

**From:** Laura Kaloi  
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**To:** T9PublicHearing  
**Subject:** Written Comment: Title IX Public Hearing: Students with Disabilities from COPAA  
**Attachments:** Council of Parent Attorneys and Advocates Title IX comments June2021.pdf

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The Council of Parent Attorneys and Advocates (COPAA) respectfully submits the attached comments for the Title IX Public Hearing, Docket No. ED-2018-OCR-0064, RIN 1870-AA14.

Thank you.  
Laura Kaloi  
COPAA Policy Advisor

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Laura W. Kaloi  
Partner



202-210-1494 (cell)  
[lkaloi@stridepolicy.com](mailto:lkaloi@stridepolicy.com)  
[www.stridepolicy.com](http://www.stridepolicy.com)



**Comments to the U.S. Department of Education, Office for Civil Rights**  
**Re: Title IX – Docket No. ED-2018-OCR-0064, RIN 1870-AA14**  
**June 7, 2021**

The Council of Parent Attorneys and Advocates (COPAA) is a national nonprofit organization of parents, attorneys, advocates, and related professionals; over 90% of whom identify as having a disability; or are parents or family members of individuals with disabilities. COPAA works to protect the civil rights and secure excellence in education on behalf of the 8 million children with disabilities in America. COPAA’s mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares them for meaningful employment, higher education, and lifelong learning, as well as full participation in their community.

We appreciate the opportunity the Biden Administration has provided to give feedback on the U.S. Department of Education (Department) Title IX regulations as part of a process to begin the rulemaking process. COPAA has advocated for many years on behalf of students with disabilities including the impact of Title IX on the lives of these individuals and their families. As the Department undertakes its review of federal regulations and other agency actions concerning discrimination on the basis of sex, our first recommendation is to urge the Department to replace the Title IX regulations promulgated by former Secretary of Education Betsy DeVos with rules that are consistent with and not contrary to Title IX. As we told the court in *Know Your IX, COPAA, Girls for Gender Equity, and Stop Sexual Assault in Schools v. DeVos*,

...[the current regulations] take unreasonable departures from longstanding ED policy and practice, and create an arbitrary, capricious, and insufficiently explained double standard, enabling institutions to ignore sexual harassment and assault that they could not ignore if the same alleged harassment were based on race, national origin, or disability. They also fail to address alarming evidence presented during the comment period about the impact these provisions would have on survivors of sexual harassment and assault and their educations.<sup>i</sup>

In support of the recommendation above and those that follow, COPAA would like to underscore the documentation that exists showing that sexual harassment of children in schools is widespread.<sup>ii</sup> Sexual violence (including sexual harassment, homophobic name-calling, and unwanted sexual touching) is also increasingly being recognized as a public health concern among adolescents and the outcomes for those who suffer from sexual violence perpetration can be severe including: lower grades and missing classes; increased rates of risky behavior; depression; anxiety; and suicidality. The negative academic and mental health effects of sexual violence are well documented.<sup>iii</sup> Additionally, people with disabilities are victimized by crime at higher rates than the rest of the population, according to the National Crime Victimization Survey.<sup>iv</sup> We also know there are students with disabilities who are improperly accused and mistreated in K-16 settings, including in college Title IX hearings. These students due process rights are too often ignored, and they are also not treated equitably during the Title IX process.

COPAA has long advocated that schools, including post-secondary settings, need more resources and support to ensure that faculty are trained to ensure that students with disabilities are provided the education, specialized services, and accommodations they require as well as guaranteed the protections afforded to them under the IDEA, the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973 and other federal laws. Consistent with our work on behalf of all students

with disabilities and in addition to the recommendation that you must replace the current Title IX regulations, we strongly recommend that regulations are promulgated which include the following changes:

- Reject the current definition of sexual harassment and redefine it to include conduct that would be recognized as harassment if based on race, national origin, or disability
- Reject the following unlawful provisions and replace with policy consistent with current statutory and case law:
  - Relieving colleges and universities of the obligation to address sexual harassment unless reports of sexual harassment are made to a limited number of school officials, while requiring those same officials to respond to all harassment on the basis of race, national origin, or disability of which they knew or should have known
  - Requiring college and university students to report sexual harassment or assault to the “right” official which comes with the discriminatory penalty that if not followed, their complaints do not have to be investigated;
  - Allowing — and, in some cases, requiring — schools to use a higher standard of proof for reports of sexual harassment and assault than is required for other harassment proceedings;
  - Holding schools accountable for their failed responses to sexual harassment only when they are “deliberately indifferent,” while requiring schools to “take prompt and effective steps reasonably calculated to end harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects” in cases of harassment based on race, national origin, or disability.
- Require schools to respond to Title IX reports of sexual harassment and assault that occur off campus or during study abroad, including in student’s homes
- Address fully the scope of the impact of sexual harassment and sexual assault on K-16 students with disabilities. As stated above, we know that students with disabilities are victims of sexual harassment – both as the accused and those who fall victim to the indecency of others. In fact, individuals with differing disabilities may face unique and distinct challenges and have quite different needs. Some disabilities may put people at higher risk for crimes like sexual assault or abuse.
  - Someone who needs regular assistance may rely on a person who is abusing them for care. The perpetrator may use this power to threaten, coerce, or force someone into non-consensual sex or sexual activities.
  - An abuser may take away access to the tools a person with a disability uses to communicate, such as a computer or phone.

People with disabilities may be less likely to be taken seriously when they make a report of sexual assault or abuse. They may also face challenges in accessing services to make a report in the first place. For example, someone who is Deaf or Deaf-Blind may face challenges accessing communication tools, like a phone, to report the crime or get help. Many people with disabilities may not understand or lack information about healthy sexuality and the types of touching that are appropriate or inappropriate. This can be especially challenging if a person’s disability requires other people to touch them to provide care.<sup>v</sup> Title IX regulations must also:

- Explain and clarify the unique statutory and civil rights that may or may not apply, depending on the unique circumstances, of a student with a disability or employees with disabilities who are parties in a Title IX complaint. More specifically, the regulations:

- Must not equivocate on the rights afforded students with disabilities throughout the Title IX process, including a[ny] removal determination.
- Must clarify that the procedural rights to a Free, Appropriate, Public Education (FAPE) under the Individuals with Disabilities Education Act (IDEA) are not as comprehensive as the right to equal educational opportunities for all students under Title IX, the Americans with Disabilities Act, and the Rehabilitation Act of 1973. Not all K-12 students with disabilities are covered under IDEA, which has an enumerated list of disabilities a student must have to meet the FAPE requirement. Recipients must be made aware that a student with a disability does not have to be eligible for FAPE in order to be covered under the Title IX regulation. Additionally, although IDEA may have additional requirements to provide FAPE, recipients must not be misled into thinking there are different standards for K-12 and post-secondary education environments when it comes to *equal access* to educational opportunities.
- Clarify that colleges and universities have an affirmative duty to communicate the nature of [any] allegation and must also inquire whether a person needs an accommodation in a way that people with any disability, including an intellectual disability, can understand and respond. This requirement must apply to every individual with a disability, regardless of whether they are the accuser or the accused. Additionally, while respecting the student's privacy, they should work with the Office of Disability and obtain the student's consent if he or she would like to contact their parent, guardian, or other support, during the entire Title IX process. Finally, campus police enforcing Title IX must be trained on how to interact with students with disabilities in ways that are not harmful to them and to their learning environment.

In conclusion, we thank the Department for the opportunity to comment and again encourage you to abandon the current regulations and continue to engage and work with the special education and civil rights communities to assure a Title IX regulation is developed that builds on the research and best practices that fully support the rights of students with disabilities.

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<sup>i</sup> *Know Your IX, a project of Advocates for Youth; Council of Parent Attorneys and Advocates, Inc., Girls for Gender Equity, and Stop Sexual Assault in Schools v. Elisabeth DeVos; Kenneth Marcus, and U.S. Department of Education*, (Case 1:20-cv-01224-RDB, 05/14/20) at: <https://www.courtlistener.com/docket/17165109/know-your-ix-v-devos/>

<sup>ii</sup> Sarah Rinehart, Namrata Doshi, & Dorothy Espelage, *Sexual Harassment and Sexual Violence Experiences Among Middle School Youth*, University of Illinois at Urbana-Champaign 5 (April 6, 2014), at: <http://www.aera.net/Newsroom/Recent-AERA-Research/Sexual-Harassment-and-Sexual-Violence-Experiences-Among-Middle-School-Youth>

<sup>iii</sup> *Id.* at 2.

<sup>iv</sup> Erika Harell, *Crime Against Persons with Disabilities*, (2008-2010) at: <https://www.bjs.gov/content/pub/pdf/capd10st.pdf>

<sup>v</sup> *Sexual Abuse of People with Disabilities, Rape, Abuse & Incest National Network* at: <https://www.rainn.org/articles/sexual-abuse-people-disabilities>