



## U.S. DEPARTMENT OF EDUCATION

Dear Students, Educators, and other Stakeholders,

I write with an important update regarding the Department of Education's regulations implementing Title IX of the Education Amendments of 1972, as amended in 2020. On July 28, 2021, a federal district court in Massachusetts issued a decision in *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021). This case was brought by several organizations and individuals challenging the 2020 amendments to the Title IX regulations.

The court upheld most of the provisions of the 2020 amendments that the plaintiffs challenged, but it found one part of 34 C.F.R. § 106.45(b)(6)(i) (live hearing requirement for the Title IX grievance process at postsecondary institutions only) to be arbitrary and capricious, vacated that part of the provision, and remanded it to the Department for further consideration. In a subsequent order issued on August 10, 2021, the court clarified that its decision applied nationwide. The court vacated the part of 34 C.F.R. § 106.45(b)(6)(i) that prohibits a decision-maker from relying on statements that are not subject to cross-examination during the hearing: "If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility...." Please note that all other provisions in the 2020 amendments, including all other parts of 34 C.F.R. § 106.45(b)(6)(i), remain in effect. The affected provision at 34 C.F.R. § 106.45(b)(6)(i) is only applicable to postsecondary institutions and does not apply to elementary or secondary schools, which are not required to provide for a live hearing with cross-examination.

In accordance with the court's order, the Department will immediately cease enforcement of the part of § 106.45(b)(6)(i) regarding the prohibition against statements not subject to cross-examination. Postsecondary institutions are no longer subject to this portion of the provision.

In practical terms, a decision-maker at a postsecondary institution may now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility in a Title IX grievance process.

For example, a decision-maker at a postsecondary institution may now consider statements made by the parties and witnesses during the investigation, emails or text exchanges between the parties leading up to the alleged sexual harassment, and statements about the alleged sexual harassment that satisfy the regulation's relevance rules, regardless of whether the parties or witnesses submit to cross-examination at the live hearing. A decision-maker at a postsecondary institution may also consider police reports, Sexual Assault Nurse Examiner documents, medical

reports, and other documents even if those documents contain statements of a party or witness who is not cross-examined at the live hearing.

The Office for Civil Rights is in the process of identifying all documents on our website that discuss this vacated provision and will make updates to those documents as appropriate in the coming weeks. Any statements in an OCR document about the vacated part of § 106.45(b)(6)(i) should not be relied upon.

As OCR announced in an April 6, 2021, letter to students, educators, and other stakeholders, OCR is undertaking a comprehensive review of the Department's existing Title IX regulations, orders, guidance, policies, and other similar agency actions to fulfill the policy set out in President Biden's Executive Order, dated March 8, 2021, on Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity. This process is ongoing, and OCR anticipates publishing a notice of proposed rulemaking to amend the Department's Title IX regulations.

OCR also recently issued a question-and-answer resource to clarify how OCR interprets schools' obligations under the 2020 amendments and a related appendix, which provides examples of Title IX procedures that schools may find helpful in implementing the 2020 amendments. The resource will be updated to reflect the court's decision in *VRLC v. Cardona*, and we hope it will continue to be a valuable tool to assist schools in carrying out their obligations under Title IX.

You can read our letter [here](#) and read our blog post [here](#).

Thank you for your efforts to ensure equal educational opportunities for all of our nation's students.

Sincerely,

Suzanne B. Goldberg

Acting Assistant Secretary for Civil Rights