From: Kanawha County Title IX Coordinator/Investigator

Sent: Fri, 11 Jun 2021 12:47:48 -0500

To: T9PublicHearing

Subject: Written Comment: Title IX Public Hearing

Attachments: Title IX Memo on changing the regulations.docx

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Below, is Kanawha County Schools analysis of issues that are caused by the new regulations and comments on how to remedy them. Overall, our experience with the regulations, which is likely to be the same as any K-12 school system’s experience, is that they were not written with the K-12 structure in mind.
A. The first, and the biggest issue that this District has with these new regulations is the length of time that the whole process takes before final action/closing out the issue or discipline can be administered.

The process from start of finish of an investigation for a Title IX issue is lengthy. First, after we get the report from the student that something happened and explain the formal complaint process, we have to send notice to all parties to be interviewed, which explains their rights. In the meantime, we cannot talk to the accused (Respondent). There is usually considerable time before all parties and witnesses can be interviewed. This is generally because the Respondent is unresponsive to requests or is attempting to get representation.

Practically this means that when we get a report at the school that something happened that may be a Title IX issue, we are barred from immediately investigating the issue. We cannot even talk to the Respondent to get their version of events. Witnesses are also entitled to get notice, so we are effectively barred from speaking with anyone except the person making the complaint. Thus, the school day(s) continues and the complainant has to wait for the whole process to come to an end, which can be months, before some final action, including discipline can happen.

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Additionally, a process that previously took a two to three staff members to investigate decided now takes several levels of administration to address, since the law requires that each new step essentially requires and new person.

B. The second issue with the new regulations is the definition for “sexual harassment” is extremely complex and vague in ways.

Sexual harassment in schools previously was defined as “unwanted and unwelcome behavior of a sexual nature that interferes with the right to receive an equal educational opportunity.” The definition now is far more complex, and in ways is more of a definition that covers criminal activity than activity that is unwelcomed and inappropriate and which also interferes with your ability to receive an education. The new definition of sexual harassment under the regulations is, conduct on the basis of sex that satisfies one or more of the following:

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Conclusion
Most of the issues that we have found with the regulations can be solved with a rewrite of the process, which is overly burdensome for K-12 districts; who most of the time have direct evidence or witnesses, and limited human resources to get through the multi-level process efficiently. The process is also too long and places the school environment in a precarious situation while all the hoops are being jumped through. Additionally, the definition covers too many aspects that are not needed for K-12 schools to consider if there was an unwanted, unwelcomed, sexual behavior. Please reconsider these regulations.
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Samantha Ferrell-Hill
Title IX Coordinator/Investigator
304-348-1379
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Kimberly Harper
Paralegal
Office of General Counsel
Kanawha County Board of Education
200 Elizabeth Street
Charleston, WV 25311
(304) 348-7798
kimberlyharper@mail.kana.k12.wv.us
KANAWHA COUNTY BOARD OF EDUCATION
OFFICE OF THE GENERAL COUNSEL
MEMORANDUM

TO: UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHT AND TO WHOMEVER ELSE IT MAY CONCERN
FROM: LINDSEY D.C. MCINTOSH
SUBJECT: ISSUES WITH THE CURRENT TITLE IX REGULATIONS
DATE: JUNE 10, 2021

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Sent: Fri, 11 Jun 2021 14:14:29 -0400  
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