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July 21, 2020

The Honorable Betsy DeVos
United States Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

The Honorable Kenneth L. Marcus
Assistant Secretary for Civil Rights
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W
Washington, D.C. 20202

Re: Nondiscrimination on the Basis of Sex in Education Programs or Activities
Receiving Federal Financial Assistance Rules Issued May 19, 2020

Dear Secretary

all stakeholders is a critical aspect of such participation. To this end, NSBA is committed to helping school districts across the country develop and implement policies to address sexual harassment against all students and to create supportive school environments.

¹Among many policy statements expressing its commitment to preventing harassment against all students, NSBA's 2016 Policy Statement on Sexual Harassment and Gender-Based Harassment states:

Beliefs & Policies Art. IV, § 2.9 NSBA supports state and local school board efforts to become more proactive in the elimination of violence and disruptive behavior at school, school-sponsored events, during school bus travel and on school property. NSBA opposes any form of harassment, including but not limited to sexual harassment, sexual assault, sexual orientation harassment, gender identity harassment, racial harassment, ethnic harassment, religious harassment, and other forms of harassment. NSBA also opposes any form of harassment based on disability, age, or religion. NSBA opposes any form of harassment based on sexual orientation, gender identity, disability, age, and religion against students or employees will not be tolerated and that appropriate disciplinary measures will be taken against offenders. Such policies should include an effective complaint mechanism. Districts should institute training programs to train all school personnel,

Beliefs & Policies Art. IV, § 2.12 NSBA believes that all public school districts should adopt and enforce policies stating that harassment for any reason, including but not limited to harassment on the basis of race, ethnicity, gender, actual or perceived sexual orientation, gender identity, disability, age, and religion against students or employees will not be tolerated and that appropriate disciplinary measures will be taken against offenders. Such policies should include an effective complaint mechanism. Districts should institute training programs to train all school personnel,


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procedures with existing district and state anti-harassment policies, which prohibit conduct based on sex that does not rise to the level of sexual harassment under the Rule. School districts need more than the allotted three months to discern the Title IX Rule can be fully integrated into existing school district policies under federal and state law.

b. *Appropriate training is unfeasible given the short implementation period.*

In addition to overhauling district policies, school districts must train all employees on the new Title IX procedures at precisely the same time they are preparing for professional development, updating student handbooks, addressing staffing needs to be ready for students to return to school in the middle of a global pandemic. During the summer break, administrators routinely collect, prepare and reconcile data for state reporting, program development, staffing/instructional modifications. All this regular activity now occurs under the cloud of coronavirus, which adds another significant set of challenges this year. At a minimum, now districts are required to redevelop and implement plans for student and staff schedules, alter or make building modifications, revise transportation scheduling, consider additional staffing needs.

While extensive training for all personnel is critical to the successful implementation of the Rule, appropriate training takes time. Training of all staff on this scale not only requires time but requires additional funding resources. There is great concern that without additional time to train staff, districts would be forced to choose between full and adequate implementation of the Rule and the reallocation of staff and resources to address coronavirus concerns. For school districts that lack financial resources or available providers for the training, and for large districts with 100 or more administrators who may need to be trained very quickly, financial impact is significant.

An extension of time to implement the rule would enable districts to tackle pandemic-related needs and education staff cuts at the onset of the new school year and to bring stability to the educational process. The August 14, 2020 deadline is simply impractical given the significant reopening task ahead. NSBA urges the Department to reconsider the effective date of the rule so that school districts will have an adequate opportunity to assess its policy, personnel, training funding needs.

II. The New Actual Knowledge Standard, Encompassing All K-12 Employees, Creates Confusion.

Section 106.30 of the Rule G H I L Q H V 3 D F W X D O N Q R Z O H G J H ' P R U H H [S and secondary school content. Courts have defined the t 792 Q /mp 12 Tf0hm/F10 q 0.00000912 0 6

employee has notice of potential sexual harassment or assault.⁵ For PSE institutions, notice to the Title IX Coordinator or any official with authority to act conveys actual knowledge to the recipient. The Department tied its differentiation between ESE and PSE schools and their employees, who

³VWDQG LQ D VSHFLDO UHODWLRQVKLS UHJDUGLQJ WKHLU V

undermine V F K R R O District Board Deal with widely varying fact situations, compromises some school safety efforts, and creates arbitrariness vis-à-vis the treatment of sexual harassment violations versus other conduct violations (e.g., weapons, threats of violence, drug use). The prospect of coordinating these dual systems is daunting for many school districts and confusing for most. This is particularly onerous where school boards are the final decisionmakers. Against the backdrop of financial disruptions caused by the pandemic, WKH³ GXDO WUDFN³ would give rise to the need for significant (and expensive)³ UHWRR OLQJ procedures, OLF LHV and training, as well as enhanced liability and fiscal exposure.

Because

