

From: Laura Kaloi
Sent: Fri, 11 Jun 2021 15:14:08 -0400
To: T9PublicHearing
Cc: Wendy Tucker
Subject: Written Comment: Title IX Public Hearing: Students with Disabilities from Center for Learner Equity
Attachments: Center for Learner Equity Title IX June2021.pdf

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The Center for Learner Equity respectfully submits the attached comments for the Title IX Public Hearing, Docket No. ED-2018-OCR-0064, RIN 1870-AA14.

Thank you.

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June 11, 2021

Comments to the U.S. Department of Education

Re: Title IX – Docket No. ED-2018-OCR-0064, RIN 1870-AA14

Submitted via email: T9PublicHearing@ed.gov

The Center for Learner Equity (“the Center”) is a nonprofit organization dedicated to ensuring students with disabilities have equitable access to high-quality public education. The Center provides research, policy analysis, coalition building, and technical assistance to a variety of stakeholders across the nation. As a leading national voice regarding supporting students with disabilities in both the charter and traditional public school sectors. 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 the rulemaking process.

Before making any recommendations to the Biden Administration, we want to note that in 2019, the Center [formally opposed the current Title IX regulations](#) in partnership with other disability advocates as part of the Consortium for Citizens with Disabilities. Our opposition then and now is based on the numerous significant negative and erroneous provisions included in current regulation that make schools and institutions of higher education drastically less safe for all students and fail to address known risk factors for students with disabilities who are survivors as well as alleged perpetrators of sexual violence.

Therefore, as the Biden Administration considers the Title IX regulations and other agency actions concerning discrimination on the basis of sex, we urge the Department to replace the current Title IX regulations with rules that are consistent with and not contrary to Title IX. A new Title IX regulation must:

1. 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.

Under the current definition of harassment, students with disabilities would be forced to endure repeated and escalating levels of abuse, from students or teachers, before their schools would be required to investigate and stop the harassment. If a student is turned away by their school after reporting sexual harassment, the student is extremely unlikely to report a second time when the harassment escalates.

2. Reject unlawful provisions that prescribe the following and replace them with policies consistent with current statutes and case law:
 - a. 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;
 - b. Allowing for complaints to not be investigated if college and university students fail to report sexual harassment or assault to the “right” official;

- c. 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; and
 - d. 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.
3. Address the full scope and impact of sexual harassment and sexual assault on K-16 students with disabilities by ensuring the regulations:
 - a. Clarify the unique statutory and civil rights that may or may not apply to students with disabilities or employees with disabilities who are parties in a Title IX complaint under Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA);
 - b. Underscore IDEA’s requirements and the rights provided to eligible K-12 students throughout the Title IX process, including a[ny] removal determination;
 - c. Clarify that the procedural rights to a Free, Appropriate, Public Education (FAPE) under the IDEA are not as comprehensive as the right to equal educational opportunities for all students under Title IX, the ADA, section 504. The regulations must make clear that a student with a disability does not have to be eligible for FAPE in order to be covered under the Title IX regulation; and
 - d. Ensure that colleges and universities are made aware of their affirmative duty to communicate the nature of [any] allegation and must also inquire whether a person with a disability needs [any] accommodation to ensure that every involved individual can understand the Title IX process and respond.
4. Require schools to respond to Title IX reports of sexual harassment and assault that occur off-campus or during study abroad, including in students’ homes.

The current exclusion of misconduct outside of school puts students with disabilities at greater risk of sexual harassment. Many K-12 students with disabilities, especially students with intellectual and multiple disabilities, are educated in separate, segregated classes or in separate schools and “off-site” educational and day services.ⁱ Sexual harassment, including assault, is more likely to occur in segregated and isolated settings.

We appreciate this opportunity to provide feedback and look forward to working with you to replace the current Title IX regulations with policies that will support students with disabilities.

Sincerely,

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Lauren Morando Rhim
Co-Founder and Executive Director

ⁱ National Council on Disability. “The Segregation of Students with Disabilities.” February 2018. https://ncd.gov/sites/default/files/NCD_Segregation-SWD_508.pdf.