



Connecticut Association of Boards of Education

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PRESENTS POLICY HIGHLIGHTS

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New Title IX Regulations Require Policy Change: The U.S. Department of Education has pursued violation allegations of the 1972 law known as Title IX for decades. Up until the last few years nearly all of those alleged violations pertained to inequities between male and female athletic opportunities and facilities. In the last decade, Title IX has also been relied upon in sexual assault cases. On May 6, 2020 the U.S. Department of Education released lengthy new Title IX regulations, over 2,000 pages in length, which demand greater due process in such cases.

Unless litigation against the U.S. Department of Education is successful in stopping the regulations from going into effect, these extremely prescriptive regulations must be implemented by districts beginning August 14 of this year, in time for the new school year. Previous Title IX guidance was the basis for district policies and practices and was generally well-understood and executed. The new regulations require changes to district policies and handbooks and training for staff. The final regulations were reviewed in depth in the May 15, 2020 issue of *Policy Highlights*.

The key provisions for K-12 schools include the following:

- Sexual harassment is defined for the first time in the new regulations.
- What constitutes a “hostile environment” is newly defined and includes an enforcement standard.
- Schools are required to respond when they have “actual knowledge” of a complaint of sexual harassment, which can include a report to any employee of an elementary or secondary school. That’s compared to the previous Title IX guidance, which held schools responsible for incidents they “reasonably should” have been aware of.
- Schools must respond when harassment occurs “in the school’s education program or activity.” The new regulations expand the definition of “program or activity” to include “locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs.”
- The new regulations allow parents or guardians of K-12 students to file complaints on their behalf, and requires parental notification of complaints against their children.
- Unlike colleges and universities, elementary and secondary schools are not required to hold hearings on student complaints.

- The new regulations require schools to provide “supportive measures” to students, with or without a formal complaint. That might include providing counseling or changing class schedules to avoid sharing a classroom with the accused.
- Schools are required to ignore all reports of in-school sexual harassment where the student has not yet been “effectively denied” equal access to a school program or activity.
- The final regulations permit the district to investigate Title IX incidents that occur off-campus as long as “the school exercises substantial control over both the respondent and the context in which the sexual harassment occurs.”
- Schools will be required to start an investigation with the presumption that no sexual harassment occurred.
- Districts must notify all students, parents, or legal guardians of elementary and secondary school students and employees the name and contact information of the employee or employees designated as the Title IX Coordinator.
- Districts must offer both parties the right to appeal the decision.
- Districts may not require the parties to participate in informal resolution and may not offer informal resolution unless a formal complaint is filed.

Policy Implications: The CAFE Policy Department is pleased to announce that a new policy and administrative regulation have been developed which comply with the new Title IX regulations. The policy and its accompanying administrative regulation have been dual-codified to pertain to both personnel and students.

This is an entirely new policy and administrative regulation. The regulations contain the mandated grievance/investigative process. Therefore, it is recommended that local districts adopt both the new policy and approve the accompanying administrative regulation.

Policy #4000.1/#5145.44, “Title IX” is available upon request by contacting any member of the CAFE Policy Department: Vincent Mustaro at vmustaro@cafe.org, Pam Brooks at pbrooks@cafe.org or Terry DeMars at tdemars@cafe.org.

States Sue Secretary of Education DeVos Over New Title IX Regulations: Seventeen states, and the District of Columbia have sued U.S. Secretary of Education DeVos and the U.S. Department of Education, challenging new rules that govern how K-12 schools, colleges, and universities must respond to student complaints of sexual assault and harassment under Title IX.

The rule, “creates arbitrary and unlawful procedural requirements that will chill reporting of sexual harassment and make it harder for schools to reach fair outcomes,” says the lawsuit, which was filed in the U.S. District Court in Washington, D.C.

Adjusting procedures and training to comply with the new rule will also be very difficult for schools as they contend with a public health and economic crisis, the suit says. “Under normal circumstances, requiring schools to overhaul their policies and procedures, re-negotiate collective bargaining agreements, and implement the Rule’s hiring, training, and other requirements in less than three months would impose an extraordinarily difficult burden,” the plaintiffs say. “Given the ongoing uncertainty caused by the COVID-19 pandemic and the strain it has placed on education institutions, Defendants’ decision to require compliance with the Rule by August 14, 2020, is inexplicable.”

Plaintiffs in the suit are California, Colorado, Delaware, District of Columbia, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin.

The new Title IX rule says schools must respond to unwelcome treatment on the basis of sex that is “so severe, pervasive, *and* objectively offensive” that it infringes on an individual’s education. Previously, the federal agency used a broader definition of conduct that is “severe, pervasive, *or* objectively offensive.”

By narrowing the definition, and using a higher bar than is used in the enforcement of other civil rights laws, the rule “impermissibly weaken[s] the administrative enforcement scheme contemplated by Congress in enacting Title IX,” the state’s suit says.

“The Department’s definition requires students to endure repeated and escalating levels of harassment to the point of risking school avoidance; detrimental mental health effects, such as increased risk of self-harm and depression; declines in attendance; withdrawal; and even dropout before the Rule permits schools to stop the discrimination under Title IX,” the suit says.

The new standards will result in a “chilling effect” that stifles student reporting, the states argue, noting that the Education Department’s own analysis anticipates fewer investigations under the new directive.

Source: “Seventeen States, D.C. Sue DeVos Over Rule on Sexual Assault, Harassment in Schools,” by Evie Blad, *Education Week*, June 4, 2020.

Policy Implications: At the present time, school districts must plan to adopt a new policy and approve an accompanying administrative regulation, as described previously. The timing and ultimate resolution of this lawsuit are unknown at this time.

School Resource Officer Position Under Reexamination: Just eight days after a Minneapolis police officer killed George Floyd, an unarmed black man, the school board voted to cut ties with the city police department. As mass protests continued nationwide over police brutality, activists in other cities hope the demonstrations will cause school districts to review their school resource officer agreements with local law enforcement agencies, and to consider how those relationships can disproportionately affect students of color.

Young people’s very first interactions with law enforcement increasingly occur at schools. Such interactions can be positive, but they can also be a vulnerable child’s first step into the labyrinth of the criminal justice system. Federal data indicates that black students are more likely to be arrested or referred to law enforcement than their peers.

School board members and administrators in a handful districts, have urged new discussions about their agreements with local law enforcement since Minneapolis eliminated the SRO position in its schools. The decision wasn’t without some mixed emotions. Prior survey data showed that SROs were generally well-regarded among students in the district. After a year of intense debate, the Portland Oregon district discontinues the use of city officers.

From the 1999 massacre at Columbine High School onward, parents are often among those who have advocated for more police, rather than fewer, as part of an overall school safety plan. “It’s important for people to re-examine the policing role, because we have a tension here: People want police in schools for safety,” said Anthony Petrosino, the director of the justice and prevention research center at WestEd, a nonprofit education research organization. “But is it creating more harm than good? Is there a way to structure this relationship so it’s helping students and staff?”

In 2017-18, 58 percent of American schools reported having a sworn law enforcement officer on campus at least once a week, a majority of them as SROs. Most staff their schools with officers through cooperative agreements with local law enforcement agencies, and they sometimes have limited input in the officers’ selection, placement, and training.

Despite having a theoretically different role than beat cops, officers that work in schools share many features. Among schools that employ them, such police almost always carry firearms and physical restraints, according to federal data. Federal data also show that school-based officers are far more common in schools where more than half of students are nonwhite. Some research links the presence of police to higher rates of entry into the criminal justice system in what’s called the “school to prison pipeline.” Black students made up 15 percent of U.S. K-12 students, but 31 percent of those arrested or referred to law enforcement at school in 2015-16, according to the most recent federal data.

Racial justice organizations, have advocated for removing police from schools and hope to capture the broad public interest in protests over Floyd’s death, challenging demonstrators to consider law enforcement’s role in all settings, including schools.

For Petrosino, the question comes down to a clash of cultures – police typically have the authority to arrest students and may be viewed as overly punitive, and that runs up against what should be the supportive, nurturing culture in schools. Which one dominates? Can they be reconciled?

National education organizations have issued calls for schools around the country to think critically about school policing. After the Minneapolis vote, the National Association of Secondary School Principals called on school leaders “to build our own cultural competence to recognize and address the racial disparities in our discipline policies and our academic systems, and in our use of school resource officers.”

An opportunity now exists for districts to think about safety in broader terms. The coronavirus pandemic has forced districts to worry about cybersecurity, protecting students’ personal information, and guarding against unwelcome intrusions into video learning platforms, rather than metal detectors and locker searches. School budgets are also likely to be severely stressed in coming months. Short of eliminating police, schools can also take steps regarding officer selection, training and creating agreements that limit officers’ role in routine school discipline.

Source: “A Tragic Killing in Minneapolis Prompts Districts to Take a Harder Look at School Police,” by Evie Blad and Stephen Sawchuk, *Education Week*, June 10, 2020.

Policy Implications: Policy #5142.4, “School Resource Officers,” pertains to this issue. A sample “Memorandum of Understanding” is also available.

Food for Thought:

“Our actions in our schools, especially in schools without a single student of color, should be guided by our desire to allow our students to build a more racially just society. Silence robs our students of a better future. To all of my fellow educators, please read, learn, do better.”

Tracey Benson in [“What Educators Should – and Should Not Do – in Response to George Floyd’s Death”](#)
in *Education Week Teacher*, June 2, 2020