

TITLE IX FROM A COORDINATOR'S PERSPECTIVE

Featuring:

KATHY HARGIS^{1*} AND STEPHANIE ROTH^{2**}

Moderated by Professor Jeffrey Omar Usman

Moderator. Thank you both very much for being here today. Attendees at our Symposium today undoubtedly have a wide range of different experiences with Title IX. Ten years ago, I think common perception might have connected Title IX most closely with issues related to athletics and student athletes on college campuses. Over the last five years, we have heard a lot more about sexual harassment and sexual assault in relation to Title IX. I wonder if we could start with you giving a sense to the audience of what exactly Title IX provides for and what the scope of Title IX is.

Stephanie Roth. I have prepared some general thoughts, which I think include what you asked about in advance of the Symposium. Then I'll toss the baton to Kathy. Good morning. Thank you to the members of the Belmont Criminal Law Journal for inviting me to participate in this Symposium addressing the breadth, complexity, and import of the provisions and interpretations of Title IX of the Education Amendments of 1972.³ This topic should make for lively conversation throughout the day. The key language of Title IX is relatively succinct: "No person in the United States shall on the basis of sex be excluded from participation in, be

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3. 20 U.S.C.A. § 1682 (1972).

denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”⁴ But this simple beginning has launched a thousand inquiries into what is required of covered higher education institutions—I’ll often just say “universities” for simplicity—and how to meet those requirements. As requested by those who extended the invitation, let me provide a quick overview of Title IX basics.

The *What*—Courts have held that Title IX’s prohibition on sex discrimination includes sexual harassment and that sexual violence is an extreme form of sexual harassment, typically meeting the severe, pervasive, objectively-offensive sexual harassment standard with a single instance.⁵ Directives from the Department of Education’s Office of Civil Rights (OCR) instruct higher education institutions to end, prevent, and remedy sexual harassment. This responsibility exists in situations where institutions have authority over the respondent and the environment in which the harassment occurs. But a university may also work with its population to offer remedial measures to persons subject to harassment by a non-campus-community member or in a non-university-controlled environment if the harassment limits a student’s ability to access educational programs and activities or affects an employee’s ability to work. University policies created to ensure compliance with Title IX continue to evolve to reflect expanding understandings of actions constituting unlawful sex discrimination. Sexual harassment has come to include interpersonal violence, stalking, sexual exploitation, complicity, and other forms of sexual misconduct. The Clery Act which requires annual reporting of certain campus crimes was expanded by the Violence Against Women Re-Authorization Act in 2013 to include statistics for domestic violence, dating violence, and stalking.⁶

The *Who*—We often discuss Title IX in the context of student complainants and respondents, but another complexity of Title IX is that employees are covered also. What then is the interplay between Title IX and Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex, among other protected classes, in employment?⁷ Does the application of Title IX to alleged violations of university policy result in a different procedural process for employee respondents accused of discrimination on the basis of sex than for those accused of discrimination on the basis of race or other protected statuses? Are otherwise at-will employees suddenly granted extra procedural safeguards if they are responding to allegations of sexual harassment? Is

4. 20 U.S.C.A. § 1681 (1986).

5. *Davis v. Monroe County Board of Education*, 526 U.S. 629, 646 (1999).

6. 20 U.S.C. § 1092(f) (1990).

7. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964).

this procedural difference itself discriminatory, or, at the very least, problematic? And how do we address situations where parties are both employees and students? The investigation may proceed based on the context in which the alleged behavior occurred if that can be delineated, but appropriate remedies and sanctions may affect the varied relationships of the person to the campus community.

Every covered institution must identify a Title IX coordinator. Following issuance of the now-rolled-back 2001 Dear Colleague Letter from the OCR, many campuses began to create single-function positions for Title IX coordinators, while some even created whole offices tasked solely with ensuring compliance with the requirements of Title IX.⁸ On my campus, Title IX is housed within the Office of Equity and Inclusion (OEI). In my role as the OEI director, I am designated as the Title IX coordinator, as well as being the Title VI coordinator, the Section 504 coordinator, and the Chief Diversity Officer for the University. TSU has also designated staff members in OEI, Student Conduct, and Athletics as deputy Title IX coordinators. My office is tasked with training the on the content of policies prohibiting sex discrimination and the procedures for enforcing those policies. The training includes the content of the policies, the mechanisms of the procedures, and the responsibilities of various constituencies under the policy, such as distinguishing between confidential and responsible employees for reporting purposes. We are also the persons designated to investigate Title IX matters, at times in partnership with Student Conduct. We draft investigation reports including findings and recommendations that are submitted to university administrators for review and issuance. We can implement interim measures during the course of an investigation, where appropriate. OEI's staff is also responsible for preparing all Title IX compliance reports on behalf of the University.

Finally, the *How*—Each covered institution must have a published, widely-available policy prohibiting discrimination on the basis of sex in education programs and activities. The policy must provide contact information for the school's Title IX coordinator and the OCR. This policy, however, does not exist in a vacuum, IPV (intimate partner violence) cases may involve damage to university property, which violates student conduct codes. Sanctions may implicate faculty-specific processes and tenure policies. Other employees may be subject to internal peer review committees and have rights associated with that process. State institutions may have external administrative review requirements. Title IX policies and procedures are part of a vast, interwoven landscape that must be evaluated and navigated with each case, and changes to the landscape can have far-reaching effects requiring the attention of multiple stakeholders to address. Evidentiary standards provide a relevant example. How does a choice of

8. *Dear Colleague*, U.S. DEP'T EDUC. OFF. OF CIVIL RIGHTS, <https://www2.ed.gov/print/about/offices/list/ocr/letters/colleague-201104.html#> (2001).

evidentiary standard in Title IX cases, about which OCR seems intent on advising schools, affect the evidentiary standard selected for other campus infractions? As a Title IX coordinator, I address these issues on a daily basis. We have Title IX cases in the internal investigation and adjudication processes most days. We review our policies and procedures to identify areas in which our language or practice is dated or lacking, particularly in a climate of changing regulations and evolving relationship expectations with respect to coercion and consent.

Those of us who spent our undergraduate days on campuses in decades past remember a different environment. Title IX, if it existed, addressed inequities in athletics and led to a good bit of number crunching around male-versus-female athletic scholarships. Title IX, as the basis for addressing sexual harassment had yet to take root. Daily walks past fraternity members displaying Olympic-style scoring systems for physical attractiveness, red-light district fraternity parties, and lively debate as to whether date rape was “a thing” were the realities of the day. To borrow from an old Virginia Slims ad, as dated as the world I just described, “We’ve come a long way, baby.” But, there is still much work to be done. Stranger and off-campus-invitee sexual assault is real and is a part of the work of Title IX offices, often in conjunction with campus police and other local law enforcement. But we in Title IX positions most often exist in the gray and murky world of word-on-word cases that occur between the newly-sexually-active, the communicationally-stunted, and the likely-intoxicated. Memories are partial, fuzzy, and recollected piecemeal. Interpretations of events differ, facts are easily camouflaged, and witnesses are frequently reluctant and easily intimidated. The cases turn on the issue of consent. Who consented to what? At which point? Under what circumstances? And did those persons have the capacity to consent at all relative moments?

We are making these determinations with a population we may have only recently begun to train on what ‘consent’ means on our campuses. Persons who have arrived, even with some pre-arrival training, with very different or non-existent understandings of what ‘consent’ means in a sexual or relational context. Are we an affirmative consent campus? What does that mean outside of the excesses depicted in satirical comedy sketches and biting op-eds? Are we teaching our campus members the difference between bad sex and sexual assault? Both may warrant cultural conversations and societal change leading to the recognition of the humanity, dignity, and personal autonomy of each person within a sexual encounter, but only one is actionable under most universities’ policies.

There are a host of other issues raised with respect to the role of a Title IX coordinator on a university campus. Currently, I am part of multiple conversations about best practices for welcoming and supporting our transgender students. And yes, this includes, but is by no means limited

to, bathroom issues. Though the current administration has rolled back protections under Title IX for transgender students on campus, most Title IX professionals I work with understand our role to include ensuring members of our campus communities are welcome regardless of sex, sexual orientation, gender identity, or gender expression. Our campus policies continue to reflect this commitment even as the legal and regulatory world in which we operate vacillates with respect to our requirements under the law. I look forward to discussing these and related topics during our time together.

Moderator. Ms. Hargis, do you have any comments?

Kathy Hargis. We are working together as a team. I will focus more on our questions for today, but I think it is great that Stephanie has given a great overview. As you can see, I think our job is ever-changing, ever-evolving. At Lipscomb University, our office is located in the General Counsel's office although our General Counsel does not really deal directly with Title IX cases. I report directly to our president on any Title IX issues that deal with anything at our University. One of the unusual things for Lipscomb is that we also have a K-12 program. That is good news and bad news for us because one of the triggers for Title IX, which I think people sometimes do not understand, the receipt of federal funding. What does federal funding look like? If you have any type of financial aid, which I think almost all schools do to be in existence today, then you do receive federal funding of some form. Unfortunately, for us, that means that we are one corporate entity—our K-12 and our university. So, our Title IX goes all the way down from Kindergarten all the way through the doctoral program. That can be very challenging because when you are dealing with minors, that brings a whole different element into the mix. We are a public, private school, but you will see a lot of the laws and regulations are the same that we are working on. But, there are some nuances to deal with. Honestly, that is something I wish we did not have to deal with because it makes it a lot more complicated in those particular cases. So, thank you for having us today, I look forward to our discussion.

Moderator. It is clearly a very challenging job to be a Title IX coordinator, I am curious about what type of training you received as a Title IX coordinator going into the job and what type of continuing training there is for Title IX coordinators.

Kathy Hargis. I have been in this role for four years and, the good news is, that over that time period, the opportunities for training have greatly increased and the type of training has gotten better. I think there are more opportunities for training. When I first started, I did have an opportunity to attend a week-long training with some very intense, high-level attorneys in the field that really led our discussion and gave a good base for that. I know you are required every year to continue your education on that, so I look for different opportunities depending on what issues we are dealing with on campus. What I feel, maybe from our climate survey

that we do each year, and where some of the deficiencies are, I try to fill those gaps with some differing type of education that next year. So, that has been what I have done since being there.

Stephanie Roth. I am relatively new to the Title IX world, so I did some reading as I was preparing to come assume this role, and then within a month of beginning the job, I did just what Kathy was talking about. I went to what I would call a week-long “boot camp” for Title IX coordinators. I actually leave tonight for another week-long “boot camp” specifically on investigation because, even with the roll-back, one of the emphases under the current OCR and DOE (Department of Education) leadership is to have trained investigators due to the nature of the work we do and the potential sanctions that can result. I entered my current position with more experience with certain parts of my job responsibilities, such as implementing the requirements of Title VII, the ADA (Americans with Disabilities Act), and the ADEA, as a result of my employment law practice. But the specific requirements of the Title IX cases have led me to focus much more attention on this aspect of training, particularly at the front end of my work in higher education, so that is some of what I’ve been doing.

Moderator. At your respective institutions, the Title IX coordinators are trained or receive training with regard to these issues. What other employees receive Title IX training and what form does that training occur in?

Kathy Hargis. I think there are multiple layers of that. We try to have an annual training, and we are really required to do so. We have a Title IX team and they are the group that does our investigations on campus. They are made up in the areas and departments that you would probably expect: someone in athletics, someone in student life, we have a faculty representative for our human resources department, and employee representative. So, those folks really receive more training on how to do investigations. I think that is very, very critical. Knowing what a really good investigation should encompass is key. In addition to that, we then divide up into our incoming students. All incoming students to the university must receive training. That takes the form of multiple levels. We try to do some online training. Personally, I like in-person training because I just think it is really valuable. It is more difficult to do, it’s more of a commitment of your time, but I do feel that the merits of it are really beneficial. We also do training for our staff. As you might expect, our faculty are probably where a lot of the complaints initially start and come in and also with our RAs for those students who live on campus. Our resident advisors (RAs) are really a source that receives a lot of the initial discussions that a student might have because of that trust factor in living in the dorms. So, all those areas receive training. One thing that I will say about training is that I like to think of compliance kind of as the floor and

not the ceiling. Training should not be something like a “check the box, we did it, we are moving on.” We have been told it needs to be continuous and on-going, which can definitely take a lot of time.

Stephanie Roth. Our campus mirrors a lot of what is happening at Kathy’s. We use an outside vendor for online training that all faculty and staff, all incoming students, all student leaders, and usually all upper-class athletes (because we have captured the first-year athletes as part of their incoming class) undergo each year. In addition, we conduct in-person training. We regularly schedule resident advisors and new faculty members for training. We also progress through the various campus communities, tailoring the training to the needs of each group. We recently conducted a training with our facilities folks. It was fascinating to work with them as they to begin to pick at some of the most interesting areas of Title IX, whether they realized it or not. One of our electricians said, “Well, I am in the dorms and people are slapping each other on the ass all the time. Am I supposed to report all that stuff while I’m trying to fix something?” So I said, “Well, let’s talk about that.” They have a very different interaction with our student population than our faculty does. Our faculty sometimes has a “different” understanding of their role on the university campus than Title IX has of their role on the campus. So, we have engaging and repeated exchanges with faculty members about their requirements as responsible employees - no matter how they view themselves in relation to the requirements of Title IX. We discuss with them what their interaction with students means with respect to what constitutes notice to the University and our obligation to respond once they have been informed of a situation. Through training, we try to meet the needs of each constituency on campus so that they can understand what their options, their rights and resources, and their responsibilities are under our policies.

Kathy Hargis. I get what you’re saying about faculty. We’ll probably get into this a little bit later but they would probably like to have the confidential part, but they don’t, and that will probably remain an ongoing conversation at all schools. To give them a little bit of credit here, I do understand how that’s a difficult journey. It’s a difficult road to walk, especially when a student comes to you and says, “I have something to tell you and I don’t want you to tell anyone else. You’re my favorite professor.” That puts them in a difficult position. I always try to start out my trainings by being empathetic with them because I know that’s a difficult conversation to have with them.

Stephanie Roth. But as you mentioned, the training helps you handle that situation and that’s on us.

Moderator. There has been increased media attention on issues related to Title IX. Especially in regard to issues concerning sexual assault. As Title IX Coordinators, has that made your jobs easier? Or could you just discuss your roles as Title IX Coordinators in this time period with the increased media attention? Easier? Harder?

Stephanie Roth. Well, it has raised public awareness of issues that we on college campuses have been dealing with maybe more openly than the rest of society before now, especially in the areas of consent and coercion. My social media outlets have been lit up with the Aziz Ansari news lately. People have been debating what the report means. And all the “special snowflake” language. Or, “No, this is assault.” Or, “No, it’s about the power dynamics that undergird the society that leads to sexual assault.” You’ve read all these things. The more people who come to campus aware of these issues that intersect with our policies and who can begin to engage in these conversations without embarrassment or a complete lack of foundation, the better. But these conversations can also greatly complicate our professional lives. The conversations can create a somewhat toxic and acrimonious environment in which to discuss these issues. At other times, folks are predisposed to interpret their sexual encounter in a certain way based upon these larger conversations. Or friends and colleagues may interpret experiences on someone else’s behalf based on an article or blog post they read.

Kathy Hargis. I’m going to take a different approach. Personally, I think I’m a glass half full kind of person, hopefully. So, I actually feel that the media’s attention is helpful in some regard. I’ll tell you why. This may come as a surprise, but in higher education there are so many competing things for resources for what’s on the hot burner today. As long as the spotlight and media tend to these issues, for administrators and people at our universities, it remains a very important topic. I see in my risk management world, the other hat that I wear from time to time, there are so many things in higher education that are critically important and need funding and attention. But, there’s only so many things you can do at one time. But I tend to feel that this being in more of the spotlight, in more of the media, helps our jobs have more attention and resources. We may have more of a caseload, so that’s the downside of it. In a perfect world, it’s probably more helpful than hurtful if it were not in the media. I think if it were not in the media, we would be fighting to keep it on the front burner more than we have to.

Moderator. Let’s walk through the process of what happens when a student comes forward. A National Institute of Justice study says that one in five women will be victims of an attempted assault or a completed assault. It is one in twenty for males. Let’s take that student who goes to a faculty member they trust and wants to keep confidential. Then, they share with the faculty member that they’ve been a victim of sexual assault, or maybe to a residential advisor. What should the RA or faculty member do next?

Stephanie Roth. Well, I hope if we’ve done our training correctly, and depending on how the story comes out when they say, “I want to share something with you, but I want it to be confidential” that our employee

looks at them and says, “Let me stop you there for a moment. The confidential resources on campus are our counseling center and our student health center.” The staff or faculty member may know of some off-campus resource centers and may be able to put them in contact with those resources. “If you continue to tell me this, I am a responsible employee under university policy. I have to tell the Title IX Office whatever occurred.” I didn’t touch on this in my opening remarks, but the responsibility of the Title IX Office is not only to the students who are involved in the reported complaint, but also to the university community. So, we have this broader obligation, which is a factor in why confidentiality is limited in university investigations. Students can go to the confidential resources and we in the Title IX office never know about it because those resources are prohibited from sharing reports with us without the permission of the student. But whatever the student shares with the responsible employee has to be reported to our office. Our office is not obligated and cannot, in most circumstances, report to law enforcement a complaint filed with our office without the permission of the complainant.

If a person chooses to come to us in Title IX, then we can talk about initiating a report. I invite you to return to this topic later this afternoon when university counsel from local universities are here. They can also address the sometimes-competing commitment to the individual, honoring their rights and voice, and the commitment to the broader campus environment. Title IX offices sometimes receive reports, where complainant share stories such as, “So, here’s what happened to me. It was really horrible and awful. But I just want the remedial measures that will keep me from having to have this person sit in class with me or from having to sleep in the same residence hall with them, or what not. I don’t want an investigation.” We in Title IX may be able to address this complainant’s wishes or we may not. “I want to remain anonymous throughout the process.” If the student is reporting an incident that involved a one-on-one encounter in a room somewhere, that will not be possible. If the report is about something a professor or classmate did in the course of a class or group setting and we are able to identify multiple people who could provide witness accounts of the incident, we may be able to preserve anonymity. Maybe. We cannot ever promise that at the outset of an investigation.

Kathy Hargis. I think that’s a good segue. After that initial report in, and ours may be a little different than yours, everything is supposed to be reported to the Title IX Coordinator as the person who is heading this up for the university. As you mentioned, there are some interim measures that, at times, we can help put in place immediately even before an investigation has started. That depends on the situation, on the person, what they need, and that’s a conversation that we would have with the person making the report. So, the complainant would help us in that regard. After that, if there is an actual investigation, usually that is our next step. The way our policy is set up, we would assign that to an investigator on our team who would

then begin the investigation process. I would help them with that. We have a lot of conversations as things are going along in the investigative period. They end up submitting everything that they find in the investigation. I review that. We usually have several meetings to talk about it. There may be a follow or need for additional things in certain areas. Once we reach the end, I will end up writing a report in the findings. That usually goes to a senior administrator within the university who will decide about the disciplinary proceedings or sanctions that will result.

Moderator. What if the victim does not want to proceed? You have a victim that comes in and doesn't want the matter to go forward? Are there ever circumstances where as an institution you have an obligation to go forward?

Stephanie Roth. Yes. That's the competing obligation within the office: balancing the wishes of the complainant against the perceived risk to the university community. I actually think of it in the office: are there any instances where we do not have to go forward? Those are the more limited cases where we really can cabin something between two people. We may consider the severity of the alleged actions, the circumstances in which the incident occurred, and relationship of the parties to the university. Every case is incredibly fact specific. I cannot emphasize that enough. The investigation, the measures, the sanctions, the remedies – all are shaped by the facts of the case. There are occasions where we do not move forward with an investigation. Oftentimes, we refrain from proceeding when parties or reporters withhold significant information. For example, sometimes folks come into our office or submit a report online. They are insistent that we must do something to this particular person they allege has violated our policies, but they do not provide specific-enough information for us to investigate. We have to put a respondent on notice of what they are alleged to have done. If I call a student in and tell them that someone has alleged they are a really bad person who pressures people for sex, they are likely to respond with a series of questions: "Who reported this? Where and when did this supposedly happen? With whom? In what context?" Sometimes we have enough information we can have conversations with people even when we do not we have enough information for a formal investigation. But sometimes our hands are tied.

In our investigations, we really live and die by consent. What does consent mean in the circumstances presented? I am going to speak broadly because I do not have those facts in front of me, but the Aziz Ansari situation appears to involve someone who reports having communicated no in various ways during an extended sexual encounter. Often, the question of consent is not as simple as: someone is about to engage in an overt sexual act, we say absolutely no, and we end it. These two people have come back after a date and it's, "Are we going to do this or are we not going to do this?" "No, I don't really feel like it." Those are no's. But I just want to get

the atmosphere in front of you that we are often working in as Title IX coordinators. Well, over time he keeps, some would say pressuring, some would say coercing. Some time has passed. Maybe things have evolved or changed. They engage in various forms of sexual activity. She says he should have known better; she did not want to engage in that activity. I have batted this around with a couple other Title IX folks. I am open to talking about it with you. As Title IX staff, we take a neutral position in these investigations. We consider the circumstances from the perspective of both parties, both subjectively and objectively. In our understanding, there were potential indicators of consent, such as participation in some acts, and she did not clearly revoke consent. She did not clearly convey to him at the time the sexual acts occurred that she did not want to engage in those acts. That did not mean she wanted to engage in them. But we also have to consider what the respondent could reasonably be held to understand under the circumstances. And this leads to considering whether are there conversations we need to have around what healthy sexual relationships and encounters look like. It reminds me of the old movie, "Pillow Talk." It's the new modern version of that. Have you all seen that old Rock Hudson and Doris Day movie? Rock Hudson's character flips switches in his apartment when he has a date over, and the door bolts, the lights go down, music plays, and the couch turns into a bed. The woman can still leave, but he's doing everything possible to trap her in there.

The Aziz Ansari incident is not "trapping" in the same way, but it is the idea that we wear someone down to have an encounter with them. I always talk with students about this scenario. That's not the report I want in my office. That's not the way I want us to talk about sexual encounters. "Well, I just kept at him/her/them until they gave in." We want healthy, consensual sexual encounters. Consent inquiries focus often on whether, at the time of that encounter, one party had conveyed that a certain activity should not happen and if you continue, you are violating them. The person does not have to use specific language; lack of consent can be communicated through a push, getting up, going to the door, going to the bathroom. It can be whatever provides a signal that can be reasonably understood by a partner as a desire to stop what is happening. Sometimes, people simply freeze; that is a realistic response in certain scenarios. But if a policy requires force or coercion to determine whether a violation has occurred, how do we identify what constituted the coercion? Apart from just wearing someone down? We have to have some sort of line. These scenarios can be so grey and so fact-specific. If I were investigating a report based on a scenario like this one from the news, I would have to sit down and walk through the timeline with that particular complainant. I would have to ask what they were thinking, what they were conveying to their partner, and in what sequence and time the events occurred. I would have to sit down with the respondent and ask, "What did you hear?" Sometimes people recount the same words but come to different conclusions as to what

those words meant. For example, “Well I heard her say no but. . . .” Now we have a violation of university policy under most circumstances. But what if we are talking about an hour later, at another location, and the party has freely and voluntarily consented to the activity they previously declined? Consent can be a fluid issue. “Well, I heard her say no but I thought it was a soft no.” A “soft no” is not a defined term under university policy. These reports – of what was said and what could have been reasonably understood by the other party - are what we pick apart.

Moderator. Between the Obama Administration and the Trump Administration, in terms of ultimate resolution and whether misconduct has occurred, there’s been a potential change in terms of standards in terms of preponderance of the evidence versus clear and convincing evidence with the university having the option between clear and convincing and preponderance. What standard are your universities using and why?

Kathy Hargis. We have not changed our evidentiary standard. I guess it was September of 2017 is when this came out. There’s so many it’s hard to keep up. There were several things that came out when they rescinded some of the Dear Colleague Letter and some in the Q and A. We chose not to do that. We would have to have a whole policy change. That’s something we will probably look at over the summer. We like to go through the academic year. I am not a big supporter of changing that mid-stream during your academic year. I’m not sure we will change it though anyway. My feeling and recommendation is that we will keep it the same.

Moderator. Which is what?

Kathy Hargis. Preponderance.

Stephanie Roth. We also have a preponderance standard, and I echo everything Kathy just said about the process to change that. We are discussing university policies that require approval from several constituencies to effect proposed changes. As to the standard itself, in the past there was heavy pressure to use a preponderance standard under the 2011 Dear Colleague Letter from the Obama administration. What the Trump administration, including Secretary of Education Betsy DeVos and Deputy Assistant Secretary Candice Jackson, has said is that universities are allowed to return to a clear and convincing standard if we so choose. I don’t read it as pressure to move to that standard, but rather presenting the standard as a viable option once again.

We have preponderance across the board for our policies at Tennessee State. Not only is the standard for Title IX cases consistent with those other policies, but you open the door to interesting questions if you establish a clear and convincing standard for Title IX violations. Why is that standard appropriate for those cases? How do we pull those apart from other discrimination, harassment, and misconduct cases? Are we holding people to different thresholds and standards? And beyond that, what do we have to prove as a university? I do not enforce the law in my role as a Title

IX coordinator. I enforce university policy, and I assess whether students, employees, or others have violated university policy. I am comfortable with a preponderance standard for that. I am aware that our sanctions can be heavy and can have significant effects, particularly on students. So, I do not say take lightly the potential outcome of the investigation process. But in a world in which academic infractions can get a student expelled, where other infractions by employees can get them terminated nearly immediately, a preponderance standard seems appropriate in the Title IX context. If we are trained, if we take the process seriously, we do it well.

Moderator. With all the media attention on Title IX issues, what do you see as the biggest public misconceptions with regard to how people understand Title IX at your institution, in general, in the broader community? What are the biggest misconceptions that you're dealing with in your role of Title IX coordinator?

Stephanie Roth. There are people who believe we are cold-hearted and indifferent to both the complainant and the respondent in a Title IX matter. I watched a *Law and Order: SVU* episode the other night, and the university president was portrayed as something akin to the White Witch from the *Narnia* movies and books. We actually care a great deal about the safety, security, and general environment in which our students and employees work. It is deeply troubling to most of us who work in the field that folks would harm each other or that anyone who has violated policy would be permitted to continue their conduct and potentially harm someone else. We take these matters very seriously. We use the tools we have. And we do the best that we can.

Kathy Hargis. I would echo everything that you said. I think we do get a bad rap sometimes. I would say that I wish that people understood things a little bit better. As far as the Title IX process, we are there to really first and foremost help our students mostly—I'm going to couch this to students at this point, and leave the employees out—to be able to continue their education. One of the things I like about Title IX versus having it go to more of a law enforcement—which a lot of people say, "Why are you all doing that? That really needs to be something that the police should be doing. You should not even be in that business." I hear that from some folks on my own campus who feel that way strongly. But, law enforcement is really not going to care a lot about if your students can continue their education or not. That's not going to be their main focus, nor should it be.

The thing about Title IX that I feel very strongly about in addition to students' safety is giving students the platform to be able to continue their education. I see too many students who drop out after an incident has happened, and I would encourage anyone on college campuses, if you go and look at your rates of why someone dropped out, a lot of times they're not reporting it, but a lot of times it has to do with something that happened that you may or may not know about. I feel passionately about helping that student stay in school and finding a way to make it work as best that we can

with the tools that we have been given. I think that is the strength of Title IX. It is what we do at the root of it. I wish that people understood that maybe a little bit more than they do.

Moderator. Please join me in thanking Ms. Hargis and Ms. Roth.