

Federal District Court Judge Denies Request to Enjoin the Enactment of New Title IX Rule

By Amanda M. Connelly

Last week, U.S. District Court Judge Carl J. Nichols for the District of Columbia ruled that the new Title IX rule, first issued by the Department of Education in May of this year, could move forward as planned. Judge Nichols's decision came after 17 states and Washington, D.C. petitioned the federal court for an injunction to enjoin the enactment of the new rule or to stay its effective date pending judicial review. The 17 states and D.C. raised a number of challenges to the new rule, including arguments that the changes to Title IX remove protections for victims due to the new definition of sexual harassment; concerns regarding the grievance process; and issues that may result due to the effective date of the new rule and its proximity to the new school year.

In denying the requested injunctive relief, Judge Nichols found that although the petitioners "raised serious arguments about certain aspects of the Rule, they have not established a likelihood of success on their claims, nor have they established that they are likely to suffer substantial irreparable harm pending further litigation." *Pennsylvania v. DeVos*, D.C. No. 1:20-cv-01468, -- F.Supp.3d --, 2020 WL 4673413, *1 (Aug. 12, 2020).

Title IX was enacted in 1972 and bars discrimination based on sex in education programs or activities that receive federal financial assistance. Specifically, Title IX applies to all educational institutions, whether public or private, that receive federal funds, including colleges and universities, as well as K-12 institutions. The new rule instructs schools on how to implement Title IX while also enacting changes to the rule. One of those changes includes the defining of "sexual harassment" to mean one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). 34 C.F.R. § 106.30.

The new rule also prescribes a specific grievance process for schools when handling sexual harassment complaints; requires live hearings at the postsecondary level; removes the 60-day recommended timeline for investigations to be completed; and requires the decision-makers at both the

postsecondary and K-12 levels to issue written decisions. Further, if a complainant's report of misconduct does not meet the elements of the newly prescribed definition of "sexual harassment," the school cannot treat the report as a formal complaint. Instead, the complainant must dismiss the complaint.

The new rule took effect on Friday, August 14, 2020, as originally scheduled. Please feel free to reach out to your Roetzel attorney for assistance regarding the changes to Title IX.

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