



**Testimony of Patricia M. Hamill, Esquire,
Chair of Conrad O'Brien P.C. 's Title IX, Due Process and Campus Discipline Practice
Before the U.S. Department of Education's Office for Civil Rights (OCR) –
Title IX Public Hearings
June 8, 2021**

My name is Patricia Hamill. I am an attorney at Conrad O'Brien where I chair the firm's Title IX Practice and have represented more than 200 college students and faculty members, mostly respondents, involved in Title IX proceedings. I do not approach these issues as a partisan. Rather, as an attorney and based on my experience, I believe it is essential that these processes be fair given their profound and lasting impact. I testify today out of concern that the Department will roll back many of the gains made and protections implemented by the 2020 regulations.

Any action the Department takes must comply with existing law. To that end, parties in Title IX proceedings must receive, at the least, full and fair notice, a thorough and impartial investigation, and impartial decisionmakers. Those critical of the current regulations do not, in general, challenge these basic fairness requirements, and they must be retained. Similarly, clear provisions allowing informal resolutions should be preserved – not every complaint should lead to a hearing.

The main points of divergence among practitioners involve the scope of covered conduct under Title IX and the requirement of live hearings with cross-examination.

I agree that the Department should reconsider the provisions regarding covered conduct. In response to the 2020 regulations, many schools adopted two-track systems, providing the legally mandated procedural protections in some cases involving alleged sexual misconduct but not in others. That is unfair, confusing, and unworkable. Any proceeding that could result in a respondent's being deprived of access to a school's educational programs or activities should provide the basic procedural protections required by the current regulations.

Additionally, given the enormous stakes in any Title IX proceeding, it is essential to preserve live hearings and cross-examination, which are already legally required in many jurisdictions. I strongly support allowing the parties' advisors to conduct the cross-examinations, subject to safeguards to ensure fairness and respectful questioning. The evidence does not support the concerns of some that complainants will be harassed or deterred from reporting because of live hearings with cross examination.

There is one key area where the 2020 regulations should be modified or clarified.

The exclusion of prior statements by parties who do not submit to cross-examination is not workable and contradicts well-established evidentiary rules. Decisionmakers should be allowed to rely on statements that are not being offered for their truth, including statements that could themselves be part of a sexual harassment claim or are relevant to issues such as consent and capacity. Decisionmakers should also be allowed to rely on either party's prior admissions and statements against interest.

Thank you.

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