**Case 4: Balancing Interests**

In 2011 the Department of Education issued a Dear Colleague Letter (DCL 2011) that clarified the scope of the Title IX Act of 1972 to include sexual misconduct. Prior to this, most people familiar with Title IX knew it as legislation written to correct gender inequities in education, as it required that schools support women’s and girls’ sports at a level comparable to men’s and boys’ sports. For example, if a college offered athletic scholarships to 250 male players and no female players, they failed to offer equitable access to educational opportunities on the basis of gender. DCL 2011 argued that these same protections were needed for women and girls because sexual assault and sexual harassment (especially in an education setting) disproportionately affect those who identify as female, thus creating educational inequities similar to those that Title IX legislation addressed.

In 2020 the Department of Education (DoE) put new legislation in place for Title IX. In 2017, the DoE had already withdrawn the DCL 2011 guidance, as well the 2014 Questions and Answers on Title IX and Sexual Violence. Considerations of equity and fairness had played a large role in the 2011 and 2014 guidance documents as had the recognition that victims and survivors of sexual violence had long been ignored or silenced. The 2017 and 2020 decisions, however, were heavily influenced by concern for the rights of the accused, especially due-process rights, as reports surfaced of schools that had wrongly found respondents to be responsible for sexual misconduct.

The 2020 Title IX legislation has been applauded by powerful lobbying groups that had advocated for the rights of the (mostly male) accused/respondents. However, advocates for (mostly female) victims and survivors point to parts of the legislation that they argue represent a significant step backwards in addressing sexual misconduct. One particularly troubling requirement is that a purported victim/survivor or complainant be present at hearings for the case to move forward. While those who endorse the new legislation point to due process rights and the right of a person to confront their accuser, victim advocates point to the move in the criminal system to not force victims/survivors to testify or be present in legal proceedings. They also point out the long history of ignoring complaints, especially when athletics, athletes, or a school’s budget is affected (e.g., Penn State, Baylor, LSU). Everyone agrees that schools should allow equitable access to educational opportunities for all, but it is unclear how to balance the interests of all students in such situations.