

## Spotlight on Higher Education



# Q&A with Hon. Jane Cutler Greenspan (Ret.)

## **Please describe your approach to dispute resolution.**

My approach to dispute resolution is based upon fairness, objectivity and preparation, as well as the ability to listen, analyze and use common sense, knowledge and good judgment about the issues and the needs of the parties. In addition, I never give up. I keep working with the parties to get them to a resolution that they can live with, even though they may not always be happy. I am invested in the process; for example, if the parties do not reach a resolution on the day of their session, I continue to work with them until they get there. I have also worked until 2:30 in the morning with parties to get them to a resolution, which I think they greatly appreciated.

## **Why did you decide you wanted to serve as a Title IX hearing officer for higher education institutions?**

I received a call years ago from a trustee at a college asking if I would serve as a hearing officer for disputes involving students. The college needed someone who had experience with sexual assault cases and credibility questions. I began to handle their cases, as I had developed great familiarity with sexual assault cases during my many years as a trial judge. Then I became an advisor to the American Law Institute's campus sexual misconduct project, assisting them in developing a code for universities regarding sexual assault. I have worked with a variety of institutions, each with their own unique culture, and have enjoyed helping these institutions navigate a tremendously difficult area.

## **Why should higher education institutions enlist a third-party neutral entity, such as JAMS, to help resolve their Title IX disputes?**

My experience in working with Title IX has led to my understanding the needs of the institutions and their students, as well as the problems the students are facing. Enlisting a neutral decision-maker removes the perception of bias. They have no other interest in the outcome other than helping the students and the school resolve very difficult issues and getting the students to a place where they are able to move on.

## **What is the importance of restorative justice within the context of higher education?**

The purpose of restorative justice is to encourage the individuals involved in disputes to move on. After a conflict, restorative justice requires collaboration between the complainant and the respondent and encourages

healing to satisfy the complainant so that the harm that has been done to them has been repaired, at least partially. Additionally, restorative justice allows the respondent to understand what they did and why it was so harmful to the complainant. Receiving knowledge in the process is so important, not only so the parties can move on, but also to encourage positive behavior in the future. Restorative justice is a way to bring those involved back to a "pre-harm" level so they can continue with their lives in a good, healthy, fruitful and fulfilling way.



## **With yet more anticipated changes to the Title IX federal regulations, how would you suggest schools ensure due process amidst the possibility of the live hearing requirement being abolished?**

I am not sure the live hearing requirement is going to be abolished so quickly, because it is not only the Department of Education or the Office for Civil Rights that is involved, but it is also the courts. What we are seeing, and have been seeing for a while, is that courts are imposing hearing requirements. The single-investigator model creates a problem for the school because the individual who may have been expelled or suspended has the ability to seek relief in court. Live hearings will probably still be required, especially when determining credibility is involved. Even if the live hearing requirement is removed, there may still be a hearing, but it may not involve lawyers performing the questioning of the complainant and respondent.

## **How would you best describe the benefits of using an experienced mediator or hearing officer for Title IX proceedings?**

I have written about the idea of mediation and presented on mediation within the Title IX structure. Informal resolution is now permitted and can be accomplished through an experienced mediator. An experienced mediator has the ability and knowledge to resolve conflicts fairly and efficiently, and by empowering students to make decisions concerning their futures, the educational mission of the higher education institution is advanced.

*A JAMS neutral based in Philadelphia, Justice Greenspan is thoroughly trained in Title IX to conduct neutral investigations and hearings and has extensive experience as an external adjudicator. View her bio at [jamsadr.com/greenspan](http://jamsadr.com/greenspan).*