

From: Lawson, Kate
Sent: Thu, 10 Jun 2021 17:25:31 +0000
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing (Improving Enforcement of Title IX of the Education Amendments of 1972)
Attachments: Xavier University Written Comment Title IX Public Hearing.pdf
Importance: High

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.

Please find Xavier University's written comment for the Title IX Public Hearing attached here.

Best,

KATE LAWSON (SHE/HER/HERS)

Title IX & Interpersonal Violence Response Coordinator

lawsonk1@xavier.edu

T 513-745-3046

xavier.edu/titleix/

Xavier University

3800 Victory Pkwy, Cincinnati, OH 45207



Xavier University Notice of Non-Discrimination

In compliance with Title IX of the Education Amendments Act of 1972, Xavier University does not discriminate, exclude from participation in, or deny benefits of its educational programs, admission policies, activities, or employment policies and opportunities on the basis of sex. Questions about Title IX may be submitted to Xavier's Title IX Coordinator Kate Lawson, Gallagher Student Center, RM 332, 513-745-3046, lawsonk1@xavier.edu and/or the Office of Civil Rights, Cleveland Office, U.S. Department of Education, 1350 Euclid Ave., Suite 325, Cleveland, OH 44115, 216-522-4970, OCR.Cleveland@ed.gov.



Consider the environment before printing this e-mail

DISCLAIMER Important! This message is intended for the above named person(s) only and is CONFIDENTIAL AND PROPRIETARY. If you are not the intended recipient of this e-mail and have received it in error, please immediately notify the sender by return email and then delete it from your mailbox. This message may be protected by the attorney-client privilege and/or work product doctrine. Accessing, copying, disseminating or re-using any of the information contained in this e-mail by anyone other than the intended recipient is strictly prohibited. Finally, you should check this email and any attachments for the presence of viruses, as the sender accepts no liability for any damage caused by any virus transmitted by this email. Thank you.

TITLE IX AND INTERPERSONAL VIOLENCE RESPONSE OFFICE

The Honorable Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW Washington, DC 20202
Re: Written Comment for Title IX Public Hearing

June 10, 2021

Dear Secretary Cardona:

Since 2013 Xavier University has been responding to reports of Sex Discrimination under a system of policies and processes that we believe best supports equitable treatment of the parties, results in supported and appropriately determined outcomes, and maximizes the rights of both parties. We would like to share the key components of this system and request that the U.S. Department of Education Office for Civil Rights consider this system as a best practice as it reviews and potentially revises the current Title IX rules:

- The Investigator is a different person than the decision-maker(s); the role of the Investigator and scope of the investigation is to gather all relevant information and ensure parties have the same opportunity to review and respond to all information gathered. The Investigator surfaces and explores with parties and witnesses issues of consistency, credibility, bias, motive, and the like.
- Each party is given full opportunity to review and respond to all information gathered in the investigation throughout the investigation and before its conclusion.
- Once the investigation is concluded, the Investigator assesses whether there is sufficient evidence to conclude that there is reasonable cause that the alleged conduct *may* have violated Title IX and the institution's Title IX policies. The Investigator does not make a finding related to responsibility.
- If the Investigator does make this reasonable cause conclusion, they pass the Investigation Report to the Dean of Students Office, which manages the student conduct process. This process, including all pre-hearing notification and communication with parties, facilitation of pre-hearing meetings, etc., is managed by Student Conduct Personnel with no role in determining whether the responding party is responsible for a policy violation(s). If the matter proceeds to a conduct hearing, a separate, appropriately trained group of students, staff, and faculty serve as the hearing panel to hear the case during a formal conduct hearing. Based on all information gathered during the conduct hearing, which usually includes testimony from the parties and other witnesses, documents identified by the parties, and the Investigation Report, the hearing panel assesses whether there is sufficient evidence to conclude by the preponderance of the evidence that the responding party violated the policies.
- The procedures governing Xavier's conduct hearings for complaints of Sex Discrimination are also focused on giving parties an equitable opportunity to present evidence to the hearing panel:
 - Conduct hearings are live either with all parties and witnesses physically present in the same location or through remote means (i.e. video conferencing, telephone).
 - Non-decision-making Student Conduct Personnel is present to ensure all law, policies, and procedures are followed.

- If either party requests a physical barrier between them during the hearing, one is provided.
- Each party is permitted an advisor of choice in the hearing. The advisor may engage in quiet counsel with the party and may request breaks, but may not speak on behalf of the party.
- The parties ask each other questions live and direct; however they ask the question first to the conduct hearing panel Chair; the Chair then restates the question to the other party. If the question posed is assessed as inappropriate or irrelevant under Title IX or the University's policies, the non-decision-making Student Conduct Personnel present will address that matter, including informing parties and the panel if, when, and why a question will not be permitted. We believe this format appropriately and equitability balances and meets the goal of providing both parties with the opportunity to directly confront and question one another, while attending to and minimizing that potential ongoing harm and challenges that direct, live questioning may pose for both parties.
- The parties pose questions to witnesses directly, without going through the Chair.
- If a witness or party was interviewed during the investigation, but does not attend the hearing for any reason, their statement(s) may be considered by the panel, but the panel is trained on appropriately weighing statements for which the parties/panel do not have the opportunity for live questioning during the hearing.

The equitability of this approach and system is demonstrated in concrete outcomes. Although the outcomes vary from year to year, the results of Sex Discrimination hearings at Xavier have remained largely consistent, with approximately half finding the responding party responsible, and half finding not responsible.¹

If additional information and/or documentation of Xavier's policies and processes would be helpful, please contact my office at the information below.

Sincerely,

(b)(6)

Kate Lawson
Title IX & Interpersonal Violence Response Coordinator
(513) 745-3046
lawsonk1@xavier.edu

¹ Over the last eight years, twenty five sex discrimination reports have progressed to the hearing stage of Xavier's Sex Discrimination complaint resolution process. Outcomes as of 6/10/21 are 44% of reports resulting in a finding of not responsible and 56% resulting in a finding of responsible.