

From: Caldwell, Deborah D
Sent: Thu, 10 Jun 2021 20:28:20 +0000
To: T9PublicHearing
Cc: Wilbur, Christi L;Maika, Sean A
Subject: Written Comment: Title IX Public Hearing (K-12 Schools)
Attachments: Written Comment Title IX Public Hearing-NEISD.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.

Dear OCR staff,

Thank you for the opportunity to submit public comments for the Title IX hearings. Attached are written comments from North East ISD in San Antonio, TX.

Cheers,
Deb

Deborah Caldwell
Director, Government Relations and Grant Development
North East Independent School District
8961 Tesoro Drive
San Antonio, TX 78217
210-407-0026 (office)
Twitter: @olenickcaldwell





North East Independent School District

8961 TESORO DRIVE – SAN ANTONIO, TEXAS 78217 78217

Sean Maika, Ed.D.
Superintendent

June 10, 2021

The Honorable Suzanne Goldberg
Acting Assistant Secretary for Civil Rights
Office for Civil Rights
U.S. Department of Education
T9PublicHearing@ed.gov

Subject: Written Comment: Title IX Public Hearing (K-12 Schools)

Dear Madame Assistant Secretary,

Thank you for gathering public comments for the purpose of improving enforcement of Title IX of the Education Amendments of 1972. I am submitting the following feedback on behalf of North East Independent School District, the second largest public school district in San Antonio, Texas.

Process

In a K-12 context, the primary rubric used for investigations into misconduct such as bullying, harassment or other similar behavior is based on the school district's applicable student code of conduct. In Texas, Chapter 37 of the Education Code governs student discipline. Consequences for the kinds of conduct involving bullying, harassment or similar behavior include assignments to disciplinary alternative education programs or expulsion. Such cases need to be investigated and acted upon quickly, and school administrators are trained on investigation techniques geared to determine whether the alleged misconduct occurred and take prompt necessary action to stop it. This is doubly true if a student has an Individualized Education Plan under the IDEA or a Section 504 plan, which often have standing deadlines by which appropriate parts of the process, such as manifestation determination review, must take place.

The formal Title IX complaint process under the current regulations is formatted in a manner that causes significant delay in the investigation process that is utilized in K-12 disciplinary situations. We have found that the time required between every step in the Title IX process to allow both the complainant and respondent to respond to every piece of evidence collected by an investigator makes the process that previously may have taken days now takes three to four months.

Parents from both parties who have participated in the process have expressed concerns as to why the process was taking so long before a decision was rendered. We are forced to explain all

the different points where both sides must be given certain extended time periods to respond at multiple steps in the process. Simply put, the Title IX process moves very slowly, which hampers school administrators from being able to act quickly to address possible violations due to the extended timelines required at each step by the process.

Possible Resolution: The K-12 process should be streamlined to be more congruent with the existing processes already utilized through the student discipline process as described above for investigation of the kind of conduct that may amount to a Title IX violation. The K-12 environment is different than the higher education environment, and the investigation process of an allegation of misconduct, bullying and/or harassment is often begun immediately upon knowledge of a potential violation since all the involved parties are within our system. We have access to students, staff, and parents in ways that higher education may not. This enables K-12 administrators to act quickly on gathering information and evidence to ensure accuracy and the safety and well-being of all students.

Timeline

If the investigator or decision-maker resigns or retires during the formal complaint process, it extends the timeline due to having to assign another staff member to that specific role. This is especially time consuming when it is the investigator role or a complaint that occurs at the end of a school year, which in the K-12 world is when the bulk of resignations and retirements occur.

Depending on when a formal complaint is submitted and the timeframe it takes for the formal process, the timeline limits the staff who may be assigned to the various roles due to campus administrators being off contract in the summer months. Many principals and assistant principals, and even certain department heads, work ten or eleven months of the year in connection with the school year calendar. Once they complete their work schedules applicable to their employment contracts, these individuals cannot be compelled to work until their new contract work period begins. Further, the majority of students are not available during the summer for interviews. Even if such investigations resume upon the start of a new school year, witness memories may not be as clear. This has obvious impact on the ability of school districts, including North East ISD, to complete investigations.

Possible Resolution: The process should be simplified for K-12 schools to lessen the overall staffing burden by allowing one person to conduct the investigation and make decisions on the outcome. Timelines need to be adjusted to account for summer breaks when staffing and students are not available, and so any applicable deadlines should be tolled pending resumption of a new school year. In addition, the overall burden for K-12 programs can be reduced by allocating federal funding for large districts like North East ISD to employ a dedicated Title IX team who can devote their time to Title IX training and investigations. This would allow the district team to be available to assist campuses in formal complaint investigations and decrease the likelihood that an investigation is negatively impacted due to staff turnover.

Staff

The role of the investigator is the most crucial, lengthiest, and most complicated role in the complaint process. In K-12, most elementary and middle school levels do not have enough staff

on the campus who are trained in discipline investigation. Such staff typically include principals and assistant principals. Elementary and middle schools usually only have 2-4 principals and assistant principals, who all have daily responsibilities associated with the regular operation of the school. These campuses typically have hundreds, if not thousands, of students to oversee. Given the limited staff with the requisite training, a Title IX investigation may require either someone from another campus/district level to conduct the investigation or contracting someone from outside the school district to assist in this process. Even at the high school level, where there are more available administrators, generally when an incident occurs on the campus, they collaborate to ensure consistency of handling. The Title IX process does not allow for that collaboration by the investigator. For this reason, it would prevent another administrator on the high school campus from being able to investigate. The investigation portion of the process can take a staff member from their everyday responsibilities and spend weeks, sometimes a month before sending both parties the Final Investigation report. With students returning to in-person instruction at the K-12 campuses in the upcoming school year, the likelihood of an increase in Title IX allegations will render campuses and/or departments at all levels short staffed during the investigation process.

Possible Resolution: Designated funding for a Title IX team of dedicated staff and their training at the school district level would lessen the burden on school administrators who already have numerous responsibilities serving the students on their campuses. In addition, providing more flexibility to K-12 schools on the staffing of investigations should occur. This would allow the district team to be available to assist campuses in formal complaint investigations and decrease the likelihood that an investigation is halted due to staff availability and turnover.

Privacy

Video that is part of the evidence must be redacted to protect the privacy of students who are not involved in the investigation. This delays the process since it requires additional time to sit with the media department to review video footage to ensure the correct students are blurred for privacy. Since the redacted video is a large file, it requires it to be saved onto a USB drive for either parties to pick up to review or sent through certified mail, which is an incurred cost for the District. Either of these methods adds to the time delay in providing evidence to both parties simultaneously.

Due to the lack of confidentiality in the Title IX Regulations, K-12 parents of and student witnesses are choosing not to participate or provide statements due to their full name and information they provide being shared with both parties. This causes additional challenges when the school investigated an incident prior to a party filing a formal complaint. This can affect the outcome of an investigation and lead to a situation where appropriate consequences may not be able to be imposed on a student due to reluctance to share evidence.

Possible Resolution: The Family Educational Rights and Privacy Act (FERPA) should play a role in K-12 Title IX investigations as it does in other discipline investigations. The required notification process of Title IX can create conflict between families and friends of the parties involved in the formal complaint, which may be displayed on the campus. In other words, an unintended consequence is that students end up with more knowledge of

issues that then ends up as topics of discussion among them. This fuels rumors and other conduct that increases conflict between students, thereby leading to additional possible complaints. While the school is required to provide supportive measures to all parties, the allegation notification and sharing of all evidence within the formal complaint process does not allow for student information to remain private. As such, adjustments should be made to allow for additional confidentiality protections for students, particularly for student witnesses.

Thank you for your consideration of our comments to ensure protections for all parties involved in the Title IX process. We take our role seriously in investigating any allegation of misconduct, bullying and/or harassment. We want a system that protects all parties and is conducted in a timely manner, without possibility of further harassment or manipulation of the formal process to extend the timeline. If you have any questions, please contact the District's Title IX Coordinator, Christi Wilbur, at 210-407-0070 or cwilbu@neisd.net.

Sincerely,

(b)(6)

Sean A. Maika
Superintendent