Hello, OCR Title IX Representative(s):

We hope this message finds you doing well. Below, and attached, please find comments (in various versions) from Western Kentucky University. Thanks tremendously for your time.

Comments for the U.S. Department of Education: Office for Civil Rights
Developed by: Western Kentucky University
May 27, 2021 (Thursday)

During a Listening Session on May 20, 2021 (Thursday) with the Office for Civil Rights (OCR), hosted by the American Association for Access, Equity, and Diversity, Acting Assistant Secretary Suzanne Goldberg encouraged attendees to submit comments to the OCR about the current Title IX (TIX) regulations. Specifically, Acting Assistant Secretary Goldberg requested for those of us who work in the Title IX field to write-up our experiences; express what has worked and not worked; and convey the supports and resources we need. The purpose of this document is to respond to the aforementioned requests while also ensuring this document is brief to exude courtesy to a number of our colleagues who also intend to submit remarks.

The current TIX regulations have allowed every sexual harassment allegation pertaining to students and/or employees to primarily filter through the Western Kentucky University (WKU) TIX Coordinator first, instead of through the two TIX Investigators on our campus. One investigator primarily handles student-to-student allegations and one investigator primarily handles employee-to-employee, student-to-employee, and employee-to-student allegations of sexual harassment. Because WKU implemented an exceptional, authentic, and thoughtful policy and procedure, when sexual harassment allegations are reported, it allows the TIX Coordinator to conduct an initial assessment and then serve as a Co-Investigator (which was not encouraged prior to August 14, 2020 – Friday). Having the TIX Coordinator and the appropriate Investigator work together at the onset of receiving an allegation, and through the duration of conducting an investigation, has allowed our institution to become more efficient in our work; this is especially helpful because one Investigator works in a completely separate division on our campus whereas the second Investigator reports directly to the TIX Coordinator. In addition, the seamless communication between the TIX Coordinator and Investigators allow each to triage their work and keep each team member informed about statuses of each allegation and/or case.

What have been very high-alerted concerns consists of the required disclosure of names of Complainants who seek to report sexual harassment allegations that are not rape or sodomy related; witnesses (who are students and/or employees); and the cross-examination component (for students and employees). A significant number of employees are not protected in their positions of employment,
and retaliation is real. Although WKU offers an Anonymous Reporting portal for sexual harassment allegations to be communicated, the required due process of disclosing names of Complainants and Witnesses (because of the new TIX regulations) poses significant challenges by not allowing us to address these concerns as efficiently as we envision. In addition, the current regulations substantially overlooked employees and barely included any thoughtful perspectives regarding empowerment of employees as Complainants, Respondents, and Witnesses. The new TIX regulations are heavily focused on due process, which we completely support; however, there are no opportunities for Complainants and Witnesses to report a sexual harassment allegation anonymously. Employees have livelihoods to worry about and families to provide for, and have been concerned about the lack of confidentiality and the brutal cross-examination process required of them simply because they work at our institution.

The following supports and resources would be helpful:

- The OCR sending every college and university governing board and president, within the OCR’s jurisdiction, an official letter requiring mandatory support, resources, and empowerment for all perspectives associated with TIX on their campuses;
- The OCR requiring every college and university TIX Coordinator and Investigator, within the OCR’s jurisdiction, to complete a short survey or participate in a brief interview annually to convey challenges they are experiencing at their institutions and express what enforcement is needed from the OCR to rectify the obstacles; and
- The OCR utilizing the Association of Title IX Administrators as a primary conduit to ensure all college and university TIX employees are properly trained and confident in their work.

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• The OCR utilizing the Association of Title IX Administrators as a primary conduit to ensure all college and university TIX employees are properly trained and confident in their work.

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