From: Maureen O'Leary
Sent: Fri, 11 Jun 2021 13:42:18 -0400
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing (Religious Freedom)
Attachments: Title IX Comments_Interfaith Alliance_Final.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To Whom It May Concern:
For your consideration, I respectfully submit the attached comment for the Title IX public hearing on behalf of Interfaith Alliance.
Interfaith Alliance Foundation is a national policy and advocacy organization committed to advancing true religious freedom for all Americans. The only national interfaith organization dedicated to protecting the integrity of both religion and democracy, IAF's membership is made up of individuals rather than institutions, in all 50 states and serving overseas in the U.S. military, and adhering to more than 75 faith traditions and belief systems.
We hope that you will find the attached comment helpful in your review. If you have any questions or need additional information, please do not hesitate to contact me.
Warmest regards,
Maureen O'Leary
--
Maureen O'Leary
Advocacy Associate
She / Her / Hers
Main Office | (202) 466-0520
Visit | www.interfaithalliance.org
Listen| www.stateofbelief.com

June 11, 2021

VIA ELECTRONIC SUBMISSION

U.S. Department of Education
Office of the Secretary
Attention: Title IX Public Hearing
400 Maryland Avenue, SW
Washington, DC 20202-0001

Re: Comment on the Enforcement Title IX of the Education Amendments of 1972, Respectfully Submitted by Interfaith Alliance Foundation

To Whom It May Concern:

Interfaith Alliance Foundation provides the following comments on the enforcement of Title IX of the Education Amendments of 1972 pursuant to Executive Order 14021, "Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity," published in the Federal Register on March 11, 2021, at 86 Fed. Reg. 13,803.

Interfaith Alliance Foundation ("IAF") is a national policy and advocacy organization committed to advancing true religious freedom for all Americans. The only national interfaith organization dedicated to protecting the integrity of both religion and democracy, IAF's membership is made up of individuals rather than institutions, in all 50 states and serving overseas in the U.S. military, and adhering to more than 75 faith traditions and belief systems.

While the notion of religious freedom has been used – and misused – by various groups over the course of our history, IAF's work remains true to the foundational promise of the U.S. Constitution: that every American has the right to believe as we choose, with the secure knowledge that our government will not play favorites or favor religion over non-religion. IAF embraces an inclusive vision of religious freedom, where all are free to embrace matters of personal conscience without fear of government intrusion or discrimination.

Our schools and universities are entrusted with the wellbeing of students from diverse backgrounds and experiences. Title IX has been central to creating safer, more equitable environments for women and LGBTQ+ students by ensuring schools are proactive in combating sexual harassment and sex discrimination. But the Rule "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance" ("The DeVos Rule") issued by the Trump administration rolled back longstanding protections, making campuses less safe and less welcoming for many students.[1]

The recent Executive Orders on advancing racial equity and underserved communities, implementing the landmark *Bostock* ruling, advancing gender equity, and equality make clear the

[1] 34 C.F.R. § 106 (2020).

Biden Administration's commitment to ensuring all students are protected "to the fullest extent permissible under law."[2] To do so, it is essential the Department restore protections removed by Sec. DeVos as well as expand Title IX to better protect women and LGBTQ+ students from harassment and discrimination.

For the reasons below, we strongly encourage the Biden administration to 1) restore and expand protections for student survivors of sexual harassment and violence, 2) ensure safe, equitable educational environments for LGBTQ+ students, and 3) ensure the appropriate implementation of Title IX's religious exemption. These changes are necessary to secure equal educational access for all students.

I. The DeVos Rule on Title IX Denies Survivors of Sexual Harassment and Violence Equal Access to Education.

The broad scope of Title IX has spurred schools to be proactive in addressing sexual harassment and violence. But at a time when national attention was focused on doing more to protect students, recent changes to Title IX allowed schools to do less. The DeVos Rule narrowed the definition for sexual harassment and limited the circumstances in which sexual harassment and violence are reportable.

These changes have forced schools to ignore many cases of sexual harassment and violence because the incident occurred in the "wrong" place (for example in off-campus housing, online, or in study abroad programs) or was reported to the wrong person (for example an advisor, coach, or professor). Students will also be required to demonstrate that the harassment is so pervasive and severe that their education has suffered as a result of the harassment *before* the school is able to investigate. This may force students to endure escalating levels of abuse before their claim can be investigated.

Even when survivors are able to come forward, the new rule requires student to participate into a response and investigation process that is burdensome and potentially traumatizing and meet a standard of proof that is more demanding than that required for other types of misconduct. Furthermore, the DeVos Rule allows schools to offer informal resolution options and restricts potential penalties for perpetrators to non-punitive outcomes like schedule or housing changes. These measures often fail to protect students from retaliation or ongoing harassment. To protect themselves, survivors may be forced to incur the cost of off-campus housing, withdraw from classes, or even leave school altogether.[3]

The DeVos Rule exacerbates existing barriers to higher education for survivors of sexual harassment and violence, which most critically impacts women, students of color, and LGBTQ+ students.[4] To grant student survivors equal access to education, we urge the Biden administration

---

[2] Exec. Order No. 13985, 86 Fed. Reg. § 14 (Jan. 20, 2021); Exec. Order No. 13988, 86 Fed. Reg. § 14 (Jan. 20, 2021); Exec. Order No. 14021, 86 Fed. Reg. § 46 (March 11, 2021).

[3] Alexandra Brodsky, *How much does sexual assault cost college students every year?*, Washington Post (November 18, 2014).

[4] Cantor et al., Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct, 102-109 (2015).

to ensure students can safely report all cases of unwelcome sexual conduct, require institutions to promptly and effectively respond to reports in a way that prioritizes the physical and emotional wellbeing of the survivor, and require fair disciplinary procedures that protect survivors from retaliation and recurring harassment.

II. LGBTQ+ Students Deserve an Educational Environment Free from Discrimination and Harassment.

At every level of education, LGBTQ+ students experience disproportionately high rates of discrimination, harassment, and sexual violence.[5] Yet LGBTQ+ students have been insufficiently protected under Title IX, as many schools fail to adequately respond to cases of harassment, violence, unequal discipline, and discrimination.[6] Insufficient Tile IX protections for LGBTQ+ students allow discriminatory practices and policies to remain in place and leave students with few ways to remedy instances of harassment and discrimination.

To adequately protect all students from harassment and discrimination, the Department should make clear that "discrimination on the basis of sex" encompasses discrimination based on sexual orientation, gender identity, and transgender status. Such language would be consistent with the intent of Title IX, the Biden administration's efforts to eliminate sex discrimination, and the Supreme Court's decision in *Bostock v. Clayton County*.[7]

Title IX seeks to provide equal access to education for all students, regardless of sex. Without the inclusion of LGBTQ+ students in Title IX protections, this promise is unfulfilled. Given the discrimination and harassment that LGBTQ+ students regularly encounter, the Biden administration must take this important step in ensuring taxpayer-funded schools move towards creating safer, more inclusive environments for LGBTQ+ students.

III. Religious Exemptions to Title IX Should Be Consistent and Transparent.

As an organization committed to protecting religious freedom, we recognize that some interpretations of Title IX may be in conflict with the religious beliefs of certain educational institutions. Religious exemptions to Title IX have an important role in ensuring that religious institutions can operate in a manner consistent with their religious beliefs. Transparency and consistent application, however, are necessary to communicate institutional procedures and expectations to members of their community and the public.

Prior notice of Title IX exemptions allows students to make informed choices about their education and safety. Without it, students will not know whether they can be punished for their sexuality, their gender identity, their reproductive health choices, or their personal beliefs. Appropriate implementation of religious exemptions also protects schools, who would otherwise be unclear as to what actions would put them at risk for legal challenges or complaints. However, under the DeVos Rule, religious schools wishing to use a religious exemption to Title IX are no

---

[6] Kosciw et al., The 2019 National School Climate Survey, 35 (2020)

[7] Exec. Order No. 13988, *supra* note 1; *Bostock v. Clayton County*, 590 U.S. ___ (2020).

longer required to notify students, their families or the public in advance or list their reason for doing so.

As a matter of religious freedom, religiously affiliated universities are able to operate in a manner consistent with their religious doctrine. But students should be afforded the same ability to make education decisions based on their own personal beliefs. We urge the Department to revise changes made to religious accommodations under former Sec. DeVos to adequately support students all of faiths and none as they pursue higher education.

IV. Conclusion

As a national organization committed to advancing true religion freedom for all Americans, Interfaith Alliance Foundation urges the Biden administration to restore Title IX protections for student survivors of sexual harassment and violence, expand protections for LGBTQ+ students, and ensure that religious exemptions are appropriately implemented.

Students seeking higher education are often away from home for the first time. They are encountering new people, having new experiences, and discovering their own identity. Schools should nurture students throughout this process and ensure that community members all beliefs, experiences, and identities can thrive. Interfaith Alliance urges the Department of Education to protect the right of all students to have equal access to education by strengthening Title IX protections. In doing so, the Biden administration can restore Title IX as a powerful tool to ensure all students are treated with dignity and respect.