But campuses sometimes consider them binding as a law and unfortunately Department officials have, in the past, made the same mistake.

For example, in 2011 and 2014, during the Obama Administration, officials at the U.S. Department of Education wrote two guidance letters interpreting Title IX, saying, in deciding whether an accused student is guilty of sexual assault, the decider ''must use a preponderance of the evidence standard.''

It was no surprise that many campuses thought this interpretation was the law because the Department acted as if it were the law, when it was only advisory. On June 26, 2014, at a hearing before this Committee, I asked the former Assistant Secretary for Civil Rights at the Department of Education, Catherine Lhamon,''do you expect institutions to comply with your Title IX guidance documents?'' She responded, ''We do.''

In September 2017, Secretary DeVos withdrew both of these letters of guidance and a year later, in November of last year, proposed to replace them with a new rule under Title IX, a process which allows extensive comment and discussion and would have the force of law when it is final.

That is not all your legal counsel would tell you. If you're the president of a public institution—where 80 percent of undergraduates attend college—your counsel would remind you that your disciplinary process must meet the standards of the 14th Amendment to the United States Constitution which says ''nor shall any state deprive any person or life, liberty, or property without due process of law.''

And then finally you'd have to look at any applicable state laws. For example, if you are an administrator at one of Tennessee's public colleges, the state's Uniform Administrative Procedures Act mandates that at public colleges and universities a student facing suspension or expulsion must be given the option to have a full administrative hearing with the right to counsel and ''the opportunity to . . . conduct cross-examination.''

This array of laws and regulations creates a challenge for college administrators, for students who allege an assault, and for those who are accused to know what the law requires, so the purpose of today's hearing is to hear how we can create more certainty in how colleges and universities should appropriately and fairly respond to allegations of sexual assault. During this hearing, I would like to focus on three issues raised by the Department's proposed rule: The requirements of due process, including cross examination; the effect of the location of the alleged assault; and The definition of sexual harassment.

According to an article published by the Cornell Law Review, more than 100 lawsuits have been filed by students accused of sexual assault who claim schools denied them due process. In one lawsuit, an accused student sued Brandeis University. The opinion of the judge of the U.S. District Court for the District of Massachusetts criticized the Department of Education's earlier 2011 guidance for causing schools to adopt unfair procedures saying:

''In recent years, universities across the United States have adopted procedural and substantive policies intended to make it easier for victims of sexual assault to make and prove their claims and for the schools to adopt punitive measures in response. That process has been substantially spurred by the Office for Civil Rights of the Department of Education, which issued a 'Dear Colleague' letter in 2011 demanding that universities do so or face a loss of federal funding. The goal of reducing sexual assault, and providing appropriate discipline for offenders, is certainly laudable. Whether the elimination of basic procedural protections—and the substantially increased risk that innocent students will be punished—is a fair price to achieve that goal is another question altogether.''

In February of this year, Supreme Court Justice Ruth Bader Ginsburg told the Atlantic, ''There's been criticism of some college codes of conduct for not giving the accused person a fair opportunity to be heard, and that's one of the basic tenets of our system, as you know, everyone deserves a fair hearing.''

In an attempt to meet that requirement, the Department's proposed rule would require institutions to hold a ''live hearing,'' which is defined as a hearing in which ''the decision-maker must permit each party to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the hearing must be conducted by the party's advisor of choice.''

The proposed rule would allow parties who do not feel comfortable being in the same room with each other to request to be in separate rooms, visible by a video feed, for example. This definition of a live hearing aligns with recent decisions by the U.S. Sixth Circuit Court of Appeals and a California State Court of Appeals.

In the Sixth Circuit case, a student accused of sexual assault sued the University of Michigan, alleging the school violated the Due Process Clause of the Fourteenth Amendment when it did not hold a hearing with the opportunity for the accused to cross-examine his accuser and other witnesses. The Sixth Circuit ruled in favor of the accused student stating: ''if a public university has to choose between competing narratives to resolve a case, the university must give the accused student or his agent an opportunity to cross-examine the accuser and adverse witnesses in the presence of a neutral fact-finder.''

And in California, the State Court of Appeals for the Second District made a similar finding, stating: ''when a student accused of sexual misconduct faces severe disciplinary sanctions, and the credibility of witnesses . . . is central to the adjudication of the allegation, fundamental fairness requires, at a minimum, that the university provide a mechanism by which the accused may cross—examine those witnesses, directly or indirectly, at a hearing in which the witnesses appear in person or by other means.''

Some college administrators have said to me, I do not want to turn our campus into a courtroom. Others point out that the requirements of fairness and due process often require inconvenient administrative burdens. It seems to me that the question before us is, how can the law satisfy the Constitutional requirements of Due Process without imposing unnecessary administrative burdens and expense on higher education institutions.

A second issue is the location of the alleged assault. The proposed rule requires schools to respond to an allegation of sexual assault even if it is off-campus if the ''conduct occurs within [an institution's] education program or activity.'' For example, the proposed rule cites a federal district court in Kansas that held that Kansas State University was required to respond to an allegation of sexual assault that occurred at an off-campus fraternity house because the house was university-recognized and the school exercised oversight over the fraternity. There is some question about the definition of university program or activity. And a second question is if a university can choose to go beyond university programs or activities to protect their students.

The third issue is how federal law or regulation should define sexual harassment. The proposed rule uses a definition established by the United States Supreme Court in 1999 in the case Davis v. Monroe County Board of Education, which requires the conduct to be ''so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the [institution's] education program or activity.'' Some have suggested we look at other definitions in federal law or Supreme Court precedent.

In the future, regulations with the force of law and guidance letters that are merely advisory will continue to interpret federal laws and constitutional requirements governing allegations of sexual assault on campus. But as Congress seeks to reauthorize the Higher Education Act this year, we should do our best to agree on ways to clarify these three issues. The more we do that the more certainty and stability we will give to the law governing how institutions of higher education should respond to accusations of sexual assault.

FAFSA

Mr. ALEXANDER. Mr. President, I ask unanimous consent that a copy of my opening statement at the Senate Health Education, Labor, and Pensions Committee be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FAFSA SIMPLIFICATION HEARING

Mr. ALEXANDER. There are not many things that United States senators can do to cause 20 million American families to say, ''thank you.''

After five years of work, we are ready to do just that by reducing the Free Application for Federal Student Aid—the FAFSA—from 108 questions to two dozen, and eliminate the need for families to give their financial information to the federal government twice.

This will help 400,000 families in Tennessee, 350,000 families in Senator Murray's Washington State, and millions more for each of us who have it in our hands to finish our work on simplifying the FAFSA.

A volunteer mentor with Tennessee Promise, which is our state's program that provides two years of free community college, told me that the FAFSA—the form that 20 million families fill out each year to apply for federal student aid—has a ''chilling effect'' on students and on parents.

The former president of Southwest Tennessee Community College in Memphis told me he believes that he loses 1,500 students each semester because the FAFSA is too complicated.

East Tennessee State University said a third of their applicants—approximately 10,000—are selected each year for verification—a complicated process that stops Pell Grant payments while a student and their family scrambles to submit their federal tax information or prove they did not have to file taxes.

Former Tennessee Governor Bill Haslam told me that Tennessee has the highest rate of filling out the FAFSA, but it is still the single biggest impediment to more students enrolling in Tennessee Promise.

And one of the questions I hear most from students is, can you please make it simpler to apply for federal aid?

Five years ago at a hearing before this Committee we heard that the vast majority of questions on the FAFSA are unnecessary.

I asked if the four witnesses could each write a letter to the Committee recommending how they would simplify the FAFSA.

The witnesses looked at each other and said, we don't have to write you four letters—we can write you one letter because we agree.

And Senator Bennet, who was on the Committee at the time, said, if that's true, and if there's that much agreement, why don't we do what you recommend?

So we started talking with other Senators, students, college administrators, and other experts about how to simplify the FAFSA.

Simplifying the FAFSA started gaining traction.

First, the Obama Administration allowed families to fill out the FAFSA using their tax information from the previous year so they could apply to school in the fall, rather than having to wait until spring.

Second, the Trump Administration has put the FAFSA application on a phone app. I was at Sevier County High School in November and saw students zipping through the FAFSA on their iPhones.

Third, last year the Senate passed legislation Senator Murray and I introduced that allows students to answer up to 22 questions on the FAFSA with just one click and will stop requiring students to give the same information to the federal government twice. We are working with the House to see if we can make that a law this year.

The final step should be our bipartisan solution that will reduce the number of questions on the FAFSA from 108 to 15–25 questions.

In 2015, Senator Bennet and I, along with Senators Booker, Burr, King, Enzi, Warner, and Isakson, introduced bipartisan legislation that would have reduced the number of FAFSA questions to two. But after discussions with college administrators and states, we realized we needed to keep some questions or states and schools would have to create their own additional forms that students would need to fill out.

Over the last four years, we have improved that legislation and now believe we can move forward with bipartisan legislation that would reduce the FAFSA to 15–25 questions.

Here is what all of these improvements mean to the 20 million families that fill out the FAFSA every year:

One: Reduce the 108 questions to 15–25.

Two: Dramatically decrease the number of students selected for verification, because students' tax data would automatically transfer to the Department of Education which would greatly reduce the need for verification.

Three: Simplifying the form and the verification process should encourage more students to apply for federal aid, which will ensure that eligible students receive the Pell they deserve.

Four: Students can now complete the FAFSA on their iPhone.

Five: Families can now apply for federal student aid sooner because they can use information from their last year's tax return; and

Six: Students can find out as early as eighth grade how much Pell grant funding they may be eligible for.

And seven: there is a $6 billion advantage to taxpayers—that is the amount the Department of Education estimates is issued in improper payments every year

These are seven huge advantages and are the result of five years of hearings and work by senators, and work by both the Obama and Trump Administrations. Bipartisan discussions have produced a lot of agreement on simplifying the number of questions, so the purpose of this hearing is to learn what we need to know before taking the final step.

I also hear from students—can you make repaying student loans simpler?

A large number of Republican and Democrat senators have suggested streamlining the nine ways to repay student loans, including Senators Warner, King, Rubio, Merkley, Burr and Baldwin.

I have proposed having just two ways to repay student loans:

One, a plan based on a borrower's income, which would never require the borrower to make payments of more than ten percent of his or her discretionary income. If a borrower wanted to pay off their loan, the other option would be a 10–year payment plan, with equal monthly payments, similar to a 10–year mortgage. And under both options, a borrower's payment would come directly from their paycheck.

This proposal would make it easier for more than 9 million borrowers annually, and any of the current 42 million borrowers with outstanding federal loan debt, to take advantage of a simpler and more affordable way to repay their loans.

And from administrators I hear—can't you do something about the administrative burden that wastes time and money that could instead be spent on students?

To help administrators overwhelmed by what the Kirwan-Zeppos report called ''a jungle of red tape,'' I am proposing we simplify federal regulations that take time and money away from educating students.

There are other steps this Committee is considering to make college worth students' time and money, but we also have the opportunity to greatly simplify the ''chilling effect'' applying for federal aid has on students today.

ADDITIONAL STATEMENTS

REMEMBERING ED SCULLY

● Mr. COONS. Mr. President, today I wish to honor the life and service of a distinguished Delawarean, veteran of the U.S. Army for 27 years, businessman, husband, father, grandfather, great-grandfather, and brother, Ed Scully.

I got to know Ed during my time as New Castle County executive and worked with him on a variety of issues facing the aviation industry.

Ed was known for his persistence during my time in the Senate when it came to bringing and keeping good, high-paying jobs in Delaware, and in particular, he was passionate about helping veterans in our State get jobs in the aviation industry.

After graduating from Wilmington, Delaware's Salesianum School, Ed joined the U.S. Army in February 1961. Ed was no ordinary soldier; he joined the Special Forces and earned his Green Beret. He was promoted five times during his 27 years of service and retired at the rank of lieutenant colonel. Ed received many awards and decorations, including the Legion of Merit, the Bronze Star with Valor, the Purple Heart, the Joint Services Meritorious Service Medal, the Air Medal, the Combat Infantryman's Badge, the Special Forces Tab, the Parachute Badge, the Senior Aviation Badge, the Vietnam Jump Wings, and the Special Forces Combat Patch.

After attending flight school, aviation became Ed's passion, and he spent the rest of his life as a military and civilian aviation expert.

After he retired from the military and returned to Delaware, he began a second career at Summit Aviation, a 500-acre airport in Middletown, DE, where he continued supporting America's men and women in uniform. Summit was an early supporter of the Delaware State Police Aviation Branch, building a hangar and providing all aircraft maintenance. To this day, Summit is a top employer of veterans in the state. Ed retired from Summit in June, 2013, after 25 years. Prior to his retirement, Summit named their new modification center after him: the Scully Modification Center. There are few people who can say that they have dedicated their lives to their country, but Ed certainly can.

Sadly, Ed passed away on December 24, 2018, and was buried in Arlington National Cemetery, but he leaves behind an indelible legacy and one he should be most proud of: his family. Ed is survived by his loving and devoted wife of 45 years, Patricia, his brothers Robert and Thomas, his daughters, Suzanne Gubich, Corynn Ciber, Kristin Stein, his son Edward Scully IV, and his grandchildren and great-grandchildren; Danielle, Cole, Kyle, Maxwell, Julia, Connor, Ashton, and Kailani.

I am grateful for Ed's service to our State and our Nation, and I hope that this tribute to his memory helps his family and friends know what an impact his life made.●

THE GULLAH SOCIETY'S ANCESTRAL REBURIAL CEREMONY

● Mr. SCOTT of South Carolina. Mr. President, today I would like to commemorate and recognize a weekend-long event happening in a place I hold very near and dear to my heart, my hometown, Charleston, SC. In 2013, 36 bodies were discovered and unearthed near Anson Street in downtown Charleston. After years of further historical, archeological and DNA analysis research, we have learned much more about the stories of these men, women, and children.

Buried between 1750 and 1800, these people of African descent—some born in Africa, others born in South Carolina—most likely were enslaved individuals who helped build the nearby port of Charleston. This weekend, 6 years after unearthing these individuals and more than 250 years after they were buried, the Gullah Society and the Charleston community are coming together to hold a naming ceremony, official release of DNA ancestry results, a reburial ceremony, and an ecumenical service.

It is the hope of the Gullah Society, a hope shared with myself and many fellow Charlestonians, that we lay these individuals to rest the proper way, as well as remember, celebrate, and honor them. While we recognize these 36 ancestral sons and daughters of South Carolina, we also will have a chance to remember all others whose graves have been lost and all others