

**From:** Warczak, Zoe, MD  
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**To:** T9PublicHearing  
**Subject:** Written Comment: Title IX Public Hearing (Sexual Harassment, Gender Identity Discrimination)

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This is my written comment for the Department's Title IX Public Hearing.

I am a physician in the Department of Pediatrics at Baystate Children's Hospital. I care for infants, children, adolescents, and young adults up to age 26 in outpatient and inpatient medical settings, including many patients who are sexual assault survivors and patients who are gender diverse. I am also a Liaison Member on the American Academy of Pediatrics (AAP) Committee on Psychosocial Aspects of Child & Family Health, and am involved with writing an upcoming AAP policy statement on supporting child witnesses in legal proceedings, including sexual assault cases in court rooms and in settings for administrative proceedings.

The Department's 2020 Sexual Harassment Final Rule

I applaud the Department for taking action to reexamine the 2020 Final Rule, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

The cost estimates used in the final rule were fatally flawed. At the time, the Department denied that the costs of sexual assault could be affected by the rule. This is flat-out wrong and not supported by the literature.

Smith and Freyd (2013) conducted a quantitative study of the effects of what the authors termed "institutional betrayal" -- which includes making sexual violence experiences harder to report -- finding in the setting of the undergraduate student population at a northwestern U.S. university that increased symptoms of anxiety, dissociation, and sexual dysfunction were associated with institutional betrayal. Smith and Freyd (2014, p. 578) illustrated the symptoms of dissociation were at least doubled compared to participants without institutional betrayal. In Reffi, Pinciotti, & Orcutt's (2018) validation study for the Institutional Betrayal Questionnaire, Version 2, the question pertaining to institutions making it more "difficult to report the experience" (question 4) had a high factor loading (0.65), greater than all other factor loading values for institutional Response to Sexual Victimization.

The above studies illustrate that when survivors perceive institutional practices that make it harder to report, "institutional betrayal" occurs, which in turn results in worse health outcomes for the survivors.

Institutional betrayal is not just an abstract term in the literature; its effects are an everyday reality for many survivors. One patient I cared for this past year was a sexual assault survivor (b)(6) who was in the midst of the reporting process after the new changes took place from the 2020 rule. The process came across to her as daunting and adversarial, with the school referring the case to local police because the sexual assault itself took place off of school grounds, and the police confiscating the victim's phone with a search warrant as evidence for her case rather than the suspect's phone. The victim then made a near-fatal suicide attempt (b)(6)

(b)(6)  
A second patient I cared for who experienced sexual assault at a university after the new rules took effect was so intimidated by the process that she chose not to report at all to the university. This is consistent with the Department's comment that the 2020 rule would reduce reporting of sexual assault.

The Department needs to listen to the views of student survivors when drafting a new rule. In particular, I urge the Department to do the following:

1. Remove any reference to prohibiting schools, universities, or other ED funding recipients from investigating or

disciplining certain forms of sexual harassment or assault pursuant to the Title IX process, such as off-campus conduct, study abroad conduct, or sexual harassment not meeting the standard in Gebser. Better yet, require recipients to investigate off-campus and study abroad sexual harassment and assault, provided that it is related to the education program/activity, such as a classmate or faculty member who is the assailant.

2. Remove the burdensome investigation and hearing prescriptive requirements in the 2020 final rule. The process is commonly seen by survivors as confrontation and intimidating, and deterring reporting.

3. Allow disability accommodations to be used in the process, including modifications when needed to allow survivors with disabilities to provide testimony in a setting without live cross-examination by the opposing party's representative. Better yet, remove the live cross-examination requirement from the rule.

#### Gender Identity Harassment

I applaud the Department for taking action to protect students who are transgender and gender diverse.

These students are at high risk for experiencing harassment and discrimination in schools due the current hostile divisive political climate towards individuals who are gender diverse.

In particular, I recommend that the Department:

1. Require recipients of federal funding to treat individuals in accordance with their gender identity rather than sex assigned at birth

2. Prohibit harassment on the basis of gender identity/expression within programs receiving federal funding

Thank you for the consideration of my comment.

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