships between advisors and the opposing parties resulting in less sense of belonging across campus. Subsequently, this reduces the resources that students want to access or feel like they can access.

Additionally, requesting volunteer faculty/staff members to conduct Title IX investigations and hearings, as well as serve as advisors takes a toll on university

employees. The minimal resources with which Western functions does not allow for compensation when someone takes on additional roles outside their contractual work as a faculty or staff member. Nor is there much ability to outsource investigations and hearings resulting in the best option to be utilizing in-house staff. These staff have vast connections across campus given the geographical location and size of the university. Again, this is not exclusive to the previous administration's regulations, but it has been exacerbated by the live hearing requirements. This is an ongoing concern for small universities and needs to be addressed in order for universities to properly address Title IX complaints.

### **Suggestions for Resources**

Under Title IX, federally-funded educational institutions are required to provide certain supports and processes for those impacted by a Title IX case. The federal support, both in training and financially, is lacking for institutions that want to provide adequate and effective support and processes for all involved. More training needs to be provided from the individuals writing policy, including annual updates and clarifications on the regulations. Additionally, financial support is needed for universities to hire trained and educated Title IX teams to address the ongoing concerns of students related to sexual harassment and due process as required by the regulations.

### Responding to Complaints

The previous administration's regulations restricted the university's ability to respond to complaints. If a Title IX coordinator receives a complaint but a complainant does not wish to move forward with a formal process, universities and complainants are to rely on the respondent's willingness to move forward. While an informal process should not happen without both parties agreeing, this prevents any meaningful follow-up from happening with the respondent and leaves the complainant with no other option but to go the formal route. Many complainants throughout the last school year did not wish to proceed with a formal route due to the live hearing and having to be subject to cross-examination. The complainant then does not have a path toward justice and safety, thus violating individual rights.

Additionally, universities are limited in how they can respond to anonymous complaints, even if there are multiple complaints against one person. While the regulations allow for Title IX coordinators to sign formal complaints, this leaves the university open to risk by moving forward without an identified complainant and/or witnesses potentially and still provides the complainant with only minimal support when they are not directly impacted by the outcome of a case. This also places

burden on the Title IX coordinator to attempt remain neutral when navigating other Title IX cases, but demonstrating clear sides when signing a formal complaint.

In addition to the limited ability of the university to respond effectively to student on student anonymous complaints, universities are expected to have other policies in place for responding to faculty/staff on student cases. Again, if a student files a complaint anonymously and does not wish to proceed with their name attached to the complaint, the university can only address the concern outside the realm of Title IX since a formal complaint cannot be filed anonymously. It is unreasonable to expect any severe sanctions or life-altering remedies to result from an anonymous complaint but the university isn't even able to follow-up with the respondent, who in this case still has access to other students and could pose a community risk. The regulations give universities the ability to respond through other policies and procedures, which is a way to hold respondent's accountable and give complainants the opportunity to feel safe, but this only functions under the assumption that universities have equitable and inclusive processes for handling complaints that cannot be addressed under Title IX.

Finally, the response to Title IX complaints has become muddled by the changing of the regulations and the narrowing of the definition of Title IX. The requirement to dismiss cases that fall outside Title IX, but the opportunity to address the concerns elsewhere in the university's policies creates a confusing environment for students and a challenging space for Title IX coordinators when explaining the difference between Title IX, student conduct, professional conduct, and every other possible policy that a complaint could fall under if it is not considered Title IX. Students used to understand Title IX as the law that protected them against discrimination and kept them safe. Now they are unsure what Title IX is versus harassment versus misconduct when consistent language and definitions could have been used.

### **Solution to Responses**

Establish a system that allows Title IX coordinators to address anonymous complaints or complaints in which the complainant does not wish to pursue a formal process, but the respondent doesn't wish to pursue an informal process. Consider the student as a whole, not just the one that is on-campus accessing physical classrooms.

#### Live Hearing and Cross-Examination

The live hearing component has impacted all involved – the complainant, respondent, witnesses, Title IX coordinator, advisors, decision-makers, and potentially even investigators. Practically speaking, coordinating schedules for all

involved is a barrier to creating an efficient process for the parties and complicates the hearing process without providing any real positive results. The additional due process has inadvertently caused more stress for the respondents than actually benefited them and has added a financial burden onto the university to train decision-makers and advisors on how to run a courtroom-like hearing. Decision-makers are able to get the same information through separate conversations during the hearing without requiring that everyone be present or face each other. Additionally, it is an unsafe space to be in during the live hearing. Complainants, respondents, and witnesses are all required to face someone who they originally thought they would not have to face again after reporting, being interviewed, and having “No Contact Orders” put in place. The regulations place a burden on the complainant to feel as though they have the responsibility to prove themselves and not the university while facing the person who allegedly did not treat them well. The respondent feels as though they need to defend themselves in a court-like situation instead of attempting to resolve things outside the formal process. Witnesses are forced to encounter a party who they testified against, potentially risking their own safety even with a retaliation clause in effect.

The live hearing was designed to provide more due process rights, but the reality is that it created an adversarial environment in which students are pitted against each other to prove their points. It is no longer perceived as a burden the university must carry, but one that the parties assume falls on them when being cross-examined.

### **Solution to Live Hearing and Cross-Examination**

Eliminate the requirement to hold a live hearing. Instead, establish structure around how questions are asked of each party and witness.

Ask that universities provide an advisor if a party requests it, but do not require it. There are some students who prefer not to utilize advisors/support persons when navigating Title IX complaints. If a party agrees to decline the offer of an advisor, this provides the party with what they want and eliminates the undue burden on the school to provide advisors that have limited capacity and resources to support the party.

Offer or subsidize trainings for staff involved in Title IX processes, including the advisor, decision-maker, investigators, appeals officer, and Title IX coordinator.

Overall, the previous administration’s regulations impacted students in ways that we couldn’t imagine. Due process rights are important and universities need to ensure students are staying safe. However, the regulations severely impacted universities’



OFFICE | Student Affairs

PHONE | 970.943.2616

EMAIL | [tixadministrator@western.edu](mailto:tixadministrator@western.edu)

ability to follow-up on cases, even serial perpetrators, and respondents are left to face the person accusing them feeling as though a formal process is the only way. Schools need to be able to respond to complaints of sexual harassment, assault, stalking, domestic violence, dating violence, rape, unhealthy relationships, and more with flexibility that supports the complainant while providing the respondent the space to discuss the allegations rather than defend themselves.

Sincerely,

(b)(6)

Shelby Schuppe  
Title IX and Student Conduct Coordinator  
Western Colorado University