



September 12, 2022

Alejandro Reyes  
U.S. Department of Education  
400 Maryland Ave. SW, PCP-6125  
Washington, DC 20202

Re: Docket No. ED-2021-OCR-0166: RIN 1870-AA16

Dear Mr. Reyes:

The National Down Syndrome Congress (NDSC) and the Think College National Coordinating Center (NCC) jointly submit the following comments to the U.S. Department of Education (Department) in response to the Notice of Proposed Rulemaking regarding Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance and proposed amendments to regulations implementing Title IX of the Education Amendments of 1972 (Title IX).

NDSC is the country's oldest national organization for people with Down syndrome, their families, and the professionals who work with them. We provide information, advocacy and support concerning all aspects of life for individuals with Down syndrome, and work to create a national climate in which all people will recognize and embrace the value and dignity of people with Down syndrome. A priority for NDSC is promoting inclusive higher education opportunities for students with intellectual disability (ID).

The Think College National Coordinating Center (NCC) provides resources, technical assistance and training related to college options for students with intellectual disability, and manages the only national listing of college programs for students with intellectual disability in the United States. It also offers support, coordination, and evaluation services for Transition and Postsecondary Education Programs for Students with Intellectual Disability (TPSID) grantees.

We thank the Department for promulgating regulations to update Title IX. Our comments are focused primarily on students with intellectual disability (ID) who are enrolled in a program for students with ID at an institution of higher education (IHE). Our comments are as follows:

## Background

Postsecondary education opportunities for students with ID began to be developed in the United States in the 1980's with a handful of programs, partially as a result of increased opportunities for students with disabilities in K-12 education. An increase in inclusive K-12 educational practices led students and their families to want the same options that their peers had for education after high school. A significant increase in opportunities resulted from the passage of the Higher Education Opportunity Act of 2008 (HEOA), which for the first time included a provision to allow students with ID enrolled in Comprehensive Transition and Postsecondary (CTP) Programs to access federal financial aid (grants and work-study jobs). The HEOA defined a CTP program as "a degree, certificate, or nondegree program" that meets certain criteria. The HEOA authorized funding for model Transition and Postsecondary Programs for Students with Intellectual Disabilities (TPSID) and a National Coordinating Center (NCC) to provide resources, technical assistance, and evaluation of the TPSIDs. In the HEOA, Congress also required the national coordinating center, which was awarded to Think College at the Institute for Community Inclusion, University of Massachusetts Boston, to create an Accreditation Workgroup to develop model program accreditation standards. The workgroup's 2021 report<sup>1</sup> to Congress and the Secretary of Education contains these standards and other recommendations.

The changes to the Higher Education Act, along with student and parent advocacy, and appropriations starting in 2010 for TPSIDs and the NCC, have led to a significant growth in programs across the country, with over 300 programs today. This number includes over 130 CTPs that have been approved by the Department to offer access to certain federal financial aid to students with ID in their programs. See <https://thinkcollege.net> for more information about inclusive higher education.

As the opportunities for students with ID continue to grow within IHEs across the US, it is important that Title IX regulations keep pace. Our organizations hear from students and families that:

- Title IX rules are not easily understandable and need to be explained clearly in plain language.
- Behavior that is related to the student's disability is sometimes misunderstood.
- Students receive a multitude of email messages from their IHE and do not always notice or understand emails sent to them requiring the student to

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<sup>1</sup> See: *Report on Model Accreditation Standards for Higher Education Programs for Students with Intellectual Disability: Progress on the Path to Education, Employment, and Community Living* at <https://thinkcollege.net/resource/program-accreditation/report-on-model-accreditation-standards-for-higher-education-programs>

appear for a disciplinary hearing. This resulted in one student being led out of a college class in handcuffs by campus police.

- Students with intellectual, and some other disabilities, may be particularly vulnerable when sexually harassed or assaulted, and need support in reporting.
- Students have needed, and have sometimes been refused, accommodations and support in communicating when accused of an infraction, and when reporting an infraction. Some students need communication (both articulation and language comprehension) and other support and advice. One mother described going with her daughter to a meeting and was told she could not help the IHE staff understand what her daughter was trying to communicate and could not help her daughter understand the language used by the staff person.
- Some IHEs have developed successful agreements with the postsecondary programs for students with ID so that, with the student's permission, the program is notified when there is an infraction and given the opportunity for the staff person, a parent, or another supporter to help the student through the process. These supporters are also allowed to provide assistance to a student filing a report.

### **Accreditation Report Recommendations**

As indicated above, the NCC was required by Congress to convene an Accreditation Workgroup to develop model program accreditation standards and report to Congress, the Secretary of Education and NACIQI. During public input on the model accreditation program standards, the NCC Accreditation Workgroup found that inclusive postsecondary education programs and families report students with ID do not always understand the formal language of the written rules and need support when complaints are raised by and against them and if they are at risk of early exit (page 39). The following two model program standards related to this issue are included on page 57 of the above-cited report.

#### **STUDENT COMPLAINTS STANDARD 2:**

The institution's grievance procedures are understandable, provided to, and discussed with students in the program and their parents.

#### ***Guidance***

An accessible (i.e., written at an accessible reading level, uses graphics, explains abstract concepts, etc.) version of the code of conduct, including Title IX requirements, is provided to students and parents or other supporters, if applicable. Program staff review the code of conduct with students, related to both academic rights and responsibilities and expected student behavior in various contexts.

### **STUDENT COMPLAINTS STANDARD 3:**

Support is provided to students who have complaints lodged against them as well as students who seek to lodge a formal written complaint. Support is available throughout the grievance process and throughout any actions that result and if a student is at risk of being expelled or urged to exit the program.

#### ***Guidance***

Support must be provided for a student when a complaint is filed against a student in the program, when a student files a complaint, or when a student is in danger of being suspended, expelled, or asked to exit a program prior to program completion. Students may request support from/involvement of their parents/designated supporters in complaint procedures. Reasonable accommodations must be provided, as applicable. All due process procedures that are established by the IHE for students involved in complaints must be followed for students in the program, with support as needed.

#### **NDSC and NCC Comments on Title IX NPRM**

We concur with the following comments submitted by the Consortium for Constituents with Disabilities (CCD) Education Task Force. Please note that the recommendations regarding Comprehensive Transition and Postsecondary (CTP) Programs refers to all CTP programs and not just those approved by the Department for financial aid purposes.

**§ 106.8(e): Recommendation:** CCD supports the new proposed provisions related specifically to students with disabilities and requests the **edits in bold:**

In regards to provisions related to § 106.46(c)(2)(ii) and (e)(2), we support clarifications made regarding students attending postsecondary institutions who are required to self-advocate in grievance procedures related to alleged sex-based harassment that involves their own conduct or experiences but also may have more need for assistance from someone in an advisory role throughout the process. As the Department notes, these updates are made to ensure postsecondary students who are “newly independent”, [or may qualify] for additional procedural protections have a right to someone to assist them in an advisory capacity. In our view, some students may require the assistance of someone other than a parent or guardian to support them through the filing and complaint process. Additionally, making the distinction(s) in § 106.46(c)(2)(ii) and (e)(2) helps ensure students with disabilities in postsecondary education may request and have the support of an advisor in the process.

We also support the addition of the definition of “student with a disability” to mean a student who is an individual with a disability who would be covered by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 705(9)(B), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3). Relatedly, we agree with the Department’s proposed Section 106.8(e) Students With Disabilities to add a new paragraph that addresses the potential intersection of Federal disability law with Title IX in the elementary school, secondary school, and postsecondary institution contexts. Under the proposed Section 106.8(e) we urge the Department to make clear that if a complainant or respondent is a postsecondary student with a disability, the Title IX Coordinator **is permitted to** and may consult as appropriate, with the individual or office that the recipient has designated to provide support to students with disabilities to help comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, **including to provide any auxiliary aids or any other reasonable accommodation as necessary.** We also urge the Department to make clear in this section that the **Title IX Coordinator is also permitted to and may consult, as appropriate, with Comprehensive Transition and Postsecondary Program (CTP) staff regarding students with intellectual disability enrolled in such programs.**

**Conclusion:**

NDSC and NCC appreciate the opportunity to provide this input. Please contact Cyrus Huncharek, NDSC Policy & Advocacy Director, with any questions at [cyrus@ndscenter.org](mailto:cyrus@ndscenter.org) or Cate Weir, Think College Program Director at [Cathryn.Weir@umb.edu](mailto:Cathryn.Weir@umb.edu).

Sincerely,



Jordan Kough  
Executive Director  
National Down Syndrome Congress



Debra Hart  
Co-Director  
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