

Daily Journal

www.dailyjournal.com

THURSDAY, NOVEMBER 8, 2018

COVER STORY

ADR provider JAMS launches Title IX service

By Andy Serbe
Daily Journal Staff Writer

Alternative dispute resolution provider JAMS has announced a service to adjudicate and investigate Title IX complaints on college campuses nationwide.

Title IX prohibits educational programs that receive federal funding from discriminating on the basis of sex. It also lays out guidelines for how schools must adjudicate complaints of sexual harassment and sexual violence.

The handling of Title IX complaints by schools has been criticized from both sides of the political divide for inconsistency from institution to institution.

At some schools, victim advocate groups claim the process sweeps incidents under the rug and lacks the proper scrutiny of courts. Conversely, others have said that proceedings lack due process, resulting in guilt-presumptive kangaroo courts pushing extrajudicial punishments.

The new program, JAMS Solutions for Higher Education, aims to ameliorate the problem for both sides.

"JAMS Solutions for Higher Education resulted from a crucial need for neutral third parties to help address sensitive issues that are a reality on campuses throughout the nation," Chris Poole, JAMS president and chief



POOLE

executive officer, said in a news release. "The stakes are too high, and we have solutions. We are committed to providing our expertise to manage, resolve and prevent these situations."

The service aims to bring legitimacy to much-maligned Title IX proceedings by providing a neutral perspective from legal experts without the trappings of either a public court or an ad hoc university committee.

"Many colleges and universities are finding themselves under scrutiny and the subject of harsh headlines for how they've handled sexual assault and harassment cases on campus," said Kimberly Taylor, JAMS' senior vice president and chief legal and operating officer. "The #MeToo movement has created a culture of accountability, and these cir-



TAYLOR

cumstances are calling for new ways to deal with often difficult situations."

The Department of Education has issued guidance on multiple occasions affecting how schools deal with Title IX proceedings since the law was passed.

Most recently, in 2017, Education Secretary Betsy DeVos gave schools increased individual discretion when she removed a requirement that they take interim action during the investigation of claims, reverting to prior policy where they "may" do so. Schools may also decide what standard of proof to employ, where previous guidance in 2011 prescribed a preponderance standard.

Though the JAMS program was in the works before the 2017 guidance, Taylor said it presents an opening to introduce consistency

in Title IX that benefits both sides.

"We think that because we have a long history of neutrality, we are able to provide a streamlined alternative resolution process that will help these schools and their constituents have some trust and get through these things with better results," she said.

Taylor added that JAMS has done this work for colleges in the past and has "a number of schools" in multiple states who are on board already.

John D. Winer of Winer, McKenna, Burritt, & Tillis LLP said the program could be a particular boon to students whose cases are not suitable for litigation because the statute of limitations expired or there are issues with proof. He added that, like any good idea, it comes down to execution.

"I'd be willing to at least look into the idea of trying it, especially in a case not worth litigating," he said. "From a plaintiff's point of view, the civil system of justice is great when it's equipped."

He noted the idea of a JAMS investigation as a good one rather than one done internally by a university.

"All anyone really wants is a neutral investigation, and I think it's difficult for internal people at the university to perform an unbiased investigation, which I think is true of anyone investigating themselves," said Winer, who has handled Title IX litigation.