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NCLA Warns Proposed Title IX Reg Amendments Threaten Due Process

Proposed Rulemaking—Title IX of the Education Amendments of 1972, 87 Fed. Reg. 41390

Washington, DC (September 13, 2022) – The U.S. Department of Education’s proposed changes to Title IX of the Education Amendments of 1972 would severely curtail due process protections in Title IX proceedings as well as violate First Amendment rights to free speech, expression, association, and practice of religion. [Comments](#) filed by the New Civil Liberties Alliance, a nonpartisan, nonprofit group, argue assault and sexual harassment/discrimination adjudications should be eliminated entirely from campuses and moved into the criminal justice or civil justice system. If, however, they are going to be dealt with on campuses, then such adjudications must protect the due process rights of both the accuser and the accused.

The agency’s efforts to expand Title IX to address other perceived problems, such as redefining “sex” to mean “gender” or “gender identity,” is an unlawful usurpation of Congress’s sole power to legislate and will force colleges and universities to eliminate women’s sports and women’s dorms—and possibly even fraternities and sororities. By broadening the definition of “sexual harassment,” the Department of Education’s proposed rule will infringe student and faculty First Amendment rights.

Through representation of clients, NCLA is all too familiar with the injustices that result from systems that disregard fundamental aspects of due process. Dr. Mukund Vengalattore, a highly esteemed physics professor at Cornell University, had his career derailed and his reputation destroyed by baseless allegations of sexual misconduct that he had no genuine opportunity to rebut. NCLA represents him in [Dr. Mukund Vengalattore v. Cornell University and the U.S. Department of Education](#). NCLA also represents Alyssa Reid in her [case](#) against James Madison University, which illustrates the life-destroying consequences that occur when campus tribunals severely diminish due process protections. Though Ms. Reid had some semblance of a hearing, she was not given notice of the allegations ahead of time, was not permitted to cross-examine either her accuser or other witnesses, and she was not allowed to have an attorney present.

These two cases show why Obama-era Title IX proceedings are morally wrong and violate principles of fairness that should govern any adjudicatory proceeding. The Department of Education now seeks not only a return to this deeply unjust system, but to exacerbate the injustices perpetuated by diminishing due process protections even more. Further, the agency’s attempt to redefine “harassment” broadly to encompass protected speech, redefine “sex” to include gender identity, and institute prohibitions on “offensive speech” all violate the First Amendment rights of students and faculty. The proposed rules also allow complainants to wield Title IX to prohibit single-sex dorms, extracurricular and off-campus activities, and religious practices in violation of student and faculty associational rights and the constitutional guarantee to free exercise of religion.

NCLA released the following statements:

“Title IX was adopted to ensure that women could fully participate in our society, and to prohibit giving federal funds to institutions that discriminate on the basis of sex. This proposed rule not only turns Title IX on its head, but it destroys the concepts of due process and freedom of religion in the process. We don’t need the Biden administration or the Department of Education to issue hundreds of pages of regulations ‘interpreting’ what is meant by Title IX (while clearly legislating in the process); we need them to enforce the statute as written.”

— **Harriet Hageman, Senior Litigation Counsel, NCLA**

“Obama-era Title IX rules severely diminished due process protections in campus tribunals, destroying the lives of countless wrongfully accused individuals, including two NCLA clients. The Department of Education now seeks to eviscerate any pretense of providing basic due process in these proceedings. Undoubtedly, more lives will be ruined as a result of the injustices perpetuated in what a federal appellate judge rightly deemed ‘star chambers.’”

— **Jenin Younes, Litigation Counsel, NCLA**

For more information visit the comments page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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