

From: Jennifer Scully, Legislation
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To: T9PublicHearing
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Attachments: RW AFT Written Comments for Title IX Hearing 061121.pdf

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Attached are comments from Randi Weingarten, President of the American Federation of Teachers.

Thanks,

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June 11, 2021

Suzanne B. Goldberg
Acting Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Ave. S.W.
Washington, DC 20202

Re: Written Comments for Title IX Public Hearing

Dear Assistant Secretary Goldberg:

On behalf of the 1.7 million members of the American Federation of Teachers—including teachers, paraprofessionals and classified school employees in elementary and secondary schools, as well as full-time faculty, part-time faculty, adjuncts, graduate employees and support staff in institutions of higher education—I am pleased to submit the following comments in response to the Department of Education’s public hearing regarding regulations for Title IX of the Education Amendments Act of 1972.

The AFT strongly opposed the proposed and final regulations for Title IX under the Trump-DeVos administration. The 2020 rule jeopardizes the safety of all our students and rolls back policies we have fought hard to establish and maintain. We believe the Department of Education must restore and strengthen Title IX protections that include providing a safe and supportive learning environment while allowing fair procedures for schools to investigate and enforce appropriate consequences.

Our members prioritize students’ safety every day. We know that when students feel safe, they want to attend school and they can learn. Our members and the institutions they serve have established a trust with students and families; students need to know that every adult in a school is someone they can go to when they are in need and an action to protect them will be taken. As the use of technology has become more incorporated in our classrooms, we have continued to work to ensure students also remain safe when not on school grounds, whether online or in a study abroad program.

As educators, we understand more than anyone the sanctity of due process and the need to protect those falsely accused. However, the evidence that led to the original Title IX changes demonstrated that the system was failing survivors, not those accused of sexual violence. All students, especially survivors, look to school and university administrators and government institutions to protect them, not to codify a system that sweeps their experiences under the rug. We were especially encouraged by President Biden’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, which made it very clear that students should be able to learn without fear.

The **American Federation of Teachers** is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.



The requirements to investigate and respond:

The 2020 Title IX rule allows a new definition of “sexual harassment” that would prolong students’ suffering and abuse, and make reporting an impossible bureaucratic maze for students to figure out.

The definition of sexual harassment includes “unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.” This means that one incident is just not enough. It is absurd that school officials would be required to wait until a student has been repeatedly victimized before a complaint could be formalized and accommodations made. Previously, Title IX guidance and the Supreme Court have defined sexual harassment as “unwelcome conduct of a sexual nature,” and they require a school to take action before it affects a student’s education.¹ This definition simply prevents a school from providing a safe learning environment. A student would have to be told that the harassment isn’t bad enough to change a class or dorm assignment, or to access academic support services.

The 2020 rule creates a process for how schools address sexual harassment that is flawed, confusing and hurts, not helps, students. For instance, based on the definition of sexual harassment, if a student tells the Title IX coordinator about one incident, the coordinator would not be able to file a complaint, because the harassment had not advanced to a point that would be considered severe enough to affect the student’s ability to attend class. We strongly encourage the department to review this definition and make appropriate changes that would protect a student after a single incident of harassment.

Moreover, under the 2020 rule, even when a school employee knows about harassment that’s considered severe enough, if the student didn’t tell the *correct* employee, the complaint would not be able to proceed due to the definition of “actual knowledge.”² The rule puts the onus on the student to find the “correct” person to tell. Sexual harassment and sexual violence are already very difficult for individuals to talk about. Survivors rarely report cases of sexual violence to their schools because they don’t know how to report it or which person on campus they should report to, or they’re afraid they won’t be believed or the assault will not be taken seriously.³ Knowing that a student may get up the courage to share their account with a trusted adult only to find out nothing can be done will only silence additional victims.

In addition to how a complaint is filed, the rule amends the requirements for where sexual harassment or sexual assault must take place for it to be actionable.⁴ It shouldn’t matter if the harassment occurred in a classroom or in the privately owned coffee shop across the street from an academic building: If the behavior threatens the student’s right to equal access to education, the institution must address it. It’s worth noting that such an approach is also contrary to Title IX’s statutory language. Title IX states that it

¹ *Davis v. Monroe County Board of Education*, 526 US 629 (1999).

² 34 CFR 106.30(a)

³ K.J. Holland and L.M. Cortina, “ ‘It Happens to Girls All the Time’: Examining Sexual Assault Survivors’ Reasons for Not Using Campus Supports,” *American Journal of Community Psychology* (2017).

⁴ 34 CFR 106.44(a)

does not depend on where the conduct occurred; it says the focus should be on prohibiting discrimination that excludes an individual from participation in or denies a person the benefits of any education program or activity.

The 2020 rule does not put student safety first and sends the message to students that what they are experiencing doesn't matter, that they are not believed, and will enable further harassment and violence. We would encourage the department to make it clear that it is safe for all students to come forward with their accounts of sexual harassment or sexual violence by having a process that is simple, not burdensome.

Remove barriers after a complaint is filed:

The 2020 rule added additional bureaucratic hurdles for students who have been sexually harassed to overcome before they will be believed. Schools are required to presume that no sexual harassment or violence occurred, which denies students resolution of their complaint and potentially requires them to face their perpetrator each school day; and the rule does not allow complaints to be addressed in a timely manner. When students know they are not going to be believed, they won't come forward. The 2020 rule also empowers the cultural concept that most girls lie about being sexually harassed or assaulted and that the greatest danger to men and boys is a false accusation. In reality, however, men and boys are far more likely to be victims of sexual assault than to be falsely accused of it.⁵ The rule requires education institutions to adopt an artificial and heartless position that inappropriately mimics the position of legal institutions. Schools and colleges are not courtrooms, yet the rule doubles down on the kinds of adversarial practices that created the school-to-prison pipeline that many educators are working hard to reverse.⁶

Rather than address the needs of the victims, the 2020 rule merely protects due process, which is important, but strengthens protections for alleged perpetrators of harassment and for the institutions they attend. This only enables further harassment, which in turn disrupts and undermines the education process. The statistics are startling:

- In grades 7-12, 56 percent of girls and 40 percent of boys are sexually harassed in any given school year.⁷
- More than 1 in 5 girls ages 14-18 are kissed or touched without their consent.⁸
- During college, 62 percent of women and 61 percent of men experience sexual harassment.⁹
- More than 1 in 5 women and nearly 1 in 18 men are sexually assaulted in college.¹⁰

⁵ lin6, "The 1 in 6 Statistic," <https://lin6.org/get-information/the-1-in-6-statistic/>.

⁶ WestEd Justice & Prevention Research Center, "Restorative Justice in U.S. Schools: A Research Review" (February 2016), https://jprc.wested.org/wp-content/uploads/2016/02/RJ_Literature-Review_20160217.pdf.

⁷ American Association of University Women, "Crossing the Line: Sexual Harassment at School" (2011), www.aauw.org/research/crossing-the-line.

⁸ National Women's Law Center, "Let Her Learn: Stopping School Pushout" (2017), www.nwlc.org/resources/stopping-school-pushout-for-girls-who-have-suffered-harassment-and-sexual-violence.

⁹ American Association of University Women, "Drawing the Line: Sexual Harassment on Campus" (2005), www.aauw.org/files/2013/02/drawing-the-line-sexual-harassment-on-campus.pdf.

¹⁰ Association of American Universities, "Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct" (2015), www.aau.edu/key-issues/aau-climate-survey-sexual-assault-and-sexual-misconduct-2015.

As a survivor of such violence, I am confident that the Biden-Harris administration—with guidance from you and Secretary Cardona—will strengthen the Title IX regulations and will be committed to enforcing Title IX protections against all forms of sex discrimination, harassment and assault.

Prior to the 2020 rule, there was progress on changing the culture of sexual violence on our education campuses, as well as improvements to student safety. We must continue to build on these reforms. I look forward to working with the Education Department to restore and strengthen Title IX protections and protect every student's right to feel safe to learn.

Sincerely,

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Randi Weingarten
President

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