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Title IX system 'pushed schools to overreach' against sexual assault, DeVos says

By Jennifer Smola

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The U.S. Department of Education will review and redevelop Title IX enforcement polices put in place by the Obama administration to crack down on campus sexual assaults.

As they wait for what's to come, some Ohio schools said they remain committed to equality on campus and preventing sexual misconduct.

Secretary of Education Betsy DeVos announced plans to change the policy Thursday at George Mason University in Virginia.

Many in higher education have been watching President Donald J. Trump's administration and waiting for details on what it would do with Obama-era guidance surrounding Title IX, the federal statute that outlaws gender discrimination.

The department will launch a notice-and-comment process to "incorporate the insights of all parties in developing a better way," DeVos said. She did not offer a timeline for that process during her remarks.

Broadly, Title IX is a federal law prohibiting discrimination based on sex in education. Since it was enacted in 1972, it's helped ensure women have equal opportunity in college athletics. More recently, it's played an important role in efforts to curb sexual misconduct on campuses.

Fighting sexual violence on campus became a national priority in 2011, when the education department sent institutions a "Dear colleague" letter that said qualifying for federal aid requires aggressively combating sexual harassment and sexual violence.

DeVos said the current approach to Title IX enforcement isn't working. Washington has pushed schools to establish "quasi-legal" structures to address sexual misconduct, she said, pointing to diminished due-process rights for those accused of sexual misconduct.

"The failed system has clearly pushed schools to overreach," she said. "The sad reality is that Lady Justice is not blind on campuses today. This unraveling of justice is shameful."

Issuing new regulations on Title IX enforcement is a step backward, some Title IX advocates said.

"Today's announcement risks taking us back to the days when sexual violence routinely compromised survivors' access to education and schools swept sexual assault under the rug," Know Your IX, a national, survivor- and youth-led campaign to end sexual violence in schools, said in a statement.

Granville attorney Eric Rosenberg, who said he's filed 20 lawsuits across Ohio and the country on behalf students falsely accused of sexual assault, said DeVos' comments Thursday reflected many of his clients' experiences.

Unlike in court, those accused on campuses lack the ability to cross examine their accuser or for attorneys to participate in a meaningful way, Rosenberg said.

"I've been told repeatedly in proceedings that 'I'm a potted plant,'" he said. "You cannot expect an 18-, 19-year-old to defend himself or herself against, essentially, a felony charge, with no representation in a hearing."

Ohio State University was thrust under the microscope in 2011 as one of 55 U.S. schools initially placed under investigation for Title IX sexual-violence issues. That led to the examination of allegations of a "sexualized culture" within the marching band and the controversial firing of former band director Jonathan Waters in July 2014. Ohio State and the education department's Office of Civil Rights reached an agreement to end the investigation later that year.

Nationwide, more than 400 cases have been opened at hundreds of schools since 2011, with just 75 resolved. At least 25 Title IX investigations have been opened at Ohio institutions, with just six resolved, according to a Title IX database compiled by The Chronicle of Higher Education.

Since 2011, universities have rewritten policies, appointed Title IX coordinators and trained students and staff on their rights. Many schools, including Ohio State, have said their policies were written to achieve gender equality and fairness.

“We will monitor and review any changes that result from the federal rule-making process announced today and, as always, will adhere to federal guidance,” Kellie Brennan, Ohio State’s compliance director and Title IX coordinator, said in a statement. “Ohio State does not tolerate sexual misconduct or discrimination under any circumstances, and that will not change.”

Thursday’s announcement does not change the law, said Ohio University President Duane Nellis.

“We are steadfast in our efforts to provide Title IX’s guarantees of equitable access to educational and fair employment opportunities. This includes the commitment to identify, stop, remediate, and prevent sexual misconduct on our campuses,” Nellis said in a statement. “The work we have accomplished to this end is not diminished and will continue. We all have a responsibility to be leaders and to take care of one another, our students, and our community.”

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