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| Committee on Women and Gender Equity: | Brenda McKinney, *Counsel*  Chloë Rivera, *Policy Analyst*  Monica Pepple, *Financial Analyst* |
| Committee on Education: | Malcom Butehorn, *Senior Counsel*  Jan Atwell, *Senior Policy Analyst*  Kalima Johnson, *Policy Analyst*  Kaitlyn O’Hagan, *Senior Financial Analyst*  *Chelsea Baytemur, Financial Analyst* |
| Committee on Higher Education: | Paul Sinegal, *Counsel*  Chloë Rivera, *Policy Analyst*  Michele Peregrin, *Financial Analyst* |



**The Council of the City of New York**

**Committee Report of the Human Services Division**

Jeffrey Baker, *Legislative Director*

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Committee on Women and Gender Equity

Hon. Helen K. Rosenthal, *Chair*

Committee on Education

Hon. Mark Treyger, *Chair*

Committee on Higher Education

Hon. Inez D. Barron, *Chair*

April 30, 2019

**Oversight: Title IX – Gender Discrimination**

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| **Int. No. 1536** | By Council Members Rosenthal, Kallos, Treyger, Richards, Levin, Chin, Levine and Gibson |
| **Title:** | Local Law expanding the commission on gender equity’s annual report to include reporting on title ix. |
| **Administrative Code:** | Amends Section 20-b of Chapter 1 of the Charter |
| **Res. No. 797** | By Council Members Adams, Treyger, Rosenthal, Chin, Richards, Levin, Levine and Gibson |
| **Title:** | Resolution calling upon the New York City Department of Education to maintain at least seven Title IX Coordinator positions, with at least one coordinator at each borough field support center. |
| **Res. No. 811** | By Council Members Miller, Treyger, Dromm, Rosenthal, Chin, Lander, Kallos and Eugene |
| **Title:** | Resolution calling upon the New York State Legislature to pass and the Governor to sign legislation to require inclusion of Employee Protection Provisions (EPPs) in all current and future school bus contracts in New York City. |

**I. Introduction**

On Tuesday, April 30, 2019, the Committee on Women and Gender Equity, chaired by Council Member Helen K. Rosenthal; the Committee on Education, chaired by Council Member Mark Treyger; and the Committee on Higher Education, chaired by Council Member Inez D. Barron, will conduct a joint oversight hearing on *Title IX – Gender Discrimination*. The Committee on Women and Gender Equity will also hear Introduction No. 1536, sponsored by Council Member Rosenthal, which would require the New York City Commission on Gender Equity (“CGE” or “Commission”) to expand their annual report to include reporting on compliance with Title IX. Additionally, the Committee on Education will hear Resolution No. 797, sponsored by Council Members Adams, Treyger, and Rosenthal, which calls upon the New York City Department of Education (“DOE” or “Department”) to maintain at least seven Title IX coordinator positions, with at least one coordinator at each borough field support center; and Resolution No. 811, sponsored by Council Members Miller, Treyger, and Dromm, which calls upon the New York State Legislature to pass and the Governor to sign legislation to require inclusion of Employee Protection Provisions (EPPs) in all current and future school bus contracts in NYC.

Witnesses invited to testify include CGE, the DOE, and representatives from the City University of New York (“CUNY” or “University”), as well as faculty members, advocacy groups and organizations focused on students and gender equity, student groups and organizations, and other interested stakeholders.

**II. Background**

Title IX of the Education Amendments of 1972 (“Title IX”) prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance.[[1]](#footnote-1) Under Title IX, “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination” under any entity covered by the law.[[2]](#footnote-2) That is, if any part of a school district or institution of higher education receives any federal funds for any purpose, including assistance through the federal student loan and grant programs, all of the operations of the entity are covered by Title IX.[[3]](#footnote-3)

Guidance from the United States Department of Education (U.S. DOE) Office for Civil Rights (OCR) asserts that Title IX “protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.”[[4]](#footnote-4) Accordingly, all individuals—regardless of sex, sexual orientation, gender identity, disability, race, national origin, or part- or full-time status—at covered entity are protected by Title IX in all spaces of the institution’s educational programs and activities.[[5]](#footnote-5) Additionally, under Title IX, covered entities are obligated to designate at least one employee, who is generally referred to as the Title IX coordinator, to coordinate efforts to comply with and carry out their responsibilities under Title IX.[[6]](#footnote-6) Such employee’s contact information must be provided to all students and employees of that institution.[[7]](#footnote-7)

U.S. Supreme Court decisions and guidance from OCR have interpreted Title IX’s prohibition to include “sex-based harassment,” which refers to sexual harassment, sexual violence, and gender-based violence “by peers, employees or third parties that is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the recipient’s education programs and activities.”[[8]](#footnote-8) Sexual harassment refers to unwelcome conduct of a sexual nature, which can include unwelcome sexual advances; requests for sexual favors; as well as other verbal, nonverbal, or physical conduct of a sexual nature.[[9]](#footnote-9) Sexual violence refers to a form of sexual harassment, more specifically, physical sexual acts perpetrated against an individual’s will or where an individual is incapable of consent, such as due to an individual’s age, being under the influence of drugs or alcohol, or because an intellectual or other disability prevents an individual from having the capacity to consent.[[10]](#footnote-10) Gender-based harassment refers to unwelcome conduct based on an individual’s actual or perceived sex, including harassment based on gender identity or nonconformity with sex stereotypes.[[11]](#footnote-11)

Pursuant to Title IX, when a recipient institution—which includes both elementary and secondary schools (K-12 schools) and universities in NYC—learns about or “reasonably should know of” possible sex-based harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred.[[12]](#footnote-12) If an investigation reveals that sex-based harassment has occurred, the recipient must take immediate and effective steps to end the harassment; put an end to the hostile environment; prevent the harassment from recurring; and, as appropriate, remedy its effects.[[13]](#footnote-13)

The federal government has also offered additional guidance on sexual harassment and Title IX implementation for schools, including several “Dear Colleague” letter from the U.S. DOE[[14]](#footnote-14) outlining, among other things, guidance on legal obligations under Title IX and how schools should comply with Title IX obligations when a student or employee files a sexual assault complaint,[[15]](#footnote-15) as well as guidance on the Title IX coordinator position.[[16]](#footnote-16)

While Title IX’s application to transgender issues is relatively new and has changed with presidential administrations, a May 2016 letter was the first to address and provide guidance related to the transgender and gender non-conforming (TGNC) student community, specifically stating that Title IX protects all students from discrimination on the basis of sexual identity,[[17]](#footnote-17) and directing all public school districts in the country to allow transgender students to use the bathrooms that match their gender identity.[[18]](#footnote-18) As further discussed in the “Issues and Concerns” section of this Committee Report, that guidance was withdrawn by the U.S. DOE under President Donald Trump’s Administration in February 2017, with officials citing the need to “more completely consider the legal issues involved” in another “Dear Colleague” letter.[[19]](#footnote-19)

Also in 2017, a September 22nd “Dear Colleague” letter[[20]](#footnote-20) rescinded guidance from the earlier 2011 letter, as well as the Questions and Answers (“Q&A”) on *Title IX and Sexual Violence* that the U.S. DOE had provided on April 29, 2014,[[21]](#footnote-21) contemporaneously issuing an updated Q&A on “Campus Sexual Misconduct.”[[22]](#footnote-22) In rescinding the earlier guidance, the U.S. DOE clarified that the move was in anticipation of forthcoming and significant changes to Title IX, which would be pursued through rulemaking.[[23]](#footnote-23) Accordingly, in November 2018, the U.S. DOE released a new proposed Title IX rule, opening the rule up for a statutory 60-day public comment period.[[24]](#footnote-24) The proposed rule garnered more than 100,000 feedback responses during this comment period,[[25]](#footnote-25) and the U.S. DOE must now review, consider and respond to substantive comments before publishing a final rule.[[26]](#footnote-26) *Proposed Changes to Title IX under the November 2018 Proposed Rule*

The November 2018 proposed rule would affect Title IX requirements in several key ways, including with regard to: (1) *When* an institution is obligated to take action or respond to sexual harassment; (2) *How* an institution must respond to actual knowledge of sexual harassment; (3) When an institution *can* respond; and (4) Liability limitations for institutions.[[27]](#footnote-27)

* With regard to **when an institution is obligated to take action or respond to sexual harassment**, the proposed rule narrows the circumstances under which institutions must respond to sexual harassment, including sexual assault, and their liability when they do act.[[28]](#footnote-28) This includes, but is not limited to:
  + **Narrowing the definition of “sexual harassment.”**[[29]](#footnote-29) The proposed rule redefines sexual harassment as conduct that is both “severe and pervasive.” This is a shift from previous U.S. DOE guidance that defined sexual harassment as “unwelcome conduct of a sexual nature” that includes “requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.”[[30]](#footnote-30)
  + **Redefining who must receive a report to trigger action.**[[31]](#footnote-31)Institutions will no longer be held accountable if they “reasonably should know” of a sexual discrimination complaint and fail to investigate it. Now, schools will be responsible for investigating where school officials have “actual knowledge” of a complaint.[[32]](#footnote-32) To trigger action, a report has to be made to the Title IX coordinator or to a school official “who has the authority to institute corrective measures” on behalf of the school. In an elementary or secondary school, reports to teachers regarding student-to-student harassment will require a response.[[33]](#footnote-33) This obligation does not extend to every “responsible employee” obligated to notify the Title IX office when they receive a report of sexual misconduct, as the guidance makes clear “the mere ability or obligation to report does not qualify an employee… as one who has authority to institute corrective measures on the school’s behalf.”[[34]](#footnote-34)
  + **Clarifying that Title IX coordinators must file formal complaints against individuals with multiple complaints.**[[35]](#footnote-35)The new rule requires Title IX coordinators to file formal complaints any time there are multiple complaints against one individual, regardless of whether victims want to pursue a formal investigation.[[36]](#footnote-36)
  + **Setting parameters around qualifying program or activity**.[[37]](#footnote-37) Under the proposed rule, an incident of sexual harassment must implicate a school’s education program or activity to activate a response.[[38]](#footnote-38) That is, an institution cannot pursue formal grievance procedures for allegations which, even if true, do not constitute sexual harassment, did not occur within the school’s education program or activity or took place outside the U.S.[[39]](#footnote-39) While the Background and Summary sections that accompanied the new rule in the Federal Register underscore that an institution still could initiate *non-sexual harassment* student conduct proceedings for complaints outside of these parameters—such as sexual harassment taking place during study abroad—and provide general support for students filing complaints, the rule would limit the school’s ability to provide options to a student via Title IX.[[40]](#footnote-40)
* With regard to **how an institution must respond to actual knowledge of sexual harassment and the procedures they must follow**, under the proposed rule, only schools with “actual knowledge” of sexual harassment “must respond in a manner that is not deliberately indifferent.[[41]](#footnote-41) More specifically, the proposed rule:
  + **Requires live hearings.**[[42]](#footnote-42) The proposed rule mandates that Title IX investigations include live hearings with cross-examinations, although this applies mainly to universities as elementary and secondary schools would be able to proceed without a live hearing and could satisfy cross-examination rights through submission of questions through the investigator or a hearing-panel member. The rule would also make all evidence in investigative proceedings available to both parties and eliminate restrictions on parties’ rights to speak about allegations.[[43]](#footnote-43)
  + **Allows for removal of a student.**[[44]](#footnote-44) The proposed regulations allow for removal of a respondent from an education program or activity on an emergency basis following a complaint of sexual harassment, but only if certain steps are taken.[[45]](#footnote-45)
  + **Defines procedures** such as supportive measures that schools should offer students and grievance procedures for those accused of sexual harassment,[[46]](#footnote-46) **requires pre-investigation notice** to both parties,[[47]](#footnote-47) **clarifies that the academic institution—not either party—bears the burden of proof** and of “gathering evidence sufficient to reach a determination regarding responsibility” and discovery rights, and **allows institutions to forego offering an appeal process** for Title IX proceedings, although if provided, it must be available to both parties and offer informal resolutions, such as via mediation.[[48]](#footnote-48)
* With regard to **liability limitations**, as mentioned above, the U.S. DOE will take action against a school only when its response to sexual harassment is deliberate indifference. The proposed regulations offer a “safe-harbor” for reasonable efforts to comply with the rules. This differs from President Barack Obama Administration-era guidance and enforcement, which arguably required schools to diligently pursue Title IX violations.[[49]](#footnote-49)

Reactions to the proposed rule have varied. Advocates and institutions have both lauded and criticized the changes, while the U.S. DOE has stated that the significant changes are necessary to reduce the liability of educational institutions, bolster the due process rights of accused students, and produce more reliable outcomes of disciplinary hearings.[[50]](#footnote-50) This process of reviewing and responding to comments can take from several months to a year, but if codified, the new Title IX rule would carry the force of law,[[51]](#footnote-51) and would thus have an impact on both DOE and university students in NYC.

**III. New York City Department of Education**

*Title IX at the NYC Department of Education’s Public Schools*

The NYC DOE Office of Equal Opportunity, which informs students, parents, teachers and DOE staff about their rights and responsibilities, oversees DOE’s Title IX compliance.[[52]](#footnote-52) As aforementioned, educational institutions are required to have at least one Title IX coordinator at all times. While the federal government does not set forth a ratio requirement for the number of Title IX coordinators to students, DOE has only one dedicated Title IX coordinator, working out of central headquarters, for the entire NYC school system, which is the largest school district in the U.S. with over 1.1 million students.[[53]](#footnote-53)

*Chancellor’s Regulations*

In addition to the requirements of Title IX, DOE sets out additional procedures and policies regarding student-to-student sexual harassment. Chancellor’s Regulation A-831 sets forth procedures for filing, investigating and resolving complaints of student-to-student sexual harassment at the school level.[[54]](#footnote-54) Pursuant to these regulations, student-to-student sexual harassment is defined as the following:

* Student-to-student sexual harassment is conduct and/or communication by a student directed against another student. It consists of unwelcome and uninvited sexual advances, requests for sexual favors, sexually motivated physical conduct and other verbal, non-verbal or physical conduct or communication of a sexual nature which is sufficiently severe, pervasive or persistent to: (1) substantially interfere with a student’s ability to participate in or benefit from an educational program, school-sponsored activity, or any other aspect of a student’s education; or (2) create a hostile, offensive, or intimidating school environment; or (3) otherwise adversely affect a student’s educational opportunities. Such behavior can constitute sexual harassment regardless of the gender, sexual orientation, or gender identity of any of the students involved.[[55]](#footnote-55)

Student-to-student sexual harassment is prohibited in school, on school premises, at school sponsored events or while on vehicles sponsored by the DOE and “on other than school property when it can be demonstrated to negatively affect the educational process or to endanger the health, safety, morality or welfare of the school community.”[[56]](#footnote-56) Additionally, student-to-student sexual harassment is prohibited before, during, and after school and includes written forms of harassment such as electronically transmitted activities.[[57]](#footnote-57)

Pursuant to Chancellors Regulations A-831, sexual harassment complaints are required to be entered into the Online Occurrence Reporting System within 24 hours. Additionally, the principal or the schools designated staff member must investigate complaints of sexual harassment and send a report detailing their findings to the Field Support Center Deputy Director for Student Services within ten days.[[58]](#footnote-58) By October 31st of each year, school principals or designees are required to ensure that the policy and procedures of Chancellors Regulations A-831 are discussed with students and staff.[[59]](#footnote-59) Additionally, schools must conspicuously post this regulation and a notice detailing DOE’s policy for student-to-student sexual harassment.[[60]](#footnote-60)

Chancellor’s Regulation A-830, which sets forth DOE’s Anti-Discrimination Policy, “establishes an internal review process for employees, applicants for employment, parents of students, students, and others who do business with DOE, use DOE facilities or otherwise interact with DOE who wish to file complaints of unlawful discrimination or harassment, or retaliation based on such complaints.” [[61]](#footnote-61) The provisions of this regulation require staff who have knowledge of an employee discriminating against or harassing a student to report the incident to the designee and file an A-830 complaint report.[[62]](#footnote-62) Pursuant to Chancellor’s Regulation A-830, sexual relations between adult staff and students are considered inappropriate and sexual harassment of a student by staff includes sexual advances, solicitation of sexual favors and sexual physical and verbal behavior.[[63]](#footnote-63)

*The Potential Impact of Proposed Title IX Changes on Schools in NYC*

Title IX prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance and applies to elementary and secondary schools, as well as postsecondary institutions.[[64]](#footnote-64) According to U.S. Secretary of Education Betsy DeVos, her focus in making proposed changes to Title IX was “ensuring that every student can learn in a safe and nurturing environment.”[[65]](#footnote-65) However, critics contend that the proposed changes actually make school environments more dangerous.[[66]](#footnote-66) An April 2019 *New York Times* article characterizes the intent of the proposed changes as “bolster[ing] the rights of the accused while narrowing the responsibilities that schools have to investigate sexual misconduct.”[[67]](#footnote-67)

As previously discussed, the definition of sexual harassment would change under Secretary DeVos’ new proposed regulations. Under the revised definition a single incident would not be sufficient for a school to respond unless it was severe enough to deny access to education programs or activities. Effectively, this means that even the youngest students at DOE would have to endure repeated incidents of sexual harassment until it was determined that such incidents rose to the “severe, pervasive and objectively offensive” standard necessary to deny “equal access to the school’s education program or activity.”[[68]](#footnote-68)

Further, under the proposed regulations, a school’s obligation to respond to an allegation of sexual harassment is only triggered if the school has “actual knowledge” of sexual harassment or allegations.[[69]](#footnote-69) A school is considered to have “actual knowledge” only if allegations are reported to the correct person which, in a K-12 school can be a Title IX coordinator, a teacher at the school or “an official with authority to take corrective action.”[[70]](#footnote-70) This ignores the fact that sexual harassment and assault are personal issues that are difficult to talk about and, for many young students, the adult they trust to reveal a disturbing incident to may be a coach, family assistant, school aide, paraprofessional or other non-teacher or administrator.[[71]](#footnote-71) Thus, this proposed change would make reporting of sexual harassment more difficult and confusing and may reduce the likelihood that such incidents are even reported.

Moreover, “the alleged harassment **must involve conduct that occurred within the school’s own program or activity**” in order for theschool to be required to respond.[[72]](#footnote-72) This rule would require schools to ignore any harassment that occurs off school grounds unless it occurred at a school-sponsored event. That is, incidents that occur while students are walking to or home from school would be excluded from consideration, as would attacks that occur online or via social media, which are increasingly prevalent, despite the fact that such off-campus incidents can and do impact students’ education. Similarly, incidents occurring off-campus between college students would be excluded from consideration regardless of any subsequent impact to those students while on-campus, such as in classes, dormitories or other campus locations or educational programs.

As to how a school must respond, the proposed regulations would require a school to “**respond meaningfully to every report** of sexual harassment” regardless of whether a formal complaint is filed.[[73]](#footnote-73) All impacted schools, including primary, secondary and post-secondary institutions, would be required to investigate every formal complaint but, where no formal complaint is filed, schools would not have to investigate, just “**offer the complainant supportive measures**.”[[74]](#footnote-74) Supportive measures are described as “non-disciplinary and non-punitive individualized services offered as appropriate, as reasonably available and without fee or charge, to protect the safety of all parties and deter sexual harassment.”[[75]](#footnote-75) However, post-secondary schools that respect the wish of a complainant not to pursue a formal complaint, yet offer such supportive measures, are entitled to a safe harbor against a Title IX compliance finding of deliberate indifference. In contrast, K-12 schools are not provided this safe harbor in recognition that primary and secondary schools need to do more to protect younger students, including pursuing an alleged violator even when a young person does not wish to.[[76]](#footnote-76)

Critics, including advocates for primary, secondary and post-secondary institutions, contend that one of the most problematic of the proposed changes would allow schools to adopt a standard of proof that favors the accused over the complainant in sexual harassment proceedings.[[77]](#footnote-77) Previous U.S. DOE guidance adopted a “preponderance of the evidence” standard of proof, which is just more than 50 percent.[[78]](#footnote-78) In contrast, the new regulations would allow schools to use a higher standard of “clear and convincing evidence,” which favors the accused over the accuser, to adjudicate claims of sexual harassment.[[79]](#footnote-79)

In addition, while President Barack Obama Administration-era guidance specified that “[s]chools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation,”[[80]](#footnote-80) the proposed changes would allow schools to delay investigations for unspecified periods of time for “good cause” such as when a concurrent law enforcement investigation is ongoing.[[81]](#footnote-81) Such delays could seriously impact the education of a victim of sexual harassment who may experience ongoing trauma from continuing exposure to their tormentor.

Another proposed change decried by critics would allow schools to use informal, unregulated mediation processes in lieu of investigations.[[82]](#footnote-82) However, once students choose an informal process, they cannot return to a formal adjudication process, “thus trapping them in a process that may not have their best interest at heart.”[[83]](#footnote-83)

In sum, critics argue that the overall impact of the proposed changes would likely result in far fewer complaints and investigations of sexual harassment and further limit schools’ obligations to students who experience sexual harassment and violence.[[84]](#footnote-84) Critics further maintain that those most likely to suffer harm from the proposed regulations include female students, students of color, students with disabilities and LGBTQ students, who already suffer disproportionately from harassment and assault.[[85]](#footnote-85)

**IV. The City University of New York**

*Overview of the City University of New York: Founding and Mission*

The CUNY system was established pursuant to a 1961 amendment to the New York State Education law with a mission to serve “as a vehicle for the upward mobility of the disadvantaged in the city of New York.”[[86]](#footnote-86) In furtherance of this mission, CUNY must provide equal educational opportunities for New Yorkers from “all ethnic and racial groups and from both sexes.”[[87]](#footnote-87) This mission is particularly relevant for CUNY students in the context of Title IX protections because, as discussed further below, CUNY has argued that the proposed changes would not only weaken needed protections but impair its mission of providing higher education access to the disadvantaged.[[88]](#footnote-88)

*Changing Student Demographics and the National Response to Title IX Changes*

Changing demographics in higher education have demonstrated a critical need to provide stronger campus protections for female students. By fall 2016, women comprised 56 percent of total undergraduate enrollment nationwide and their enrollment is projected to increase by an additional four percent through 2027.[[89]](#footnote-89) Yet, according to a report by the U.S. DOE, the number of sexual assaults reported on college campuses has increased by over 305 percent in recent decades, from 2,200 in 2001 to 8,900 in 2016.[[90]](#footnote-90)

Following the release of the proposed Title IX rule changes, a number of higher education associations and universities lodged major criticisms against several key proposed changes and urged their reconsideration during the public comment period.[[91]](#footnote-91) The American Council of Education, which represents the views of over 60 co-signatory higher education associations,[[92]](#footnote-92) generally supported provisions that would provide survivors more flexibility to determine how to proceed in Title IX-related matters, but opposed what it referred to as “inappropriately legalizing” campus disciplinary proceedings by requiring live hearings with direct cross-examination by the parties’ advisors, among other objections.[[93]](#footnote-93) The Association of American Universities similarly objected to the cross-examination provisions,[[94]](#footnote-94) while both organizations sought clarification of the circumstances in which an institution would be forbidden from investigating behavior falling outside of the proposed Title IX definition of sexual harassment.[[95]](#footnote-95) Adding to the concerns raised by higher education associations were critical comments submitted directly by colleges and universities themselves, including a number located in New York such as the State University of New York[[96]](#footnote-96) and several in New York City, including New York University (NYU),[[97]](#footnote-97) Columbia University,[[98]](#footnote-98) and CUNY[[99]](#footnote-99) (as discussed below).

*CUNY’s Comments Regarding Title IX Proposed Rule Change*

In its January 2019 Comments on Proposed Department of Education Regulations to Implement Title IX, CUNY echoed many of the concerns lodged by higher education advocates and other universities and summarized its objections on seven grounds as follows:

1. Requiring sexual harassment to be both severe and pervasive would be unfair;
2. Requiring complaint dismissal when behavior falls outside of educational programs or activities would be unreasonably constricting;
3. Requiring “actual knowledge” of a complaint would improperly reduce an institution’s responsibility to investigate and sanction sexual harassment;
4. Imposing a higher “clear and convincing” standard of proof on claims, as opposed to the existing “preponderance of the evidence” standard, would inequitably burden survivors;
5. Compliance with new requirements could be prohibitively costly for public institutions such as CUNY;
6. Allowing alternative “informal resolutions” to Title IX claims could undermine due process rights; and
7. The laudable impetus for Title IX would be turned “on its head” by reducing institutional liability in favor of respondents.[[100]](#footnote-100)

While CUNY’s fuller comments provide comprehensive explanations with respect to each of these grounds, including case examples to illustrate how the proposed changes would impact students in specific fact patterns, CUNY additionally contends that the changes would have a particularly deleterious impact on its campuses because of its unique student body.[[101]](#footnote-101)

As noted above, CUNY’s legislated mission is to uplift the disadvantaged of the City of New York by providing them with access to higher education.[[102]](#footnote-102) CUNY’s student body therefore reflects many attributes of those from low income backgrounds. Seventy-six percent of CUNY students come from families making less than $30,000 annually and almost 40 percent experience food insecurity.[[103]](#footnote-103) In addition, 76 percent are students of color, 57 percent are female, 45 percent are first generation college students and many more are representative of immigrants, or children of immigrants.[[104]](#footnote-104) CUNY cites victimization data that show 84 percent of sexual assault and rape victims are female while 44 percent come from families making less than $25,000 per year.[[105]](#footnote-105) As CUNY students are disproportionately female and low income, CUNY argues that they are at greater risk for sexual assault over the course of their lifetimes. [[106]](#footnote-106) At the same time, CUNY notes that persons of color and immigrants victimized by sexual assault may be less likely to report their experiences to authorities for cultural, social and legal reasons, making the additional burdens contemplated by Title IX changes all the more stifling for CUNY’s diverse students, in particular.[[107]](#footnote-107)

*CUNY Resources for Students Related to Title IX*

CUNY provides many resources designed to comply with the requirements of Title IX, including those that help students who have experienced sexual harassment or violence and which educate the university community regarding the identification and prevention of unwelcome behavior.[[108]](#footnote-108) CUNY employs a university-wide Title IX Director and each individual CUNY campus has a Title IX coordinator specially trained to respond to incidents involving sexual harassment and assault.[[109]](#footnote-109) Each CUNY campus also maintains a website with its respective Title IX coordinator’s contact information as well as contact information for other localized campus personnel who can respond to issues, such as a public safety officer, student affairs officer or director of community standards.[[110]](#footnote-110) Several campuses additionally include contact information for their respective directors of human resources[[111]](#footnote-111) and deputy Title IX coordinators, while at least one campus uniquely lists a Director for Diversity and Title IX Compliance as a resource for related issues on its campus.[[112]](#footnote-112) Despite some differences in personnel titles, each campus appears to provide uniform guidance to students who may have been recently sexually assaulted including how to seek medical attention and preserve evidence.[[113]](#footnote-113) Each webpage also includes comprehensive information about the rights and protections afforded under Title IX, how to file a complaint, CUNY’s Policy on Sexual Misconduct[[114]](#footnote-114) and other helpful guidance required pursuant to New York’s Enough is Enough law (as discussed below).

*“Enough is Enough” Legislation*

In addition to Title IX, all New York colleges and universities must comply with a state law passed in June 2015 that strives to combat campus-based sexual assaults.[[115]](#footnote-115) Referred to as “Enough is Enough,” the law requires colleges to distribute to all students a “Students’ Bill of Rights” that informs sexual violence victims of their legal rights and available resources.[[116]](#footnote-116) The law also established a statewide definition of “affirmative consent” to sexual activity and it requires comprehensive training for college administrators, staff and students while encouraging incident reporting by students by offering immunity for certain campus policy violations such as drug and alcohol use.[[117]](#footnote-117) It has been suggested, however, that proposed changes to Title IX may conflict with the provisions of Enough is Enough, and similar state statutes, to the extent that they permit schools to address sexual conduct falling outside of the scope of Title IX regulations, such as off-campus conduct.[[118]](#footnote-118) As part of their comments, several universities including CUNY[[119]](#footnote-119) and NYU[[120]](#footnote-120) have sought clarification on whether the proposed changes would require the dismissal of formal complaints for off-campus incidents, or those that involve a definition of harassment at odds with the proposed changes.

**V.** **Other Issues and Concerns related to Gender Equity in DOE Schools**

In addition to Title IX, the Committees are interested in exploring other issues relating to gender equity in DOE schools as follows:

1. *Feminine Hygiene Products in Schools*

Local Law 84 of 2016 required DOE to make feminine hygiene products available in bathrooms at no-cost to students in grades six through 12. Following the City’s lead, New York State in 2018, as part of the State Enacted Budget, required that all public school students in the state have access to free tampons and sanitary pads.[[121]](#footnote-121) At today’s hearing, DOE’s compliance with these state and local mandates will be explored.

1. *Access to Bathrooms for Transgender and Gender Non-Conforming Students*

In February 2017, the U.S. Department of Justice and the U.S. DOE withdrew previous Title IX guidance directing schools to allow Transgender and Gender Non-Conforming (TGNC) students to use bathrooms consistent with their gender identity (rather than genitalia, chromosomes, or sex assigned at birth)[[122]](#footnote-122) In response, the New York State attorney general and education commissioner reminded New York school districts that they are obligated by state law to protect TGNC students from discrimination under New York’s “Dignity for All Students Act,” which prohibits discrimination and harassment on school grounds or at school functions – including allowing students to use restrooms that align with their gender identity.[[123]](#footnote-123) DOE’s response, including its compliance with state law, will be explored.

1. *Citywide Dress Code*

In recent years, advocates in NYC have stated that a lack of a citywide dress code for DOE students disproportionately harms young women and TGNC individuals by ignoring diverse cultures, body diversity, and gender expression, ultimately creating barriers to education for these and other groups.[[124]](#footnote-124) The Committees are therefore interested in hearing these advocates concerns as well as DOE’s response.

**VI.** **Conclusion**

At the hearing, the Committees will seek an overview of Title IX compliance at the DOE, CUNY, and the impact that the proposed Title IX rule would have on students, staff, and the City with regard to each institution. The hearing will also consider the current landscape of gender and equity-related issues for students in NYC, at both DOE and CUNY, to gain a deeper understanding of how the Council and the City can address such barriers and support students.

**VIII. Analysis of Int. No. 1536**

Section one of Int. No. 1536 would require the NYC Commission on Gender Equity (CGE) to expand their annual report to include information on the City’s compliance with Title IX, which prohibits discrimination on the basis of sex in education programs and activities, and disaggregate such information by factors such as by agency, and by number and type of complaint. Section one would additionally require CGE to report a summary of key findings and recommendations related to Title IX compliance.

Section two of Int. No. 1536 would provide that the local law take effect immediately.

Int. No. 1536

By Council Members Rosenthal, Kallos, Treyger, Richards, Levin, Chin, Levine and Gibson

A LOCAL LAW

A local law to amend the administrative code of the city of New York, in relation to expanding the commission on gender equity’s annual report to include reporting on title ix

Be it enacted by the Council as follows:

Section 1. Section 20-b of Chapter 1 of the New York city charter is amended to read as follows:

§ 20-b. Commission on gender equity. a. There shall be a commission on gender equity to study the nature and extent of inequities facing women and girls in the city; to study their impact on the economic, civic, and social well-being of women and girls; to advise on ways to analyze the function and composition of city agencies through a gender -based lens and ways to develop equitable recruitment strategies; and to make recommendations to the mayor and the council for the reduction of gender-based inequality. Such commission shall consist of 26 members appointed by the mayor; five members appointed by the speaker of the council; and the chair of the commission on human rights, who shall serve as an ex officio member. Members of the commission shall be representative of the New York city population and shall have experience in advocating for issues important to women and girls. The mayor shall designate one member to serve as chair of the commission, and may also designate a member to serve as co-chair. Members shall serve at the pleasure of the appointing authority. In the event of the death or resignation of any member, his or her successor shall be appointed by the official who appointed such member. The mayor shall appoint an executive director for the commission.

b. The commission shall have the power and duty to:

1. hold at least one meeting every four months, including at least one annual meeting open to the public;

2. keep a record of its activities;

3. determine its own rules of procedure; and

4. perform such advisory duties and functions as may be necessary to achieve its purposes as described in subdivision a of this section.

c. The commission may request information from any city agency or office it deems necessary to enable the commission to properly carry out its functions. The commission may also request from any private organization providing services to women and girls in the city pursuant to a contract with a city agency or office, information necessary to enable the commission to properly carry out its functions.

d. No later than December 1, 2017 and annually by December 1 thereafter, the commission shall submit to the mayor and the speaker of the council and post online a report concerning its activities during the previous twelve months, the goals for the following year, and recommendations pursuant to subdivision a of this section. The report shall also include information on the city’s compliance with section 1681 of title 20 of the United States code, or title ix of the education amendments of 1972 that prohibit discrimination on the basis of sex in education programs and activities, including but not limited to the number of complaints regarding title ix violations received, disaggregated by agency, the number of complaints that were substantiated and unsubstantiated, categories of complaints, where applicable, any barriers to compliance, including but not limited to vacancies in title ix coordinator positions, a summary of key findings, and recommendations for next steps.

§ 2. This local law takes effect immediately.

BM

LS # 9147

4/5/2019 12:00 p.m.

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Res. No. 797

Resolution calling upon the New York City Department of Education to maintain at least seven Title IX Coordinator positions, with at least one coordinator at each borough field support center.

By Council Members Adams, Treyger, Rosenthal, Chin, Richards, Levin, Levine and Gibson

Whereas, Title IX of the Education Amendments of 1972 (Title IX), as amended, prohibits educational institutions that receive federal financial assistance from subjecting any person to discrimination on the basis of sex;

Whereas, Title IX applies to any education or training program operated by a recipient of federal financial assistance, including but not limited to traditional educational institutions such as elementary schools, secondary schools, colleges, and universities,;

Whereas, Protection from discrimination on the basis of sex also includes protection for victims of sexual or gender-based harassment, bullying, and violence, and also offers protection from being retaliated against for filing a complaint of discrimination or harassment;

Whereas, Under Title IX, each funding recipient must designate at least one employee to serve as its Title IX coordinator, ensure that the coordinator position is filled at all times, and notify all students and employees of the name, office, address, and telephone number of the employee(s) designated to serve as the Title IX coordinator;

Whereas, The U.S. Department of Education’s (Department) Office for Civil Rights (OCR) enforces Title IX for institutions that receive funds from the Department;

Whereas, OCR guidance on Title IX issued in April 2015 states that the Title IX coordinator’s role should be independent to avoid any potential conflicts of interest, meaning that the Title IX coordinator should report directly to the institution’s senior leadership;

Whereas, This OCR guidance on Title IX further states that designating a disciplinary board member, general counsel, dean of students, superintendent, principal, or athletics director as the Title IX coordinator may pose a conflict of interest and that, while not required by Title IX, it is “good practice” for “particularly larger” school districts, colleges, and universities to designate multiple Title IX coordinators;

Whereas, The New York City Department of Education (DOE) is a particularly large school district with over 1.1 million students in over 1,800 DOE schools;

Whereas, DOE only has one Title IX coordinator position for all DOE schools, even though DOE is the largest school district in the country and school districts in other large cities in the United States have multiple Title IX coordinators;

Whereas, According to the DOE’s website, the DOE Title IX coordinator position is currently being covered by an “acting Title IX coordinator,” who is also a member of DOE’s legal team;

Whereas, Reports such as *Girls for Gender Equity*’s “The School Girls Deserve” report point out that sexual harassment and assault are an on-going issue at DOE schools that is not being adequately addressed at the school level, and for this and other reasons, the DOE Title IX coordinator role is increasingly important;

Whereas, Hiring additional DOE Title IX coordinators and ensuring that there are multiple Title IX coordinators at DOE at all times would be in line with OCR’s guidance and help ensure that Title IX regulations are being appropriately met; now, therefore, be it

Resolved, That the Council of the City of New York calls on the New York City Department of Education to maintain at least seven Title IX Coordinator positions, with at least one coordinator at each borough field support center.

BM

LS# 9828, 9836, 9042

3/12/19

Res. No. 811

Resolution calling upon the New York State Legislature to pass and the Governor to sign legislation to require inclusion of Employee Protection Provisions (EPPs) in all current and future school bus contracts in New York City.

By Council Members Miller, Treyger, Dromm, Rosenthal, Chin, Lander, Kallos and Eugene

Whereas, Whereas, The New York City Department of Education’s Office of Pupil Transportation (OPT) is the largest school transportation department in the country; and

Whereas, Almost the entire transportation budget is spent on contracts with private vendors that provide busing services; and

Whereas, School-bus drivers and matrons are hired by these companies, not by the City; and

Whereas, A 1979 agreement negotiated between Local 1181 Amalgamated Transit Union and the DOE (after New York City bus drivers and escorts went on strike) produced the Employee Protection Provisions (EPPs); and

Whereas, EPPs apply to K-12 transportation and requires the DOE to maintain a seniority list of drivers, escorts and mechanics; and

Whereas, Bus companies that win bids must hire from this list in order of seniority and maintain workers’ wages and pensions; and

Whereas, In 2009 the Bloomberg Administration elected to remove EPPs from Request for Bids for pupil transportation services, and subsequently new contracts issued to school bus companies in 2013 did not contain EPPs; and

Whereas, Bus drivers and matrons went on strike in early 2013 over this issue but returned to work without a settlement; and

Whereas, When contracts were awarded under the new bids a number of employees lost their jobs; and

Whereas, In December of 2013, Local 1181 voted not to accept a new scaled down contract from the City’s largest school bus contractor, Atlantic Express, which then subsequently announced it was going out of business; and

Whereas, Additionally, according to Local 1181, the removal of EPPs from school busing contracts could create a deficiency in pension funds for current and retired workers due to a loss of contributions; and

Whereas, After years of costly litigation failed to restore EPPs, in December 2018 the New York Supreme Court made clear that the New York State Legislation can easily resolve this issue by requiring EPPs in any future school bus contracts; and

Whereas, School buses transport some of the City’s youngest and most vulnerable students and should have the most experienced and professional employees available; and

Whereas, Numerous parents and workers believe that those providing these transport services should be treated fairly and in accordance with established employee protections provisions; now,

Whereas, Despite an initial increase in costs for higher salaries, a comprehensive economic analysis shows that by mandating EPPs state lawmakers would save New York taxpayers more than $288 million over five years; and

Whereas, The New York State Assembly and the New York State Senate each included language in their respective one house budget resolutions mandating the inclusion of EPPs in all New York City school bus contracts; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass and the Governor to sign legislation to require include inclusion of the Employee Protection Provisions (EPPs) in all current and future school bus contracts in New York City.

JP/JA

LS# 1221/ Res 797-2015

LS# 6390

3/25/19

1. *See* 20 USC §§ 1681-1688; U.S. Department of Justice, Overview of Title IX of the Education Amendments of 1972, 20 U.S.C. A§ 1681 et. seq. (Aug. 7, 2015), *available at* <https://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq>. [↑](#footnote-ref-1)
2. U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Title IX, Education Amendments of 1972 (n.d.), *available at* <https://www.dol.gov/oasam/regs/statutes/titleix.htm>. [↑](#footnote-ref-2)
3. U.S. Department of Education, Office for Civil Rights, Sex Discrimination: Frequently Asked Questions (Sept. 25, 2018), *available at* <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/sex.html>. [↑](#footnote-ref-3)
4. U.S. Department of Education, Office for Civil Rights, *Title IX Resource Guide* (April 2015), 1, *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>. [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. 34 C.F.R. § 106.8(a). Note that although Title IX applies to any recipient that offers education programs or activities, this Committee Report is focused on Title IX compliance by local educational agencies, schools, colleges, and universities. [↑](#footnote-ref-6)
7. *Supra* note 4. [↑](#footnote-ref-7)
8. *Supra* note 4 at 15. [↑](#footnote-ref-8)
9. *Supra* note 4 at 15. [↑](#footnote-ref-9)
10. *Supra* note 4 at 15. [↑](#footnote-ref-10)
11. *Supra* note 4 at 15. [↑](#footnote-ref-11)
12. *Supra* note 4 at 15. [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. *See* Zach Winn, *Reviewing Dear Colleague Letters on Title IX’s 45th Anniversary*, Campus Safety (Aug. 2, 2017), *available at* <https://www.campussafetymagazine.com/clery/reviewing-dear-colleague-letters-on-title-ixs-45th-anniversary/>. [↑](#footnote-ref-14)
15. U.S. Department of Education, Office for Civil Rights, *Dear Colleague letter* (Apr. 4, 2011), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>; *See also* Jeannie Suk Gerson, Assessing Betsy DeVos’s Proposed Rules on Title IX and Sexual Assault (Feb. 1, 2019), *available at* <https://www.newyorker.com/news/our-columnists/assessing-betsy-devos-proposed-rules-on-title-ix-and-sexual-assault>. [↑](#footnote-ref-15)
16. U.S. Department of Education, Office of Civil Rights, *Dear Colleague Letter* (Apr. 24, 2015), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>; *See also* U.S. Department of Education, Office of Civil Rights, *Letter to Title IX Coordinators* (Apr. 24, 2015), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-letter-201504.pdf>; U.S. Department of Education, Office of Civil Rights, *Title IX Resource Guide* (Apr. 24, 2015), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>. [↑](#footnote-ref-16)
17. U.S. Department of Education, Office of Civil Rights, Dear Colleague Letter (May 13, 2016), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>. [↑](#footnote-ref-17)
18. *Id.*; *See also* Campus Safety Staff, Dept. of Ed. Issues Directive to Schools on Gender Identity Bathroom Policy (May 13, 2016), *available at* <https://www.campussafetymagazine.com/clery/dept-_of_ed-_instructs_schools_to_use_gender_identity_bathroom_policy/> [↑](#footnote-ref-18)
19. *See* U.S. Department of Education, Office of Civil Rights, Dear Colleague Letter (Feb. 22, 2017), *available at* <http://i2.cdn.turner.com/cnn/2017/images/02/23/1atransletterpdf022317.pdf> [↑](#footnote-ref-19)
20. U.S. Department of Education, Office of Civil Rights, Dear Colleague Letter (Sept. 22, 2017), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf> [↑](#footnote-ref-20)
21. [*Id.*](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf); Erin Delmore, *Betsy DeVos's Title IX Sexual Assault Announcement Kills Obama's "Dear Colleague" Lette*r, Bustle (Sept. 22, 2017), *available at* <https://www.bustle.com/p/betsy-devoss-title-ix-sexual-assault-announcement-kills-obamas-dear-colleague-letter-2356036> [↑](#footnote-ref-21)
22. U.S. Department of Education, Office of Civil Rights, Q&A on Campus Sexual Misconduct (Sept. 2017), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>; U.S. Department of Education, Department of Education Issues New Interim Guidance on Campus Sexual Misconduct (Sept. 22, 2017), *available at* <https://www.ed.gov/news/press-releases/department-education-issues-new-interim-guidance-campus-sexual-misconduct/> [↑](#footnote-ref-22)
23. A full transcript of Sec. DeVos’s September 7, 2017 speech in which she states that “‘rule by letter’ is over” can be found here: https://www.washingtonpost.com/news/grade-point/wp/2017/09/07/transcript-betsy-devoss-remarks-on-campus-sexual-assault/?utm\_term=.2fc7d56b89b5. [↑](#footnote-ref-23)
24. U.S. Department of Education, *Notice of Proposed Rulemaking: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* (last visited April 19, 2019), *available at* <https://www.regulations.gov/document?D=ED-2018-OCR-0064-0001>; *See also* U.S. Department of Education, *U.S. Department of Education Proposed Title IX Regulation Fact Sheet* (last visited April 19, 2019), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/proposed-title-ix-regulation-fact-sheet.pdf>. [↑](#footnote-ref-24)
25. Bill O’Leary, *Nearly 100,000 Comments on Betsy DeVos’s Plan to Overhaul Rules on Sexual Assault Probes*, Washington Post (Jan. 30, 2019), *available at* <https://www.washingtonpost.com/local/education/nearly-100000-comments-on-betsy-devoss-plan-to-overhaul-rules-on-sexual-assault-probes/2019/01/30/ce441956-24b9-11e9-ad53-824486280311_story.html> [↑](#footnote-ref-25)
26. Simon C. Chu, *What Happens Next with Title IX: DeVos’s Proposed Rule, Explained*, The Harvard Crimson (Feb 27, 2019), *available at* <https://www.thecrimson.com/article/2019/2/27/title-ix-explainer/>. [↑](#footnote-ref-26)
27. U.S. Department of Education, *Federal Register: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* (last visited April 19, 2019), *available at* <https://www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>; *See also* Tina Sciocchetti and Steven M. Richard, *Proposed Title IX Regulations — What Institutions Need to Know*, Nixon Peabody (Dec. 10, 2018), *available at* <https://www.nixonpeabody.com/en/ideas/articles/2018/12/10/proposed-title-ix-regulations#ref4> [↑](#footnote-ref-27)
28. *Id.* [↑](#footnote-ref-28)
29. *Id.* [↑](#footnote-ref-29)
30. *See also* Simon C. Chu, *What Happens Next with Title IX: DeVos’s Proposed Rule, Explained*, The Harvard Crimson (Feb 27, 2019), *available at* <https://www.thecrimson.com/article/2019/2/27/title-ix-explainer/>. [↑](#footnote-ref-30)
31. U.S. Department of Education, *Federal Register: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* (last visited April 19, 2019), *available at* <https://www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>. [↑](#footnote-ref-31)
32. *Id.* [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. *Id.* [↑](#footnote-ref-34)
35. *Id.* [↑](#footnote-ref-35)
36. *Id.* [↑](#footnote-ref-36)
37. *Id.* [↑](#footnote-ref-37)
38. *Id.* [↑](#footnote-ref-38)
39. *Id.* [↑](#footnote-ref-39)
40. *Id.* [↑](#footnote-ref-40)
41. *Id.* [↑](#footnote-ref-41)
42. *Id.* [↑](#footnote-ref-42)
43. *Id.* [↑](#footnote-ref-43)
44. *Id.* [↑](#footnote-ref-44)
45. *Id.* [↑](#footnote-ref-45)
46. *Id.* [↑](#footnote-ref-46)
47. *Id.* [↑](#footnote-ref-47)
48. *Id.* [↑](#footnote-ref-48)
49. *Id.* [↑](#footnote-ref-49)
50. *Id.*; *Title IX* (last visited April 19, 2019), *available at* <https://safercampus.org/titleix>; U.S. Department of Education, *Proposed Title IX Regulation Fact Sheet* (last visited April 19, 2019), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-nprm.pdf>; U.S. Department of Education, *Secretary DeVos: Proposed Title IX Rule Provides Clarity for Schools, Support for Survivors, and Due Process Rights for All* (last visited Apr. 19, 2019), *available at* <https://www.ed.gov/news/press-releases/secretary-devos-proposed-title-ix-rule-provides-clarity-schools-support-survivors-and-due-process-rights-all>; Victoria Yuen and Osub Ahmed, *4 Ways Secretary DeVos’ Proposed Title IX Rule Will Fail Survivors of Campus Sexual Assault* (last visited Apr. 19, 2019), *available at* <https://www.americanprogress.org/issues/education-postsecondary/news/2018/11/16/461181/4-ways-secretary-devos-proposed-title-ix-rule-will-fail-survivors-campus-sexual-assault/>. [↑](#footnote-ref-50)
51. Tina Sciocchetti and Steven M. Richard, *Proposed Title IX Regulations — What Institutions Need to Know*, Nixon Peabody (Dec. 10, 2018), *available at* <https://www.nixonpeabody.com/en/ideas/articles/2018/12/10/proposed-title-ix-regulations#ref4>. [↑](#footnote-ref-51)
52. DOE’s Website, “Office of Equal Opportunity and Diversity Management” *available at* <http://165.155.103.32/Offices/GeneralCounsel/Investigative/OEO/default.htm?mo=5&yr=2019>. [↑](#footnote-ref-52)
53. DOE’s Website, “DOE Data at a Glance” *available at* <https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance>. [↑](#footnote-ref-53)
54. *Chancellor’s Regulation A-831: Student-to-Student Sexual Harassment*, Department of Education (Issued: Oct. 12, 2011), *available at* <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-831-english>. [↑](#footnote-ref-54)
55. *Id.* [↑](#footnote-ref-55)
56. *Id.* [↑](#footnote-ref-56)
57. *Id.* [↑](#footnote-ref-57)
58. *Id.* [↑](#footnote-ref-58)
59. *Id.* [↑](#footnote-ref-59)
60. *Id.* [↑](#footnote-ref-60)
61. *Chancellor’s Regulation A-830: Anti-Discrimination Policy and Procedures for Filing Internal Complaints of Discrimination*, Department of Education (Issued: Mar. 28, 2019), *available at* <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-830>.

    *Id.* [↑](#footnote-ref-61)
62. *Id.*  [↑](#footnote-ref-62)
63. *Id.* [↑](#footnote-ref-63)
64. 34 CFR § 106 [↑](#footnote-ref-64)
65. U.S. Department of Education press release, “Secretary DeVos: Proposed Title IX Rule Provides Clarity for Schools, Support for Survivors, and Due Process Rights for All,” November 16, 2018, accessed at <https://www.ed.gov/news/press-releases/secretary-devos-proposed-title-ix-rule-provides-clarity-schools-support-survivors-and-due-process-rights-all>. [↑](#footnote-ref-65)
66. Erik Ortiz, “DeVos proposals for campus sex misconduct rules are 'worse than we thought,' victims' advocates say,” *NBC News*, November 16, 2018, accessed at <https://www.nbcnews.com/news/us-news/devos-proposal-campus-sex-misconduct-rules-are-worse-we-thought-n937316>. [↑](#footnote-ref-66)
67. Erica L. Green, “As DeVos Eases Sexual Assault Rules, Her Old High School May Provide a Test Case,” *The New York Times,* April 1, 2019, accessed at <https://www.nytimes.com/2019/04/01/us/politics/betsy-devos-sexual-assault-title-ix.html>. [↑](#footnote-ref-67)
68. *Id.* [↑](#footnote-ref-68)
69. *Id.* in Proposed Section 34 CFR 106.44(a). [↑](#footnote-ref-69)
70. *Id.* [↑](#footnote-ref-70)
71. Emma J. Roth and Shayna Medley, “Betsy DeVos Wants to Roll Back Civil Rights Protections For Students Filing Complaints of Sexual Harassment or Assault,” November 16, 2018, American Civil Liberties Union, accessed at <https://www.aclu.org/blog/womens-rights/womens-rights-education/betsy-devos-wants-roll-back-civil-rights-protections>. [↑](#footnote-ref-71)
72. U.S. Department of Education, “Background & Summary of the Education Department’s Proposed Title IX Regulation: Proposed Section 34 CFR 106.44(a)” November 16, 2018, accessed at <https://www2.ed.gov/about/offices/list/ocr/docs/background-summary-proposed-ttle-ix-regulation.pdf>. [↑](#footnote-ref-72)
73. *Id.* in Proposed Section 34 CFR 106.44(a)-(b). [↑](#footnote-ref-73)
74. *Id.* [↑](#footnote-ref-74)
75. *Id.* [↑](#footnote-ref-75)
76. *Supra note 72.*  [↑](#footnote-ref-76)
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79. *Id.* [↑](#footnote-ref-79)
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