From: Angela Schlingheyde
Sent: Mon, 7 Jun 2021 19:54:56 +0000
To: T9PublicHearing
Subject: Title IX Testimony
Attachments: DOC060721-06072021155255.pdf

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Attached please find written testimony for the Title IX hearing.

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#TDVAM #KnowYourWorth #loveisrespect

Formerly The Center for Women & Families of Eastern Fairfield County, Inc.

Serving the towns of Bridgeport, Easton, Fairfield, Monroe, Stratford and Trumbull

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June 7, 2021

Submitted via T9PublicHearing@ed.gov

Written comment of Angela Schlingheyde, Director of Civil Legal & Court Advocacy Services at The Center for Family Justice, Bridgeport, Connecticut

RE: Office of Civil Rights hearing pursuant to Executive Order 14021, *Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*

Document Citation 86 FR 27429

The Center for Family Justice, Inc. (CFJ), respectfully submits this comment as testimony to inform the Department of Education's review of regulations, guidance, and other agency actions under Title IX, and to respectfully request changes to the rule entitled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance."

CFJ provides free and confidential services to sexual assault, domestic violence and child abuse survivors in Bridgeport, Stratford, Fairfield, Trumbull, Monroe and Easton, Connecticut. We are a member organization of The Connecticut Alliance to End Sexual Violence, The Connecticut Coalition Against Domestic Violence, and The Connecticut Children's Alliance. We are also a family justice center and member of the International Alliance for Hope, the coalition for family justice centers around the globe. We are first responders in addressing sexual violence, domestic violence and child abuse by bringing together a coordinated team of experts in law enforcement, victim advocacy, mental health, medicine and other disciplines to both hold offenders accountable and help children and families heal in a comprehensive, seamless way so no future is out of reach.

Changes to the Title IX rule made last year under then-Secretary Betsy DeVos are discriminatory, illegal, and profoundly limit the legal duties of institutions of higher education and K-12 schools to respond to sexual harassment and violence. The changes have created unnecessary and challenging hurdles for students to seek help, preventing schools from addressing many reports of sexual harassment and imposing uniquely burdensome procedures that are not required for any other type of student or staff misconduct. The rule has undermined the progress made over the last twenty years to lessen the effects of sexual harassment in schools, reduce the stigma of experiencing sexual harassment and violence, and improve educational outcomes for student survivors. For these reasons, we are grateful for the opportunity that the Office of Civil Rights is providing to listen to those most impacted as you consider

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changes to this devastating rule that has made school less safe for girls, women, and gender non-conforming students.

At its very core, The DeVos rule has the effect of discouraging students from reporting sexual assault and other forms of sexual harassment, fostering environments based in fear, not support. The rule is in direct contradiction of the purpose of Title IX as a civil rights law, which is to protect equal access to education. The experience and stress of sexual harassment creates significant barriers for student success in school, further exacerbated when a school does not or cannot respond effectively with support. Impacts on students include serious emotional and mental health problems, such as anxiety, depression, and substance misuse. Students may drop out of school because they do not feel safe or may be forced to leave school due to performance issues related to the trauma. There are financial burdens as well related to student loans, costs of treatment, additional expenses of relocation. Student survivors need support and learning environments free of discrimination.

Restore Protections for Student Survivors

Prior to the DeVos Title IX rules, and since 1997, the Department of Education's longstanding guidance led to more meaningful action by institutions to address sex-based harassment and support victims, an increase in reporting by victims to their schools and the Department, and greater accountability when institutions failed to comply with Title IX. To restore Title IX's purpose, the Department must reinstate the following guidance:

- Clearly define sex-based harassment to include sexual harassment, dating violence, domestic violence, and sex-based stalking and harassment based on sexual orientation, gender identity, gender expression, parental status, pregnancy, childbirth, termination of pregnancy, or related conditions;
- Define sexual harassment as unwelcome sexual conduct;
- Require schools to respond to all quid pro quo harassment and any other sex-based harassment that is sufficiently serious to create a hostile environment that interferes with or limits an individual's ability to participate in or benefit from the recipient's program or activity;
- Require institutions to promptly and effectively respond to, take action to eliminate, and prevent the recurrence of sex-based harassment, specifying that:
    - Institutions must address sex-based harassment that may create a hostile environment in their program or activity, regardless of where it occurred;
    - Institutions should respond to harassment that they know or should know about, as well as *any* sex-based harassment by employees that

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occurs in the context of the employee's responsibilities to provide aid, benefits, or services within the institution's program or activity;

- To ensure a "prompt" response to sex-based harassment, institutions should be required to provide supportive services and accommodations to the complainant as immediately as possible, but no later than five school days after a report is made;
- Institutions must take reasonable steps when responding to sex-based harassment (rather than just avoiding a response that is "clearly unreasonable," which is known as the "deliberate indifference" standard); and
- An effective response may include restorative justice or other alternatives to traditional student discipline, as long as participation is truly voluntary, all parties are able (and aware they are able) to terminate the alternative resolution process at any time, and those facilitating it are adequately trained to do so.

- Make clear that states and local entities can provide additional protections beyond those in the Department's Title IX rule.

Develop Robust Protections Against Retaliation

Title IX prohibits retaliation against those who complain of sex discrimination. Yet student survivors— especially survivors of color, students with disabilities, and LGTBQ survivors—continue to face punishment when they turn to their schools for help. Some are disciplined for rule-breaking that they must divulge to report. Student survivors—primarily those in higher education—have increasingly faced retaliation from their assailants, who file baseless cross-complaints to dissuade and punish victims.

The Department's regulations should explicitly prohibit these common forms of retaliation and:

- Define prohibited retaliation to include (but not be limited to):
  - Disciplining complainants for collateral conduct violations that must be disclosed in order to report sexual harassment, dating violence, domestic violence, or stalking; that is disclosed in the investigation (e.g., alcohol or drug use, consensual sexual contact, reasonable self-defense, or presence in restricted parts of campus); or that occurs as a result of the reported harassment (e.g., nonattendance);
  - Disciplining complainants for false reports based solely on the school's conclusion that there wasn't sufficient evidence to support a finding of harassment;

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- Disciplining complainants for prohibited sexual conduct in school based on the school's conclusion that the reported sexual harassment was instead welcomed sexual contact;
- Disciplining a complainant for discussing the sex-based harassment report; and
- Disciplining a victim for charges the school knew or should have known were brought by a third party for the purpose of using the disciplinary process to retaliate against a victim of sex-based harassment.

- Allow institutions to dismiss, without a full investigation, complaints of sexual harassment, dating violence, domestic violence, and stalking that are patently retaliatory (e.g., where a student is reported for sexually assaulting a classmate, insists the contact was consensual, and then, after being found responsible, files a counter-complaint that their victim in fact sexually assaulted them).

Ensure Fair Disciplinary Procedures and School Flexibility

Prior to the DeVos rule, the Department long affirmed the agreed-upon notion that school discipline for sexual harassment must be fair to all involved parties. Yet DeVos's regulations require unique disciplinary procedures for sexual harassment that differ from other civil procedures. In this regard, new regulations should:

- Outline general requirements for fairness that flow from Title IX's equity mandate, and not impose a one-size-fits-all model that may not be effective given the diversity of institutions;
- Require that schools use the preponderance of evidence standard in determining responsibility for sexual harassment and sex-based harassment, the standard used in civil rights lawsuits more broadly;
- Undo the current regulation that prevents institutions from considering past statements by parties or witnesses who are not available for cross-examination.

Address Other Forms of Harassment

In addition to sexual harassment, too many students face harassment face non-sexual sex-based harassment, including harassment based on sexual orientation, gender identity or expression, and pregnancy or parenting status, as well as harassment based on other protected characteristics, including race, color, national origin, and disability.

Fortunately, civil rights laws that the Department enforces require funding recipients to address these forms of harassment. We encourage the Department to enforce

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these protections meaningfully and consistently and to return to its long-standing practice of employing uniform standards for different forms of harassment.

Importance of community-based rape crisis centers

There are community-based rape crisis centers in every state and territory, meeting the needs of all victims and survivors. Rape crisis centers are experts in their communities on survivor services and sexual violence prevention. Schools should be encouraged to partner and develop memoranda of understanding (MOUs) with local organizations that have the expertise and community knowledge about how to best meet survivor needs and prevent future sexual violence. They can help schools improve their own policies and procedures, while providing free and confidential services outside of the school context, which is a critical option for student survivors.

On behalf of survivors, we strongly encourage the Biden-Harris administration to reverse Title IX rule elements that have taken us dangerously backward in our national response to the scourge of sexual violence. We welcome any opportunity to provide additional input and information toward this effort.

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