



Information Collection Comments

February 13, 2019

The Honorable Betsy DeVos

Secretary of Education

U.S. Department of Education

400 Maryland Avenue, SW

Washington, DC 20202

Via electronic submission at *regulations.gov*

Re: Docket ID No. ED 2018-ED-0064, Proposed Regulations Implementing Title IX of the Education Amendments of 1972, 34 CFR Part 106

Dear Secretary DeVos,

The Association of Title IX Administrators (ATIXA) submits the below additional comments as a supplement to previous comments submitted on January 28, 2019:

1. In 2011, when OCR released the April 4th DCL, it took most colleges at least 12-18 months to move to substantial compliance. Some took far longer. OCR has now proposed far more sweeping changes than those that were proposed in 2011, and building an entire hearing and cross-examination apparatus, staffing it, and training the staff will be a time-consuming endeavor for recipients. Will OCR consider a reasonable window for implementation of at least 90 days, once the final regulations are released, and will OCR provide recipients with an enforcement grace period thereafter if they can demonstrate good faith efforts to move toward compliance? OCR typically expects regulatory changes to take effect within 30-60 days, but these changes are sweeping, and a short implementation window ignores the complex governance issues that many recipients will need to address in order to make the proposed changes in a timely manner. Lastly, will OCR consider issuing the final regulations (in whatever year that occurs) in the month of May, so that the requested 90-day implementation window takes place over the summer, when recipients have more time and ability to address and implement the changes constructively? Issuing the changes in the middle of a school year will inhibit the ability of recipients to make changes and will also provoke

issues of applying two different sets of rules to acts of alleged discrimination during the same school year, based on an arbitrary cut-off date.

2. As noted in ATIXA's previously submitted comments, and those of many other individuals and organizations, OCR's proposed changes are likely to engender litigation as soon as the final regulations are released. The litigation will challenge both the regulations and OCR's authority to issue them. As such, the suits are likely to be complex and lengthy. Will OCR commit to staying enforcement on recipients with respect to any/all challenged provisions during the pendency of litigation? If not, recipients will be left in limbo between OCR and the courts, faced with a Catch-22 of violating OCR's expectations if they await the decision of the court, or of violating the rights of those litigating, if they comply with OCR mandates that are later struck down.
3. On February 13th, 2019, Judge Amy Berman Jackson of the US District Court for the District of Columbia ordered that a plea agreement involving Paul Manafort be voided on the basis of the fact that he lied to and intentionally misled the Office of Special Counsel (linked [here](#)). On the basis of her finding on three of five grounds, Judge Jackson determined that OSC is no longer required to uphold its plea agreement with Manafort (order linked below), the result of which will very likely be a harsher prison sentence for Manafort, when he is sentenced by Jackson. In making the determination on the five bases, Jackson applied the preponderance of the evidence. ATIXA asks OCR to please explain why the preponderance of the evidence is a standard sufficient to void a plea agreement in federal court, leading to the imposition of a longer prison sentence for a defendant, yet the preponderance of the evidence is seen by OCR as somehow insufficient to permit a finding of sex discrimination by a recipient under Title IX, despite the fact that such a finding can never result in prison or criminal findings of any kind?