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Sent: Fri, 11 Jun 2021 17:43:03 +0000
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing

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June 11, 2021

Webster University's Title IX Office submits the following comments for consideration on improving enforcement of the terms of Title IX of the Education Amendments of 1972 ("Title IX") that prohibit sexual harassment in the programs and activities of educational institutions receiving federal funds.

We respectfully suggest that the Department of Education should maintain current rules concerning the offering of supportive measures to a complainant regardless of whether a formal report is initiated. In our experience, supportive measures are all that a complainant wants, and oftentimes complainants choose not to file a formal complaint after receiving supportive measures.

Changing the requirements for cross-examination would be beneficial to reduce burdens and exposure to potential liability for universities. Under the previous regulations, a trained Title IX Investigator cross examined the parties and witnesses within the confines of a private interview. The expectation that a university faculty, administrator or employee will act in an advisor role for Title IX hearings (which is a role that mimics the functions that an attorney would serve in a judicial proceeding), capable of navigating complex legal matters such as relevancy and evidentiary standards, is setting high and unreasonable expectations even with annual training. Moreover, given the inherently adversarial nature of cross-examinations, requiring university personnel to cross examine a student or coworker in a live hearing undermines the trust and mutual respect that is essential to learning and work environments. Further, holding a mandatory hearing may chill reporting in many instances. Reinstating the option for hearings would be a better trauma-informed approach.

Lowering the bar for what constitutes a Title IX violation would also be beneficial. The Title IX process does not need to mirror the criminal justice system. If parties wish to file a criminal report, universities work in conjunction with local law enforcement to provide assistance and support for students who wish to exercise that right. However, Title IX is meant to be a less formal process that imposes disciplinary, educational, and restorative sanctions on respondents inside the university community. The allegations need only be pervasive and objectively offensive. Requiring the allegations to be

pervasive, objectively offensive, AND severe is too high of a standard given the goal is to protect and maintain the safety of our campus population.

It would be advantageous for OCR to offer guidance or even training for universities on steps recommended to cultivate an environment free from discrimination based on sexual orientation and gender identity.

Thank you for your consideration.

Sincerely,

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