



September 6, 2022

U.S. Department of Education
Office for Civil Rights

Re: Docket ID ED-2021-OCR-0166

To Whom It May Concern:

Thank you for this opportunity to provide comments to the U.S. Department of Education's proposed rule "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance" (2022).

The National Disability Rights Network (NDRN) is the non-profit membership organization of Protection and Advocacy (P&A) agencies, a nationwide network of congressionally mandated, cross disability organizations. The P&A agencies operate in all 50 States, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands). There is also a P&A affiliated with the Native American Consortium which advocates for Native Americans with disabilities in the Hopi, Navajo, and San Juan Southern Paiute Nations located in the Four Corners region of the Southwest.

Individuals with disabilities are at significant risk of sexual violence, harassment, assault, and exploitation and they must be specifically recognized in Title IX. For example, a national survey indicated in comparison to those without a disability, men and women with a disability face more potential of sexual violence.¹ Students with disabilities are an especially vulnerable population in terms of sexual harassment and sexual assault due to several factors. Children with disabilities are at heightened

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4985079/>

risk of exploitation by peers, inaccurate stigmatization as being “weak or inferior,” and abuse at the hands of caregivers, including teachers, aides, and other school personnel. Additionally, children with disabilities often do not receive effective education on human sexuality and therefore lack the language to report what happened to them.² While it is estimated that one in ten children with disabilities have experienced sexual violence, reports are only made for one in thirty survivors with disabilities.³ In the rare cases that do get reported, legal action rarely provides effective relief for students.⁴ There are continued physical, social, and institutional barriers which limit students with disabilities ability to bring sex-based discrimination claims. More attention to the needs of students with disabilities facing discrimination based on sex are necessary in the proposed regulations to protect them against sexual violence.

NDRN proposes the following modifications to the proposed Title IX regulations as described in the *Federal Register* notice dated Jul 12, 2022:

First, the Department of Education proposes adding a definition of “student with a disability,” as “a student who is an individual with a disability who would be covered by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 705(9)(B), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3).” NDRN agrees that this definition should be included. However, NDRN proposes that the definition should also refer to the Americans with Disabilities Act (ADA) at 42 USC 12102. This is because Title II of the ADA protects individuals with disabilities against disability-based discrimination in the services, programs, or activities of public entities and may be more familiar to public entities. Further, Title II of the ADA, IDEA, Section 504, and Title IX may overlap as methods of protecting students with disabilities and this intersection must be recognized when reviewing a sexual harassment allegation. To overcome institutional barriers of students with disabilities bringing sex-based discrimination claims there must be a clear path of communication and understanding between Title IX coordinators and the institutions in place to protect the civil rights of students with disabilities including the ADA, IDEA, and Section 504.

² <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1163&context=jlasc>

³ <https://www.publichealth.columbia.edu/public-health-now/news/one-three-children-disabilities-has-experienced-violence-global-study>

<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1163&context=jlasc>

⁴ <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1163&context=jlasc>

Second, NDRN agrees with the Department's proposal to encourage the implementation of supportive measures in proposed § 106.8(e) and 106.44 which include responsibilities of the Title IX coordinator to consult with a student's Individual Education Program (IEP) or Section 504 team. NDRN understands that 106.44(g) makes it permissible for a Title IX coordinator to contact a postsecondary school's disability services office if a postsecondary student with a disability files a Title IX complaint. Because some postsecondary students may not know the Title IX coordinator is available to consult on supportive services if the student files a Title IX complaint, NDRN proposes to also include a mandatory requirement for a postsecondary school's disability services office to publish a notice that states the availability of the Title IX coordinator to consult with a postsecondary student with a disability if that student files a Title IX complaint.

Thank you for considering these proposed additions to the Department of Education's proposed rule. Please be in touch with Dan Stewart, Managing Attorney for Education and Employment, dan.stewart@ndrn.org should you have any questions or need further clarification.

Sincerely,



Eric Buehlmann

Deputy Executive Director for Public Policy
National Disability Rights Network