FACE OPPOSES NEW YORK’S LAW TO NOTATE TRANSCRIPTS OF TITLE IX DISCIPLINARY ACTIONS

Families Advocating for Campus Equality (FACE), a not for profit organization that advocates for fairness and due process on our college campuses, strongly opposes transcript notations of disciplinary actions involving sexual and intimate partner impropriety. Transcript notations are an unnecessarily punitive measure, akin to public shaming, that will serve to inflate the disciplinary action, a confidential process that is slim on due process and is conducted by students and faculty with no professional legal or judicial experience, into a life sentence so that the student is permanently barred from education and jobs.

Advocates note that the transcript notation is a scarlet flag that could stop a dangerous sexual predator from otherwise transferring undetected into another school or the work force. The best way to contain dangerous sexual predators is to report them to the police. FACE notes that most disciplinary actions on campus do not deal with dangerous crimes. Instead, they are based on expanded and inflated definitions of sexual activity that turn them into “sexual assault” or “sexual violence” even though they are neither criminal nor even tortious. Institutions of higher education (IHE) already propagate a punitive standard of sexual activity and decorum different from and more stringent than found in the criminal justice system and social mores. Students accused of Title IX violations already face the full weight of punitive consequences: suspension and/or expulsion from their college or university and the life-altering stigma of having been disciplined for sexual activity that in other contexts would not be actionable. Now, New York wants to insure that these inflated claims are matched with inflated punishments.

FACE challenges any IHE to air in the public forum the actual (albeit redacted) claims, testimony, and evidence in connection with their Title IX disciplinary actions and let the public judge whether these disciplinary actions are responsibly administering justice to criminals and keeping our campuses safe or whether they are over-zealously adjudicating and punishing misapprehensions in alcohol-fueled, on-campus hook ups.

Our courts are being filled with litigation brought by students whose reputations and futures are damaged in these disciplinary actions. Few if any of these cases include activity that would warrant criminal prosecution. Few if any include any evidence of physical or emotional damage. Some of these cases deal with accused students for whom the sexual activity for which they were disciplined was their very first sexual encounter. Other cases involve parties who were in an ongoing emotional and sexual relationship. Most cases involve alcohol. Most
disciplined students cannot afford an attorney and do not litigate. Most leave school in debt with their education and employment prospects ruined. If kicking a dog when he’s down is to be the grand moral achievement of our IHE’s disciplinary actions under Title IX, then notating these student’s transcripts is worthwhile legislation. Otherwise, New York’s legislators and all IHE’s may better serve their fine mission to lead and to educate with measures that are moderate, wise and fair.

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