

From: Sheilah Vance
Sent: Fri, 11 Jun 2021 09:41:24 -0400
To: T9PublicHearing
Cc: Sherri Killins
Subject: Written Comment: Title IX Public Hearing (comments on various topics)
Attachments: Final Title IX Comments 6.11.2021 .docx

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TO: T9PublicHearing@ed.gov

SUBJECT LINE: Written Comment: Title IX Public Hearing (comments on various topics)

FROM: (b)(6)

Note: Comments appear in this email below and also are attached to this email as a Word Document.

Win With Black Women is a collective of intergenerational, intersectional Black women leaders throughout the nation that have come together within their personal capacity to stand United in Support of Black Women.

The Education Policy Group of Win With Black Women submits these comments to the US Department of Education (ED) Office for Civil Rights (OCR) as part of its comprehensive review of the Department's existing regulations, orders, guidance, policies, and any other similar agency actions, including the amendments to the Department's Title IX regulations that took effect on August 14, 2020, titled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance".

As Black Women, we are especially concerned about the manner in which the Biden Harris Administration ensures that its Department of Education reaches its stated goal of ensuring that all educational institutions that receive federal funds provide an educational environment free from discrimination based on sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and includes discrimination on the basis of sexual orientation or gender identity/expression.

There are Black employees and Black students who will never report instances of sexual assault, dating violence, domestic violence, or stalking to the police because of distrust and/or concern about such issues as bias and immigration status. The Preamble to the current Title IX regulations acknowledged that several commenters to the proposed regulations noted this. Consequently, a recipient institution's Title IX processes are the only institutional processes that some parties will participate in. Yet, there is often distrust and avoidance of these processes.

To help Black students and Black employees achieve the stated goals of equal access to educational opportunities, regardless of their sex, sexual orientation, or gender

identity/expression, we recommend the following processes.

1) Make available opportunities for informal resolution in all types of sex discrimination, sexual harassment, and sexual misconduct cases if both the complainant and respondent agree, without the requirement that the complainant file a formal complaint. Under current Title IX regulations, informal resolution is only permitted after a complainant files a formal complaint with the Title IX Coordinator. Title IX Coordinators should have the discretion to be able to offer informal resolution as an option to a complainant. Such informal resolution could include restorative justice to achieve the respondent's understanding of the impact of their behavior on the complainant and the community and to develop a healing plan to which both parties agree.

Often, students of color do not want to file formal complaints due to:

- a. lack of trust of the administration to handle their complaints without racial bias.
- b. not wanting the respondent tied up in the postsecondary institution's student conduct process.
- c. not wanting to go to the police and file a criminal complaint against the respondent because they do not trust the police.
- d. not wanting the respondent, often a person of color, tied up in the criminal justice system.

2) Retain the provision stating the requirement to train Title IX Coordinators and all of those involved in the process to eliminate racial bias. Section 106.45(1)(iii) of the current Title IX regulations requires that educational institutions provide training to eliminate racial bias for Title IX Coordinators, investigators, decision-makers, and any person who facilitates a resolution process.

3) Remove the provision "unless a witness testifies at the hearing and subjects herself to cross examination, any evidence that the witness provides is not admissible." The investigator should be able to testify that the statement and or documents were validly collected and move the statement and documents into evidence. This would not disadvantage either party because either party's witnesses would be subject to the same procedure.

4) Widen Title IX's geography to include incidents that occur off campus. Current regulations have forced institutions to create their own policies and approaches to sexual misconduct that go beyond federal regulations. Postsecondary institutions often include these incidents in their own institutional student harassment or code of conduct policies which creates a non-uniform national approach to sexual harassment and sexual misconduct. Congress's intent with Title IX is a national approach to sexual misconduct and harassment.

5) Include a provision that all parties who are involved in a live hearing for the resolution of Title IX complaints process, complete the necessary training in racial bias before the hearing occurs. This training should include institutional employees as well as the external hearing officers, investigators, and advisors hired by the institution. The Institution should also provide certification of such training to the Title IX Coordinator. The coordinator will then provide annually a list of such trainings and certifications to OCR. Noticeably, racial bias can easily manifest during the interactions of the different parties during a live hearing. This must stop. Too often hearings proceed without unmistakable evidence of training in racial bias by all of the internal and external parties.

6) Fund demonstration projects for Title IX Service Centers. This funding will allow each institution the opportunity to have access to high-quality, and affordable Title IX investigators, hearing officers, and advisors.

7) Provide grants to educational institutions, particularly K-12 school districts in underrepresented areas. These funds will be used to create information materials and informational campaigns, to inform students and parents about their rights to address sexual harassment and misconduct under Title IX.

8) Eliminate the severe, pervasive, and objectively offensive standard requirement to show sexual harassment under the current Title IX regulations. The requirement is extremely limiting because a party must show that all three requirements have been met. If OCR retains any part of this language as a requirement to prove hostile environment sexual harassment, the standard should be severe, pervasive, or objectively offensive. A party would have to show one or two of these requirements, depending on OCR's guidance and interpretation of the word "or", but not all three. This standard was included in previous Title IX regulatory guidance.

9) Include postsecondary institutions in the OCR Civil Rights Data Collection requirement. Currently, K-12 educational institutions must collect and report data by race on student discipline including.

- a) in-school and out-of-school suspensions
- b) offenses
- c) harassment (including sexual harassment and sexual misconduct)
- d) bullying
- e) restraint and seclusion

This data shows the racial disparities in students who are accused by another student of sexual harassment and misconduct, the types of charges against students, and the types of discipline that is administered. More importantly, it shows if one racial group receives more severe discipline than another group. OCR should expand this requirement to postsecondary institutions considering it has conducted this survey of K-12 institutions since 1968, which yields valuable data.

10) Provide funding for additional social service and supportive resources from community-based and culturally-specific organizations for students, particularly in K-12. Reduce the continued or increased presence in schools of police or police-like school resource officers.

11) Prohibit schools from having policies that require schools to report all incidents of sexual harassment to law enforcement unless it is required by state law. Many students are deterred from reporting cases to schools, particularly K-12, because such cases are mandatory to be reported to the police.

12) Require culturally competent sexual and healthy relationship education in K-12 schools. This will help students understand what sexual harassment is.

13) Provide additional, direct funding to institutions so that they may appropriately train Title IX Coordinators and other staff who are involved in administering its Title IX program. To date,

OCR requires Title IX programs, but does not provide funds for institutions to operate such programs. These programs are often costly for educational institutions.

14) Investigate and require methods to ensure that institutions implement Title IX due process procedures that eliminate racial bias while also ensuring survivors that such procedures are safe and will not retraumatize them. The current Title IX regulation's requirements of a live hearing with cross examination are often traumatizing for survivors and negatively influence survivor's willingness to make a formal report of instances of sexual discrimination, harassment, or misconduct. We believe in due process. However, we are also aware that many respondents of color are falsely accused or are the victims of racial bias in Title IX processes.

Please do not hesitate to contact us if you have any questions or need further information about any of the above comments. Please send your comments to Win With Black Women Education Policy Group member Sheilah Vance, Esq., (b)(6)

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¹ Volume 34, Code of Federal Regulations, Part 106.

² Volume 34, Code of Federal Regulations, Part 106, Preamble.

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