UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

ASSISTANT SECRETARY

January 31, 2007

Dear Colleague:

I am writing to inform you that the U.S. Department of Education (Department) has amended the regulations implementing Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (Title IX), applicable to nonvocational single-sex classes, extracurricular activities, and schools at the elementary and secondary education levels. These new regulations were published in the Federal Register on October 25, 2006, and took effect on November 24, 2006.

The new regulations apply to local educational agencies (LEAs) and other recipients of financial assistance from the Department that provide nonvocational elementary and secondary education. They provide recipients more flexibility to offer nonvocational elementary and secondary classes, extracurricular activities, and schools on a single-sex basis, consistent with the nondiscrimination requirements of Title IX. Title IX prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance.

The purpose of these new regulations is to provide requirements that, if implemented by recipients, will ensure compliance with Title IX in those situations in which recipients choose to provide nonvocational single-sex education. Like the former regulations, the new regulations do not require that recipients provide single-sex education. Single-sex education is merely an option. Recipients of financial assistance from the Department that choose to provide single-sex education should carefully evaluate their policies and practices and ensure their programs meet the requirements of the regulations.

Summary of Title IX requirements for single-sex classes and extracurricular activities

The new regulations provide for a new exception to the general prohibition against single-sex classes and extracurricular activities. Under the former regulations, single-sex classes were generally prohibited in a coeducational school with specific limited exceptions, such as for sex education classes and contact sports in physical education classes. The new regulations retain the specific exceptions from the former regulations and add a new exception, which permits a recipient to provide single-sex nonvocational classes and extracurricular activities based on the recipient's "important objective." Each single-sex class or extracurricular activity must be based on the recipient's important objective.

The new regulations establish two important objectives upon which a recipient may base a single-sex class or extracurricular activity. The first important objective is to improve educational achievement of its students through a recipient's overall established policy to provide diverse educational opportunities.

The second important objective is to meet the particular, identified educational needs of a recipient's students. Regardless of the recipient's important objective, the regulations require that the single-sex nature of the class or extracurricular activity be substantially related to achieving the recipient's important objective.

A recipient that chooses to provide single-sex classes or extracurricular activities is required to implement its important objective in an evenhanded manner with respect to male and female students. The regulations require that student enrollment in any single-sex class or extracurricular activity must be completely voluntary. The regulations also require that the recipient provide to all students, including the students excluded from the single-sex class or extracurricular activity based on sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity. In addition to the required substantially equal coeducational class or extracurricular activity, a recipient, if necessary to comply with the requirement to implement its objective in an evenhanded manner, may also be required to provide a substantially equal single-sex class or extracurricular activity in the same subject or activity to students of the excluded sex.

After a recipient has established single-sex classes or extracurricular activities under this new regulatory exception, the regulations require recipients to conduct periodic self-evaluations of their single-sex classes or extracurricular activities at least every two years. Recipients are required to ensure through their self-evaluation that there is a substantial relationship between the single-sex nature of the class or activity and achievement of the important objective. Recipients also are required to ensure that their single-sex classes or extracurricular activities are based on genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex.

Summary of Title IX requirements for single-sex schools

With respect to requirements for offering single-sex public schools, the new regulations also provide more flexibility. The former regulations permitted an LEA to offer a nonvocational single-sex school if it offered a corresponding school for students of the other sex. Under the Department's interpretation of the former requirements, the corresponding school must also have been a single-sex school. Under the new regulations, an LEA is permitted to offer a single-sex school to students of one sex if it provides a substantially equal school to students excluded from the single-sex school based on sex, but that school may be either single-sex or coeducational. The new regulations also allow a nonvocational public charter school that is a single-school LEA under State law an exemption from the requirement to provide a substantially equal school for students of the excluded sex.

Enclosed for your convenience is a copy of the new regulatory provisions. When the final regulations were published in the Federal Register, the regulatory provisions were accompanied

by additional explanatory information. An electronic link to the Federal Register and this supplementary information is available on the Department's Web site at http://www.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf.

The Office for Civil Rights (OCR) in the Department enforces the Title IX regulations, among other civil rights requirements, and provides technical assistance to school districts and other recipients that request such assistance in voluntarily complying with the civil rights laws enforced by OCR. To submit questions and requests for technical assistance in connection with these new requirements, you may address them to T9singlesexTA@ed.gov, a dedicated e-mail address, which will be in operation until December 31, 2007.

I look forward to continuing our work together to ensure equal access to education and to promote educational excellence throughout the nation. Thank you for your efforts on behalf of America's students.

Sincerely,

Stephanie J. Monroe
Assistant Secretary
for Civil Rights

Enclosure

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 1. The authority citation for part 106 continues to read as follows:

Authority: 20 U.S.C. 1681 *et seq.*, unless otherwise noted.

■ 2. Section 106.34 is revised to read as follows:

§ 106.34 Access to classes and schools.

(a) *General standard.* Except as provided for in this section or otherwise in this part, a recipient shall not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex.

(1) *Contact sports in physical education classes.* This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(2) *Ability grouping in physical education classes.* This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) *Human sexuality classes.* Classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality may be conducted in separate sessions for boys and girls.

(4) *Choruses.* Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

(b) *Classes and extracurricular activities.* (1) *General standard.* Subject to the requirements in this paragraph, a recipient that operates a nonvocational coeducational elementary or secondary school may provide nonvocational single-sex classes or extracurricular activities, if–

(i) Each single-sex class or extracurricular activity is based on the recipient's important objective—

(A) To improve educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective; or

(B) To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective;

(ii) The recipient implements its objective in an evenhanded manner;

(iii) Student enrollment in a single-sex class or extracurricular activity is completely voluntary; and

(iv) The recipient provides to all other students, including students of the excluded sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity.

(2) *Single-sex class or extracurricular activity for the excluded sex.* A recipient that provides a single-sex class or extracurricular activity, in order to comply with paragraph (b)(1)(ii) of this section, may be required to provide a substantially equal single-sex class or extracurricular activity for students of the excluded sex.

(3) *Substantially equal factors.* Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether classes or extracurricular activities are substantially equal include, but are not limited to, the following: the policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources provided to the class, and intangible features, such as reputation of faculty.

(4) *Periodic evaluations.* (i) The recipient must conduct periodic evaluations to ensure that single-sex classes or extracurricular activities are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes or extracurricular activities are substantially related to the achievement of the important objective for the classes or extracurricular activities.

(ii) Evaluations for the purposes of paragraph (b)(4)(i) of this section must be conducted at least every two years.

(5) *Scope of coverage.* The provisions of paragraph (b)(1) through (4) of this section apply to classes and extracurricular activities provided by a recipient directly or through another entity, but the provisions of paragraph (b)(1) through (4) of this section do not apply to interscholastic, club, or intramural athletics, which are subject to the provisions of §§ 106.41 and 106.37(c) of this part.

(c) *Schools.* (1) *General Standard.* Except as provided in paragraph (c)(2) of this section, a recipient that operates a public nonvocational elementary or secondary school that excludes from admission any students, on the basis of sex, must provide students of the excluded sex a substantially equal single-sex school or coeducational school.

(2) *Exception.* A nonvocational public charter school that is a single-school local educational agency under State law may be operated as a single-sex charter school without regard to the requirements in paragraph (c)(1) of this section.

(3) *Substantially equal factors.* Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether schools are substantially equal include, but are not limited to, the following: The policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the quality and range of extracurricular offerings, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources, and intangible features, such as reputation of faculty.

(4) *Definition.* For the purposes of paragraph (c)(1) through (3) of this section, the term "school" includes a "school within a school," which means an administratively separate school located within another school.

(Authority: 20 U.S.C. 1681, 1682)

■ 3. Section 106.35 is revised to read as follows:

§ 106.35 Access to institutions of vocational education.

A recipient shall not, on the basis of sex, exclude any person from admission to any institution of vocational education operated by that recipient.

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If use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have that effect.

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[FR Doc. E6-17858 Filed 10-24-06; 8:45 am]

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

ASSISTANT SECRETARY

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. In order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients") in meeting these obligations, this letter[1] explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and lays out the specific Title IX requirements applicable to sexual violence.[2] Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape,

[1] The Department has determined that this Dear Colleague Letter is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), *available at:* http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf. OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

[2] Use of the term "sexual harassment" throughout this document includes sexual violence unless otherwise noted. Sexual harassment also may violate Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c), which prohibits public school districts and colleges from discriminating against students on the basis of sex, among other bases. The U.S. Department of Justice enforces Title IV.

sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college.[3] The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.[4] According to data collected under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act.[5] This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools.[6] Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.[7] The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities.

This letter begins with a discussion of Title IX's requirements related to student-on-student sexual harassment, including sexual violence, and explains schools' responsibility to take immediate and effective steps to end sexual harassment and sexual violence. These requirements are discussed in detail in OCR's *Revised Sexual Harassment Guidance* issued in 2001 (*2001 Guidance*).[8] This letter supplements the *2001 Guidance* by providing additional guidance and practical examples regarding the Title IX requirements as they relate to sexual violence. This letter concludes by discussing the proactive efforts schools can take to prevent sexual harassment and violence, and by providing examples of remedies that schools and OCR may use to end such conduct, prevent its recurrence, and address its effects. Although some examples contained in this letter are applicable only in the postsecondary context, sexual

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[3] CHRISTOPHER P. KREBS ET AL., THE CAMPUS SEXUAL ASSAULT STUDY: FINAL REPORT xiii (Nat'l Criminal Justice Reference Serv., Oct. 2007), *available at* http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf. This study also found that the majority of campus sexual assaults occur when women are incapacitated, primarily by alcohol. *Id.* at xviii.

[4] *Id.* at 5-5.

[5] U.S. Department of Education, Office of Postsecondary Education, Summary Crime Statistics (data compiled from reports submitted in compliance with the Clery Act), *available at* http://www2.ed.gov/admins/lead/safety/criminal2007-09.pdf. Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. 34 C.F.R. Part 668, Subpt. D, App. A.

[6] SIMONE ROBERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2010 at 104 (U.S. Dep't of Educ. & U.S. Dep't of Justice, Nov. 2010), *available at* http://nces.ed.gov/pubs2011/2011002.pdf.

[7] ERIKA HARRELL & MICHAEL R. RAND, CRIME AGAINST PEOPLE WITH DISABILITIES, 2008 (Bureau of Justice Statistics, U.S. Dep't of Justice, Dec. 2010), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/capd08.pdf.

[8] The *2001 Guidance* is available on the Department's Web site at http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf. This letter focuses on peer sexual harassment and violence. Schools' obligations and the appropriate response to sexual harassment and violence committed by employees may be different from those described in this letter. Recipients should refer to the *2001 Guidance* for further information about employee harassment of students.

harassment and violence also are concerns for school districts. The Title IX obligations discussed in this letter apply equally to school districts unless otherwise noted.

Title IX Requirements Related to Sexual Harassment and Sexual Violence

Schools' Obligations to Respond to Sexual Harassment and Sexual Violence

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX.[9]

As explained in OCR's *2001 Guidance*, when a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.[10]

Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program

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[9] Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. The Title IX obligations discussed in this letter also apply to gender-based harassment. Gender-based harassment is discussed in more detail in the *2001 Guidance,* and in the 2010 Dear Colleague letter on Harassment and Bullying, which is available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf.

[10] *See, e.g., Jennings v. Univ. of N.C.*, 444 F.3d 255, 268, 274 n.12 (4th Cir. 2006) (acknowledging that while not an issue in this case, a single incident of sexual assault or rape could be sufficient to raise a jury question about whether a hostile environment exists, and noting that courts look to Title VII cases for guidance in analyzing Title IX sexual harassment claims); *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 259 n.4 (6th Cir. 2000) ("'[w]ithin the context of Title IX, a student's claim of hostile environment can arise from a single incident'" (quoting *Doe v. Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d 57, 62 (D. Me. 1999))); *Soper v. Hoben*, 195 F.3d 845, 855 (6th Cir. 1999) (explaining that rape and sexual abuse "obviously qualif[y] as...severe, pervasive, and objectively offensive sexual harassment"); *see also Berry v. Chi. Transit Auth.*, 618 F.3d 688, 692 (7th Cir. 2010) (in the Title VII context, "a single act can create a hostile environment if it is severe enough, and instances of uninvited physical contact with intimate parts of the body are among the most severe types of sexual harassment"); *Turner v. Saloon, Ltd.*, 595 F.3d 679, 686 (7th Cir. 2010) (noting that "'[o]ne instance of conduct that is sufficiently severe may be enough,'" which is "especially true when the touching is of an intimate body part" (quoting *Jackson v. Cnty. of Racine*, 474 F.3d 493, 499 (7th Cir. 2007))); *McKinnis v. Crescent Guardian, Inc.*, 189 F. App'x 307, 310 (5th Cir. 2006) (holding that "'the deliberate and unwanted touching of [a plaintiff's] intimate body parts can constitute severe sexual harassment'" in Title VII cases (quoting *Harvill v. Westward Commc'ns, L.L.C.*, 433 F.3d 428, 436 (5th Cir. 2005))).

sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.[11]

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.[12] Schools also are required to publish a notice of nondiscrimination and to adopt and publish grievance procedures. Because of these requirements, which are discussed in greater detail in the following section, schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly. Training for employees should include practical information about how to identify and report sexual harassment and violence. OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors.

Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.

Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. As discussed later in this letter, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. The specific steps in a school's

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[11] Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities. For example, Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall. Title IX also protects employees of a recipient from sexual harassment. For further information about harassment of employees, see *2001 Guidance* at n.1.

[12] This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. *See 2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. *See Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643, 648 (1999).

investigation will vary depending upon the nature of the allegations, the age of the student or students involved (particularly in elementary and secondary schools), the size and administrative structure of the school, and other factors. Yet as discussed in more detail below, the school's inquiry must in all cases be prompt, thorough, and impartial. In cases involving potential criminal conduct, school personnel must determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.[13]

Schools also should inform and obtain consent from the complainant (or the complainant's parents if the complainant is under 18 and does not attend a postsecondary institution) before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited.[14] The school also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

As discussed in the *2001 Guidance*, if the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.[15] The school should inform the complainant if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence. Examples of such steps are discussed later in this letter.

Compliance with Title IX, such as publishing a notice of nondiscrimination, designating an employee to coordinate Title IX compliance, and adopting and publishing grievance procedures, can serve as preventive measures against harassment. Combined with education and training programs, these measures can help ensure that all students and employees recognize the

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[13] In states with mandatory reporting laws, schools may be required to report certain incidents to local law enforcement or child protection agencies.

[14] Schools should refer to the *2001 Guidance* for additional information on confidentiality and the alleged perpetrator's due process rights.

[15] For example, the alleged harasser may have a right under FERPA to inspect and review portions of the complaint that directly relate to him or her. In that case, the school must redact the complainant's name and other identifying information before allowing the alleged harasser to inspect and review the sections of the complaint that relate to him or her. In some cases, such as those where the school is required to report the incident to local law enforcement or other officials, the school may not be able to maintain the complainant's confidentiality.

nature of sexual harassment and violence, and understand that the school will not tolerate such conduct. Indeed, these measures may bring potentially problematic conduct to the school's attention before it becomes serious enough to create a hostile environment. Training for administrators, teachers, staff, and students also can help ensure that they understand what types of conduct constitute sexual harassment or violence, can identify warning signals that may need attention, and know how to respond. More detailed information and examples of education and other preventive measures are provided later in this letter.

Procedural Requirements Pertaining to Sexual Harassment and Sexual Violence

Recipients of Federal financial assistance must comply with the procedural requirements outlined in the Title IX implementing regulations. Specifically, a recipient must:

(A) Disseminate a notice of nondiscrimination;[16]

(B) Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX;[17] and

(C) Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints.[18]

These requirements apply to all forms of sexual harassment, including sexual violence, and are important for preventing and effectively responding to sex discrimination. They are discussed in greater detail below. OCR advises recipients to examine their current policies and procedures on sexual harassment and sexual violence to determine whether those policies comply with the requirements articulated in this letter and the *2001 Guidance*. Recipients should then implement changes as needed.

(A) *Notice of Nondiscrimination*

The Title IX regulations require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner.[19] The notice must state that inquiries concerning the application of Title IX may be referred to the recipient's Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and e-mail address for the recipient's designated Title IX coordinator.

The notice must be widely distributed to all students, parents of elementary and secondary students, employees, applicants for admission and employment, and other relevant persons. OCR recommends that the notice be prominently posted on school Web sites and at various

[16] 34 C.F.R. § 106.9.
[17] *Id.* § 106.8(a).
[18] *Id.* § 106.8(b).
[19] *Id.* § 106.9(a).

locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school's services and policies. The notice should be available and easily accessible on an ongoing basis.

Title IX does not require a recipient to adopt a policy specifically prohibiting sexual harassment or sexual violence. As noted in the *2001 Guidance*, however, a recipient's general policy prohibiting sex discrimination will not be considered effective and would violate Title IX if, because of the lack of a specific policy, students are unaware of what kind of conduct constitutes sexual harassment, including sexual violence, or that such conduct is prohibited sex discrimination. OCR therefore recommends that a recipient's nondiscrimination policy state that prohibited sex discrimination covers sexual harassment, including sexual violence, and that the policy include examples of the types of conduct that it covers.

(B) *Title IX Coordinator*

The Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX.[20] The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The Title IX coordinator or designee should be available to meet with students as needed. If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities (*e.g.*, who will handle complaints by students, faculty, and other employees). The recipient should designate one coordinator as having ultimate oversight responsibility, and the other coordinators should have titles clearly showing that they are in a deputy or supporting role to the senior coordinator. The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest.

Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. Because sexual violence complaints often are filed with the school's law enforcement unit, all school law enforcement unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents. The school's Title IX coordinator or designee should be available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence. The Title IX coordinator also should be given access to school law enforcement unit investigation notes

[20] *Id.* § 106.8(a).

and findings as necessary for the Title IX investigation, so long as it does not compromise the criminal investigation.

(C) *Grievance Procedures*

The Title IX regulations require all recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.[21] The grievance procedures must apply to sex discrimination complaints filed by students against school employees, other students, or third parties.

Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution.[22] These requirements are discussed in greater detail below. If the recipient relies on disciplinary procedures for Title IX compliance, the Title IX coordinator should review the recipient's disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX.[23]

Grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised recipients, however, that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school (*e.g.*, participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, as stated in the *2001 Guidance*, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints.

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[21] *Id.* § 106.8(b). Title IX also requires recipients to adopt and publish grievance procedures for employee complaints of sex discrimination.

[22] These procedures must apply to all students, including athletes. If a complaint of sexual violence involves a student athlete, the school must follow its standard procedures for resolving sexual violence complaints. Such complaints must not be addressed solely by athletics department procedures. Additionally, if an alleged perpetrator is an elementary or secondary student with a disability, schools must follow the procedural safeguards in the Individuals with Disabilities Education Act (at 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-300.519, 300.530-300.537) as well as the requirements of Section 504 of the Rehabilitation Act of 1973 (at 34 C.F.R. §§ 104.35-104.36) when conducting the investigation and hearing.

[23] A school may not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual harassment or violence by delegating, whether through express contractual agreement or other less formal arrangement, the responsibility to administer school discipline to school resource officers or "contract" law enforcement officers. *See* 34 C.F.R. § 106.4.

Prompt and Equitable Requirements

As stated in the *2001 Guidance*, OCR has identified a number of elements in evaluating whether a school's grievance procedures provide for prompt and equitable resolution of sexual harassment complaints. These elements also apply to sexual violence complaints because, as explained above, sexual violence is a form of sexual harassment. OCR will review all aspects of a school's grievance procedures, including the following elements that are critical to achieve compliance with Title IX:

- Notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- Application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Notice to parties of the outcome of the complaint;[24] and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

As noted in the *2001 Guidance*, procedures adopted by schools will vary in detail, specificity, and components, reflecting differences in the age of students, school sizes and administrative structures, State or local legal requirements, and past experiences. Although OCR examines whether all applicable elements are addressed when investigating sexual harassment complaints, this letter focuses on those elements where our work indicates that more clarification and explanation are needed, including:

(A) *Notice of the grievance procedures*

The procedures for resolving complaints of sex discrimination, including sexual harassment, should be written in language appropriate to the age of the school's students, easily understood, easily located, and widely distributed. OCR recommends that the grievance procedures be prominently posted on school Web sites; sent electronically to all members of the school community; available at various locations throughout the school or campus; and summarized in or attached to major publications issued by the school, such as handbooks, codes of conduct, and catalogs for students, parents of elementary and secondary students, faculty, and staff.

(B) *Adequate, Reliable, and Impartial Investigation of Complaints*

OCR's work indicates that a number of issues related to an adequate, reliable, and impartial investigation arise in sexual harassment and violence complaints. In some cases, the conduct

[24] "Outcome" does not refer to information about disciplinary sanctions unless otherwise noted. Notice of the outcome is discussed in greater detail in Section D below.

may constitute both sexual harassment under Title IX and criminal activity. Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.

A school should notify a complainant of the right to file a criminal complaint, and should not dissuade a victim from doing so either during or after the school's internal Title IX investigation. For instance, if a complainant wants to file a police report, the school should not tell the complainant that it is working toward a solution and instruct, or ask, the complainant to wait to file the report.

Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime. Any agreement or Memorandum of Understanding (MOU) with a local police department must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the Title IX investigation.[25] Moreover, nothing in an MOU or the criminal investigation itself should prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the school community while the law enforcement agency's fact-gathering is in progress. OCR also recommends that a school's MOU include clear policies on when a school will refer a matter to local law enforcement.

As noted above, the Title IX regulation requires schools to provide equitable grievance procedures. As part of these procedures, schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred. In addressing complaints filed with OCR under Title IX, OCR reviews a school's procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints. The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.* Like Title IX,

[25] In one recent OCR sexual violence case, the prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances.

Title VII prohibits discrimination on the basis of sex.[26] OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. For instance, OCR's Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX.[27] OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings.[28] Thus, in order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred). The "clear and convincing" standard (*i.e.*, it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

Throughout a school's Title IX investigation, including at any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing.[29] For example, a school should not conduct a pre-hearing meeting during which only the alleged perpetrator is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the complainant; a hearing officer or disciplinary board should not allow only the alleged perpetrator to present character witnesses at a hearing; and a school should not allow the alleged perpetrator to review the complainant's

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[26] *See, e.g., Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (noting that under the "conventional rule of civil litigation," the preponderance of the evidence standard generally applies in cases under Title VII); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252-55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O'Connor, J., concurring in the judgment). The *2001 Guidance* noted (on page vi) that "[w]hile *Gebser* and *Davis* made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the *Davis* Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX." *See also Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007) ("We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.").

[27] OCR's Case Processing Manual is available on the Department's Web site, at http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html.

[28] The Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act of 1964. *See* 34 C.F.R. § 106.71 ("The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference."). The Title VI regulations apply the Administrative Procedure Act to administrative hearings required prior to termination of Federal financial assistance and require that termination decisions be "supported by and in accordance with the reliable, probative and substantial evidence." 5 U.S.C. § 556(d). The Supreme Court has interpreted "reliable, probative and substantial evidence" as a direction to use the preponderance standard. *See Steadman v. SEC*, 450 U.S. 91, 98-102 (1981).

[29] Access to this information must be provided consistent with FERPA. For example, if a school introduces an alleged perpetrator's prior disciplinary records to support a tougher disciplinary penalty, the complainant would not be allowed access to those records. Additionally, access should not be given to privileged or confidential information. For example, the alleged perpetrator should not be given access to communications between the complainant and a counselor or information regarding the complainant's sexual history.

statement without also allowing the complainant to review the alleged perpetrator's statement.

While OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, if a school chooses to allow the parties to have their lawyers participate in the proceedings, it must do so equally for both parties. Additionally, any school-imposed restrictions on the ability of lawyers to speak or otherwise participate in the proceedings should apply equally. OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment. OCR also recommends that schools provide an appeals process. If a school provides for appeal of the findings or remedy, it must do so for both parties. Schools must maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings.

All persons involved in implementing a recipient's grievance procedures (*e.g.*, Title IX coordinators, investigators, and adjudicators) must have training or experience in handling complaints of sexual harassment and sexual violence, and in the recipient's grievance procedures. The training also should include applicable confidentiality requirements. In sexual violence cases, the fact-finder and decision-maker also should have adequate training or knowledge regarding sexual violence.[30] Additionally, a school's investigation and hearing processes cannot be equitable unless they are impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed.

Public and state-supported schools must provide due process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.

(C) *Designated and Reasonably Prompt Time Frames*

OCR will evaluate whether a school's grievance procedures specify the time frames for all major stages of the procedures, as well as the process for extending timelines. Grievance procedures should specify the time frame within which: (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal, if applicable. Both parties should be given periodic status updates. Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment. For example, the resolution of a complaint involving multiple incidents with multiple complainants likely would take longer than one involving a single incident that

[30] For instance, if an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner.

occurred in a classroom during school hours with a single complainant.

(D) *Notice of Outcome*

Both parties must be notified, in writing, about the outcome of both the complaint and any appeal,[31] *i.e.*, whether harassment was found to have occurred. OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the alleged perpetrator of the outcome before it notifies the complainant.

Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to the complainant.[32] FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, as stated in the *2001 Guidance*, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.[33] Disclosure of other information in the student's "education record," including information about sanctions that do not relate to the harassed student, may result in a violation of FERPA.

Further, when the conduct involves a crime of violence or a non-forcible sex offense,[34] FERPA permits a postsecondary institution to disclose to the alleged victim the final results of a

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[31] As noted previously, "outcome" does not refer to information about disciplinary sanctions unless otherwise noted.

[32] In 1994, Congress amended the General Education Provisions Act (GEPA), of which FERPA is a part, to state that nothing in GEPA "shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." 20 U.S.C. § 1221(d). The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. *See 2001 Guidance* at vii.

[33] This information directly relates to the complainant and is particularly important in sexual harassment cases because it affects whether a hostile environment has been eliminated. Because seeing the perpetrator may be traumatic, a complainant in a sexual harassment case may continue to be subject to a hostile environment if he or she does not know when the perpetrator will return to school or whether he or she will continue to share classes or a residence hall with the perpetrator. This information also directly affects a complainant's decision regarding how to work with the school to eliminate the hostile environment and prevent its recurrence. For instance, if a complainant knows that the perpetrator will not be at school or will be transferred to other classes or another residence hall for the rest of the year, the complainant may be less likely to want to transfer to another school or change classes, but if the perpetrator will be returning to school after a few days or weeks, or remaining in the complainant's classes or residence hall, the complainant may want to transfer schools or change classes to avoid contact. Thus, the complainant cannot make an informed decision about how best to respond without this information.

[34] Under the FERPA regulations, crimes of violence include arson; assault offenses (aggravated assault, simple assault, intimidation); burglary; criminal homicide (manslaughter by negligence); criminal homicide (murder and

disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.[35] Additionally, a postsecondary institution may disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution's rules or policies.[36]

Postsecondary institutions also are subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in Federal student financial aid programs, requires that "both the accuser and the accused must be informed of the outcome[37] of any institutional disciplinary proceeding brought alleging a sex offense."[38] Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act.[39] Accordingly, postsecondary institutions may not require a complainant to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of this information.

Steps to Prevent Sexual Harassment and Sexual Violence and Correct its Discriminatory Effects on the Complainant and Others

Education and Prevention

In addition to ensuring full compliance with Title IX, schools should take proactive measures to prevent sexual harassment and violence. OCR recommends that all schools implement preventive education programs and make victim resources, including comprehensive victim services, available. Schools may want to include these education programs in their (1) orientation programs for new students, faculty, staff, and employees; (2) training for students who serve as advisors in residence halls; (3) training for student athletes and coaches; and (4) school assemblies and "back to school nights." These programs should include a

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non-negligent manslaughter); destruction, damage or vandalism of property; kidnapping/abduction; robbery; and forcible sex offenses. Forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include rape, sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are incest and statutory rape. 34 C.F.R. Part 99, App. A.

[35] 34 C.F.R. § 99.31(a)(13). For purposes of 34 C.F.R. §§ 99.31(a)(13)-(14), disclosure of "final results" is limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed against the perpetrator by the school. 34 C.F.R. § 99.39.

[36] 34 C.F.R. § 99.31(a)(14).

[37] For purposes of the Clery Act, "outcome" means the institution's final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(11)(vi)(B).

[38] 34 C.F.R. § 668.46(b)(11)(vi)(B). Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person's will, or not forcibly or against the person's will where the person is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses include incest and statutory rape. 34 C.F.R. Part 668, Subpt. D, App. A.

[39] 34 C.F.R. § 99.33(c).

discussion of what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies.

The education programs also should include information aimed at encouraging students to report incidents of sexual violence to the appropriate school and law enforcement authorities. Schools should be aware that victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of school or campus rules were involved.[40] As a result, schools should consider whether their disciplinary policies have a chilling effect on victims' or other students' reporting of sexual violence offenses. For example, OCR recommends that schools inform students that the schools' primary concern is student safety, that any other rules violations will be addressed separately from the sexual violence allegation, and that use of alcohol or drugs never makes the victim at fault for sexual violence.

OCR also recommends that schools develop specific sexual violence materials that include the schools' policies, rules, and resources for students, faculty, coaches, and administrators. Schools also should include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive. These materials should include where and to whom students should go if they are victims of sexual violence. These materials also should tell students and school employees what to do if they learn of an incident of sexual violence. Schools also should assess student activities regularly to ensure that the practices and behavior of students do not violate the schools' policies against sexual harassment and sexual violence.

Remedies and Enforcement

As discussed above, if a school determines that sexual harassment that creates a hostile environment has occurred, it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant, as well as changes to the school's overall services or policies. Examples of these actions are discussed in greater detail below.

Title IX requires a school to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment or violence allegation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school's investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on the

[40] The Department's Higher Education Center for Alcohol, Drug Abuse, and Violence Prevention (HEC) helps campuses and communities address problems of alcohol, other drugs, and violence by identifying effective strategies and programs based upon the best prevention science. Information on HEC resources and technical assistance can be found at www.higheredcenter.org.

complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain. In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement.[41]

Schools should be aware that complaints of sexual harassment or violence may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. As part of their Title IX obligations, schools must have policies and procedures in place to protect against retaliatory harassment. At a minimum, schools must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

When OCR finds that a school has not taken prompt and effective steps to respond to sexual harassment or violence, OCR will seek appropriate remedies for both the complainant and the broader student population. When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation.

Schools should proactively consider the following remedies when determining how to respond to sexual harassment or violence. These are the same types of remedies that OCR would seek in its cases.

Depending on the specific nature of the problem, remedies for the complainant might include, but are not limited to:[42]

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes;
- moving the complainant or alleged perpetrator to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;

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[41] The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi).

[42] Some of these remedies also can be used as interim measures before the school's investigation is complete.

- arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.[43]

Remedies for the broader student population might include, but are not limited to:

Counseling and Training

- offering counseling, health, mental health, or other holistic and comprehensive victim services to all students affected by sexual harassment or sexual violence, and notifying students of campus and community counseling, health, mental health, and other student services;
- designating an individual from the school's counseling center to be "on call" to assist victims of sexual harassment or violence whenever needed;
- training the Title IX coordinator and any other employees who are involved in processing, investigating, or resolving complaints of sexual harassment or sexual violence, including providing training on:
  - the school's Title IX responsibilities to address allegations of sexual harassment or violence
  - how to conduct Title IX investigations
  - information on the link between alcohol and drug abuse and sexual harassment or violence and best practices to address that link;
- training all school law enforcement unit personnel on the school's Title IX responsibilities and handling of sexual harassment or violence complaints;
- training all employees who interact with students regularly on recognizing and appropriately addressing allegations of sexual harassment or violence under Title IX; and
- informing students of their options to notify proper law enforcement authorities, including school and local police, and the option to be assisted by school employees in notifying those authorities.

Development of Materials and Implementation of Policies and Procedures

- developing materials on sexual harassment and violence, which should be distributed to students during orientation and upon receipt of complaints, as well as widely posted throughout school buildings and residence halls, and which should include:
  - what constitutes sexual harassment or violence
  - what to do if a student has been the victim of sexual harassment or violence
  - contact information for counseling and victim services on and off school grounds
  - how to file a complaint with the school
  - how to contact the school's Title IX coordinator

[43] For example, if the complainant was disciplined for skipping a class in which the harasser was enrolled, the school should review the incident to determine if the complainant skipped the class to avoid contact with the harasser.

  - what the school will do to respond to allegations of sexual harassment or violence, including the interim measures that can be taken
- requiring the Title IX coordinator to communicate regularly with the school's law enforcement unit investigating cases and to provide information to law enforcement unit personnel regarding Title IX requirements;[44]
- requiring the Title IX coordinator to review all evidence in a sexual harassment or sexual violence case brought before the school's disciplinary committee to determine whether the complainant is entitled to a remedy under Title IX that was not available through the disciplinary committee;[45]
- requiring the school to create a committee of students and school officials to identify strategies for ensuring that students:
  - know the school's prohibition against sex discrimination, including sexual harassment and violence
  - recognize sex discrimination, sexual harassment, and sexual violence when they occur
  - understand how and to whom to report any incidents
  - know the connection between alcohol and drug abuse and sexual harassment or violence
  - feel comfortable that school officials will respond promptly and equitably to reports of sexual harassment or violence;
- issuing new policy statements or other steps that clearly communicate that the school does not tolerate sexual harassment and violence and will respond to any incidents and to any student who reports such incidents; and
- revising grievance procedures used to handle sexual harassment and violence complaints to ensure that they are prompt and equitable, as required by Title IX.

School Investigations and Reports to OCR

- conducting periodic assessments of student activities to ensure that the practices and behavior of students do not violate the school's policies against sexual harassment and violence;
- investigating whether any other students also may have been subjected to sexual harassment or violence;
- investigating whether school employees with knowledge of allegations of sexual harassment or violence failed to carry out their duties in responding to those allegations;
- conducting, in conjunction with student leaders, a school or campus "climate check" to assess the effectiveness of efforts to ensure that the school is free from sexual harassment and violence, and using the resulting information to inform future proactive steps that will be taken by the school; and

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[44] Any personally identifiable information from a student's education record that the Title IX coordinator provides to the school's law enforcement unit is subject to FERPA's nondisclosure requirements.

[45] For example, the disciplinary committee may lack the power to implement changes to the complainant's class schedule or living situation so that he or she does not come in contact with the alleged perpetrator.

- submitting to OCR copies of all grievances filed by students alleging sexual harassment or violence, and providing OCR with documentation related to the investigation of each complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, any final disposition letters, disciplinary records, and documentation regarding any appeals.

Conclusion

The Department is committed to ensuring that all students feel safe and have the opportunity to benefit fully from their schools' education programs and activities. As part of this commitment, OCR provides technical assistance to assist recipients in achieving voluntary compliance with Title IX.

If you need additional information about Title IX, have questions regarding OCR's policies, or seek technical assistance, please contact the OCR enforcement office that serves your state or territory. The list of offices is available at http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm. Additional information about addressing sexual violence, including victim resources and information for schools, is available from the U.S. Department of Justice's Office on Violence Against Women (OVW) at http://www.ovw.usdoj.gov/.[46]

Thank you for your prompt attention to this matter. I look forward to continuing our work together to ensure that all students have an equal opportunity to learn in a safe and respectful school climate.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights

[46] OVW also administers the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program. This Federal funding is designed to encourage institutions of higher education to adopt comprehensive, coordinated responses to domestic violence, dating violence, sexual assault, and stalking. Under this competitive grant program, campuses, in partnership with community-based nonprofit victim advocacy organizations and local criminal justice or civil legal agencies, must adopt protocols and policies to treat these crimes as serious offenses and develop victim service programs and campus policies that ensure victim safety, offender accountability, and the prevention of such crimes. OVW recently released the first solicitation for the Services, Training, Education, and Policies to Reduce Domestic Violence, Dating Violence, Sexual Assault and Stalking in Secondary Schools Grant Program. This innovative grant program will support a broad range of activities, including training for school administrators, faculty, and staff; development of policies and procedures for responding to these crimes; holistic and appropriate victim services; development of effective prevention strategies; and collaborations with mentoring organizations to support middle and high school student victims.

U.S. Department of Education
Office for Civil Rights

Dear Colleague Letter: Sexual Violence Background, Summary, and Fast Facts
April 4, 2011

Sexual Violence Statistics and Effects

- Acts of sexual violence are vastly under-reported.[1] Yet, data show that our nation's young students suffer from acts of sexual violence early and the likelihood that they will be assaulted by the time they graduate is significant. For example:
  - Recent data shows nearly 4,000 reported incidents of sexual battery and over 800 reported rapes and attempted rapes occurring *in our nation's public high schools.*[2] Indeed, by the time girls graduate from high school, more than one in ten will have been physically forced to have sexual intercourse in or out of school.[3]
  - When young women get to *college*, nearly 20% of them will be victims of attempted or actual sexual assault, as will about 6% of undergraduate men.[4]
- Victims of sexual assault are more likely to suffer academically and from depression, post-traumatic stress disorder, to abuse alcohol and drugs, and to contemplate suicide.[5]

Why is ED Issuing the Dear Colleague letter (DCL)?

Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. Sec. 1681, *et seq.*, prohibits discrimination on the basis of sex in any federally funded education program or activity. ED is issuing the DCL to explain that the requirements of Title IX cover sexual violence and to remind schools[6] of their responsibilities to take immediate and effective steps to respond to sexual violence in accordance with the requirements of Title IX. In the context of the letter, sexual violence means physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion.

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[1] For example, see HEATHER M. KARJANE, ET AL., SEXUAL ASSAULT ON CAMPUS: WHAT COLLEGES AND UNIVERSITIES ARE DOING ABOUT IT 3 (Nat'l. Institute of Justice, Dec. 2005).

[2] SIMONE ROBERS, ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY 104 (U.S. Dep't of Education & U.S. Dep't of Justice, Nov. 2010), *available at* http://nces.ed.gov/pubs2011/2011002.pdf.

[3] EATON, D. K., KANN, L., KINCHEN, S., SHANKLIN, S., ROSS, J., HAWKINS, J., ET AL., YOUTH RISK BEHAVIOR SURVEILLANCE-UNITED STATES 2009, *Morbidity and Mortality Weekly Report.*

[4] CHRISTOPHER P. KREBS ET AL., THE CAMPUS SEXUAL ASSAULT STUDY FINAL REPORT xiii, 5-5 (Nat'l. Criminal Justice Reference Service, Oct. 2007), *available at* http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf.

[5] For example, see WORLD HEALTH ORGANIZATION, WORLD REPORT ON VIOLENCE AND HEALTH 162-164 (Etienne G. Krug, et al. eds., 2002), *available at* http://whqlibdoc.who.int/publications/2002/9241545615_eng.pdf; CENTERS FOR DISEASE CONTROL, UNDERSTANDING SEXUAL VIOLENCE: FACT SHEET 1 (2011), *available at* http://www.cdc.gov/violenceprevention/pdf/SV_factsheet_2011-a.pdf.

[6] "Schools" includes all recipients of federal funding and includes school districts, colleges, and universities.

What does the DCL do?

- Provides guidance on the unique concerns that arise in sexual violence cases, such as the role of criminal investigations and a school's independent responsibility to investigate and address sexual violence.
- Provides guidance and examples about key Title IX requirements and how they relate to sexual violence, such as the requirements to publish a policy against sex discrimination, designate a Title IX coordinator, and adopt and publish grievance procedures.
- Discusses proactive efforts schools can take to prevent sexual violence.
- Discusses the interplay between Title IX, FERPA, and the Clery Act[7] as it relates to a complainant's right to know the outcome of his or her complaint, including relevant sanctions facing the perpetrator.
- Provides examples of remedies and enforcement strategies that schools and the Office for Civil Rights (OCR) may use to respond to sexual violence.

What are a school's obligations under Title IX regarding sexual violence?

- Once a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate action to investigate or otherwise determine what occurred.
- If sexual violence has occurred, a school must take prompt and effective steps to end the sexual violence, prevent its recurrence, and address its effects, whether or not the sexual violence is the subject of a criminal investigation.
- A school must take steps to protect the complainant as necessary, including interim steps taken prior to the final outcome of the investigation.
- A school must provide a grievance procedure for students to file complaints of sex discrimination, including complaints of sexual violence. These procedures must include an equal opportunity for both parties to present witnesses and other evidence and the same appeal rights.
- A school's grievance procedures must use the preponderance of the evidence standard to resolve complaints of sex discrimination.
- A school must notify both parties of the outcome of the complaint.

How can I get help from OCR?

OCR offers technical assistance to help schools achieve voluntary compliance with the civil rights laws it enforces and works with schools to develop approaches to preventing and addressing discrimination. A school should contact the OCR enforcement office serving its jurisdiction for technical assistance. For contact information, please visit ED's website at http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm.

A complaint of discrimination can be filed by anyone who believes that a school that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group. For information on how to file a complaint with OCR, visit http://www2.ed.gov/about/offices/list/ ocr/complaintintro.html or contact OCR's Customer Service Team at 1-800-421-3481.

[7] The Family Educational Rights and Privacy Act is at 20 U.S.C. Sec. 1232g, and the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act is at 20 U.S.C. Sec. 1092(f).

Know Your Rights: Title IX Prohibits Sexual Harassment[1] and Sexual Violence Where You Go to School

Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. §1681 *et seq.*, is a Federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities (hereinafter "schools") receiving any Federal funds must comply with Title IX. Under Title IX, discrimination on the basis of sex can include sexual harassment or sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion.

Below is additional information regarding the specific requirements of Title IX as they pertain to sexual harassment and sexual violence.

What are a school's responsibilities to address sexual harassment and sexual violence?

- A school has a responsibility to respond promptly and effectively. If a school knows or reasonably should know about sexual harassment or sexual violence that creates a hostile environment, the school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects.
- Even if a student or his or her parent does not want to file a complaint or does not request that the school take any action on the student's behalf, if a school knows or reasonably should know about possible sexual harassment or sexual violence, it must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.
- A criminal investigation into allegations of sexual harassment or sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.

What procedures must a school have in place to prevent sexual harassment and sexual violence and resolve complaints?

- **Every School Must Have And Distribute A Policy Against Sex Discrimination**
  - Title IX requires that each school publish a policy that it does not discriminate on the basis of sex in its education programs and activities. This notice must be widely distributed and available on an on-going basis.
  - The policy must state that inquiries concerning Title IX may be referred to the school's Title IX coordinator or to OCR.

- **Every School Must Have A Title IX Coordinator**
  - Every school must designate at least one employee who is responsible for coordinating the school's compliance with Title IX. This person is sometimes referred to as the Title IX coordinator. Schools must notify all students and employees of the name or title and contact information of the Title IX coordinator.
  - The coordinator's responsibilities include overseeing all complaints of sex discrimination and identifying and addressing any patterns or systemic problems that arise during the review of such complaints.

[1] Use of the term "sexual harassment" throughout this document includes sexual violence unless otherwise noted.

- **Every School Must Have And Make Known Procedures For Students To File Complaints Of Sex Discrimination.**

  - Title IX requires schools to adopt and publish grievance procedures for students to file complaints of sex discrimination, including complaints of sexual harassment or sexual violence. Schools can use general disciplinary procedures to address complaints of sex discrimination. But all procedures must provide for prompt and equitable resolution of sex discrimination complaints.

  - Every complainant has the right to present his or her case. This includes the right to adequate, reliable, and impartial investigation of complaints, the right to have an equal opportunity to present witnesses and other evidence, and the right to the same appeal processes, for both parties.

  - Every complainant has the right to be notified of the time frame within which: (a) the school will conduct a full investigation of the complaint; (b) the parties will be notified of the outcome of the complaint; and (c) the parties may file an appeal, if applicable.

  - Every complainant has the right for the complaint to be decided using a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred).

  - Every complainant has the right to be notified, in writing, of the outcome of the complaint. Even though federal privacy laws limit disclosure of certain information in disciplinary proceedings:
    - Schools must disclose to the complainant information about the sanction imposed on the perpetrator *when the sanction directly relates to the harassed student.* This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.
    - Additionally, the Clery Act (20 U.S.C. §1092(f)), which only applies to postsecondary institutions, requires that both parties be informed of the outcome, including sanction information, of any institutional proceeding alleging a sex offense. Therefore, colleges and universities may not require a complainant to abide by a non-disclosure agreement, in writing or otherwise.

  - The grievance procedures may include voluntary informal methods (e.g., mediation) for resolving some types of sexual harassment complaints. However, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In cases involving allegations of sexual assault, mediation is not appropriate.

If you want to learn more about your rights, or if you believe that a school district, college, or university is violating Federal law, you may contact the U.S. Department of Education, Office for Civil Rights, at (800) 421-3481 or ocr@ed.gov. If you wish to fill out a complaint form online, you may do so at: http://www2.ed.gov/about/offices/list/ocr/complaintintro.html.

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

APR 20 2010

Dear Colleague:

Title IX of the Education Amendments of 1972[1] (Title IX) prohibits discrimination on the basis of sex in education programs and activities by recipients of Federal financial assistance, which include schools, colleges and universities. Since its passage, Title IX has dramatically increased academic, athletic and employment opportunities for women and girls. Title IX stands for the proposition that equality of opportunity in America is not rhetoric, but rather a guiding principle.

Although there has been indisputable progress since Title IX was enacted, notably in interscholastic and intercollegiate athletic programs, sex discrimination unfortunately continues to exist in many education programs and activities. I am committed to the vigorous enforcement of Title IX to resolve this discrimination and to provide clear policy guidance to assist a recipient institution (institution) in making the promise of Title IX a reality for all.

To that end, on behalf of the Office for Civil Rights (OCR) of the U.S. Department of Education (Department), it is my pleasure to provide you with this "Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three." With this letter, the Department is withdrawing the "Additional Clarification of Intercollegiate Athletics Policy: Three Part Test – Part Three" (2005 Additional Clarification) and all related documents accompanying it, including the "User's Guide to Student Interest Surveys under Title IX" (User's Guide) and related technical report, that were issued by the Department on March 17, 2005.

OCR enforces Title IX and its implementing regulation.[2] The regulation contains specific provisions governing athletic programs[3] and the awarding of athletic scholarships.[4] Specifically, the Title IX regulation provides that if an institution operates or sponsors an athletic program, it must provide equal athletic opportunities for members of both sexes.[5] In determining whether equal athletic opportunities are available, the regulation requires OCR to consider whether an institution is effectively accommodating the athletic interests and abilities of students of both sexes.[6]

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[1] 20 U.S.C. § 1681 et seq.

[2] 34 C.F.R. Part 106.

[3] 34 C.F.R. § 106.41.

[4] 34 C.F.R. § 106.37(c).

[5] 34 C.F.R. § 106.41(c).

[6] 34 C.F.R. § 106.41(c)(1). The Title IX regulation at 34 C.F.R. § 106.41(c) provides that OCR also will consider other factors when determining whether equal athletic opportunity is available at an institution. This Dear Colleague

The "Intercollegiate Athletics Policy Interpretation"[7] (1979 Policy Interpretation), published on December 11, 1979, provides additional guidance on the Title IX intercollegiate athletic regulatory requirements.[8] The 1979 Policy Interpretation sets out a three-part test that OCR uses to assess whether an institution is effectively accommodating the athletic interests and abilities of its students to the extent necessary to provide equal athletic opportunity.[9] On January 16, 1996, OCR issued the "Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test" (1996 Clarification) to provide additional clarification on all parts of the three-part test, including the specific factors that OCR uses to evaluate compliance under the third part of the three-part test (Part Three).[10]

In 2005, OCR issued the Additional Clarification regarding application of the indicators in the 1996 Clarification that guided OCR's analysis of Part Three. The accompanying User's Guide included a prototype survey instrument (model survey) that institutions could use to measure student interest in participating in intercollegiate athletics and included specific guidance on its implementation. The Additional Clarification and User's Guide changed OCR's approach from an analysis of multiple indicators to a reliance on a single survey instrument to demonstrate that an institution is accommodating student interests and abilities in compliance with Part Three. After careful review, OCR has determined that the 2005 Additional Clarification and the User's Guide are inconsistent with the nondiscriminatory methods of assessment set forth in the 1979 Policy Interpretation and the 1996 Clarification and do not provide the appropriate and necessary clarity regarding nondiscriminatory assessment methods, including surveys, under Part Three. Accordingly, the Department is withdrawing the 2005 Additional Clarification and User's Guide, including the model survey. All other Department policies on Part Three remain in effect and provide the applicable standards for evaluating Part Three compliance.

Given the resource limitations faced by institutions throughout the nation and the effect on institutions' athletics programs, I recognize the importance of assisting institutions in developing their own assessment methods that retain the flexibility to meet their unique circumstances, but are consistent with the nondiscrimination requirements of the Title IX regulation. Therefore, this Dear Colleague letter reaffirms, and provides additional clarification

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letter only addresses the regulatory requirement, at 34 C.F.R. § 106.41(c)(1), to effectively accommodate interests and abilities.

[7] 44 Fed. Reg. 71413 (1979). The 1979 Policy Interpretation was published by the former Department of Health, Education, and Welfare, and was adopted by the Department of Education when it was established in 1980.

[8] Although the 1979 Policy Interpretation is designed for intercollegiate athletics, its general principles, and those of this letter, often will apply to interscholastic, club, and intramural athletic programs. 44 Fed. Reg. at 71413. Furthermore, the Title IX regulation requires institutions to provide equal athletic opportunities in intercollegiate, interscholastic, club, and intramural athletics. 34 C.F.R. § 106.41(c).

[9] As discussed in the 1979 Policy Interpretation, OCR also considers the quality of competitive opportunities offered to members of both sexes in determining whether an institution effectively accommodates the athletic interests and abilities of its students. 44 Fed. Reg. at 71418.

[10] OCR's "Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance," which was issued as a Dear Colleague letter on July 11, 2003, also reincorporated the 1996 Clarification's broad range of specific factors and illustrative examples.

on, the multiple indicators discussed in the 1996 Clarification that guide OCR's analysis of whether institutions are in compliance with Part Three, as well as the nondiscriminatory implementation of a survey as one assessment technique.

The Three-Part Test

As discussed above, OCR uses the three-part test to determine whether an institution is providing nondiscriminatory athletic participation opportunities in compliance with the Title IX regulation. The test provides the following three compliance options:

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or

3. Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.[11]

The three-part test is intended to allow institutions to maintain flexibility and control over their athletic programs consistent with Title IX's nondiscrimination requirements. As stated in the 1996 Clarification, "[T]he three-part test furnishes an institution with three individual avenues to choose from when determining how it will provide individuals of each sex with nondiscriminatory opportunities to participate in intercollegiate athletics. If an institution has met any part of the three-part test, OCR will determine that the institution is meeting this requirement."

Part Three of the Three-Part Test — Fully and Effectively Accommodating the Interests and Abilities of the Underrepresented Sex

This letter focuses on Part Three — whether an institution is fully and effectively accommodating the athletic interests and abilities of the underrepresented sex. As the 1996 Clarification indicates, while disproportionately high athletic participation rates by an institution's students of the overrepresented sex (as compared to their enrollment rates) may indicate that an institution is not providing equal athletic opportunities to its students of the underrepresented sex, an institution can satisfy Part Three if it can show that the underrepresented sex is not being denied opportunities, i.e., that the interests and abilities of

[11] 44 Fed. Reg. at 71418.

the underrepresented sex are fully and effectively accommodated. This letter provides information that guides OCR in its evaluation of compliance with Part Three and the nondiscriminatory implementation of assessments of students' athletic interests and abilities under it.

Under Part Three, the focus is on full and effective accommodation of the interests and abilities of the institution's students who are members of the underrepresented sex — including students who are admitted to the institution though not yet enrolled.[12] As stated in the 1996 Clarification, and as further discussed below, in determining compliance with Part Three, OCR considers all of the following three questions:

1. Is there unmet interest in a particular sport?

2. Is there sufficient ability to sustain a team in the sport?

3. Is there a reasonable expectation of competition for the team?

If the answer to all three questions is "Yes," OCR will find that an institution is not fully and effectively accommodating the interests and abilities of the underrepresented sex and therefore is not in compliance with Part Three.

A. Unmet Interest and Ability — OCR Evaluation Criteria

In determining whether an institution has unmet interest and ability to support an intercollegiate team in a particular sport, OCR evaluates a broad range of indicators, including:

- whether an institution uses nondiscriminatory methods of assessment when determining the athletic interests and abilities of its students;
- whether a viable team for the underrepresented sex recently was eliminated;
- multiple indicators of interest;
- multiple indicators of ability; and
- frequency of conducting assessments.

Each of these five criteria is described below. Following the discussion of these criteria, this section provides technical assistance recommendations for effective assessment procedures and the nondiscriminatory implementation of a survey as one component of assessing the interests and abilities of students of the underrepresented sex. This section concludes with a discussion of the multiple indicators OCR evaluates to determine whether there are a sufficient number of students with unmet interest and ability to sustain a new intercollegiate team.

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[12] OCR examines an institution's recruitment practices under another part of the 1979 Policy Interpretation. See 44 Fed. Reg. at 71417. Accordingly, where an institution recruits potential student athletes for its men's teams, it must ensure that its women's teams are provided with substantially equal opportunities to recruit potential student athletes.

1. Nondiscriminatory Methods of Assessment

Under Part Three, OCR evaluates whether an institution uses processes and methods for assessing the athletic interests and abilities of its students of the underrepresented sex that are consistent with the nondiscrimination standards set forth in the 1979 Policy Interpretation. The 1979 Policy Interpretation states that institutions may determine the athletic interests and abilities of students by nondiscriminatory methods of their choosing provided:

a. The processes take into account the nationally increasing levels of women's interests and abilities;

b. The methods of determining interest and ability do not disadvantage the members of an underrepresented sex;

c. The methods of determining ability take into account team performance records; and

d. The methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an underrepresented sex.[13]

An institution should document its assessment of students' interests and abilities.

2. Assessments Not Used To Eliminate Viable Teams

As discussed in the 1996 Clarification, if an institution recently has eliminated a viable team for the underrepresented sex from the intercollegiate athletics program, OCR will find that there is sufficient interest, ability, and available competition to sustain an intercollegiate team in that sport and thus there would be a presumption that the institution is not in compliance with Part Three. This presumption can be overcome if the institution can provide strong evidence that interest, ability, or competition no longer exists.

Accordingly, OCR does not consider the failure by students to express interest during a survey under Part Three as evidence sufficient to justify the elimination of a current and viable intercollegiate team for the underrepresented sex. In other words, students participating on a viable intercollegiate team have expressed interest by active participation, and OCR does not use survey results to nullify that expressed interest.

3. Multiple Indicators Evaluated to Assess Interest

OCR considers a broad range of indicators to assess whether there is unmet athletic interest among the underrepresented sex. These indicators guide OCR in determining whether the institution has measured the interests of students of the underrepresented sex using nondiscriminatory methods consistent with the 1979 Policy Interpretation. As discussed in the

[13] 44 Fed. Reg. at 71417.

1996 Clarification, OCR evaluates the interests of the underrepresented sex by examining the following list of non-exhaustive indicators:

- requests by students and admitted students that a particular sport be added;
- requests for the elevation of an existing club sport to intercollegiate status;
- participation in club or intramural sports;
- interviews with students, admitted students, coaches, administrators and others regarding interests in particular sports;
- results of surveys or questionnaires of students and admitted students regarding interests in particular sports;[14]
- participation in interscholastic sports by admitted students; and
- participation rates in sports in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the institution draws its students.[15]

In accordance with the 1996 Clarification, OCR also will consider the likely interest[16] of the underrepresented sex by looking at participation in intercollegiate sports in the institution's normal competitive regions.

4. Multiple Indicators Evaluated to Assess Ability

As discussed in the 1996 Clarification, OCR considers a range of indicators to assess whether there is sufficient ability among interested students of the underrepresented sex to sustain a team in the sport. When making this determination, OCR examines indicators such as:

- the athletic experience and accomplishments — in interscholastic, club or intramural competition — of underrepresented students and admitted students interested in playing the sport;

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[14] OCR evaluates all of the indicators discussed here so OCR does not consider survey results alone as sufficient evidence of lack of interest under Part Three.

[15] As discussed in the 1996 Clarification, this indicator may be helpful to OCR in ascertaining likely interest of an institution's students and admitted students in particular sports, especially in the absence of more direct indicia. However, in conducting its investigations, OCR determines whether an institution is meeting the actual interests and abilities of its students and admitted students.

An institution's evaluation should take into account sports played in the high schools and communities from which it draws its students, both as an indication of possible interest at the institution, and to permit the institution to plan to meet the interests of admitted students of the underrepresented sex. For example, if OCR's investigation finds that a substantial number of high schools from the relevant region offer a particular sport that the institution does not offer for the underrepresented sex, OCR will ask the institution to provide a basis for any assertion that its students and admitted students are not interested in playing that sport. OCR also may interview students, admitted students, coaches, and others regarding interest in that sport.

[16] See Footnote 15 above.

- opinions of coaches, administrators, and athletes at the institution regarding whether interested students and admitted students have the potential to sustain an intercollegiate team; and
- if the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an intercollegiate team.

Additionally, because OCR recognizes that students may have a broad range of athletic experiences and abilities, OCR also examines other indications of ability such as:

- participation in other sports, intercollegiate, interscholastic or otherwise, that may demonstrate skills or abilities that are fundamental to the particular sport being considered; and
- tryouts or other direct observations of participation in the particular sport in which there is interest.

As the 1996 Clarification indicated, neither a poor competitive record, nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes, is conclusive evidence of lack of ability. For the purposes of assessing ability, it is sufficient that interested students and admitted students have the potential to sustain an intercollegiate team.

5. Frequency of Assessments

As discussed in the 1996 Clarification, OCR evaluates whether an institution assesses interest and ability periodically so that the institution can identify in a timely and responsive manner any developing interests and abilities of the underrepresented sex. There are several factors OCR considers when determining the rate of frequency for conducting an assessment. These factors include, but are not limited to:

- the degree to which the previous assessment captured the interests and abilities of the institution's students and admitted students of the underrepresented sex;
- changes in demographics or student population at the institution;[17] and
- whether there have been complaints from the underrepresented sex with regard to a lack of athletic opportunities or requests for the addition of new teams.

Further, OCR will consider whether an institution conducts more frequent assessments if a previous assessment detected levels of student interest and ability in any sport that were close to the minimum number of players required to sustain a team.

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[17] For example, in a typical four-year institution, the student body population will change substantially each year, by approximately 25 percent annually.

6. Effective Procedures for Evaluating Requests to Add Teams and Assessing Participation

An institution has a continuing obligation to comply with Title IX's nondiscrimination requirements; thus, OCR recommends that institutions have effective ongoing procedures for collecting, maintaining, and analyzing information on the interests and abilities of students of the underrepresented sex, including easily understood policies and procedures for receiving and responding to requests for additional teams, and wide dissemination of such policies and procedures to existing and newly admitted students, as well as to coaches and other employees.

OCR also recommends that institutions develop procedures for, and maintain documentation from, routine monitoring of participation of the underrepresented sex in club and intramural sports as part of their assessment of student interests and abilities. OCR further recommends that institutions develop procedures for, and maintain documentation from, evaluations of the participation of the underrepresented sex in high school athletic programs, amateur athletic associations, and community sports leagues that operate in areas from which the institution draws its students. This is the type of documentation that may be needed in order for an institution to demonstrate that it is assessing interests and abilities in compliance with Part Three.

The Title IX regulation requires institutions to designate at least one employee to coordinate their efforts to comply with and carry out their Title IX responsibilities.[18] Therefore, institutions may wish to consider whether the monitoring and documentation of participation in club, intramural, and interscholastic sports and the processing of requests for the addition or elevation of athletic teams should be part of the responsibilities of their Title IX coordinators in conjunction with their athletic departments. Another option an institution may wish to consider is to create a Title IX committee to carry out these functions. If an institution chooses to form such a committee, it should include the Title IX coordinator as part of the committee and provide appropriate training on the Title IX requirements for committee members.

7. Survey May Assist in Capturing Information on Students' Interests and Abilities

As discussed in the 1996 Clarification, institutions may use a variety of techniques to identify students' interests and abilities. OCR recognizes that a properly designed and implemented survey is one tool that can assist an institution in capturing information on students' interests and abilities. OCR evaluates a survey as one component of an institution's overall assessment under Part Three and will not accept an institution's reliance on a survey alone, regardless of the response rate, to determine whether it is fully and effectively accommodating the interests and abilities of its underrepresented students. If an institution conducts a survey as part of its assessment, OCR examines the content, implementation and response rates of the survey, as well as an institution's other methods of measuring interest and ability.

[18] 34 C.F.R. § 106.8(a).

Under Part Three, OCR evaluates the overall weight it will accord the conclusions drawn by an institution from the results of a survey by examining the following factors, among others:

- content of the survey;
- target population surveyed;
- response rates and treatment of non-responses;
- confidentiality protections; and
- frequency of conducting the survey.

OCR also considers whether a survey is implemented in such a way as to maximize the possibility of obtaining accurate information and facilitating responses. A properly designed survey should effectively capture information on interest and ability[19] across multiple sports, without complicating responses with superfluous or confusing questions.

OCR has not endorsed or sanctioned any particular survey; however, for technical assistance purposes, this letter contains information that an institution may wish to consider in developing its own survey.

a. Content of the Survey

i. *Purpose*

To ensure students understand the importance of responding to the survey, OCR evaluates whether a survey clearly states its purpose. For technical assistance purposes, an example of a purpose statement might be:

> **Purpose:** This data collection is being conducted for evaluation, research, and planning purposes and may be used along with other information to determine whether [Institution] is effectively accommodating the athletic interests and abilities of its students, including whether to add additional teams.

ii. *Collect information regarding all sports*

In addition, OCR evaluates whether the survey lists all sports for the underrepresented sex recognized by the three primary national intercollegiate athletic associations,[20] and contains an open-ended inquiry for other sports to allow students to write in any sports that are not

[19] Experience in sports generally is one indicator of ability.

[20] These associations are the National Collegiate Athletic Association, the National Association of Intercollegiate Athletics, and the National Junior College Athletic Association. A current list of these sports for both sexes is: baseball, basketball, bowling, cross country, fencing, field hockey, football, golf, gymnastics, ice hockey, lacrosse, rifle, rowing, skiing, soccer, softball, swimming and diving, tennis, indoor track and field, outdoor track and field, volleyball, water polo, and wrestling.

listed.[21] OCR considers whether the survey allows students to identify their interest in future or current participation in all of the sports they identify and general athletic experience. OCR also considers whether the survey allows students to provide additional information or comments about their interest, experience, and ability. For technical assistance purposes, the types of questions an institution could ask regarding interest in future participation, current participation, and prior athletic experience might be:

Sport	**Interest in Future Participation:** At what level do you wish to participate in this sport at [Institution]?	**Current Participation:** At what level are you participating in this sport?	**Prior Experience:** At what level did you participate in this sport or any other relevant sport in high school, college, or in another capacity?	
Basketball	☐ Intercollegiate ☐ Club ☐ Intramural ☐ Recreational	☐ Intercollegiate ☐ Club ☐ Intramural ☐ Recreational ☐ Other _____	College ☐ Intercollegiate ☐ Club ☐ Intramural ☐ Recreational	High School ☐ Varsity ☐ Junior Varsity ☐ Club ☐ Intramural ☐ Recreational ☐ Other _____
Lacrosse	☐ Intercollegiate ☐ Club ☐ Intramural ☐ Recreational	☐ Intercollegiate ☐ Club ☐ Intramural ☐ Recreational ☐ Other _____	College ☐ Intercollegiate ☐ Club ☐ Intramural ☐ Recreational	High School ☐ Varsity ☐ Junior Varsity ☐ Club ☐ Intramural ☐ Recreational ☐ Other _____
Other sport identified by student[22]	☐ Intercollegiate ☐ Club ☐ Intramural ☐ Recreational	☐ Intercollegiate ☐ Club ☐ Intramural ☐ Recreational ☐ Other _____	College ☐ Intercollegiate ☐ Club ☐ Intramural ☐ Recreational	High School ☐ Varsity ☐ Junior Varsity ☐ Club ☐ Intramural ☐ Recreational ☐ Other _____

iii. *Contact Information*

OCR also looks at whether an institution requests contact information, to allow the institution to follow-up with students who wish to be contacted regarding their interests and abilities.

b. Target Population Surveyed

OCR considers the target population surveyed at the institution. Under Part Three, OCR evaluates whether the survey is administered as a census to all full-time undergraduate

[21] An open-ended inquiry for other sports should be prominent or otherwise readily visible and contain a line or other mechanism for students to write in the sport for which they wish to express interest and ability.
[22] If the survey is provided in paper form, an institution should provide a surplus of rows to ensure that a respondent can provide information for all the sports for which there is interest.

students of the underrepresented sex and admitted students of the underrepresented sex.[23] Using a census of all students can avoid several issues associated with sample surveys including, but not limited to: selection of the sampling mechanism, selection of the sample size, calculation of sampling error, and using sample estimates. If an institution intends to administer a survey to a sample population to gauge an estimate of interests and abilities, the larger the sample, the more weight OCR will accord the estimate.

c. Responses: Rates and Treatment of Non-Responses

OCR evaluates whether the survey is administered in a manner designed to generate high response rates and how institutions treat responses and non-responses.

OCR looks at whether institutions provide the survey in a context that encourages high response rates, and whether institutions widely publicize the survey; give students, including those participating in club or intramural sports, advance notice of the survey; and provide students adequate time to respond. Generally, OCR accords more weight to a survey with a higher response rate than a survey with a lower response rate, and institutions may want to distribute the survey through multiple mechanisms to increase the response rate.

For example, for enrolled students, an institution may want to administer the survey as part of a mandatory activity, such as during course registration. If administered as part of a mandatory activity, students also should have the option of completing the survey at a later date in order to ensure that they have adequate time to respond. Students who indicate that they wish to complete the survey at a later time should be given the opportunity to provide their contact information to enable the institution to take steps to ensure that they complete the survey. An institution should follow-up with those students who indicate that they wish to respond in the future.

An institution also may choose to send an email to the entire target population that includes a link to the survey. If an institution's assessment process includes email, OCR considers whether the institution takes appropriate cautionary measures, such as ensuring that it has accurate email addresses and that the target population has access to email.[24] OCR also expects institutions to take additional steps to follow-up with those who do not respond, including sending widely publicized reminder notices.

If institutions administer the survey through a web-based distribution system, students who indicate that they have no current interest[25] in athletic participation should be asked to confirm their lack of interest before they exit the system. If response rates using the methods described

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[23] For example, institutions may distribute surveys to all admitted students of the underrepresented sex with acceptance letters.

[24] OCR also evaluates whether the survey is administered in a manner designed to ensure the accurate identity of the respondent and to protect against multiple responses by the same individual.

[25] Students may have, or may be unaware of whether they will have, a future interest in athletic participation.

above are low, an institution should consider administering the survey in another manner to obtain higher response rates.

OCR does not consider non-responses to surveys as evidence of lack of interest or ability in athletics. As discussed above, regardless of whether students respond to a survey, OCR also evaluates whether students' interest and abilities are assessed using the multiple indicators described above.

d. Confidentiality Protections

OCR also looks at whether institutions notify students that all responses as well as any personally identifiable information they provide will be kept confidential, although the aggregate survey information will be shared with athletic directors, coaches, and other staff, as appropriate. When requesting any personal or personally identifiable data, protecting the respondents' confidentiality helps to ensure that institutions obtain high-quality data and high response rates. If a student has expressed interest in being contacted when responding to the survey, an institution should continue to maintain the student's confidentiality except to the extent needed to follow-up with the student.

e. Frequency of Conducting the Survey

As discussed above, OCR evaluates whether an institution periodically conducts an assessment of interest and abilities. In addition to the factors OCR considers when determining the rate of frequency for conducting an assessment, OCR also will consider factors such as the size of the previously assessed survey population and the rate of response to the immediately preceding survey(s) conducted by the institution, if any.

8. Multiple Indicators Evaluated to Assess Sufficient Number of Interested and Able Students to Sustain a Team

Under Part Three, institutions are not required to create an intercollegiate team or elevate a club team to intercollegiate status unless there are a sufficient number of interested and able students to sustain a team. When OCR evaluates whether there are a sufficient number of students, OCR considers such indicators as the:

- minimum number of participants needed for a particular sport;
- opinions of athletic directors and coaches concerning the abilities required to field an intercollegiate team; and
- size of a team in a particular sport at institutions in the governing athletic association or conference to which the institution belongs or in the institution's competitive regions.

When evaluating the minimum number of athletes needed, OCR may consider factors such as the:

- rate of substitutions necessitated by factors such as length of competitions, intensity of play, or injury;
- variety of skill sets required for competition; and
- minimum number of athletes needed to conduct effective practices for skill development.

B. Reasonable Expectation of Competition — OCR Evaluation Criteria

Lastly, as indicated in the 1996 Clarification, OCR evaluates whether there is a reasonable expectation of intercollegiate competition for the team in the institution's normal competitive regions. In evaluating available competition, OCR considers available competitive opportunities in the geographic area in which the institution's athletes primarily compete, including:

- competitive opportunities offered by other schools against which the institution competes; and
- competitive opportunities offered by other schools in the institution's geographic area, including those offered by schools against which the institution does not now compete.[26]

If the information or documentation compiled by the institution during the assessment process shows that there is sufficient interest and ability to support a new intercollegiate team and a reasonable expectation of intercollegiate competition in the institution's normal competitive region for the team, the institution is under an obligation to create an intercollegiate team within a reasonable period of time in order to comply with Part Three.

Conclusion

The three-part test gives institutions flexibility and affords them control over their athletics programs. This flexibility, however, must be used consistent with Title IX's nondiscrimination requirements. OCR will continue to work with institutions to assist them in finding ways to address their particular circumstances and comply with Title IX. For technical assistance, please contact the OCR enforcement office that serves your area, found at http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm.

Sincerely,

Russlynn Ali
Assistant Secretary for Civil Rights

[26] Under the 1979 Policy Interpretation, an institution also may be required to actively encourage the development of intercollegiate competition for a sport for members of the underrepresented sex when overall athletic opportunities within its competitive region have been historically limited for members of that sex. 44 Fed. Reg. at 71418.

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Dear Colleague Letter

THE ASSISTANT SECRETARY

April 24, 2013

Dear Colleague:

The Office for Civil Rights (OCR) in the United States Department of Education (Department) is responsible for enforcing Federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, or age by recipients of Federal financial assistance (recipient(s)) from the Department.[1] Although a significant portion of the complaints filed with OCR in recent years have included retaliation claims, OCR has never before issued public guidance on this important subject. The purpose of this letter is to remind school districts, postsecondary institutions, and other recipients that retaliation is also a violation of Federal law.[2] This letter seeks to clarify the basic principles of retaliation law and to describe OCR's methods of enforcement.

The ability of individuals to oppose discriminatory practices, and to participate in OCR investigations and other proceedings, is critical to ensuring equal educational opportunity in accordance with Federal civil rights laws. Discriminatory practices are often only raised and remedied when students, parents, teachers, coaches, and others can report such practices to school administrators without the fear of retaliation. Individuals should be commended when they raise concerns about compliance with the Federal civil rights laws, not punished for doing so.

The Federal civil rights laws make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws.[3] If, for example, an individual brings concerns about possible civil rights problems to a school's attention, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she made a complaint, testified, or participated in any manner in an OCR investigation or proceeding. Thus, once a student, parent, teacher, coach, or other individual complains formally or informally to a school about a potential civil rights violation or participates in an OCR investigation or proceeding, the recipient is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating against the individual) because of the individual's complaint or participation. OCR will continue to vigorously enforce this prohibition against retaliation.

If OCR finds that a recipient retaliated in violation of the civil rights laws, OCR will seek the recipient's voluntary commitments through a resolution agreement to take specific measures to remedy the identified noncompliance.[4] Such a resolution agreement must be designed both to ensure that the individual who was retaliated against receives redress and to ensure that the recipient complies with the prohibition against retaliation in the future. OCR will determine which remedies, including monetary relief, are appropriate based on the facts presented in each specific case.

Steps OCR could require a recipient to take to ensure compliance in the future include, but are not limited to:

- training for employees about the prohibition against retaliation and ways to avoid engaging in retaliation;
- adopting a communications strategy for ensuring that information concerning retaliation is continually being conveyed to employees, which may include incorporating the prohibition against retaliation into relevant policies and procedures; and

- implementing a public outreach strategy to reassure the public that the recipient is committed to complying with the prohibition against retaliation.

If OCR finds that a recipient engaged in retaliation and the recipient refuses to voluntarily resolve the identified area(s) of noncompliance or fails to live up to its commitments in a resolution agreement, OCR will take appropriate enforcement action. The enforcement actions available to OCR include initiating administrative proceedings to suspend, terminate, or refuse to grant or continue financial assistance made available through the Department to the recipient; or referring the case to the U.S. Department of Justice for judicial proceedings.[5]

OCR is available to provide technical assistance to entities that request assistance in complying with the prohibition against retaliation or any other aspect of the civil rights laws OCR enforces. Please visit http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm to contact the OCR regional office that serves your state or territory.

Thank you for your help in ensuring that America's educational institutions are free from retaliation so that concerns about equal educational opportunity can be openly raised and addressed.

Sincerely,

/s/

Seth M. Galanter
Acting Assistant Secretary for Civil Rights

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[1] OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975 (Age Act), and the Boy Scouts of America Equal Access Act (Boy Scouts Act). OCR also shares enforcement responsibilities with the Department of Justice for Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits discrimination against individuals with disabilities in state and local government services, programs and activities, regardless of whether they receive Federal financial assistance.

[2] The Federal courts have repeatedly affirmed that retaliation is a violation of the Federal civil rights laws enforced by OCR. *See, e.g., Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005); *Peters v. Jenney*, 327 F.3d 307, 320-21 (4th Cir. 2003); *Weeks v. Harden Mfg. Corp.*, 291 F.3d 1307, 1311 (11th Cir. 2002).

[3] *See* 34 C.F.R. § 100.7(e) (Title VI); 34 C.F.R. § 106.71 (Title IX) (incorporating 34 C.F.R. §100.7(e) by reference); 34 C.F.R. § 104.61 (Section 504) (incorporating 34 C.F.R. §100.7(e) by reference); and 34 C.F.R. §108.9 (Boy Scouts Act) (incorporating 34 C.F.R. §100.7(e) by reference). Title II and the Age Act have similar regulatory language. *See* 28 C.F.R. § 35.134 (Title II); and 34 C.F.R. § 110.34 (Age Act).

[4] See OCR's Case Processing Manual for more information about resolution agreements, *available at* http://www.ed.gov/ocr/docs/ocrcpm.html.

[5] *See* 34 C.F.R. § 100.8.

Top

Close

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 24, 2015

Dear Colleague:

I write to remind you that all school districts, colleges, and universities receiving Federal financial assistance must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX of the Education Amendments of 1972 (Title IX), which prohibits sex discrimination in education programs and activities.[1] These designated employees are generally referred to as Title IX coordinators.

Your Title IX coordinator plays an essential role in helping you ensure that every person affected by the operations of your educational institution—including students, their parents or guardians, employees, and applicants for admission and employment—is aware of the legal rights Title IX affords and that your institution and its officials comply with their legal obligations under Title IX. To be effective, a Title IX coordinator must have the full support of your institution. It is therefore critical that all institutions provide their Title IX coordinators with the appropriate authority and support necessary for them to carry out their duties and use their expertise to help their institutions comply with Title IX.

The U.S. Department of Education's Office for Civil Rights (OCR) enforces Title IX for institutions that receive funds from the Department (recipients).[2] In our enforcement work, OCR has found that some of the most egregious and harmful Title IX violations occur when a recipient fails to designate a Title IX coordinator or when a Title IX coordinator has not been sufficiently trained or given the appropriate level of authority to oversee the recipient's compliance with Title IX. By contrast, OCR has found that an effective Title IX coordinator often helps a recipient provide equal educational opportunities to all students.

OCR has previously issued guidance documents that include discussions of the responsibilities of a Title IX coordinator, and those documents remain in full force. This letter incorporates that existing OCR guidance on Title IX coordinators and provides additional clarification and recommendations

[1] 34 C.F.R. § 106.8(a). Although Title IX applies to any recipient that offers education programs or activities, this letter focuses on Title IX coordinators designated by local educational agencies, schools, colleges, and universities.

[2] 20 U.S.C. §§ 1681–1688. The Department of Justice shares enforcement authority over Title IX with OCR.

as appropriate. This letter outlines the factors a recipient should consider when designating a Title IX coordinator, then describes the Title IX coordinator's responsibilities and authority. Next, this letter reminds recipients of the importance of supporting Title IX coordinators by ensuring that the coordinators are visible in their school communities and have the appropriate training.

Also attached is a letter directed to Title IX coordinators that provides more information about their responsibilities and a Title IX resource guide. The resource guide includes an overview of the scope of Title IX, a discussion about Title IX's administrative requirements, as well as a discussion of other key Title IX issues and references to Federal resources. The discussion of each Title IX issue includes recommended best practices for the Title IX coordinator to help your institution meet its obligations under Title IX. The resource guide also explains your institution's obligation to report information to the Department that could be relevant to Title IX. The enclosed letter to Title IX coordinators and the resource guide may be useful for you to understand your institution's obligations under Title IX.

Designation of a Title IX Coordinator

Educational institutions that receive Federal financial assistance are prohibited under Title IX from subjecting any person to discrimination on the basis of sex. Title IX authorizes the Department of Education to issue regulations to effectuate Title IX.[3] Under those regulations, a recipient must designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX and the Department's implementing regulations.[4] This position may not be left vacant; a recipient must have at least one person designated and actually serving as the Title IX coordinator at all times.

In deciding to which senior school official the Title IX coordinator should report and what other functions (if any) that person should perform, recipients are urged to consider the following:[5]

A. Independence

The Title IX coordinator's role should be independent to avoid any potential conflicts of interest and the Title IX coordinator should report directly to the recipient's senior leadership, such as the district superintendent or the college or university president. Granting the Title IX coordinator this

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[3] The Department's Title IX regulations, 34 C.F.R. Part 106, are available at http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html.

[4] 34 C.F.R. § 106.8(a).

[5] Many of the principles in this document also apply generally to employees required to be designated to coordinate compliance with other civil rights laws enforced by OCR against educational institutions, such as Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; 34 C.F.R. § 104.7(a), and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131–12134; 28 C.F.R. § 35.107(a).

independence also ensures that senior school officials are fully informed of any Title IX issues that arise and that the Title IX coordinator has the appropriate authority, both formal and informal, to effectively coordinate the recipient's compliance with Title IX. Title IX does not categorically exclude particular employees from serving as Title IX coordinators. However, when designating a Title IX coordinator, a recipient should be careful to avoid designating an employee whose other job responsibilities may create a conflict of interest. For example, designating a disciplinary board member, general counsel, dean of students, superintendent, principal, or athletics director as the Title IX coordinator may pose a conflict of interest.

B. Full-Time Title IX Coordinator

Designating a full-time Title IX coordinator will minimize the risk of a conflict of interest and in many cases ensure sufficient time is available to perform all the role's responsibilities. If a recipient designates one employee to coordinate the recipient's compliance with Title IX and other related laws, it is critical that the employee has the qualifications, training, authority, and time to address all complaints throughout the institution, including those raising Title IX issues.

C. Multiple Coordinators

Although not required by Title IX, it may be a good practice for some recipients, particularly larger school districts, colleges, and universities, to designate multiple Title IX coordinators. For example, some recipients have found that designating a Title IX coordinator for each building, school, or campus provides students and staff with more familiarity with the Title IX coordinator. This familiarity may result in more effective training of the school community on their rights and obligations under Title IX and improved reporting of incidents under Title IX. A recipient that designates multiple coordinators should designate one lead Title IX coordinator who has ultimate oversight responsibility. A recipient should encourage all of its Title IX coordinators to work together to ensure consistent enforcement of its policies and Title IX.

Responsibilities and Authority of a Title IX Coordinator

The Title IX coordinator's primary responsibility is to coordinate the recipient's compliance with Title IX, including the recipient's grievance procedures for resolving Title IX complaints. Therefore, the Title IX coordinator must have the authority necessary to fulfill this coordination responsibility. The recipient must inform the Title IX coordinator of all reports and complaints raising Title IX issues, even if the complaint was initially filed with another individual or office or the investigation will be conducted by another individual or office. The Title IX coordinator is responsible for coordinating the recipient's responses to all complaints involving possible sex discrimination. This responsibility includes monitoring outcomes, identifying and addressing any patterns, and assessing effects on the campus climate. Such coordination can help the recipient avoid Title IX violations, particularly violations involving sexual harassment and violence, by preventing incidents

from recurring or becoming systemic problems that affect the wider school community. Title IX does not specify who should determine the outcome of Title IX complaints or the actions the school will take in response to such complaints. The Title IX coordinator could play this role, provided there are no conflicts of interest, but does not have to.

The Title IX coordinator must have knowledge of the recipient's policies and procedures on sex discrimination and should be involved in the drafting and revision of such policies and procedures to help ensure that they comply with the requirements of Title IX. The Title IX coordinator should also coordinate the collection and analysis of information from an annual climate survey if, as OCR recommends, the school conducts such a survey. In addition, a recipient should provide Title IX coordinators with access to information regarding enrollment in particular subject areas, participation in athletics, administration of school discipline, and incidents of sex-based harassment. Granting Title IX coordinators the appropriate authority will allow them to identify and proactively address issues related to possible sex discrimination as they arise.

Title IX makes it unlawful to retaliate against individuals—including Title IX coordinators—not just when they file a complaint alleging a violation of Title IX, but also when they participate in a Title IX investigation, hearing, or proceeding, or advocate for others' Title IX rights.[6] Title IX's broad anti-retaliation provision protects Title IX coordinators from discrimination, intimidation, threats, and coercion for the purpose of interfering with the performance of their job responsibilities. A recipient, therefore, must not interfere with the Title IX coordinator's participation in complaint investigations and monitoring of the recipient's efforts to comply with and carry out its responsibilities under Title IX. Rather, a recipient should encourage its Title IX coordinator to help it comply with Title IX and promote gender equity in education.

Support for Title IX Coordinators

Title IX coordinators must have the full support of their institutions to be able to effectively coordinate the recipient's compliance with Title IX. Such support includes making the role of the Title IX coordinator visible in the school community and ensuring that the Title IX coordinator is sufficiently knowledgeable about Title IX and the recipient's policies and procedures. Because educational institutions vary in size and educational level, there are a variety of ways in which recipients can ensure that their Title IX coordinators have community-wide visibility and comprehensive knowledge and training.

[6] 34 C.F.R. § 106.71 (incorporating by reference 34 C.F.R. § 100.7(e)).

A. Visibility of Title IX Coordinators

Under the Department's Title IX regulations, a recipient has specific obligations to make the role of its Title IX coordinator visible to the school community. A recipient must post a notice of nondiscrimination stating that it does not discriminate on the basis of sex and that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR. The notice must be included in any bulletins, announcements, publications, catalogs, application forms, or recruitment materials distributed to the school community, including all applicants for admission and employment, students and parents or guardians of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient.[7]

In addition, the recipient must always notify students and employees of the name, office address, telephone number, and email address of the Title IX coordinator, including in its notice of nondiscrimination.[8] Because it may be unduly burdensome for a recipient to republish printed materials that include the Title IX coordinator's name and individual information each time a person leaves the Title IX coordinator position, a recipient may identify its coordinator only through a position title in printed materials and may provide an email address established for the position of the Title IX coordinator, such as TitleIXCoordinator@school.edu, so long as the email is immediately redirected to the employee serving as the Title IX coordinator. However, the recipient's website must reflect complete and current information about the Title IX coordinator.

Recipients with more than one Title IX coordinator must notify students and employees of the lead Title IX coordinator's contact information in its notice of nondiscrimination, and should make available the contact information for its other Title IX coordinators as well. In doing so, recipients should include any additional information that would help students and employees identify which Title IX coordinator to contact, such as each Title IX coordinator's specific geographic region (*e.g.*, a particular elementary school or part of a college campus) or Title IX area of specialization (*e.g.*, gender equity in academic programs or athletics, harassment, or complaints from employees).

The Title IX coordinator's contact information must be widely distributed and should be easily found on the recipient's website and in various publications.[9] By publicizing the functions and responsibilities of the Title IX coordinator, the recipient demonstrates to the school community its commitment to complying with Title IX and its support of the Title IX coordinator's efforts.

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[7] 34 C.F.R. § 106.9.

[8] 34 C.F.R. § 106.8(a).

[9] 34 C.F.R. § 106.9.

Supporting the Title IX coordinator in the establishment and maintenance of a strong and visible role in the community helps to ensure that members of the school community know and trust that they can reach out to the Title IX coordinator for assistance. OCR encourages recipients to create a page on the recipient's website that includes the name and contact information of its Title IX coordinator(s), relevant Title IX policies and grievance procedures, and other resources related to Title IX compliance and gender equity. A link to this page should be prominently displayed on the recipient's homepage.

To supplement the recipient's notification obligations, the Department collects and publishes information from educational institutions about the employees they designate as Title IX coordinators. OCR's Civil Rights Data Collection (CRDC) collects information from the nation's public school districts and elementary and secondary schools, including whether they have civil rights coordinators for discrimination on the basis of sex, race, and disability, and the coordinators' contact information.[10] The Department's Office of Postsecondary Education collects information about Title IX coordinators from postsecondary institutions in reports required under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and the Higher Education Opportunity Act.[11]

B. Training of Title IX Coordinators

Recipients must ensure that their Title IX coordinators are appropriately trained and possess comprehensive knowledge in all areas over which they have responsibility in order to effectively carry out those responsibilities, including the recipients' policies and procedures on sex discrimination and all complaints raising Title IX issues throughout the institution. The resource guide accompanying this letter outlines some of the key issues covered by Title IX and provides references to Federal resources related to those issues. In addition, the coordinators should be knowledgeable about other applicable Federal and State laws, regulations, and policies that overlap with Title IX.[12] In most cases, the recipient will need to provide an employee with training to act as its Title IX coordinator. The training should explain the different facets of Title IX, including regulatory provisions, applicable OCR guidance, and the recipient's Title IX policies and grievance procedures. Because these laws, regulations, and OCR guidance may be updated, and

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[10] OCR began collecting this information through the CRDC for the 2013-2014 school year. More information about the CRDC is available at http://www.ed.gov/ocr/data.html.

[11] The Department will begin collecting this information in 2015. More information about the Clery Act data collection is available at http://www.ed.gov/admins/lead/safety/campus.html.

[12] *See, e.g.*, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, and its implementing regulations, 34 C.F.R. Part 99; and the Clery Act, 20 U.S.C. § 1092(f), and its implementing regulations, 34 C.F.R. Part 668. These documents only address an institution's compliance with Title IX and do not address its obligations under other Federal laws, such as the Clery Act.

recipient policies and procedures may be revised, the best way to ensure Title IX coordinators have the most current knowledge of Federal and State laws, regulations, and policies relating to Title IX and gender equity is for a recipient to provide regular training to the Title IX coordinator, as well as to all employees whose responsibilities may relate to the recipient's obligations under Title IX. OCR's regional offices can provide technical assistance, and opportunities for training may be available through Equity Assistance Centers, State educational agencies, private organizations, advocacy groups, and community colleges. A Title IX coordinator may also find it helpful to seek mentorship from a more experienced Title IX coordinator and to collaborate with other Title IX coordinators in the region (or who serve similar institutions) to share information, knowledge, and expertise.

In rare circumstances, an employee's prior training and experience may sufficiently prepare that employee to act as the recipient's Title IX coordinator. For example, the combination of effective prior training and experience investigating complaints of sex discrimination, together with training on current Title IX regulations, OCR guidance, and the recipient institution's policies and grievance procedures may be sufficient preparation for that employee to effectively carry out the responsibilities of the Title IX coordinator.

Conclusion

Title IX coordinators are invaluable resources to recipients and students at all educational levels. OCR is committed to helping recipients and Title IX coordinators understand and comply with their legal obligations under Title IX. If you need technical assistance, please contact the OCR regional office serving your State or territory by visiting http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm or call OCR's Customer Service Team at 1-800-421-3481; TDD 1-800-877-8339.

Thank you for supporting your Title IX coordinators to help ensure that all students have equal access to educational opportunities, regardless of sex. I look forward to continuing to work with recipients nationwide to help ensure that each and every recipient has at least one knowledgeable Title IX coordinator with the authority and support needed to prevent and address sex discrimination in our nation's schools.

Sincerely,

/s/
Catherine E. Lhamon
Assistant Secretary for Civil Rights

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 24, 2015

Dear Title IX Coordinator:

Thank you for serving as the Title IX coordinator for your school, school district, college, or university. Your work, and that of your fellow coordinators across the country, is essential to ensuring that all students in the United States, regardless of their sex, have an equal educational opportunity. As a Title IX coordinator, you are an invaluable resource for every person in your institution's community—including students, their parents or guardians, employees, and applicants for admission and employment—regarding their rights under Title IX of the Education Amendments of 1972 (Title IX).[1] The U.S. Department of Education's Office for Civil Rights (OCR) supports your efforts to help your institution comply with Title IX and the Department's implementing regulations,[2] and looks forward to working with you and your institution to provide students with an educational environment free from sex discrimination.

This letter accompanies a Dear Colleague letter to your school district superintendent or college or university president that reminds all educational institutions receiving Federal financial assistance from the Department that they must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX. That letter explains the significance of your work as the Title IX coordinator to the institution's compliance with Title IX and the importance of providing you with the appropriate authority and support necessary to perform your responsibilities.

This letter also accompanies a resource guide that may assist you in your work as a Title IX coordinator. The resource guide first provides an overview of the scope of Title IX. It then explains Title IX's administrative requirements, which are the foundation for your job and your institution's compliance with Title IX. The resource guide also discusses your institution's obligations with respect to some of the key issues under Title IX and provides references to helpful Federal

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[1] 20 U.S.C. §§ 1681–1688. The Department of Justice (DOJ) shares enforcement authority over Title IX with OCR.

[2] The Department's Title IX regulations, 34 C.F.R. Part 106, are available at http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html.

resources. Finally, the resource guide discusses your institution's obligation to report information to the Department that could be relevant to Title IX compliance.[3]

To be an effective Title IX coordinator, you must have the full support of your institution. Such support includes making your role as the Title IX coordinator visible in the community. Because the obligation to designate a Title IX coordinator affects educational institutions of every size and at every educational level, there are a variety of ways to ensure that Title IX coordinators have the necessary support to help institutions meet their obligations under Title IX. For more information about how your institution should support your work as the Title IX coordinator, please see the accompanying Dear Colleague Letter and Title IX Resource Guide.

I commend you for your efforts to ensure students learn in educational environments free from discrimination, and OCR supports you in your work. If you need technical assistance, please contact the OCR regional office serving your state or territory by visiting http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm or call OCR's Customer Service Team at 1-800-421-3481; TDD 1-800-877-8339.

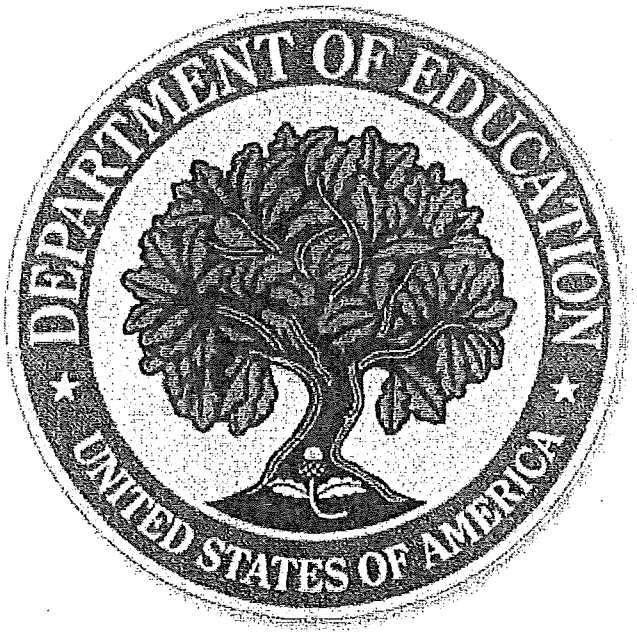
Thank you for your commitment to assisting your institution in complying with Title IX and to ensuring that all your institution's students have safe and healthy environments in which to learn and thrive. I look forward to continuing to work with Title IX coordinators nationwide to help prevent and address sex discrimination in our nation's schools.

Sincerely,

/s/
Catherine E. Lhamon
Assistant Secretary for Civil Rights

[3] These documents only address an institution's compliance with Title IX and do not address its obligations under other federal laws, such as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

TITLE IX RESOURCE GUIDE



U.S. Department of Education

Office for Civil Rights

April 2015

U.S. Department of Education
Office for Civil Rights

Catherine E. Lhamon
Assistant Secretary

April 2015

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U.S. Department of Education, Office for Civil Rights, *Title IX Resource Guide* (Apr. 2015).

This guide is also available on the Office for Civil Rights' website at http://www.ed.gov/ocr. Any updates to this guide will be available at this website.

If you need technical assistance, please contact the OCR regional office serving your State or territory by:

- visiting http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm, or
- calling OCR's Customer Service Team at 1 800-421-3481; TDD 1-800-877-8339; or
- emailing OCR at ocr@ed.gov.

Notice of Language Assistance
Title IX Resource Guide

Notice of Language Assistance: If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

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或者使用英语有困难，您可以要求獲得向大眾提供的語言協助服務，幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊，請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線：1-800-877-8339)，或電郵：Ed.Language.Assistance@ed.gov。

Thông báo dành cho những người có khả năng Anh ngữ hạn chế: Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: Ed.Language.Assistance@ed.gov.

영어 미숙자를 위한 공고: 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일주소 Ed.Language.Assistance@ed.gov 으로 연락하시기 바랍니다.

Paunawa sa mga Taong Limitado ang Kaalaman sa English: Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na impormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: Ed.Language.Assistance@ed.gov.

Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.

TABLE OF CONTENTS

A. Scope of Title IX **1**

B. Responsibilities and Authority of a Title IX Coordinator **2**

C. Title IX's Administrative Requirements **4**

1. Grievance Procedures 4

2. Notice of Nondiscrimination and Contact Information for the Title IX Coordinator 6

D. Application of Title IX to Various Issues **8**

1. Recruitment, Admissions, and Counseling 8

2. Financial Assistance 10

3. Athletics 11

(a) Student Interests and Abilities 11

(b) Athletic Benefits and Opportunities 13

(c) Athletic Financial Assistance 14

4. Sex-Based Harassment 15

5. Pregnant and Parenting Students 18

6. Discipline 19

7. Single-Sex Education 20

(a) Schools 20

(b) Classes and Extracurricular Activities 21

8. Employment 23

9. Retaliation 24

E. Information Collection and Reporting **25**

A. Scope of Title IX

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination based on sex in education programs and activities in federally funded schools at all levels.[1] If any part of a school district or college receives any Federal funds for any purpose, all of the operations of the district or college are covered by Title IX.[2]

Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. All students (as well as other persons) at recipient institutions are protected by Title IX—regardless of their sex, sexual orientation, gender identity, part- or full-time status, disability, race, or national origin—in all aspects of a recipient's educational programs and activities.

As part of their obligations under Title IX, all recipients of Federal financial assistance must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX and must notify all students and employees of that employee's contact information.[3] This employee is generally referred to as the Title IX coordinator.

The essence of Title IX is that an institution may not exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex unless expressly authorized to do so under Title IX or the Department's implementing regulations.[4] When a recipient is considering relying on one of the exceptions to this general rule (several of which are discussed below), Title IX coordinators should be involved at every stage and work with school officials and legal counsel to help determine whether the exception is applicable and, if so, properly executed.

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[1] 20 U.S.C. §§ 1681–1688. The Department of Justice shares enforcement authority over Title IX with OCR. The Department of Education's Title IX regulations, 34 C.F.R. Part 106, are available at http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html. Although Title IX and the Department's implementing regulations apply to any recipient institution that offers education programs or activities, this resource guide focuses on Title IX coordinators designated by local educational agencies, schools, colleges, and universities.

[2] An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office.

[3] 34 C.F.R. § 106.8(a).

[4] 20 U.S.C. § 1681(a); 34 C.F.R. § 106.31.

B. Responsibilities and Authority of a Title IX Coordinator

Although the recipient is ultimately responsible for ensuring that it complies with Title IX and other laws, the Title IX coordinator is an integral part of a recipient's systematic approach to ensuring nondiscrimination, including a nondiscriminatory environment. Title IX coordinators can be effective agents for ensuring gender equity within their institutions only when they are provided with the appropriate authority and support necessary to coordinate their institution's Title IX compliance, including access to all of their institution's relevant information and resources.

One of the most important facets of the Title IX coordinator's responsibility is helping to ensure the recipient's compliance with Title IX's administrative requirements. The Title IX coordinator must have knowledge of the recipient's policies and procedures on sex discrimination and should be involved in the drafting and revision of such policies and procedures to help to ensure that they comply with the requirements of Title IX.

The coordinator may help the recipient by coordinating the implementation and administration of the recipient's procedures for resolving Title IX complaints, including educating the school community on how to file a complaint alleging a violation of Title IX, investigating complaints, working with law enforcement when necessary, and ensuring that complaints are resolved promptly and appropriately. The coordinator should also coordinate the recipient's response to all complaints involving possible sex discrimination to monitor outcomes, identify patterns, and assess effects on the campus climate. Such coordination can help an institution avoid Title IX violations, particularly violations involving sexual harassment and violence, by preventing incidents from recurring or becoming systemic problems. Title IX does not specify who should determine the outcome of Title IX complaints or the actions the school will take in response to such complaints. The Title IX coordinator could play this role, provided there are no conflicts of interest, but does not have to.

The Title IX coordinator should also assist the institution in developing a method to survey the school climate and coordinate the collection and analysis of information from that survey. Further, the coordinator should monitor students' participation in athletics and across academic fields to identify programs with disproportionate enrollment based on sex and ensure that sex discrimination is not causing any disproportionality or otherwise negatively affecting a student's access to equal educational opportunities.

The Title IX coordinator should provide training and technical assistance on school policies related to sex discrimination and develop programs, such as assemblies or college trainings, on issues related to Title IX to assist the recipient in making sure that all members of the school community, including students and staff, are aware of their rights and obligations under Title IX. To perform

this responsibility effectively, the coordinator should regularly assess the adequacy of current training opportunities and programs and propose improvements as appropriate.

A recipient can designate more than one Title IX coordinator, which may be particularly helpful in larger school districts, colleges, and universities. It may also be helpful to designate specific employees to coordinate certain Title IX compliance issues (*e.g.*, gender equity in academic programs or athletics, harassment, or complaints from employees). If a recipient has multiple Title IX coordinators, then it should designate one lead Title IX coordinator who has ultimate oversight responsibility.

Because Title IX prohibits discrimination in all aspects of a recipient's education programs and activities, the Title IX coordinator should work closely with many different members of the school community, such as administrators, counselors, athletic directors, non-professional counselors or advocates, and legal counsel. Although these employees may not be formally designated as Title IX coordinators, the Title IX coordinator may need to work with them because their job responsibilities relate to the recipient's obligations under Title IX. The recipient should ensure that all employees whose work relates to Title IX communicate with one another and that these employees have the support they need to ensure consistent practices and enforcement of the recipient's policies and compliance with Title IX. The coordinator should also be available to meet with the school community, including other employees, students, and parents or guardians, as needed to discuss any issues related to Title IX.

For more information about the role of the Title IX coordinator, please review:

- 34 C.F.R. § 106.8(a);
- Dear Colleague Letter: Title IX Coordinators (April 24, 2015), *available at* http://www.ed.gov/ocr/letters/colleague-201504-title-ix-coordinators.pdf; and
- Letter to Title IX Coordinators (April 24, 2015), *available at* http://www.ed.gov/ocr/docs/dcl-title-ix-coordinators-letter-201504.pdf.

C. Title IX's Administrative Requirements

The administrative requirements in the Department's Title IX regulations are the underpinning of both the Title IX coordinator's job and a recipient's compliance with Title IX; their purpose is to ensure that a recipient maintains an environment for students and employees that is free from unlawful sex discrimination in all aspects of the educational experience, including academics, extracurricular activities, and athletics. These requirements provide that a recipient must establish a system for the prompt and equitable resolution of complaints. This allows an institution to resolve complaints of discrimination without the need for involvement by outside entities, such as the Federal government. They also provide that a recipient must ensure that members of the school community are aware of their rights under Title IX, have the contact information for the Title IX coordinator, and know how to file a complaint alleging a violation of Title IX.

1. Grievance Procedures

The Department's Title IX regulations require a recipient to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints under Title IX. These procedures provide an institution with a mechanism for discovering incidents of discrimination or harassment as early as possible and for effectively correcting individual and systemic problems. The procedures that each school uses to resolve Title IX complaints may vary depending on the nature of the allegation, the age of the student or students involved, the size and administrative structure of the school, state or local legal requirements, and what it has learned from past experiences.

There are several ways in which a Title IX coordinator can coordinate the recipient's compliance with the Title IX regulatory requirement regarding grievance procedures.

- First, the Title IX coordinator should work with the recipient to help make sure that the grievance procedures are written in language appropriate for the age of the audience (such as elementary, middle school, high school, or postsecondary students), and that they are easily understood and widely disseminated.

- Second, the Title IX coordinator should review the grievance procedures to help determine whether they incorporate all of the elements required for the prompt and equitable resolution of student and employee complaints under Title IX, consistent with the Title IX regulatory requirement and OCR guidance.

- Third, the Title IX coordinator should communicate with students, parents or guardians, and school employees to help them understand the recipient's grievance procedures; train employees and students about how Title IX protects against sex discrimination; and provide consultation and information regarding Title IX requirements to potential complainants.

- Fourth, the Title IX coordinator is responsible for coordinating the grievance process and making certain that individual complaints are handled properly. This coordination responsibility may include informing all parties regarding the process, notifying all parties regarding grievance decisions and of the right to and procedures for appeal, if any; monitoring compliance with all of the requirements and timelines specified in the grievance procedures; and maintaining grievance and compliance records and files.

- Finally, the Title IX coordinator should work with the recipient to help ensure that its grievance procedures are accessible to English language learners[5] and students with disabilities.[6]

For more information about grievance procedures, please review:

- 34 C.F.R. § 106.8(b);

- Questions and Answers on Title IX and Sexual Violence (April 29, 2014), *available at* http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf;

- Dear Colleague Letter: Sexual Violence (April 4, 2011), *available at* http://www.ed.gov/ocr/letters/colleague-201104.pdf;

- Dear Colleague Letter: Title IX Grievance Procedures, Postsecondary Education (August 4, 2004), *available at* http://www.ed.gov/ocr/responsibilities_ix_ps.html;

- Dear Colleague Letter: Title IX Grievance Procedures, Elementary and Secondary Education (April 26, 2004), *available at* http://www.ed.gov/ocr/responsibilities_ix.html; and

- Revised Sexual Harassment Guidance (January 19, 2001), *available at* http://www.ed.gov/ocr/docs/shguide.pdf.

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[5] Public schools and State educational agencies must take affirmative steps to ensure that students with limited English proficiency can meaningfully participate in their educational programs and services under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to d-7, and the Equal Educational Opportunities Act, 20 U.S.C. § 1703(f) (1974).

[6] *See* 28 C.F.R. § 35.130(a) and (b); 34 C.F.R. § 104.4.

2. Notice of Nondiscrimination and Contact Information for the Title IX Coordinator

The Department's Title IX regulations require a recipient to publish a statement that it does not discriminate on the basis of sex in the education programs or activities it operates and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

The notice must be widely distributed to all applicants for admission and employment, students and parents or guardians of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient. The notice should be prominently posted on the recipient's website, at various locations on campus, and in electronic and printed publications for general distribution. In addition, the notice must be included in any bulletins, announcements, publications, catalogs, application forms, or recruitment materials.

A recipient must notify all students and employees of the name or title, office address, telephone number, and email address of the Title IX coordinator, including in its notice of nondiscrimination. The notice should also state any other job title that the Title IX coordinator might have. Recipients must notify students and employees of the Title IX coordinator's contact information in its notice of nondiscrimination. Recipients with more than one Title IX coordinator must notify the school community of the lead Title IX coordinator's contact information in its notice of nondiscrimination, and should also make available the contact information for its other Title IX coordinators as well to ensure consistent practices and standards in handling complaints. In doing so, recipients should include any additional information that would help students and employees identify which Title IX coordinator to contact, such as each Title IX coordinator's specific geographic region (*e.g.*, a particular elementary school or part of a college campus) or area of specialization within Title IX (*e.g.*, gender equity in academic programs or athletics, harassment, or complaints from employees). Because social media are now widespread means for students and other members of the school community to communicate, a recipient should also make the Title IX coordinator's contact information available on social media to the extent that they are supported or used by the recipient.

The content of the notice must be complete and include current information. The Title IX coordinator should work with the recipient to make sure the text of the notice complies with all applicable requirements, that the notice is published and properly displayed, and the content of the notice remains accurate. One potentially low-cost way to help ensure that a recipient's notice is properly disseminated and current on the recipient's website is to create a page on the website that includes the name and contact information of the recipient's Title IX coordinator(s), relevant Title IX policies and grievance procedures, and other resources related to Title IX compliance and gender equity. A link to this page should be prominently displayed on the recipient's homepage.

For more information on notices of nondiscrimination, please review:

- 34 C.F.R. §§ 106.8(a), 106.9;
- Notice of Nondiscrimination (August 2010), *available at* http://www.ed.gov/ocr/docs/nondisc.pdf;
- Dear Colleague Letter: Title IX Grievance Procedures, Postsecondary Education (August 4, 2004), *available at* http://www.ed.gov/ocr/responsibilities_ix_ps.html; and
- Dear Colleague Letter: Title IX Grievance Procedures, Elementary and Secondary Education (April 26, 2004), *available at* http://www.ed.gov/ocr/responsibilities_ix.html.

D. Application of Title IX to Various Issues

Below is a summary of some of the key issues covered by Title IX, as well as some general information on the legal requirements applicable to each issue area, including citations to the relevant Departmental regulatory provisions and references to OCR's guidance that address the issue. The discussion of each Title IX issue includes recommended best practices to help a recipient meet its obligations under Title IX.

1. Recruitment, Admissions, and Counseling

Title IX prohibits recipient institutions of vocational education, professional education, graduate higher education, and public colleges and universities from discriminating on the basis of sex in the recruitment or admission of students.[7] The Title IX coordinator at these recipient institutions should help the recipient to ensure that it does not discriminate on the basis of sex in recruitment and admissions by reviewing the recipient's recruitment materials, admission forms, and policies and practices in these areas.

The Department's Title IX regulations also prohibit all recipients from discriminating on the basis of sex in counseling or guiding students or applicants for admission. The Title IX coordinator should review any materials used for counseling students in terms of class or career selection, or for counseling applicants for admission, to ensure that the recipient does not use different materials for students based on sex or use materials that permit or require different treatment of students based on sex.

At all types of recipient institutions covered by Title IX, the Title IX coordinator should also work with school officials to help remind the school community that all students must have equal access to all programs. Many fields of study continue to be affected by sex-based disparities in enrollment; these are typically called nontraditional fields. For example, some fields of study in science, technology, engineering, and mathematics or career and technical education are often affected by disproportionate enrollment of students based on sex, which triggers a duty of inquiry on the part of the recipient. Title IX coordinators can help ensure that such disparities are not the result of discrimination on the basis of sex by reviewing enrollment data and working with other employees of the recipient to review counseling practices and counseling or appraisal materials. Under certain circumstances, recipients might encourage students to explore nontraditional fields to address underrepresentation of students of that sex in those fields.

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[7] 20 U.S.C. §1681(a)(1). The Department's Title IX regulations regarding admissions do not apply to private institutions of undergraduate higher education or to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex. 34 C.F.R. § 106.15.

For more information about sex discrimination in recruiting, admissions, and counseling, please review:

- 34 C.F.R. §§ 106.3(b), 106.15, 106.36, and 34 C.F.R. Part 106, Subpart C; and
- Title IX and Access to Courses and Programs in Science, Technology, Engineering and Math (October 2012), *available at* http://www.ed.gov/ocr/presentations/stem-t9-powerpoint.pdf.

2. Financial Assistance

Generally, a recipient may not: (a) provide different amounts or types of financial assistance, limit eligibility for such assistance, apply different criteria or otherwise discriminate on the basis of sex in administering such assistance; or (b) assist any agency, organization, or person which offers sex-restricted student aid.

The Department's Title IX regulations provide three exceptions to these general prohibitions. Recipients are permitted to administer or assist in the administration of scholarships, fellowships, or other awards that are restricted to members of one sex if the award is: (a) created by certain legal instruments, including wills or trusts, or by acts of a foreign government, provided the overall effect is nondiscriminatory; (b) for study at foreign institutions if the recipient provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex; or (c) athletic financial assistance. The Department's Title IX regulatory requirements regarding athletic financial assistance are discussed in the Athletics section, below.

To help the recipient ensure its compliance with these requirements, the Title IX coordinator should help the recipient develop, and subsequently monitor, the procedures and practices for awarding financial assistance and for administering or aiding any foundation, trust, agency, organization, person, or foreign government in awarding financial assistance to its students.

For more information about sex discrimination in financial assistance, please review:

- 34 C.F.R. §§ 106.31(c) and 106.37.

3. Athletics

The Department's Title IX regulations prohibit sex discrimination in interscholastic, intercollegiate, club, or intramural athletics offered by a recipient institution, including with respect to (a) student interests and abilities; (b) athletic benefits and opportunities; and (c) athletic financial assistance.

(a) Student Interests and Abilities

Under the Department's Title IX regulations, an institution must provide equal athletic opportunities for members of both sexes and effectively accommodate students' athletic interests and abilities. OCR uses a three-part test to determine whether an institution is providing nondiscriminatory athletic participation opportunities in compliance with the Title IX regulation. The test provides the following three compliance options:

1. Whether participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

2. Where the members of one sex have been and are underrepresented among athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or

3. Where the members of one sex are underrepresented among athletes, and the institution cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

The three-part test is intended to allow institutions to maintain flexibility and control over their athletic programs consistent with Title IX's nondiscrimination requirements. The three-part test furnishes an institution with three individual avenues to choose from when determining how it will provide individuals of each sex with nondiscriminatory opportunities to participate in athletics. If an institution has met any part of the three-part test, OCR will determine that the institution is meeting this requirement.

To coordinate the institution's compliance with this requirement, the Title IX coordinator should compare its enrollment data to the number of athletic participation opportunities it offers; review the institution's history of expanding participation opportunities for students of the underrepresented sex; and evaluate whether there is unmet interest in a particular sport, whether there is sufficient ability to sustain a team in the sport, and whether there is a reasonable expectation of competition for the team.

For more information about the obligation to provide equal athletic opportunities and to effectively accommodate students' athletic interests and abilities, please review:

- 34 C.F.R. § 106.41(c)(1);
- Dear Colleague Letter: Part Three of the Three-Part Test (April 20, 2010), *available at* http://www.ed.gov/ocr/letters/colleague-20100420.html;
- Dear Colleague Letter: Athletic Activities Counted for Title IX Purposes (September 17, 2008), *available at* http://www.ed.gov/ocr/letters/colleague-20080917.pdf;
- Dear Colleague Letter: Title IX Athletics Three-Part Test (March 27, 2008), *available at* http://www.ed.gov/ocr/letters/title-ix-2008-0327.pdf;
- Dear Colleague Letter: Further Clarification of Intercollegiate Athletics Policy Guidance (July 11, 2003), *available at* http://www.ed.gov/ocr/title9guidanceFinal.html;
- Dear Colleague Letter: Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (January 16, 1996), *available at* http://www.ed.gov/ocr/docs/clarific.html; and
- Title IX Policy Interpretation: Intercollegiate Athletics (December 11, 1979), *available at* http://www.ed.gov/ocr/docs/t9interp.html.

(b) Athletic Benefits and Opportunities

The Department's Title IX regulations and OCR guidance require that recipients that operate or sponsor interscholastic, intercollegiate, club or intramural athletics provide equal athletic opportunities for members of both sexes. In determining whether an institution is providing equal opportunity in athletics, the regulations require the Department to consider, among others, the following factors: (1) the provision of equipment and supplies; (2) scheduling of games and practice time; (3) travel and per diem allowances; (4) opportunity for coaching and academic tutoring; (5) assignment and compensation of coaches and tutors; (6) provision of locker rooms, and practice and competitive facilities; (7) provision of medical and training facilities and services; (8) housing and dining services; (9) publicity; (10) recruitment; and (11) support services. These factors are sometimes referred to as the laundry list.

As part of the recipient's obligation to provide equal athletic opportunity to its students, OCR encourages Title IX coordinators to work with the recipient to periodically review and compare the distribution of athletic benefits and opportunities by sex in each of these areas, including financial expenditures on male and female athletic teams.

For more information about each of these areas, please review:

- 34 C.F.R. § 106.41(c)(2)–(10); and
- Title IX Policy Interpretation: Intercollegiate Athletics (December 11, 1979), *available at* http://www.ed.gov/ocr/docs/t9interp.html.

(c) Athletic Financial Assistance

The Department's Title IX regulations specify that if a recipient awards athletic financial assistance, including athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in substantial proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics. Separate athletic financial assistance for members of each sex may be provided as part of separate athletic teams for members of each sex.

The Title IX coordinator should help coordinate the recipient's efforts to ensure that the athletic financial assistance awarded by the recipient complies with these provisions by working with the institution and its athletics department.

For more information about a recipient's obligations regarding awards of athletic financial assistance, please review:

- 34 C.F.R. § 106.37(c);
- Title IX Policy Interpretation: Intercollegiate Athletics (December 11, 1979), *available at* http://www.ed.gov/ocr/docs/t9interp.html; and
- Dear Colleague Letter: Bowling Green State University (July 23, 1998), *available at* http://www.ed.gov/ocr/docs/bowlgrn.html.

4. Sex-Based Harassment

In order to best perform academically and to have equal access to all aspects of a recipient's educational programs and activities, students must not be subjected to unlawful harassment, either in the classroom or while participating in other education programs or activities.[8]

Title IX prohibits sex-based harassment by peers, employees, or third parties that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the recipient's education programs and activities (*i.e.*, creates a hostile environment). When a recipient knows or reasonably should know of possible sex-based harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that the harassment created a hostile environment, the recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects.

Title IX prohibits several types of sex-based harassment. Sexual harassment is unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment and refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Gender-based harassment is another form of sex-based harassment and refers to unwelcome conduct based on an individual's actual or perceived sex, including harassment based on gender identity or nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature. All of these types of sex-based harassment are forms of sex discrimination prohibited by Title IX.

Harassing conduct may take many forms, including verbal acts and name-calling, as well as non-verbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.

Title IX protects all students from sex-based harassment, regardless of the sex of the alleged perpetrator or complainant, including when they are members of the same sex. Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to

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[8] A Title IX coordinator may receive reports of sex-based harassment of any member of the school community. It is the Title IX coordinator's responsibility to help make sure that such complaints are processed appropriately.

conform to stereotypical notions of masculinity or femininity, and a recipient must accept and appropriately respond to all complaints of sex discrimination. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a recipient's obligations. A recipient should investigate and resolve allegations of sexual or gender-based harassment of lesbian, gay, bisexual, and transgender students using the same procedures and standards that it uses in all complaints involving sex-based harassment. The fact that an incident of sex-based harassment may be accompanied by anti-gay comments or be partly based on a student's actual or perceived sexual orientation does not relieve a recipient of its obligation under Title IX to investigate and remedy such an incident.

The Title IX coordinator must coordinate the recipient's efforts to accept and appropriately respond to all complaints of sex discrimination and should work with the recipient to prevent sexual and gender-based harassment.

- First, the Title IX coordinator should assist in any training the recipient provides to the school community, including all employees, as to what conduct constitutes sexual and gender-based harassment and how to respond appropriately when it occurs.

- Second, the Title IX coordinator should help the recipient develop a method appropriate to their institution to survey the campus climate, evaluate whether any discriminatory attitudes pervade the school culture, and determine whether any harassment or other problematic behaviors are occurring, where they happen, which students are responsible, which students are targeted, and how those conditions may be best remedied.

- Third, because the Title IX coordinator must have knowledge of all Title IX reports and complaints at the recipient institution, the Title IX coordinator is generally in the best position to evaluate confidentiality requests from complainants in the context of providing a safe, nondiscriminatory environment for all students.

- Fourth, the Title IX coordinator should coordinate recordkeeping (for instance, in a confidential log maintained by the Title IX coordinator), monitor incidents to help identify students or employees who have multiple complaints filed against them or who have been repeated targets, and address any patterns or systemic problems that arise, including making school officials aware of these patterns or systemic problems as appropriate.

- Fifth, the Title IX coordinator should recommend, as necessary, that the recipient increase safety measures, such as monitoring, supervision, or security at locations or activities where harassment has occurred.

- Finally, the Title IX coordinator should regularly review the effectiveness of the recipient's efforts to ensure that the recipient institution is free from sexual and gender-based harassment, and use that information to recommend future proactive steps that the recipient can take to comply with Title IX and protect the school community.

For more information about a recipient's obligation to address sexual and gender-based harassment, please review:

- Questions and Answers on Title IX and Sexual Violence (April 29, 2014), *available at* http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf;
- Dear Colleague Letter: Sexual Violence (April 4, 2011), *available at* http://www.ed.gov/ocr/letters/colleague-201104.pdf;
- Dear Colleague Letter: Harassment and Bullying (October 26, 2010), *available at* http://www.ed.gov/ocr/letters/colleague-201010.pdf;
- Sexual Harassment: It's Not Academic (September 2008), *available at* http://www.ed.gov/ocr/docs/ocrshpam.pdf;
- Dear Colleague Letter: Sexual Harassment Issues (January 25, 2006), *available at* http://www.ed.gov/ocr/letters/sexhar-2006.pdf;
- Dear Colleague Letter: First Amendment (July 28, 2003), *available at* http://www.ed.gov/ocr/firstamend.html;
- Revised Sexual Harassment Guidance (January 19, 2001), *available at* http://www.ed.gov/ocr/docs/shguide.pdf; and
- Not Alone: Together Against Sexual Assault, *available at* http://www.notalone.gov.

5. Pregnant and Parenting Students

Under the Department's Title IX regulations, recipients are prohibited from: (a) applying any rule concerning parental, family, or marital status that treats persons differently on the basis of sex; or (b) discriminating against or excluding any student from its education program or activity, including any class or extracurricular activity on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom. Institutions of vocational education, professional education, graduate higher education, and public colleges and universities are prohibited from making pre-admission inquiries as to the marital status of an applicant for admission.

The Title IX coordinator should work with the recipient on its obligation not to discriminate against students based on their parental, family, or marital status, or exclude pregnant or parenting students from participating in any educational program, including extracurricular activities. The Title IX coordinator is responsible for coordinating the recipient's response to complaints of discrimination against pregnant and parenting students. In addition, the Title IX coordinator should provide training to students so they know that Title IX prohibits discrimination against pregnant and parenting students, provide workshops to administrators, teachers, and other staff on the Department's Title IX regulations and OCR guidance related to pregnant and parenting students, and assist the recipient in helping to meet the unique educational, child care, and health care needs of pregnant and parenting students.

For more information about a recipient's obligations regarding pregnant and parenting students, please review:

- 34 C.F.R. §§ 106.21(c), 106.31, 106.40;
- Supporting the Academic Success of Pregnant and Parenting Students (June 2013), *available at* http://www.ed.gov/ocr/docs/pregnancy.pdf;
- Dear Colleague Letter: Pregnant and Parenting Students (June 25, 2013), *available at* http://www2.ed.gov/ocr/letters/colleague-201306-title-ix.pdf; and
- Dear Colleague Letter: Nondiscriminatory Treatment of Pregnant Student Athletes (June 25, 2007), *available at* http://www.ed.gov/ocr/letters/colleague-20070625.pdf.

6. Discipline

The Department's Title IX regulations prohibit a recipient from subjecting any person to separate or different rules of behavior, sanctions, or other treatment, such as discriminatory discipline, based on sex.

The Title IX coordinator should review the recipient's discipline policies to help make sure they are not discriminatory. In addition, the Title IX coordinator should work with other coordinators or school employees to help the recipient keep and maintain accurate and complete records regarding its disciplinary incidents and monitor the recipient's administration of its discipline policies to ensure that they are not administered in a discriminatory manner. For example, the Title IX coordinator should review the recipient's disciplinary records and data to ensure that similarly situated students are not being disciplined differently based on sex for the same offense and that the recipient's discipline policies do not have an unlawful disparate impact on students based on sex. The Title IX coordinator should also help the recipient to ensure that students are not disciplined based on their gender identity or for failing to conform to stereotypical notions of masculinity or femininity in their behavior or appearance.

For more information about a recipient's obligations regarding nondiscriminatory administration of discipline, please review:

- 34 C.F.R. § 106.31(b)(4); and
- Dear Colleague Letter: Nondiscriminatory Administration of Discipline (January 8, 2014), *available at* http://www.ed.gov/ocr/letters/colleague-201401-title-vi.pdf.

7. Single-Sex Education

A recipient is generally prohibited from providing any of its education programs or activities separately on the basis of sex, or requiring or refusing participation by students on the basis of sex unless expressly authorized to do so under Title IX or the Department's implementing regulations. There are some limited exceptions, the most significant of which are outlined below.

(a) Schools

A recipient generally may offer a single-sex nonvocational elementary or secondary school under Title IX only if it offers a substantially equal school to students of the other sex.[9] The substantially equal school may be either single-sex or coeducational. The Department's Title IX regulations include a non-exhaustive list of factors that are relevant to determining whether a school is substantially equal to a single-sex school. The factors include the admission criteria and policies; the educational benefits provided, including the quality, range, and content of curriculum and other services, and the quality and availability of books, instructional materials, and technology; the qualifications of faculty and staff; geographic accessibility; the quality and range of extracurricular offerings; the quality, accessibility, and availability of facilities and resources provided; and intangible features, such as reputation of faculty. Although the schools do not need to be identical with respect to each factor, they need to be substantially equal. This means that if one school is significantly superior with respect to one factor, or slightly superior with respect to many factors, the schools are likely not substantially equal.

If the recipient offers a single-sex school, then the district's Title IX coordinator should be involved in assessing the recipient's compliance with Title IX by helping to ensure that the recipient offers a substantially equal single-sex school or coeducational school.

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[9] Title IX does not prohibit the operation of a single-sex nonvocational private elementary or secondary school or a single-sex nonvocational private institution of undergraduate higher education. 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15(d). Title IX permits the operation of a nonvocational public charter school that is a single-school local educational agency under State law without requiring the operation of a substantially equal school for the excluded sex.

(b) Classes and Extracurricular Activities

The Department's Title IX regulations do not prohibit recipients from grouping students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex or using requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

The Department's Title IX regulations identify the following categories for which a recipient may intentionally separate students by sex: (a) contact sports in physical education classes; (b) classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality; and (c) nonvocational classes and extracurricular activities within a coeducational, nonvocational elementary or secondary school if certain criteria are met.

With respect to the third category, a recipient may offer a single-sex nonvocational class or extracurricular activity in a coeducational, nonvocational elementary or secondary school if the class is based on one of two important objectives: to improve its students' educational achievement through its overall established policy to provide diverse educational opportunities or to meet the particular, identified educational needs of its students. The single-sex nature of each class must be substantially related to achievement of the important objective and the recipient must implement its important objective in an evenhanded manner. In addition, enrollment in a single-sex class must be completely voluntary and the recipient must provide a substantially equal coeducational class in the same subject to all students, and may be required to provide a substantially equal single-sex class for students of the excluded sex. The factors that are relevant to determining whether a single-sex class and a coeducational class are substantially equal are similar to those used to determine whether schools are substantially equal. If a recipient provides a single-sex class under this regulatory exception, it is also required to conduct a periodic evaluation of the class and the original justification behind the class at least every two years. The periodic evaluation must ensure that each single-sex class is based upon a genuine justification and does not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex, and that each single-sex class or extracurricular activity is substantially related to the achievement of the important objective for the class.

If the recipient offers a single-sex class, then the Title IX coordinator should be involved in assessing the recipient's compliance with Title IX, both when determining whether and how single-sex classes can be offered and during the recipient's periodic review of single-sex offerings. The Title IX coordinator's role may include assisting with the preparation and review of the required periodic evaluations, tracking and reviewing complaints involving single-sex classes, confirming that student enrollment in any single-sex class is completely voluntary, and helping to ensure that the recipient offers a substantially equal coeducational class and, as appropriate, substantially equal single-sex class, for each single-sex class offered. The Title IX coordinator should also help ensure that

transgender students are treated consistent with their gender identity in the context of single-sex classes.

For more information about single-sex schools, classes, and extracurricular activities, please review:

- 34 C.F.R. § 106.34;
- Questions and Answers Regarding Single-Sex Elementary and Secondary Classes and Extracurricular Activities (December, 2014), *available at* http://www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf;
- Dear Colleague Letter: Single-Sex Education (January 31, 2007), *available at* http://www.ed.gov/ocr/letters/single-sex-20070131.html; and
- Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 71 Fed. Reg. 62,530 (October 25, 2006), *available at* http://www2.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf.

8. Employment

Under the Department's Title IX regulations, a recipient is generally prohibited from discriminating on the basis of sex in any employment or recruitment, consideration or selection for employment, whether full-time or part-time.[10] This includes employment actions such as recruitment, hiring, promotion, compensation, grants of leave, and benefits. A recipient must make employment decisions in a nondiscriminatory manner, and may not enter into contracts, including those with employment agencies or unions, that have the direct or indirect effect of subjecting employees or students to discrimination based on sex. Additionally, Title IX's employment provisions protect against discrimination based on an applicant's or employee's pregnancy or marital or parental status. Finally, a recipient may not employ students in a way that discriminates against one sex, or provide services to any other organization that does so.

The Title IX coordinator should help the recipient in making sure school employees are aware that the Title IX coordinator is available to help employees as well as students. The Title IX coordinator should be familiar with the recipient's employment policies and procedures, and train the appropriate human resource employees regarding the recipient's obligations under Title IX.

For more information about employment discrimination, please review:

- 34 C.F.R. Part 106, Subpart E; 34 C.F.R. § 106.38.

[10] Employees are also protected from discrimination on the basis of sex, including sexual harassment, by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e. OCR does not enforce Title VII. For information about Title VII, see the Equal Employment Opportunity Commission's website at http://www.eeoc.gov.

9. Retaliation

A recipient cannot retaliate against an individual, including a Title IX coordinator, for the purpose of interfering with any right or privilege secured by Title IX. Retaliation against an individual because the individual filed a complaint alleging a violation of Title IX; participated in a Title IX investigation, hearing, or proceeding; or advocated for others' Title IX rights is also prohibited. The recipient should ensure that individuals are not intimidated, threatened, coerced, or discriminated against for engaging in such activity.

For more information about the prohibition against retaliation, please review:

- 34 C.F.R. § 106.71 (incorporating by reference 34 C.F.R. § 100.7(e)); and
- Dear Colleague Letter: Retaliation (April 2013), *available at* http://www.ed.gov/ocr/letters/colleague-201304.pdf.

E. Information Collection and Reporting

The Department requires recipients to report information about Title IX and other civil rights issues that may be useful to the work of Title IX coordinators. In addition, Title IX coordinators can play a helpful role in helping to ensure that their institutions' information is accurate, comprehensive, and effectively used to cure civil rights violations or prevent them from occurring.

OCR administers the Civil Rights Data Collection (CRDC), which collects information on key education and civil rights issues from public local educational agencies (LEAs) and schools, including juvenile justice facilities, charter schools, alternative schools, and schools serving students with disabilities. The information is used by OCR in its enforcement efforts, by other Department offices and Federal agencies, and by the public, including policymakers and researchers.

The CRDC collects information on several key issue areas under Title IX that might help inform the Title IX coordinator's work, including harassment or bullying,[11] discipline, and participation in various academic classes and programs, single-sex classes and activities, and interscholastic athletics. In addition, the CRDC asks LEAs to report whether they have civil rights coordinators, including Title IX coordinators and to provide each coordinator's contact information. For Title IX coordinators at elementary and secondary schools, the CRDC may be a useful tool to monitor trends within their districts and schools to determine whether there are patterns or systemic problems under Title IX. Additionally, the CRDC and other information collections at the State and local levels can help recipients and their Title IX coordinators identify patterns of disproportionality that may be rooted in sex discrimination. For example, the CRDC's information about student enrollment in particular courses of study (*e.g.*, science, technology, engineering, and mathematics courses) may help a Title IX coordinator determine whether a particular sex is underrepresented in such courses. If so, the coordinator should investigate the possible causes of the disproportionality and then recommend measures for reaching greater proportionality, as appropriate.

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[11] The CRDC collects information on allegations of harassment or bullying, students reported as harassed or bullied, and students disciplined for harassment or bullying, based on sex, race/color/national origin, and disability. For allegations of harassment or bullying, data are also collected based on religion and sexual orientation. As a best practice, OCR recommends that Title IX coordinators assist the recipient in training relevant staff about how information on sex-based harassment should be reported under the CRDC. For example, relevant staff should be knowledgeable about the ways in which harassment based on sex and sexual orientation overlap, and informed that if an incident has multiple bases (*e.g.*, an incident in which a student was harassed both based on gender nonconformity (sex) and sexual orientation), the LEA should report all relevant bases under the CRDC. In addition, the recipient should remind staff who collect, maintain, and report information to the Department of these requirements and of the district's obligations, including keeping personally identifiable information private.

The Department's Office of Postsecondary Education also collects information about Title IX coordinators from postsecondary institutions in reports required under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and the Higher Education Opportunity Act.[12] Title IX coordinators in postsecondary settings should assist the institution's officials in accurately reporting the required information.

For more information about data collection and reporting, please review:

- CRDC webpage, *available at* http://www.ed.gov/ocr/data.html; and
- Campus Security webpage (for postsecondary institutions), *available at* http://www.ed.gov/admins/lead/safety/campus.html.

[12] 20 U.S.C. § 1092(f). The Department will begin collecting this information in 2015.

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

June 25, 2013

Dear Colleague:

We as a nation need to do more to help the hundreds of thousands of young people who become mothers and fathers each year graduate from high school ready for college and successful careers. According to studies cited in the attached pamphlet, *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972,* 26 percent of young men and young women combined who had dropped out of public high schools — and one-third of young women — said that becoming a parent was a major factor in their decision to leave school. And, only 51 percent of young women who had a child before age 20 earned their high school diploma by age 22. The educational prospects are worse at the higher-education level. Only 2 percent of young women who had a child before age 18 earned a college degree by age 30. This low education attainment means that young parents are more likely than their peers to be unemployed or underemployed, and the ones who do find jobs will, on average, earn significantly less than their peers.

To help improve the high school and college graduation rates of young parents, we must support pregnant and parenting students so that they can stay in school and complete their education, and thereby build better lives for themselves and their children. In view of this need, my office has prepared the attached pamphlet to help secondary school administrators, teachers, counselors, parents and students in this important work.[1] Although this pamphlet focuses on secondary schools, the legal principles apply to all recipients of federal financial assistance, including postsecondary institutions.

The pamphlet provides background on school retention problems associated with young parents and the requirements related to these issues contained in the Department's regulation implementing *Title IX*, 20 U.S.C. §§ 1681 *et seq*. As the pamphlet explains, it is illegal under *Title IX* for schools to exclude pregnant students (or students who have been pregnant) from participating in any part of an educational program, including extracurricular activities. Schools may implement special instructional programs or classes for pregnant students, but participation must be completely voluntary on the part of the student. Also, the programs and classes must be comparable to those offered to other students with regard to the range of academic, extracurricular and enrichment opportunities.

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[1] This pamphlet replaces the pamphlet entitled *Teenage Pregnancy and Parenthood Issues Under Title IX of the Education Amendments of 1972*, which the Department of Education's Office for Civil Rights published in 1991.

Schools must treat pregnant students in the same way that they treat similarly situated students. Thus, any special services provided to students who have temporary medical conditions must also be provided to pregnant students. Likewise, a student who is pregnant or has given birth may not be required to submit medical certification for school participation unless such certification is also required for all other students with physical or emotional conditions requiring the attention of a physician.

A school must excuse a student's absences because of pregnancy or childbirth for as long as the student's doctor deems the absences medically necessary. When a student returns to school, she must be allowed to return to the same academic and extracurricular status as before her medical leave began. By ensuring that the student has the opportunity to maintain her academic status, we can encourage young parents to work toward graduation instead of choosing to drop out of school.

The pamphlet also includes information on strategies that educators may use and programs schools can develop to address the educational needs of students who become pregnant or have children.

The pamphlet is available online at http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf. If you need additional information about *Title IX*, have questions regarding the Office for Civil Rights' (OCR) policies or seek technical assistance, please contact the OCR enforcement office that serves your state or territory. The list of offices is available at http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm.

Thank you for your attention to the importance of ensuring that young parents have the opportunity to graduate from high school and earn a college degree. I look forward to continuing our work together to provide all students with the opportunity to fully benefit from their schools' educational programs and activities.

Sincerely,

/s/

Seth Galanter
Acting Assistant Secretary for Civil Rights

Attachment

Know Your Rights:

Pregnant or Parenting? Title IX Protects You From Discrimination At School

Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. §1681 *et seq.*, is a Federal civil rights law that prohibits discrimination on the basis of sex—including pregnancy and parental status—in educational programs and activities.

All public and private schools, school districts, colleges, and universities receiving any Federal funds ("schools") must comply with Title IX.*

Here are some things you should know about your rights:

***Classes and School Activities* – your school MUST:**

- Allow you to continue participating in classes and extracurricular activities even though you are pregnant. This means that you can still participate in advanced placement and honors classes, school clubs, sports, honor societies, student leadership opportunities, and other activities, like after-school programs operated at the school.
    - Allow you to choose whether you want to participate in special instructional programs or classes for pregnant students. You can participate if you want to, but your school cannot pressure you to do so. The alternative program must provide the same types of academic, extracurricular and enrichment opportunities as your school's regular program.
- Allow you to participate in classes and extracurricular activities even though you are pregnant and not require you to submit a doctor's note unless your school requires a doctor's note from all students who have a physical or emotional condition requiring treatment by a doctor. Your school also must not require a doctor's note from you after you have been hospitalized for childbirth unless it requires a doctor's note from all students who have been hospitalized for other conditions.
- Provide you with reasonable adjustments, like a larger desk, elevator access, or allowing you to make frequent trips to the restroom, when necessary because of your pregnancy.

***Excused Absences and Medical Leave* – your school MUST:**

- Excuse absences due to pregnancy or childbirth for as long as your doctor says it is necessary.
- Allow you to return to the same academic and extracurricular status as before your medical leave began, which should include giving you the opportunity to make up any work missed while you were out.
- Ensure that teachers understand the Title IX requirements related to excused absences/medical leave. Your teacher may not refuse to allow you to submit work after a deadline you missed because of pregnancy or childbirth. If your teacher's grading is based in part on class participation or attendance and you missed class because of pregnancy or childbirth, you should be allowed to make up the participation or attendance credits you didn't have the chance to earn.
- Provide pregnant students with the same special services it provides to students with temporary medical conditions. This includes homebound instruction/at-home tutoring/independent study.

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* A school that is controlled by a religious organization is exempt from Title IX when the law's requirements would conflict with the organization's religious tenets.

Harassment – your school MUST:

- Protect you from harassment based on sex, including harassment because of pregnancy or related conditions. Comments that could constitute prohibited harassment include making sexual comments or jokes about your pregnancy, calling you sexually charged names, spreading rumors about your sexual activity, and making sexual propositions or gestures, if the comments are sufficiently serious that it interferes with your ability to benefit from or participate in your school's program.

Policies and Procedures – your school MUST:

- Have and distribute a policy against sex discrimination. It is recommended that the policy make clear that prohibited sex discrimination covers discrimination against pregnant and parenting students.
- Adopt and publish grievance procedures for students to file complaints of sex discrimination, including discrimination related to pregnancy or parental status.
- Identify at least one employee in the school or school district to carry out its responsibilities under Title IX (sometimes called a "Title IX Coordinator") and notify all students and employees of the name, title, and contact information of its Title IX Coordinator. These responsibilities include overseeing complaints of discrimination against pregnant and parenting students.

Helpful Tips for Pregnant and Parenting Students:

- Ask your school for help—meet with your school's Title IX Coordinator or counselor regarding what your school can do to support you in continuing your education.
- Keep notes about your pregnancy-related absences, any instances of harassment and your interactions with school officials about your pregnancy, and immediately report problems to your school's Title IX Coordinator, counselor, or other staff.
- If you feel your school is discriminating against you because you are pregnant or parenting you may file a complaint:
  - Using your school's internal Title IX grievance procedures.
  - With the U.S. Department of Education, Office for Civil Rights (OCR), even if you have not filed a complaint with your school. If you file with OCR, make sure you do so within 180 days of when the discrimination took place.
  - In court, even if you have not filed a complaint with your school or with OCR.
- Contact OCR if you have any questions. We are here to help make sure all students, including pregnant and parenting students, have equal educational opportunities!

If you want to learn more about your rights, or if you believe that a school district, college, or university is violating Federal law, you may contact the U.S. Department of Education, Office for Civil Rights, at (800) 421-3481 or ocr@ed.gov. If you wish to fill out a complaint form online, you may do so at: http://www.ed.gov/ocr/complaintintro.html.



U.S. DEPARTMENT OF EDUCATION

Supporting the Academic Success of Pregnant and Parenting Students

Under *Title IX* of the Education Amendments of 1972

Supporting the Academic Success of Pregnant and Parenting Students

Under *Title IX* of the Education Amendments of 1972

U.S. Department of Education
Office for Civil Rights

June 2013

U. S. Department of Education
Arne Duncan
Secretary

Office for Civil Rights
Seth Galanter
Acting Assistant Secretary

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This publication is available on the Department's Office for Civil Rights website at http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf. Any updates to this publication will be available at this site.

On request, this publication is available in alternate formats, such as Braille, large print, or compact disc. For more information, you may contact the Department's Alternate Format Center at 1-202-260-0852 or 1-202-260-0818.

If you have difficulty understanding English you may request language assistance services for Department information that is available to the public. These language assistance services are available free of charge. If you need more information about interpretation or translation services, please call 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-437-0833), or email us at: Ed.Language.Assistance@ed.gov. Or write to: U.S. Department of Education, Information Resource Center, LBJ Education Building, 400 Maryland Ave. SW, Washington, DC 20202.

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Contents

Introduction 1

Effect of Pregnancy and Parenthood on the Dropout Rate. . .3

Title IX Requirements Regarding Pregnant and Parenting Students 5

Frequently Asked Questions Pertaining to *Title IX* Requirements Regarding Pregnant and Parenting Students. .7

May a school require a pregnant student to participate in a separate program for pregnant students? 7

May a school require a pregnant student to obtain a doctor's permission before allowing her to attend school late in her pregnancy if the school is worried about the student's health or safety? 8

Can harassing a student because of pregnancy violate *Title IX*? 8

What types of assistance must a school provide to a pregnant student at school? 9

In addition to allowing a pregnant student to attend classes, does a school need to allow her to participate in school clubs, class activities, interscholastic sports, and other school-sponsored organizations? 9

Does a school have to excuse a student's absences due to pregnancy or childbirth? 10

Does a school need to provide special services to a pregnant student? 10

What if some teachers at a school have their own policies about class attendance and make-up work?. . . . 11

What procedures must a school district have in place related to discrimination on the basis of sex, including discrimination related to pregnancy and parental status? 11

How do I enforce my rights under *Title IX?* 13

Strategies to Assist Educators in Supporting Pregnant and Parenting Students 15

Programs Designed to Support Pregnant and Parenting Students. 19

Endnotes 23

Introduction

The Office for Civil Rights (OCR) in the U.S. Department of Education (ED) is responsible for enforcing laws prohibiting discrimination in federally assisted educational programs and activities. These laws include *Title IX* of the Education Amendments of 1972 (*Title IX*), which prohibits discrimination based on sex in education programs or activities. All public and private educational institutions that receive any federal financial assistance ("schools") must comply with this law. (Note, however, that an educational institution that is controlled by a religious organization is exempt from *Title IX* when the law's requirements would conflict with the organization's religious tenets.[1]) *Title IX* protects students in all of the academic, educational, extracurricular, athletic, and other programs or activities of schools. This includes prohibiting discrimination against pregnant and parenting students.

President Obama has set the ambitious goal that by 2020 the United States will lead the world in the proportion of persons who graduate from college.[2] In order to achieve this goal, we must support every student in completing high school, so he or she is ready for college or a career. To this end, it is imperative that we all work to ensure that pregnant and parenting students are not discriminated against as they strive to stay in school. With our help, young parents can graduate from high school ready for further success, instead of dropping out of school as a result of practices that make it difficult for them to succeed. OCR is committed to helping achieve this goal.

This pamphlet has been prepared for secondary school administrators, teachers, counselors, parents, and students.[3] The first section provides background on school retention problems associated with pregnant and parenting students.

The next two sections, "*Title IX* Requirements Regarding Pregnant and Parenting Students" and "Frequently Asked Questions Pertaining to *Title IX* Requirements Regarding Pregnant and Parenting Students," provide information on the law's specific requirements regarding pregnancy and parenthood. The final two sections, "Strategies to Assist Educators in Supporting Pregnant and Parenting Students" and "Programs Designed to Support Pregnant and Parenting Students," include strategies that educators can use and programs that schools can develop to address the educational needs of students who become pregnant or have children. These strategies and programs have been implemented by some school districts to address those needs while complying with *Title IX*. They are recommendations and are not legally mandated by *Title IX* or its regulations.

Although this pamphlet focuses on secondary schools, the underlying legal principles apply to all recipients of federal financial assistance, including postsecondary institutions.

Effect of Pregnancy and Parenthood on the Dropout Rate

As of October 2009, approximately 3 million 16- through 24-year-olds living in the United States were not enrolled in high school and had not earned a high school diploma or alternative credential.[4] Students give a range of reasons for dropping out of high school, both school- and family-related.[5] Pregnancy is consistently the most common family-related reason given by female students.[6] According to the Centers for Disease Control and Prevention, more than 329,000 young women ages 15 to 19 years in the United States were reported to have given birth in 2011.[7] Data collected by the National Center for Education Statistics in spring 2004 show that 27.8 percent of the female students who were high school sophomores in 2002 and subsequently dropped out did so due to pregnancy.[8] Similarly, a 2006 report found that, of 467 survey respondents ages 16 through 25 who had dropped out of public high schools in 25 different locations across the country, 26 percent of young men and young women combined — and one-third of young women — said that becoming a parent was a major factor in their decision to leave school.[9] Many of these young people reported that, before they became parents, they had been doing reasonably well in school; they also had a strong belief that they could have graduated had they stayed in school.[10] And according to the National Longitudinal Survey of Youth, only 51 percent of young mothers surveyed in 2007–08 who had children before age 20 earned their high school diplomas by age 22, while 89 percent of their peers who did not have children as teenagers earned their diplomas by that age.[11]

The economic and career prospects for students who drop out of school are limited. In 2010 adult women without a high school diploma earned on average only a little more than $17,000 for the year — approximately $8,000 less annually than women with a high school diploma.[12] A 2007 report found that having a high school diploma lowered the probability of needing benefits from Temporary Assistance for Needy Families by 40 percent and from food stamps by 19 percent.[13] And a 2006 report found only about 2 percent of mothers who had a baby before age 18 obtained a college degree by age 30.[14]

Before Congress passed *Title IX* in 1972, students who became pregnant or had children were often treated poorly and sometimes were dismissed from high school. Since the passage of *Title IX*, sex discrimination — including discrimination on the basis of pregnancy, childbirth, and parental status has been prohibited. Encouraging pregnant and parenting students to stay in school will have a positive effect on their lives and their children's lives. The nation as a whole will benefit from having a generation of young adults who are better educated and more economically self-sufficient.

Title IX Requirements Regarding Pregnant and Parenting Students

Title IX provides that:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

ED's regulation implementing *Title IX* specifically prohibits discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.[15] The *Title IX* regulation also prohibits a school from applying any rule related to a student's parental, family, or marital status that treats students differently based on their sex.[16]

Under *Title IX*, it is illegal for schools to exclude a pregnant student from participating in any part of an educational program.[17] This prohibition applies to specific classes such as advanced placement or honors classes, extracurricular programs, interscholastic sports, honor societies, and opportunities for student leadership, among other activities. Schools may implement special instructional programs or classes for a pregnant student, but participation must be completely voluntary on the part of the student, and the programs and classes must be comparable to those offered to other students.[18]

In addition, a school must excuse a student's absences because of pregnancy or childbirth for as long as the student's doctor deems the absences medically necessary. When a student returns to school, she must be allowed to return to the same academic and extracurricular status as before her medical leave began.[19]

Any special services provided to students who have temporary medical conditions must also be provided to a pregnant student.[20] Therefore, if a school provides special services, such as homebound instruction or tutoring, for students who miss school because they have a temporary medical condition, it must do the same for a student who misses school because of pregnancy or childbirth.[21]

A school may require a pregnant student or student who has given birth to submit medical certification for school participation only if the school also requires such certification from all students with physical or emotional conditions requiring the attention of a physician.[22] Thus, for example, a student who has been hospitalized for childbirth must not be required to submit a medical certificate to return to school if a certificate is not required of students who have been hospitalized for other conditions.

Frequently Asked Questions Pertaining to *Title IX* Requirements Regarding Pregnant and Parenting Students

May a school require a pregnant student to participate in a separate program for pregnant students?

No. Any such requirement would violate *Title IX*. A school may offer separate programs or schools for a pregnant student, but participation in those programs or schools must be completely voluntary.[23] A school may provide information to its students about the availability of an alternative program, but it may not pressure a pregnant student to attend that program. A pregnant student must be allowed to remain in her regular classes and school if she so chooses.

If a school offers a voluntary alternative program, that program must provide academic, extracurricular, and enrichment opportunities comparable to those provided to the students in the regular school program.[24] Although an alternative program need not be identical to the regular school program in the specific courses or range of courses, if it provides only vocational-track courses, with no opportunity for advanced academic or college-preparatory classes, it would not be considered comparable. It is critical to provide clear information about what courses are available, how credits are transferred between the regular program and alternative program, and how the student can meet graduation requirements.This helps ensure that any separate programs offered to a pregnant student are both voluntary and comparable to the regular program.

May a school require a pregnant student to obtain a doctor's permission before allowing her to attend school late in her pregnancy if the school is worried about the student's health or safety?

Schools cannot require a pregnant student to produce a doctor's note in order to stay in school or participate in activities, including interscholastic sports, unless the same requirement to obtain a doctor's note applies to all students being treated by a doctor.[25] That is, schools cannot treat a pregnant student differently from other students being cared for by a doctor, even when a student is in the later stages of pregnancy; schools should not presume that a pregnant student is unable to attend school or participate in school activities.

Can harassing a student because of pregnancy violate *Title IX*?

Yes. *Title IX* prohibits harassment of students based on sex, including harassment because of pregnancy or related conditions. Harassing conduct can take many forms, including verbal acts and name-calling, graphic and written statements, and other conduct that may be humiliating or physically threatening or harmful. Particular actions that could constitute prohibited harassment include making sexual comments or jokes about a student's pregnancy, calling a pregnant student sexually charged names, spreading rumors about her sexual activity, and making sexual propositions or gestures. Schools must take prompt and effective steps reasonably calculated to end pregnancy-related harassment, prevent its recurrence, and eliminate any hostile environment created by the harassment. The school violates *Title IX* if sexual harassment or other pregnancy-related harassment by employees, students, or third parties is sufficiently serious that it interferes with

a student's ability to benefit from or participate in the school's program,[26] and the harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.

What types of assistance must a school provide to a pregnant student at school?

To ensure a pregnant student's access to its educational program, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy status. For example, a school might be required to provide a larger desk, allow frequent trips to the bathroom, or permit temporary access to elevators.[27]

In addition to allowing a pregnant student to attend classes, does a school need to allow her to participate in school clubs, class activities, interscholastic sports, and other school-sponsored organizations?

Yes. *Title IX* prohibits a school from excluding a pregnant student from any part of its educational program, including all extracurricular activities, such as school clubs, academic societies, honors programs, homecoming court, or interscholastic sports.[28] A pregnant student must also be eligible to hold leadership positions in these activities. In addition, a pregnant student may not be excluded from an activity that is part of the school's educational program even if the activity is not operated directly by the school.[29] For example, an after-school program run by a local nonprofit agency that rents the school's facilities at a reduced rate and is advertised and promoted by the school may not exclude a pregnant student from enrolling.

Does a school have to excuse a student's absences due to pregnancy or childbirth?

Yes. *Title IX* requires a school to excuse a student's absences due to pregnancy or related conditions, including recovery from childbirth, for as long as the student's doctor deems the absences to be medically necessary.[30] When the student returns to school, she must be reinstated to the status she held when the leave began, which should include giving her the opportunity to make up any work missed. A school may offer the student alternatives to making up missed work, such as retaking a semester, taking part in an online course credit recovery program, or allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave. The student should be allowed to choose how to make up the work.

If the school requires students with other medical conditions to submit a doctor's note, it may require the same from a pregnant student.[31]

Does a school need to provide special services to a pregnant student?

Title IX requires a school to provide the same special services to a pregnant student that it provides to students with temporary medical conditions.[32] For example, if a school provides at-home instruction or tutoring to students who miss school because of temporary medical conditions, it must do the same for a student who misses school because of pregnancy or childbirth.

What if some teachers at a school have their own policies about class attendance and make-up work?

Every school that receives federal financial assistance is bound by *Title IX*.[33] Schools must ensure that the policies and practices of individual teachers do not discriminate against pregnant students. For example, a teacher may not refuse to allow a student to submit work after a deadline that she missed because of absences due to pregnancy or childbirth. Additionally, if a teacher's grading is based in part on class attendance or participation, the student should be allowed to earn the credits she missed so that she can be reinstated to the status she had before the leave. Schools should ensure that their teachers and staff are aware of and follow *Title IX* requirements.

What procedures must a school district have in place related to discrimination on the basis of sex, including discrimination related to pregnancy and parental status?[34]

School districts must adopt and publish grievance procedures for students to file complaints of sex discrimination, including discrimination related to pregnancy or parental status.[35] The grievance process should provide a mechanism for school districts to investigate and evaluate complaints and must provide for prompt and equitable resolution of complaints. School districts should make sure that their grievance procedures are widely distributed and understandable by students, parents, and employees.

A school district must also designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the law.[36] The coordinator's responsibilities include overseeing all *Title IX* complaints, including those alleging discrimination against pregnant and parenting students, and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The *Title IX* coordinator must have adequate training in *Title IX* requirements and must be able to explain the operation of the district's grievance procedures. A school district must notify all students and employees of the name, office address, and telephone number of its *Title IX* coordinator(s).

In addition, a school district must publish a notice that it does not discriminate on the basis of sex in its educational programs or activities.[37] The notice must also state that inquiries concerning the application of *Title IX* and its implementing regulations may be referred to the *Title IX* coordinator or to OCR. The notice must be displayed prominently in each announcement, bulletin, catalog, or application form used in connection with the recruitment of students or employees.[38] *Title IX* does not require a school district to adopt a policy specifically prohibiting discrimination against pregnant or parenting students, but OCR recommends that a school district's nondiscrimination policy makes clear that prohibited sex discrimination covers discrimination against pregnant and parenting students.

How do I enforce my rights under *Title IX*?

If you wish to file a complaint of discrimination with OCR, you may use the online complaint form available at http://www.ed.gov/ocr/complaintintro.html. If filing your complaint online, you will need to provide an original signature by mail, which may be done by printing and mailing the consent form linked at the bottom of the online complaint form.

Alternatively, you may send a letter to the OCR enforcement office responsible for the state in which the school is located. To find out which enforcement office is responsible for your state and to get contact information for it, call 1-800-421-3481, or check OCR's website at http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm. In your letter, you should provide us with the name of the school or school district you are complaining about, the name of the person who has been discriminated against, a description of the events or actions that you believe constitute discrimination, and the date(s) on which the events or actions occurred. You should sign and date your letter and provide your contact information so we can reach you by phone, letter, and email.

The complaint must be filed with OCR within 180 days from the date of the incident that is the basis of your complaint, although there may be limited exceptions that would allow additional time. You are not required to use a school district's grievance procedures before filing a complaint with OCR. Note that it is unlawful for a school to retaliate against an individual for bringing concerns about the rights of a pregnant and parenting student to a school's attention, making a complaint to OCR, or otherwise participating in an OCR investigation or proceeding.

You also may have the right to file suit in court claiming that a school violated *Title IX*. You need not file a complaint with OCR before filing a suit in court. If you file a suit in court, OCR will close any complaint you filed with OCR that involves the same allegations against the same school. OCR cannot represent you in court. Thus, if you wish to file a court action, you must do so through your own attorney or on your own through the court's clerk's office. You may re-file your complaint with OCR within 60 days following the termination of the court proceeding if there was no decision on the merits or settlement of your complaint allegations.

Strategies to Assist Educators in Supporting Pregnant and Parenting Students

Going beyond their basic legal obligations under *Title IX*, administrators, teachers, and school counselors often seek ways to best help pregnant and parenting students to continue their education and maintain their academic progress. Schools can provide direction in coordinating the education, child care, and health care needed by pregnant and parenting students. Schools can also provide leadership in combating the myths surrounding pregnancy and parenting. Listed below are approaches implemented by some secondary schools to address the educational issues associated with pregnant and parenting students. These are examples of possible strategies; unless otherwise stated, they are not legally mandated by *Title IX* or its regulations. They are provided to assist educators in developing effective approaches to addressing these issues in their schools.

Administrators

- Contact other school administrators to learn about effective approaches that they have implemented to address the needs of pregnant and parenting students.
- Develop policies and procedures to address the needs of pregnant and parenting students. If your school district does not already provide services such as at-home instruction for students who have temporary medical conditions, consider implementing policies to do so and remember that if homebound instruction is made available to students with temporary medical conditions, it must also be provided to pregnant students. Allowing pregnant students to receive such support services could encourage them to remain in school. Additionally,

consider allowing excused absences for parenting students (both male and female) who need to take their children to doctors' appointments or to take care of their sick children. By treating the absences as excused, you give these students the opportunity to make up the work they missed without being penalized, and you prevent them from falling behind.

- Prepare guidance materials to assist teachers, school nurses, counselors, and other staff in responding to the needs of pregnant and parenting students so they can stay in school. Be mindful of issues facing male students who are parenting and opportunities to reach out to them.

- Have the school district's attorney, *Title IX* coordinator, or another knowledgeable person provide workshops for administrators, teachers, and other school staff on federal, state, and local laws related to the provision of services to pregnant and parenting students.

- Have the *Title IX* coordinator provide training to students to ensure that they know that *Title IX* prohibits discrimination against pregnant and parenting students.

- Follow up to determine the reason behind any student's decision to leave school before graduation. Collect and analyze this information to see how pregnancy and parenthood affect your district's dropout rate, and how those issues can be addressed or resolved.

- Consider asking pregnant and parenting students to share their views on ways that the school district can help them stay in school.

- Designate a private room for young mothers to breastfeed, pump milk, or address other needs related to breastfeeding during the school day.

- Establish policies expressing a commitment to the equal treatment of all students, regardless of their pregnancy or parenting status.
- Consider allowing pregnant or parenting students to engage in online course work to complete high school courses at home during an excused leave of absence.

Teachers

- As required by *Title IX*, assist pregnant and parenting students who have excused absences by providing them with make-up assignments and exams. As long as the absences are excused, schools should allow pregnant students to make up the work that they missed.
- Encourage pregnant and parenting students to seek the assistance of school counselors who can provide the support needed to help the students remain in school.
- Contact pregnant and parenting students who have dropped out of school and encourage them to return.
- Request to participate in workshops, or to hear from speakers who can share information, on how to provide support to pregnant and parenting students, including addressing the challenges that they may face trying to juggle work, complete school, and care for their children.

Counselors

- Recognize that pregnant and parenting students are more likely to drop out of school than are other students. Advise them of the importance of staying in school. Let them know of any school assistance that may be available to them for this purpose.

- Work with pregnant and parenting students individually and come up with a graduation plan tailored to each student's needs. This plan may include an academic credit-recovery component for pregnant and parenting students who have fallen behind.

- Contact pregnant and parenting students who have dropped out of school to see if you can offer them advice and encouragement to return.

- Whenever possible, conduct follow-up counseling with pregnant and parenting students after they drop out of school, providing them information about programs, services, and support that will help them return to school.

- Encourage the establishment of school policies and programs for pregnant and parenting students, particularly those at high risk of dropping out of school. Take a leadership role in determining what policies and programs can address students' various needs.

- Set up support groups to help pregnant and parenting students stay in school.

- Advise librarians, teachers, and pregnant and parenting students of books and materials that may be useful for keeping their education on track.

- Advise pregnant and parenting students of the availability of programs and services to help them stay in school and maintain their educational progress.

- Provide parents with information regarding the availability of programs and services that help all students stay in school and maintain their educational progress regardless of pregnancy or parenthood.

Programs Designed to Support Pregnant and Parenting Students

While not required by *Title IX*, some school districts have established programs to help pregnant and parenting students stay in school, graduate, and acquire the skills needed for parenting. Schools can provide leadership in coordinating the education, health care, counseling, and child care needed by pregnant and parenting students. These programs can provide these students with peer support and encouragement to help prevent the feelings of isolation that they may experience. These programs also can reduce the dropout rate, provide comprehensive prenatal care, and improve the health of student parents and their children.

Programs such as those described below can supplement pregnant and parenting students' regular academic course work. This is not an exhaustive list of suggested programs and may not be applicable to every specific setting in a particular school. The programs discussed in this section are provided only as examples and are not legally mandated by *Title IX*.

Prenatal, Parenting, and Life Skills Programs

Pregnant students may need prenatal programs to learn about nutrition, exercise, and caring for themselves while pregnant. Some schools have developed courses for credit, special classes during free periods, and after-school prenatal care programs. Schools can assist students in accessing such programs provided by other entities, such as community-based nonprofits, and can even offer course credits to students who take part in such programs.

Prenatal care programs may include not only pregnant students but also their partners, who can give invaluable support during pregnancy and after birth. Other programs may provide information and training in parenting skills and child development, including courses in child health and infant stimulation. Some of these programs include school nurseries, where students gain practical experience diapering, feeding, and bathing infants. Schools may also provide life-skills courses to teach pregnant and parenting students (both young men and young women) lessons on time management, including balancing schoolwork and parenting, and handling finances, so that they can continue and complete school. These programs also help prepare pregnant and parenting students for the challenges posed by higher education and work, such as by providing job-readiness training and mentoring services. They also may facilitate access for pregnant and parenting students to many health and social service programs.

Child Care and Early Learning Programs

These programs help keep parenting students in school by offering child care and early childhood education. They also enhance parenting skills and may provide transportation for students and their children. Even schools that cannot house a child care center can help pregnant and parenting students locate and secure high-quality, affordable early learning programs and services and connect parenting students with available resources in the community.

Dropout Prevention Programs

These programs identify students at a higher risk of dropping out, contact them, and encourage them to remain in or return to school. The programs can provide flexible academic options for pregnant and parenting students, so that they do not fall too far behind in earning credits towards graduation. They may also include an academic credit recovery component to help students who have already fallen far behind get back on track.

To obtain additional assistance, contact the OCR regional office responsible for the state in which the school is located. To find contact information for that office, call 1-800-421-3481 or 1-800-877-8339 (TDD) or check OCR's website at http://www.ed.gov/ocr.

Endnotes

[1] *Title IX* does not "apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization." 20 U.S.C. § 1681(a)(3). *See also* 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office.

[2] http://www.whitehouse.gov/issues/education/higher-education.

[3] This pamphlet replaces the pamphlet entitled *Teenage Pregnancy and Parenthood Issues Under Title IX of the Education Amendments of 1972* issued by the Office for Civil Rights in 1991.

[4] The 3 million 16- through 24-year-olds referred to are out of a total population of 38 million non-institutionalized civilians in that age range. *See* Chris Chapman et al., *Trends in High School Dropout and Completion Rates in the United States: 1972–2009* (National Center for Education Statistics, U.S. Department of Education, October 2011), available at http://nces.ed.gov/pubs2012/2012006.pdf. The statistics in this paragraph refer to the status dropout rate, which is the percentage of individuals in a given age range who are not in school and have not earned a high school diploma or alternative credential. It focuses on the overall age group as opposed to individuals in the U.S. school system. This rate is different from the event dropout rate, which estimates the percentage of public and private high school students who left high school between the beginning of one school year and the beginning of the next without earning a high school diploma or its equivalent. The national event dropout rate for the year beginning in October 2008 was 3.4 percent. The status dropout rate is also different than the averaged freshman graduation rate (AFGR), which estimates the percentage of public high school freshmen who graduate on time with a regular diploma four years after starting ninth grade. The national AFGR for U.S. public school students in the class of 2008–09 was 75.5 percent.

[5] Ben Dalton et al., *Late High School Dropouts: Characteristics, Experiences, and Changes Across Cohorts* (National Center for Education Statistics, U.S. Department of Education, June 2009). The study is based on a population of young women who were high school sophomores in 2002 who subsequently dropped out of school, and is available at http://nces.ed.gov/pubs2009/2009307.pdf.

[6] Ibid.

[7] The more than 329,000 young women referred to are out of a total population of approximately 10.7 million women in that age range. *See* Brady E. Hamilton et al., *Births: Preliminary Data for 2011*, National Vital Statistics Reports, Volume 61, Number 5 (National Center for Health Statistics, U.S. Department of Health and Human Services, October 3, 2012), available at http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_05.pdf.

[8] *See* note 5.

[9] John M. Bridgeland et al., *The Silent Epidemic: Perspectives of High School Dropouts* (Bill & Melinda Gates Foundation, March 2006), available at http://www.gatesfoundation.org/united-states/Documents/TheSilentEpidemic3-06Final.pdf.

[10] Ibid.

[11] This figure is based on data from Round 11 of the National Longitudinal Survey of Youth 1997 cohort. The 1997 cohort includes nearly 9,000 persons who were born between 1980 and 1984. At the time of the data collection for Round 11, respondents were 22-28 years old. Center for Human Resource Research, The Ohio State University, National Longitudinal Survey of Youth 1997 Cohort, (Round 11) (Bureau of Labor Statistics, U.S. Department of Labor, 2007), available at http://www.bls.gov/nls/nlsy97.htm.

[12] U.S. Census Bureau, Current Population Survey: 2011 Annual Social and Economic Supplement, PINC-03 (2011), available at http://www.census.gov/hhes/www/cpstables/032011/perinc/new03_253.htm.

[13] Henry Levin et al., *The Costs and Benefits of an Excellent Education for All of America's Children* (Teachers College, Columbia University, January 2007), available at http://cbcse.org/wordpress/wp-content/uploads/2013/03/2007-Levin.Excellent-educatin-for-all-of-america%C2%B4s-children.pdf.

[14] Saul D. Hoffman, *By the Numbers: The Public Costs of Teen Childbearing* (The National Campaign to Prevent Teen Pregnancy, October 2006), available at http://www.thenationalcampaign.org/resources/pdf/pubs/btn_full.pdf.

[15] 34 C.F.R. § 106.40(b)(1). References to pregnancy include all of the related conditions covered by the regulation.

[16] Ibid., § 106.40(a).

[17] Ibid., § 106.40(b)(1).

[18] Ibid., § 106.40(b)(3).

[19] Ibid., § 106.40(b)(5).

[20] Ibid., § 106.40(b)(4).

[21] OCR also enforces *Title II of the Americans with Disabilities Act* (*Title II*), 42 U.S.C. § 12131 *et seq.*, and its implementing regulations, and Section 504 of the *Rehabilitation Act of 1973* (Section 504), 29 U.S.C. § 794, and its implementing regulations. An uncomplicated pregnancy, by itself, does not constitute a physical impairment and therefore is not considered a disability under *Title II* or Section 504. Complications resulting from pregnancy may be impairments. Whether a student with a complication resulting from pregnancy is protected under Section 504 and *Title II* depends on whether the complication is an impairment that substantially limits a major life activity, or alternatively, whether the student has a record of or is regarded as having such impairment. *See* 34 C.F.R. § 104.3(j); 28 C.F.R. § 35.104. *See also* 29 C.F.R. Part 1630, App. § 1630.2(h).

[22] 34 C.F.R. § 106.40(b)(2).

[23] Ibid., § 106.40(b)(3).

[24] Ibid.

[25] Ibid., § 106.40(b)(2).

[26] OCR considers the conduct from both a subjective and objective perspective. For more information on the *Title IX* requirements related to sexual harassment, see OCR's *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (January 19, 2001), available at http://www.ed.gov/ocr/docs/shguide.html; *Sexual Harassment: It's Not Academic* (Revised September 2008), available at http://www.ed.gov/ocr/docs/ocrshpam.html; Dear Colleague letter on Harassment and Bullying (October 26, 2010), available at http://www.ed.gov/ocr/letters/colleague-201010.pdf; and Dear Colleague letter on Sexual Violence (April 4, 2011), available at http://www.ed.gov/ocr/letters/colleague-201104.pdf.

[27] 34 C.F.R. § 106.40(b)(1).

[28] Ibid. A school may, however, require a pregnant student to obtain a doctor's certification to continue participation as long as such certification is required of all students for physical or emotional conditions requiring the attention of a physician. *See* 34 C.F.R. § 106.40(b)(2). *See also* page 8, supra.

[29] Ibid., § 106.31(a), (b)(6), (b)(7).

[30] Ibid., § 106.40(b)(5).

[31] Ibid., § 106.40(b)(2).

[32] Ibid., § 106.40(b)(4).

[33] Ibid., § 106.11.

[34] For more information on the procedural requirements of *Title IX*, see the sources listed in note 26.

[35] Ibid., § 106.8(b).

[36] Ibid., § 106.8(a).

[37] Ibid., § 106.9(a).

[38] Ibid., § 106.9(b).

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

October 26, 2010

Dear Colleague:

In recent years, many state departments of education and local school districts have taken steps to reduce bullying in schools. The U.S. Department of Education (Department) fully supports these efforts. Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential. The movement to adopt anti-bullying policies reflects schools' appreciation of their important responsibility to maintain a safe learning environment for all students. I am writing to remind you, however, that some student misconduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the Department's Office for Civil Rights (OCR). As discussed in more detail below, by limiting its response to a specific application of its anti-bullying disciplinary policy, a school may fail to properly consider whether the student misconduct also results in discriminatory harassment.

The statutes that OCR enforces include Title VI of the Civil Rights Act of 1964[1] (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972[2] (Title IX), which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973[3] (Section 504); and Title II of the Americans with Disabilities Act of 1990[4] (Title II). Section 504 and Title II prohibit discrimination on the basis of disability.[5] School districts may violate these civil rights statutes and the Department's implementing regulations when peer harassment based on race, color, national origin, sex, or disability is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.[6] School personnel who understand their legal obligations to address harassment under these laws are in the best position to prevent it from occurring and to respond appropriately when it does. Although this letter focuses on the elementary and secondary school context, the legal principles also apply to postsecondary institutions covered by the laws and regulations enforced by OCR.

Some school anti-bullying policies already may list classes or traits on which bases bullying or harassment is specifically prohibited. Indeed, many schools have adopted anti-bullying policies that go beyond prohibiting bullying on the basis of traits expressly protected by the federal civil

[1] 42 U.S.C. § 2000d *et seq.*
[2] 20 U.S.C. § 1681 *et seq.*
[3] 29 U.S.C. § 794.
[4] 42 U.S.C. § 12131 *et seq.*
[5] OCR also enforces the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, and the Boy Scouts of America Equal Access Act, 20 U.S.C. § 7905. This letter does not specifically address those statutes.
[6] The Department's regulations implementing these statutes are in 34 C.F.R. parts 100, 104, and 106. Under these federal civil rights laws and regulations, students are protected from harassment by school employees, other students, and third parties. This guidance focuses on peer harassment, and articulates the legal standards that apply in administrative enforcement and in court cases where plaintiffs are seeking injunctive relief.

rights laws enforced by OCR—race, color, national origin, sex, and disability—to include such bases as sexual orientation and religion. While this letter concerns your legal obligations under the laws enforced by OCR, other federal, state, and local laws impose additional obligations on schools.[7] And, of course, even when bullying or harassment is not a civil rights violation, schools should still seek to prevent it in order to protect students from the physical and emotional harms that it may cause.

Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.[8]

A school is responsible for addressing harassment incidents about which it knows or reasonably should have known.[9] In some situations, harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on a school bus, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the school on notice. In other situations, the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment. In all cases, schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment.[10]

When responding to harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a school's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

If an investigation reveals that discriminatory harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile

[7] For instance, the U.S. Department of Justice (DOJ) has jurisdiction over Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c (Title IV), which prohibits discrimination on the basis of race, color, sex, religion, or national origin by public elementary and secondary schools and public institutions of higher learning. State laws also provide additional civil rights protections, so districts should review these statutes to determine what protections they afford (*e.g.*, some state laws specifically prohibit discrimination on the basis of sexual orientation).

[8] Some conduct alleged to be harassment may implicate the First Amendment rights to free speech or expression. For more information on the First Amendment's application to harassment, see the discussions in OCR's Dear Colleague Letter: First Amendment (July 28, 2003), *available at* http://www.ed.gov/about/offices/list/ocr/firstamend.html, and OCR's *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (Jan. 19, 2001) (*Sexual Harassment Guidance*), *available at* http://www.ed.gov/about/offices/list/ocr/docs/shguide.html.

[9] A school has notice of harassment if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. For a discussion of what a "responsible employee" is, see OCR's *Sexual Harassment Guidance*.

[10] Districts must adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex and disability discrimination complaints, and must notify students, parents, employees, applicants, and other interested parties that the district does not discriminate on the basis of sex or disability. *See* 28 C.F.R. § 35.106; 28 C.F.R. § 35.107(b); 34 C.F.R. § 104.7(b); 34 C.F.R. § 104.8; 34 C.F.R. § 106.8(b); 34 C.F.R. § 106.9.

environment and its effects, and prevent the harassment from recurring. These duties are a school's responsibility even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

Appropriate steps to end harassment may include separating the accused harasser and the target, providing counseling for the target and/or harasser, or taking disciplinary action against the harasser. These steps should not penalize the student who was harassed. For example, any separation of the target from an alleged harasser should be designed to minimize the burden on the target's educational program (*e.g.*, not requiring the target to change his or her class schedule).

In addition, depending on the extent of the harassment, the school may need to provide training or other interventions not only for the perpetrators, but also for the larger school community, to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond. A school also may be required to provide additional services to the student who was harassed in order to address the effects of the harassment, particularly if the school initially delays in responding or responds inappropriately or inadequately to information about harassment. An effective response also may need to include the issuance of new policies against harassment and new procedures by which students, parents, and employees may report allegations of harassment (or wide dissemination of existing policies and procedures), as well as wide distribution of the contact information for the district's Title IX and Section 504/Title II coordinators.[11]

Finally, a school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students and their families know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

When responding to incidents of misconduct, schools should keep in mind the following:

- The label used to describe an incident (*e.g.*, bullying, hazing, teasing) does not determine how a school is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications. So, for example, if the abusive behavior is on the basis of race, color, national origin, sex, or disability, and creates a hostile environment, a school is obligated to respond in accordance with the applicable federal civil rights statutes and regulations enforced by OCR.

- When the behavior implicates the civil rights laws, school administrators should look beyond simply disciplining the perpetrators. While disciplining the perpetrators is likely a necessary step, it often is insufficient. A school's responsibility is to eliminate the

[11] Districts must designate persons responsible for coordinating compliance with Title IX, Section 504, and Title II, including the investigation of any complaints of sexual, gender-based, or disability harassment. *See* 28 C.F.R. § 35.107(a); 34 C.F.R. § 104.7(a); 34 C.F.R. § 106.8(a).

hostile environment created by the harassment, address its effects, and take steps to ensure that harassment does not recur. Put differently, the unique effects of discriminatory harassment may demand a different response than would other types of bullying.

Below, I provide hypothetical examples of how a school's failure to recognize student misconduct as discriminatory harassment violates students' civil rights.[12] In each of the examples, the school was on notice of the harassment because either the school or a responsible employee knew or should have known of misconduct that constituted harassment. The examples describe how the school should have responded in each circumstance.

Title VI: Race, Color, or National Origin Harassment

- *Some students anonymously inserted offensive notes into African-American students' lockers and notebooks, used racial slurs, and threatened African-American students who tried to sit near them in the cafeteria. Some African-American students told school officials that they did not feel safe at school. The school investigated and responded to individual instances of misconduct by assigning detention to the few student perpetrators it could identify. However, racial tensions in the school continued to escalate to the point that several fights broke out between the school's racial groups.*

In this example, school officials failed to acknowledge the pattern of harassment as indicative of a racially hostile environment in violation of Title VI. Misconduct need not be directed at a particular student to constitute discriminatory harassment and foster a racially hostile environment. Here, the harassing conduct included overtly racist behavior (*e.g.*, racial slurs) and also targeted students on the basis of their race (*e.g.*, notes directed at African-American students). The nature of the harassment, the number of incidents, and the students' safety concerns demonstrate that there was a racially hostile environment that interfered with the students' ability to participate in the school's education programs and activities.

Had the school recognized that a racially hostile environment had been created, it would have realized that it needed to do more than just discipline the few individuals whom it could identify as having been involved. By failing to acknowledge the racially hostile environment, the school failed to meet its obligation to implement a more systemic response to address the unique effect that the misconduct had on the school climate. A more effective response would have included, in addition to punishing the perpetrators, such steps as reaffirming the school's policy against discrimination (including racial harassment), publicizing the means to report allegations of racial harassment, training faculty on constructive responses to racial conflict, hosting class discussions about racial harassment and sensitivity to students of other races, and conducting outreach to involve parents and students in an effort to identify problems and improve the school climate. Finally, had school officials responded appropriately

[12] Each of these hypothetical examples contains elements taken from actual cases.

and aggressively to the racial harassment when they first became aware of it, the school might have prevented the escalation of violence that occurred.[13]

- *Over the course of a school year, school employees at a junior high school received reports of several incidents of anti-Semitic conduct at the school. Anti-Semitic graffiti, including swastikas, was scrawled on the stalls of the school bathroom. When custodians discovered the graffiti and reported it to school administrators, the administrators ordered the graffiti removed but took no further action. At the same school, a teacher caught two ninth-graders trying to force two seventh-graders to give them money. The ninth-graders told the seventh-graders, "You Jews have all of the money, give us some." When school administrators investigated the incident, they determined that the seventh-graders were not actually Jewish. The school suspended the perpetrators for a week because of the serious nature of their misconduct. After that incident, younger Jewish students started avoiding the school library and computer lab because they were located in the corridor housing the lockers of the ninth-graders. At the same school, a group of eighth-grade students repeatedly called a Jewish student "Drew the dirty Jew." The responsible eighth-graders were reprimanded for teasing the Jewish student.*

  The school administrators failed to recognize that anti-Semitic harassment can trigger responsibilities under Title VI. While Title VI does not cover discrimination based solely on religion,[14] groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under Title VI on the ground that they also share a common faith. These principles apply not just to Jewish students, but also to students from any discrete religious group that shares, or is perceived to share, ancestry or ethnic characteristics (*e.g.*, Muslims or Sikhs). Thus, harassment against students who are members of any religious group triggers a school's Title VI responsibilities when the harassment is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices. A school also has responsibilities under Title VI when its students are harassed based on their actual or perceived citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity.[15]

  In this example, school administrators should have recognized that the harassment was based on the students' actual or perceived shared ancestry or ethnic identity as Jews (rather than on the students' religious practices). The school was not relieved of its responsibilities under Title VI because the targets of one of the incidents were not actually Jewish. The harassment was still based on the perceived ancestry or ethnic characteristics of the targeted students. Furthermore, the harassment negatively affected the ability and willingness of Jewish students to participate fully in the school's

[13] More information about the applicable legal standards and OCR's approach to investigating allegations of harassment on the basis of race, color, or national origin is included in *Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance*, 59 Fed. Reg. 11,448 (Mar. 10, 1994), *available at* http://www.ed.gov/about/offices/list/ocr/docs/race394.html.

[14] As noted in footnote seven, DOJ has the authority to remedy discrimination based solely on religion under Title IV.

[15] More information about the applicable legal standards and OCR's approach to investigating complaints of discrimination against members of religious groups is included in OCR's Dear Colleague Letter: Title VI and Title IX Religious Discrimination in Schools and Colleges (Sept. 13, 2004), *available at* http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html.

education programs and activities (*e.g.*, by causing some Jewish students to avoid the library and computer lab). Therefore, although the discipline that the school imposed on the perpetrators was an important part of the school's response, discipline alone was likely insufficient to remedy a hostile environment. Similarly, removing the graffiti, while a necessary and important step, did not fully satisfy the school's responsibilities. As discussed above, misconduct that is not directed at a particular student, like the graffiti in the bathroom, can still constitute discriminatory harassment and foster a hostile environment. Finally, the fact that school officials considered one of the incidents "teasing" is irrelevant for determining whether it contributed to a hostile environment.

Because the school failed to recognize that the incidents created a hostile environment, it addressed each only in isolation, and therefore failed to take prompt and effective steps reasonably calculated to end the harassment and prevent its recurrence. In addition to disciplining the perpetrators, remedial steps could have included counseling the perpetrators about the hurtful effect of their conduct, publicly labeling the incidents as anti-Semitic, reaffirming the school's policy against discrimination, and publicizing the means by which students may report harassment. Providing teachers with training to recognize and address anti-Semitic incidents also would have increased the effectiveness of the school's response. The school could also have created an age-appropriate program to educate its students about the history and dangers of anti-Semitism, and could have conducted outreach to involve parents and community groups in preventing future anti-Semitic harassment.

Title IX: Sexual Harassment

- *Shortly after enrolling at a new high school, a female student had a brief romance with another student. After the couple broke up, other male and female students began routinely calling the new student sexually charged names, spreading rumors about her sexual behavior, and sending her threatening text messages and e-mails. One of the student's teachers and an athletic coach witnessed the name calling and heard the rumors, but identified it as "hazing" that new students often experience. They also noticed the new student's anxiety and declining class participation. The school attempted to resolve the situation by requiring the student to work the problem out directly with her harassers.*

Sexual harassment is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. Thus, sexual harassment prohibited by Title IX can include conduct such as touching of a sexual nature; making sexual comments, jokes, or gestures; writing graffiti or displaying or distributing sexually explicit drawings, pictures, or written materials; calling students sexually charged names; spreading sexual rumors; rating students on sexual activity or performance; or circulating, showing, or creating e-mails or Web sites of a sexual nature.

In this example, the school employees failed to recognize that the "hazing" constituted sexual harassment. The school did not comply with its Title IX obligations when it failed to investigate or remedy the sexual harassment. The conduct was clearly unwelcome, sexual (*e.g.*, sexual rumors and name calling), and sufficiently serious that it limited the student's ability to participate in and benefit from the school's education program (*e.g.*, anxiety and declining class participation).

The school should have trained its employees on the type of misconduct that constitutes sexual harassment. The school also should have made clear to its employees that they could not require the student to confront her harassers. Schools may use informal mechanisms for addressing harassment, but only if the parties agree to do so on a voluntary basis. Had the school addressed the harassment consistent with Title IX, the school would have, for example, conducted a thorough investigation and taken interim measures to separate the student from the accused harassers. An effective response also might have included training students and employees on the school's policies related to harassment, instituting new procedures by which employees should report allegations of harassment, and more widely distributing the contact information for the district's Title IX coordinator. The school also might have offered the targeted student tutoring, other academic assistance, or counseling as necessary to remedy the effects of the harassment.[16]

Title IX: Gender-Based Harassment

- *Over the course of a school year, a gay high school student was called names (including anti-gay slurs and sexual comments) both to his face and on social networking sites, physically assaulted, threatened, and ridiculed because he did not conform to stereotypical notions of how teenage boys are expected to act and appear (e.g., effeminate mannerisms, nontraditional choice of extracurricular activities, apparel, and personal grooming choices). As a result, the student dropped out of the drama club to avoid further harassment. Based on the student's self-identification as gay and the homophobic nature of some of the harassment, the school did not recognize that the misconduct included discrimination covered by Title IX. The school responded to complaints from the student by reprimanding the perpetrators consistent with its anti-bullying policy. The reprimands of the identified perpetrators stopped the harassment by those individuals. It did not, however, stop others from undertaking similar harassment of the student.*

As noted in the example, the school failed to recognize the pattern of misconduct as a form of sex discrimination under Title IX. Title IX prohibits harassment of both male and female students regardless of the sex of the harasser—*i.e.*, even if the harasser and target are members of the same sex. It also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping. Thus, it can be sex discrimination if students are harassed either for exhibiting what is perceived as a stereotypical characteristic for their

[16] More information about the applicable legal standards and OCR's approach to investigating allegations of sexual harassment is included in OCR's *Sexual Harassment Guidance*, *available at* http://www.ed.gov/about/offices/list/ocr/docs/shguide.html.

sex, or for failing to conform to stereotypical notions of masculinity and femininity. Title IX also prohibits sexual harassment and gender-based harassment of all students, regardless of the actual or perceived sexual orientation or gender identity of the harasser or target.

Although Title IX does not prohibit discrimination based solely on sexual orientation, Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination. When students are subjected to harassment on the basis of their LGBT status, they may also, as this example illustrates, be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy overlapping sexual harassment or gender-based harassment. In this example, the harassing conduct was based in part on the student's failure to act as some of his peers believed a boy should act. The harassment created a hostile environment that limited the student's ability to participate in the school's education program (*e.g.*, access to the drama club). Finally, even though the student did not identify the harassment as sex discrimination, the school should have recognized that the student had been subjected to gender-based harassment covered by Title IX.

In this example, the school had an obligation to take immediate and effective action to eliminate the hostile environment. By responding to individual incidents of misconduct on an *ad hoc* basis only, the school failed to confront and prevent a hostile environment from continuing. Had the school recognized the conduct as a form of sex discrimination, it could have employed the full range of sanctions (including progressive discipline) and remedies designed to eliminate the hostile environment. For example, this approach would have included a more comprehensive response to the situation that involved notice to the student's teachers so that they could ensure the student was not subjected to any further harassment, more aggressive monitoring by staff of the places where harassment occurred, increased training on the scope of the school's harassment and discrimination policies, notice to the target and harassers of available counseling services and resources, and educating the entire school community on civil rights and expectations of tolerance, specifically as they apply to gender stereotypes. The school also should have taken steps to clearly communicate the message that the school does not tolerate harassment and will be responsive to any information about such conduct.[17]

Section 504 and Title II: Disability Harassment

- *Several classmates repeatedly called a student with a learning disability "stupid," "idiot," and "retard" while in school and on the school bus. On one occasion, these students tackled him, hit him with a school binder, and threw his personal items into the garbage. The student complained to his teachers and guidance counselor that he was continually being taunted and teased. School officials offered him counseling services and a*

[17] Guidance on gender-based harassment is also included in OCR's *Sexual Harassment Guidance, available at* http://www.ed.gov/about/offices/list/ocr/docs/shguide.html.

psychiatric evaluation, but did not discipline the offending students. As a result, the harassment continued. The student, who had been performing well academically, became angry, frustrated, and depressed, and often refused to go to school to avoid the harassment.

In this example, the school failed to recognize the misconduct as disability harassment under Section 504 and Title II. The harassing conduct included behavior based on the student's disability, and limited the student's ability to benefit fully from the school's education program (*e.g.*, absenteeism). In failing to investigate and remedy the misconduct, the school did not comply with its obligations under Section 504 and Title II.

Counseling may be a helpful component of a remedy for harassment. In this example, however, since the school failed to recognize the behavior as disability harassment, the school did not adopt a comprehensive approach to eliminating the hostile environment. Such steps should have at least included disciplinary action against the harassers, consultation with the district's Section 504/Title II coordinator to ensure a comprehensive and effective response, special training for staff on recognizing and effectively responding to harassment of students with disabilities, and monitoring to ensure that the harassment did not resume.[18]

I encourage you to reevaluate the policies and practices your school uses to address bullying[19] and harassment to ensure that they comply with the mandates of the federal civil rights laws. For your convenience, the following is a list of online resources that further discuss the obligations of districts to respond to harassment prohibited under the federal antidiscrimination laws enforced by OCR:

- *Sexual Harassment: It's Not Academic* (Revised 2008): http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html
- *Dear Colleague Letter: Sexual Harassment Issues* (2006): http://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html
- *Dear Colleague Letter: Religious Discrimination* (2004): http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html
- *Dear Colleague Letter: First Amendment* (2003): http://www.ed.gov/about/offices/list/ocr/firstamend.html

[18] More information about the applicable legal standards and OCR's approach to investigating allegations of disability harassment is included in OCR's Dear Colleague Letter: Prohibited Disability Harassment (July 25, 2000), *available at* http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html.

[19] For resources on preventing and addressing bullying, please visit http://www.bullyinginfo.org, a Web site established by a federal Interagency Working Group on Youth Programs. For information on the Department's bullying prevention resources, please visit the Office of Safe and Drug-Free Schools' Web site at http://www.ed.gov/offices/OESE/SDFS. For information on regional Equity Assistance Centers that assist schools in developing and implementing policies and practices to address issues regarding race, sex, or national origin discrimination, please visit http://www.ed.gov/programs/equitycenters.

- *Sexual Harassment Guidance* (Revised 2001): http://www.ed.gov/about/offices/list/ocr/docs/shguide.html
- *Dear Colleague Letter: Prohibited Disability Harassment* (2000): http://www.ed.gov/about/offices/list/ocr/docs/disabharassltr.html
- *Racial Incidents and Harassment Against Students* (1994): http://www.ed.gov/about/offices/list/ocr/docs/race394.html

Please also note that OCR has added new data items to be collected through its Civil Rights Data Collection (CRDC), which surveys school districts in a variety of areas related to civil rights in education. The CRDC now requires districts to collect and report information on allegations of harassment, policies regarding harassment, and discipline imposed for harassment. In 2009-10, the CRDC covered nearly 7,000 school districts, including all districts with more than 3,000 students. For more information about the CRDC data items, please visit http://www2.ed.gov/about/offices/list/ocr/whatsnew.html.

OCR is committed to working with schools, students, students' families, community and advocacy organizations, and other interested parties to ensure that students are not subjected to harassment. Please do not hesitate to contact OCR if we can provide assistance in your efforts to address harassment or if you have other civil rights concerns.

For the OCR regional office serving your state, please visit: http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm, or call OCR's Customer Service Team at 1-800-421-3481.

I look forward to continuing our work together to ensure equal access to education, and to promote safe and respectful school climates for America's students.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights

U.S. Department of Education
Office for Civil Rights

Dear Colleague Letter Harassment and Bullying (October 26, 2010) Background, Summary, and Fast Facts

What are the possible effects of student-on-student harassment and bullying?

- Lowered academic achievement and aspirations
- Increased anxiety
- Loss of self-esteem and confidence
- Depression and post-traumatic stress
- General deterioration in physical health
- Self-harm and suicidal thinking
- Feelings of alienation in the school environment, such as fear of other children
- Absenteeism from school

What does the Dear Colleague letter (DCL) do?

- Clarifies the relationship between bullying and discriminatory harassment under the civil rights laws enforced by the Department of Education's (ED) Office for Civil Rights (OCR).
- Explains how student misconduct that falls under an anti-bullying policy also may trigger responsibilities under one or more of the anti-discrimination statutes enforced by OCR.
- Reminds schools that failure to recognize discriminatory harassment when addressing student misconduct may lead to inadequate or inappropriate responses that fail to remedy violations of students' civil rights. Colleges and universities have the same obligations under the anti-discrimination statutes as elementary and secondary schools.
- Discusses racial and national origin harassment, sexual harassment, gender-based harassment, and disability harassment and illustrates how a school should respond in each case.

Why is ED Issuing the DCL?

ED is issuing the DCL to clarify the relationship between bullying and discriminatory harassment, and to remind schools that by limiting their responses to a specific application of an anti-bullying or other disciplinary policy, they may fail to properly consider whether the student misconduct also results in discrimination in violation of students' federal civil rights.

What are the anti-discrimination statutes that the Office for Civil Rights enforces?

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin.
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex.
- Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability.[1]

What are a school's obligations under these anti-discrimination statutes?

- Once a school knows or reasonably should know of possible student-on-student harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred.
- If harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent its recurrence. These duties are a school's responsibility even if the misconduct also is covered by an anti-bullying policy and regardless of whether the student makes a complaint, asks the school to take action, or identifies the harassment as a form of discrimination.

How can I get help from OCR?

OCR offers technical assistance to help schools achieve voluntary compliance with the civil rights laws it enforces and works with schools to develop creative approaches to preventing and addressing discrimination. A school should contact the OCR enforcement office serving its jurisdiction for technical assistance. For contact information, please visit ED's website at http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm.

A complaint of discrimination can be filed by anyone who believes that a school that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group. Information about how to file a complaint with OCR is at http://www2.ed.gov/about/offices/list/ocr/complaintintro.html or by contacting OCR's Customer Service Team at 1-800-421-3481.

[1] OCR also enforces the Age Discrimination Act of 1975 and the Boy Scouts of America Equal Access Act. The DCL does not address these statutes.

U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights

Dear Colleague Letter on Transgender Students
Notice of Language Assistance

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

給英語能力有限人士的通知: 如果您不懂英語，或者使用英语有困难，您可以要求獲得向大眾提供的語言協助服務，幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊，請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線：1-800-877-8339),或電郵: Ed.Language.Assistance@ed.gov。

Thông báo dành cho những người có khả năng Anh ngữ hạn chế: Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: Ed.Language.Assistance@ed.gov.

영어 미숙자를 위한 공고: 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일주소 Ed.Language.Assistance@ed.gov 으로 연락하시기 바랍니다.

Paunawa sa mga Taong Limitado ang Kaalaman sa English: Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na impormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: Ed.Language.Assistance@ed.gov.

Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.

U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights

May 13, 2016

Dear Colleague:

Schools across the country strive to create and sustain inclusive, supportive, safe, and nondiscriminatory communities for all students. In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance.[1] This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. This letter summarizes a school's Title IX obligations regarding transgender students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluate a school's compliance with these obligations.

ED and DOJ (the Departments) have determined that this letter is *significant guidance*.[2] This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact ED at ocr@ed.gov or 800-421-3481 (TDD 800-877-8339); or DOJ at education@usdoj.gov or 877-292-3804 (TTY: 800-514-0383).

Accompanying this letter is a separate document from ED's Office of Elementary and Secondary Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students*. The examples in that document are taken from policies that school districts, state education agencies, and high school athletics associations around the country have adopted to help ensure that transgender students enjoy a supportive and nondiscriminatory school environment. Schools are encouraged to consult that document for practical ways to meet Title IX's requirements.[3]

Terminology

- *Gender identity* refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.

- *Sex assigned at birth* refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.

- *Transgender* describes those individuals whose gender identity is different from the sex they were assigned at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth; a *transgender female* is someone who identifies as female but was assigned the sex of male at birth.

- *Gender transition* refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

Compliance with Title IX

As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.[4] The Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity. The Departments' interpretation is consistent with courts' and other agencies' interpretations of Federal laws prohibiting sex discrimination.[5]

The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.[6] Because transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to restrictions imposed by state or local law in their place of birth or residence),[7] requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity.

A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students.[8]

1. Safe and Nondiscriminatory Environment

Schools have a responsibility to provide a safe and nondiscriminatory environment for all students, including transgender students. Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex, and the Departments enforce Title IX accordingly.[9] If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment in violation of Title IX. For a more detailed discussion of Title IX

requirements related to sex-based harassment, see guidance documents from ED's Office for Civil Rights (OCR) that are specific to this topic.[10]

2. *Identification Documents, Names, and Pronouns*

Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.[11]

3. *Sex-Segregated Activities and Facilities*

Title IX's implementing regulations permit a school to provide sex-segregated restrooms, locker rooms, shower facilities, housing, and athletic teams, as well as single-sex classes under certain circumstances.[12] When a school provides sex-segregated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.[13]

- **Restrooms and Locker Rooms.** A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity.[14] A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.[15]

- **Athletics.** Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport.[16] A school may not, however, adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (*i.e.*, the same gender identity) or others' discomfort with transgender students.[17] Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or physical safety of the sport.[18]

- **Single-Sex Classes.** Although separating students by sex in classes and activities is generally prohibited, nonvocational elementary and secondary schools may offer nonvocational single-sex classes and extracurricular activities under certain circumstances.[19] When offering such classes and activities, a school must allow transgender students to participate consistent with their gender identity.

- **Single-Sex Schools.** Title IX does not apply to the admissions policies of certain educational institutions, including nonvocational elementary and secondary schools, and private undergraduate colleges.[20] Those schools are therefore permitted under Title IX to set their own

sex-based admissions policies. Nothing in Title IX prohibits a private undergraduate women's college from admitting transgender women if it so chooses.

- **Social Fraternities and Sororities.** Title IX does not apply to the membership practices of social fraternities and sororities.[21] Those organizations are therefore permitted under Title IX to set their own policies regarding the sex, including gender identity, of their members. Nothing in Title IX prohibits a fraternity from admitting transgender men or a sorority from admitting transgender women if it so chooses.

- **Housing and Overnight Accommodations.** Title IX allows a school to provide separate housing on the basis of sex.[22] But a school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students. Nothing in Title IX prohibits a school from honoring a student's voluntary request for single-occupancy accommodations if it so chooses.[23]

- **Other Sex-Specific Activities and Rules.** Unless expressly authorized by Title IX or its implementing regulations, a school may not segregate or otherwise distinguish students on the basis of their sex, including gender identity, in any school activities or the application of any school rule. Likewise, a school may not discipline students or exclude them from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity or femininity (*e.g.*, in yearbook photographs, at school dances, or at graduation ceremonies).[24]

4. Privacy and Education Records

Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity. The Departments may find a Title IX violation when a school limits students' educational rights or opportunities by failing to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth.[25] Nonconsensual disclosure of personally identifiable information (PII), such as a student's birth name or sex assigned at birth, could be harmful to or invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA).[26] A school may maintain records with this information, but such records should be kept confidential.

- **Disclosure of Personally Identifiable Information from Education Records.** FERPA generally prevents the nonconsensual disclosure of PII from a student's education records; one exception is that records may be disclosed to individual school personnel who have been determined to have a legitimate educational interest in the information.[27] Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this FERPA exception to disclose PII from education records to other school personnel who do not have a legitimate educational interest in the information. Inappropriately disclosing (or requiring students or their parents to disclose) PII from education records to the school community may

violate FERPA and interfere with transgender students' right under Title IX to be treated consistent with their gender identity.

- **Disclosure of Directory Information.** Under FERPA's implementing regulations, a school may disclose appropriately designated directory information from a student's education record if disclosure would not generally be considered harmful or an invasion of privacy.[28] Directory information may include a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.[29] School officials may not designate students' sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy.[30] A school also must allow eligible students (*i.e.*, students who have reached 18 years of age or are attending a postsecondary institution) or parents, as appropriate, a reasonable amount of time to request that the school not disclose a student's directory information.[31]

- **Amendment or Correction of Education Records.** A school may receive requests to correct a student's education records to make them consistent with the student's gender identity. Updating a transgender student's education records to reflect the student's gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.

  - Under FERPA, a school must consider the request of an eligible student or parent to amend information in the student's education records that is inaccurate, misleading, or in violation of the student's privacy rights.[32] If the school does not amend the record, it must inform the requestor of its decision and of the right to a hearing. If, after the hearing, the school does not amend the record, it must inform the requestor of the right to insert a statement in the record with the requestor's comments on the contested information, a statement that the requestor disagrees with the hearing decision, or both. That statement must be disclosed whenever the record to which the statement relates is disclosed.[33]
  - Under Title IX, a school must respond to a request to amend information related to a student's transgender status consistent with its general practices for amending other students' records.[34] If a student or parent complains about the school's handling of such a request, the school must promptly and equitably resolve the complaint under the school's Title IX grievance procedures.[35]

* * *

We appreciate the work that many schools, state agencies, and other organizations have undertaken to make educational programs and activities welcoming, safe, and inclusive for all students.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education

/s/

Vanita Gupta
Principal Deputy Assistant Attorney General for Civil Rights
U.S. Department of Justice

[1] 20 U.S.C. §§ 1681–1688; 34 C.F.R. Pt. 106; 28 C.F.R. Pt. 54. In this letter, the term *schools* refers to recipients of Federal financial assistance at all educational levels, including school districts, colleges, and universities. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a).

[2] Office of Management and Budget, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf.

[3] ED, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 13, 2016), www.ed.gov/oese/oshs/emergingpractices.pdf. OCR also posts many of its resolution agreements in cases involving transgender students online at www.ed.gov/ocr/lgbt.html. While these agreements address fact-specific cases, and therefore do not state general policy, they identify examples of ways OCR and recipients have resolved some issues addressed in this guidance.

[4] 34 C.F.R. §§ 106.4, 106.31(a). For simplicity, this letter cites only to ED's Title IX regulations. DOJ has also promulgated Title IX regulations. *See* 28 C.F.R. Pt. 54. For purposes of how the Title IX regulations at issue in this guidance apply to transgender individuals, DOJ interprets its regulations similarly to ED. State and local rules cannot limit or override the requirements of Federal laws. *See* 34 C.F.R. § 106.6(b).

[5] *See, e.g., Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U.S. 75, 79 (1998); *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467, at *8 (4th Cir. Apr. 19, 2016); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215–16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1201–02 (9th Cir. 2000); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-08 (D.D.C. 2008); *Macy v. Dep't of Justice*, Appeal No. 012012082 (U.S. Equal Emp't Opportunity Comm'n Apr. 20, 2012). *See also* U.S. Dep't of Labor (USDOL), Training and Employment Guidance Letter No. 37-14, *Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System* (2015), wdr.doleta.gov/directives/attach/TEGL/TEGL_37-14.pdf; USDOL, Job Corps, Directive: Job Corps Program Instruction Notice No. 14-31, *Ensuring Equal Access for Transgender Applicants and Students to the Job Corps Program* (May 1, 2015), https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf; DOJ, Memorandum from the Attorney General, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (2014), www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf; USDOL, Office of Federal Contract Compliance Programs, Directive 2014-02, *Gender Identity and Sex Discrimination* (2014), www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html.

[6] *See Lusardi v. Dep't of the Army*, Appeal No. 0120133395 at 9 (U.S. Equal Emp't Opportunity Comm'n Apr. 1, 2015) ("An agency may not condition access to facilities—or to other terms, conditions, or privileges of employment—on the completion of certain medical steps that the agency itself has unilaterally determined will somehow prove the bona fides of the individual's gender identity.").

[7] *See G.G.*, 2016 WL 1567467, at *1 n.1 (noting that medical authorities "do not permit sex reassignment surgery for persons who are under the legal age of majority").

[8] 34 C.F.R. § 106.31(b)(4); *see G.G.*, 2016 WL 1567467, at *8 & n.10 (affirming that individuals have legitimate and important privacy interests and noting that these interests do not inherently conflict with nondiscrimination principles); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (rejecting claim that allowing a transgender woman "merely [to be] present in the women's faculty restroom" created a hostile environment); *Glenn*, 663 F.3d at 1321 (defendant's proffered justification that "other women might object to [the plaintiff]'s restroom use" was "wholly irrelevant"). *See also Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) ("Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect."); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (recognizing that "mere negative attitudes, or fear . . . are not permissible bases for" government action).

[9] *See, e.g.,* Resolution Agreement, *In re Downey Unified Sch. Dist., CA*, OCR Case No. 09-12-1095, (Oct. 8, 2014), www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf (agreement to address harassment of transgender student, including allegations that peers continued to call her by her former name, shared pictures of her prior to her transition, and frequently asked questions about her anatomy and sexuality); Consent Decree, *Doe v. Anoka-Hennepin Sch. Dist. No. 11, MN* (D. Minn. Mar. 1, 2012), www.ed.gov/ocr/docs/investigations/05115901-d.pdf (consent decree to address sex-based harassment, including based on nonconformity with gender stereotypes); Resolution Agreement, *In re Tehachapi Unified Sch. Dist., CA*, OCR Case No. 09-11-1031 (June 30, 2011), www.ed.gov/ocr/docs/investigations/09111031-b.pdf (agreement to address sexual and gender-based harassment, including harassment based on nonconformity with gender stereotypes). *See also Lusardi,* Appeal No. 0120133395, at *15 ("Persistent failure to use the employee's correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is either severe or pervasive enough to create a hostile work environment").

[10] *See, e.g.*, OCR, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (2001), www.ed.gov/ocr/docs/shguide.pdf; OCR, *Dear Colleague Letter: Harassment and Bullying* (Oct. 26, 2010), www.ed.gov/ocr/letters/colleague-201010.pdf; OCR, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011), www.ed.gov/ocr/letters/colleague-201104.pdf; OCR, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), www.ed.gov/ocr/docs/qa-201404-title-ix.pdf.

[11] *See, e.g.*, Resolution Agreement, *In re Cent. Piedmont Cmty. Coll., NC*, OCR Case No. 11-14-2265 (Aug. 13, 2015), www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf (agreement to use a transgender student's preferred name and gender and change the student's official record to reflect a name change).

[12] 34 C.F.R. §§ 106.32, 106.33, 106.34, 106.41(b).

[13] *See* 34 C.F.R. § 106.31.

[14] 34 C.F.R. § 106.33.

[15] *See, e.g.*, Resolution Agreement, *In re Township High Sch. Dist. 211, IL*, OCR Case No. 05-14-1055 (Dec. 2, 2015), www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf (agreement to provide any student who requests additional privacy "access to a reasonable alternative, such as assignment of a student locker in near proximity to the office of a teacher or coach; use of another private area (such as a restroom stall) within the public area; use of a nearby private area (such as a single-use facility); or a separate schedule of use.").

[16] 34 C.F.R. § 106.41(b). Nothing in Title IX prohibits schools from offering coeducational athletic opportunities.

[17] 34 C.F.R. § 106.6(b), (c). An interscholastic athletic association is subject to Title IX if (1) the association receives Federal financial assistance or (2) its members are recipients of Federal financial assistance and have ceded controlling authority over portions of their athletic program to the association. Where an athletic association is covered by Title IX, a school's obligations regarding transgender athletes apply with equal force to the association.

[18] The National Collegiate Athletic Association (NCAA), for example, reported that in developing its policy for participation by transgender students in college athletics, it consulted with medical experts, athletics officials, affected students, and a consensus report entitled *On the Team: Equal Opportunity for Transgender Student Athletes* (2010) by Dr. Pat Griffin & Helen J. Carroll (*On the Team*), https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B(2).pdf. *See* NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes* 2, 30-31 (2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (citing *On the Team*). The *On the Team* report noted that policies that may be appropriate at the college level may "be unfair and too complicated for [the high school] level of competition." *On the Team* at 26. After engaging in similar processes, some state interscholastic athletics associations have adopted policies for participation by transgender students in high school athletics that they determined were age-appropriate.

[19] 34 C.F.R. § 106.34(a), (b). Schools may also separate students by sex in physical education classes during participation in contact sports. *Id.* § 106.34(a)(1).

[20] 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15(d); 34 C.F.R. § 106.34(c) (a recipient may offer a single-sex public nonvocational elementary and secondary school so long as it provides students of the excluded sex a "substantially

equal single-sex school or coeducational school").

[21] 20 U.S.C. § 1681(a)(6)(A); 34 C.F.R. § 106.14(a).

[22] 20 U.S.C. § 1686; 34 C.F.R. § 106.32.

[23] *See, e.g.,* Resolution Agreement, *In re Arcadia Unified. Sch. Dist., CA*, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70, (July 24, 2013), www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf (agreement to provide access to single-sex overnight events consistent with students' gender identity, but allowing students to request access to private facilities).

[24] *See* 34 C.F.R. §§ 106.31(a), 106.31(b)(4). *See also, In re Downey Unified Sch. Dist., CA, supra* n. 9; *In re Cent. Piedmont Cmty. Coll., NC, supra* n. 11.

[25] 34 C.F.R. § 106.31(b)(7).

[26] 20 U.S.C. § 1232g; 34 C.F.R. Part 99. FERPA is administered by ED's Family Policy Compliance Office (FPCO). Additional information about FERPA and FPCO is available at www.ed.gov/fpco.

[27] 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. § 99.31(a)(1).

[28] 34 C.F.R. §§ 99.3, 99.31(a)(11), 99.37.

[29] 20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3.

[30] Letter from FPCO to Institutions of Postsecondary Education 3 (Sept. 2009), www.ed.gov/policy/gen/guid/fpco/doc/censuslettertohighered091609.pdf.

[31] 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. §§ 99.3. 99.37(a)(3).

[32] 34 C.F.R. § 99.20.

[33] 34 C.F.R. §§ 99.20-99.22.

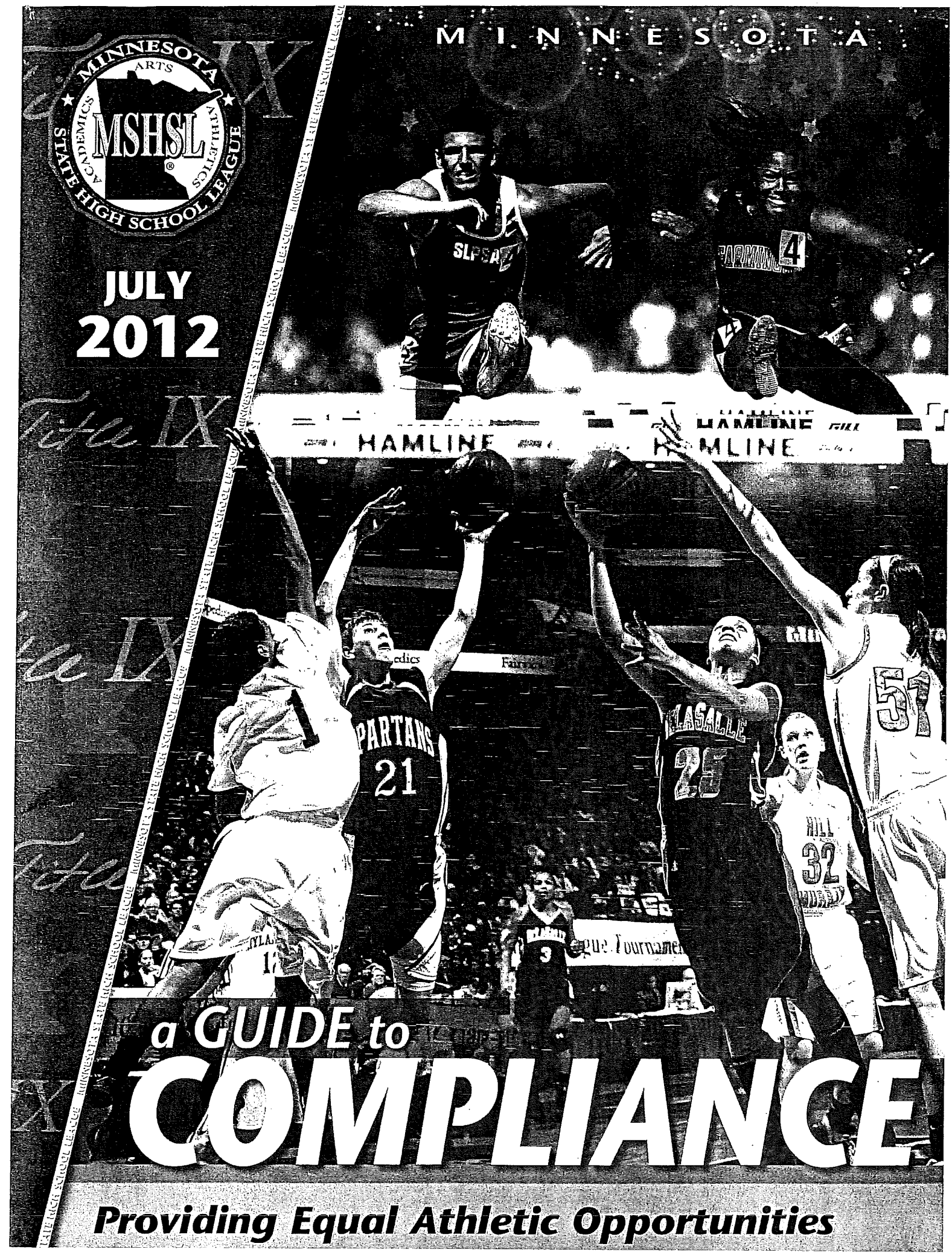
[34] *See* 34 C.F.R. § 106.31(b)(4).

[35] 34 C.F.R. § 106.8(b).

MINNESOTA

MINNESOTA ARTS ACADEMICS ATHLETICS STATE HIGH SCHOOL LEAGUE MSHSL

JULY
2012



a GUIDE to COMPLIANCE

Providing Equal Athletic Opportunities

The Law

Title IX

Title IX of the Education Amendments of 1972

20 U.S.C. §§ 1681 et seq.

Prohibits discrimination of the basis of sex in education programs and activities that receive Federal financial assistance from the U.S. Department of Education.

Requires recipients which operate or sponsor interscholastic, intercollegiate, club or intramural athletics to provide equal athletic opportunities for members of both sexes.

The regulations implementing Title IX (34 C.F.R. Part 106) contain specific provisions for athletics programs and athletic scholarships.

Applies to interscholastic, intercollegiate, club and intramural athletic programs receiving federal funding from the U.S. Department of Education.

Minn. Stat. § 121A.04

Requires each school to provide equal opportunity for members of both sexes to participate in its athletic program.

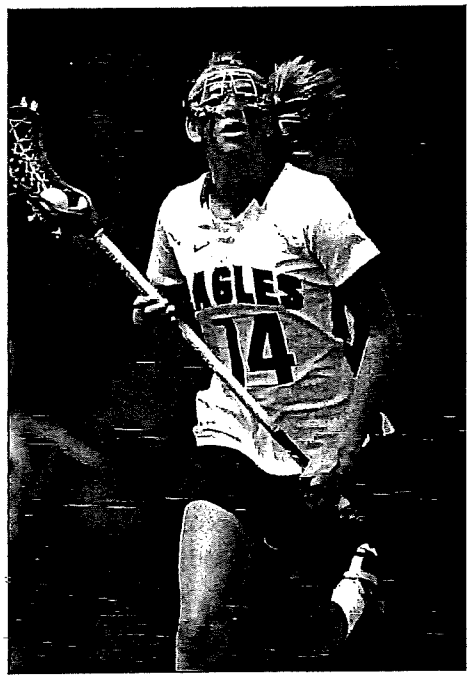
Minnesota Rules Chapter 3535 contains specific provisions for equal opportunity in schools.

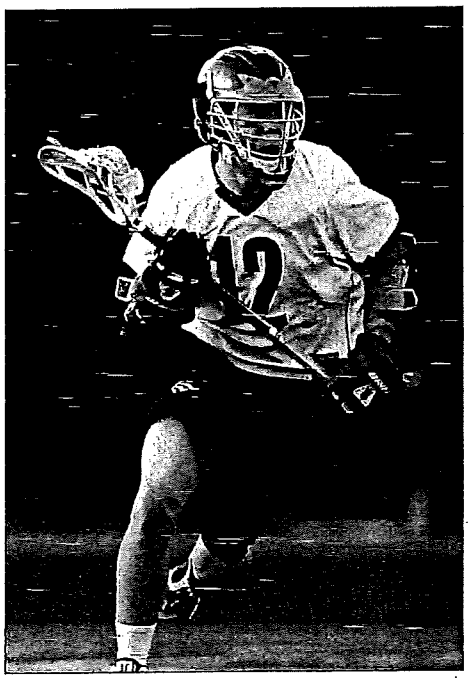
Applies to interscholastic and intramural athletic programs in public and private elementary and secondary schools.

Contents

	Page No.
The Law	1
Guiding Principles Behind the Law	2
Factors That Must be Considered	3
Frequently Asked Questions	7
Resources	22
Legal Resources and Documents Cited	23

Guiding Principles Behind the Law





- Title IX seeks true equality of opportunity for male and female student-athletes in America. *(OCR Clarification 2003).*
- Nothing in Title IX requires the cutting, capping or reduction of teams in order to demonstrate Title IX compliance. *(OCR Q & A 2010).*
- Schools have flexibility in providing nondiscriminatory participation opportunities to their students, and OCR does not require quotas. *(OCR Clarification 1996).*
- There are no strict numerical formulas or "cookie cutter" answers to the issues that are inherently case – and fact – specific. *(OCR Clarification 1996).*
- Participation must be real, not illusory. *(OCR Clarification 1996).*
- Equality of opportunity in America is not rhetoric, but rather a guiding principle. *(OCR Clarification 2010).*
- Participation in women's sports is growing rapidly. This growth has not been at the expense of men's programs. *(OCR Policy Interpretation 1979).*

Factors that must be considered to determine whether equal opportunities for members of both sexes to participate in athletic programs are available

(34 C.F.R. § 106.41 and Minn. Stat. § 121A.04)

OCR considers the effective accommodation of interests and abilities in conjunction with equivalence in the availability, quality and kinds of other athletic benefits and opportunities provided male and female athletes to determine whether an institution provides equal athletic opportunity as required by Title IX. These other benefits include coaching, equipment, practice and competitive facilities, recruitment, scheduling of games, and publicity, among others. A school's failure to provide nondiscriminatory participation opportunities usually amounts to a denial of equal athletic opportunity because these opportunities provide access to all other athletic benefits, treatment, and services. *(OCR Clarification 1996).*

Under this equivalency standard, identical benefits, opportunities, or treatment are not required. If a comparison of program components indicates that benefits, opportunities, or treatment are not equivalent in quality, availability, or kind, the institution may still be in compliance with the law if the differences are shown to be the result of nondiscriminatory factors. Generally, these differences will be the result of unique aspects of particular sports or athletic activities, such as the nature/replacement of equipment and maintenance of facilities required for competition. This equivalency approach allows schools great flexibility in conducting their athletic programs and maintaining compliance without compromising the diversity of athletic programs among institutions. *(OCR Policy Statement 1991).*

Factors That Must be Considered

OCR Clarification 2010
OCR Q & A 2010
OCR Clarification 2003
OCR Clarification 1996
OCR Policy Statement 1991
OCR Policy Interpretation 1979
Minn. Stat. § 121A.04
Minn. R. 3525.3400

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of both sexes

Further Explanation of Each Factor

OCR uses a three-part test as part of determining whether students of both sexes are provided nondiscriminatory opportunities to participate in athletics.

This three-part test provides schools three individual avenues to choose from when determining how it will provide individuals of each sex with nondiscriminatory opportunities to participate in athletics. If a school has met any part of the three-part test, OCR will determine that the school has met this requirement.

The three-parts of the test are:

1. **Substantial proportionality:** The number of male and female athletes is substantially proportionate to their respective enrollments; or
2. **History and continuing practice:** The school has a history and continuing practice of expanding participation opportunities responsive to the developing interests and abilities of the underrepresented sex; or
3. **Fully and effectively accommodating interests and abilities of the underrepresented sex:** The school is fully and effectively accommodating the interests and abilities of the underrepresented sex.

Factors That Must Be Considered	Further Explanation of Each Factor
2. The provision and maintenance of equipment and supplies	Equipment and supplies include but are not limited to uniforms, other apparel, sport-specific equipment and supplies, general equipment and supplies, instructional devices, and conditioning and weight training equipment. Compliance will be assessed by examining, among other factors, the equivalence for males and females of: 1) The quality of equipment and supplies; 2) The amount of equipment and supplies; 3) The suitability of equipment and supplies; 4) The maintenance and replacement of equipment and supplies; and 5) The availability of equipment and supplies.
3. Scheduling of games and practice times	Compliance will be assessed by examining, among other factors, the equivalence for males and females of: 1) The number of competitive events per sport; 2) The number and length of practice opportunities; 3) The time of day competitive events are scheduled; 4) The time of day practice opportunities are scheduled; and 5) The opportunities to engage in available pre-season and post-season competition.
4. Travel and per diem expenses/allowance	Compliance will be assessed by examining, among other factors, the equivalence for males and females of: 1) Modes of transportation; 2) Lodging furnished during travel; 3) Length of stay before and after competitive events; 4) Per diem allowances; and 5) Dining arrangements.
5. Opportunity to receive coaching and academic tutoring	Compliance will be assessed by examining, among other factors, the equivalence for males and females of: 1) Relative availability of full-time coaches; 2) Relative availability of part-time coaches; 3) Relative availability of assistants; 4) The availability of tutoring; and 5) Procedures and criteria for obtaining tutorial assistance.

Factors That Must Be Considered

Further Explanation of Each Factor

6. Assignment and compensation of coaches and tutors

In general a violation will be found only where compensation or assignment policies or practices deny male or female athletes coaching of equivalent quality, nature or availability.

Nondiscriminatory factors can affect the compensation of coaches. In determining whether differences are caused by permissible factors, the range and nature of duties, the experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised, and the level of competition will be considered.

Compliance will be assessed by examining, among other factors, the equivalence for males and females coaches/tutors of:

1) Training, experience, and other professional qualifications;
2) Professional standing;
3) Rate of compensation (per sport, per season);
4) Duration of contracts;
5) Conditions relating to contract renewal;
6) Nature of duties performed;
7) Working conditions; and
8) Other terms and conditions of employment.

7. Provision of locker rooms, practice and competitive facilities

Compliance will be assessed by examining, among other factors, the equivalence for males and females of:

1) Quality and availability of facilities provided for practice and competitive events;
2) Exclusivity of use of facilities provided for practice and competitive events;
3) Availability of locker rooms;
4) Quality of locker rooms;
5) Maintenance of practice and competitive facilities; and
6) Preparation of facilities for practice and competitive events.

8. Provision of medical and training facilities

Compliance will be assessed by examining, among other factors, the equivalence for males and females of:

1) Availability of medical personnel and assistance;
2) Health, accident and injury insurance coverage;
3) Availability and quality of weight and training facilities;
4) Availability and quality of conditioning facilities; and
5) Availability and qualifications of athletic trainers.

Factors That Must Be Considered

Further Explanation of Each Factor

9. Provision of housing and dining facilities

Compliance will be assessed by examining, among other factors, the equivalence for males and females of:

1) Housing provided; and
2) Special services as part of housing arrangement (e.g., laundry facilities, parking space, maid services).

10. Publicity

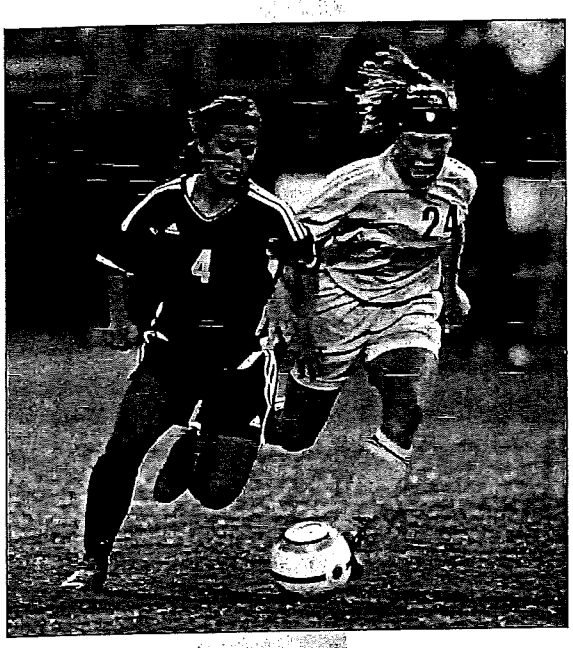
Compliance will be assessed by examining, among other factors, the equivalence for males and females of:

1) Availability and quality of sports information personnel;
2) Access to other publicity resources for male's and female's programs; and
3) Quantity and quality of publications and other promotional devices featuring male's and female's programs.

11. Expenditures

Under Title IX, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a school operates or sponsors separate teams will not constitute noncompliance; however, the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex may be considered.

Under Minnesota law, when two teams in the same sport are in fact separated or substantially separated according to sex, the two teams shall be provided with substantially equal budgets per participant, exclusive of the salary of the coach, gate receipts and other revenues generated by that sport, and in all other respects shall be treated in a substantially equal manner. When an item(s) of expense are not separated, the expense shall be prorated to the teams according to the number of participants.





Frequently Asked Questions

Pertaining to Providing Equal Opportunity

Question	Short Answer	Explanation
Question 1: ***How do we determine if our school meets part one – substantial proportionality – of the three-part test?***	By comparing the percentage of each sex participating in sports to their respective enrollment percentages.	*Participate:* means for interscholastic sports, a student has been selected by the coach to be a member of a particular athletic team, inclusive of varsity, junior varsity, and sophomore teams, after the tryout period has ended.
OCR Clarification 1996	The National Women's Law Center provides the following checklist:	In determining the number of participation opportunities, an athlete who participates in more than one sport will be counted as a participant in each sport in which he or she participates (duplicate number).
Minn. R. 3535.3000, subp. 5	What is the TOTAL number of students in the school? _____	The number of participation opportunities is the sum of the duplicate male participants number and duplicate female participants number.
Minn. R. 3525.3000, subp. 6	How many are female?____ How many are male? ____	To determine the percentage of females participating in athletic opportunities, divide the duplicate female participants number by the number of participation opportunities.
Minn. R. 3525.3000, subp. 7	What are the percentages of female and male students? ___% female ____% male	To determine the percentage of males participating in athletic opportunities, divide the duplicate male participants number by the number of participation opportunities.
National Women's Law Center Checklist (2000)	What is the TOTAL number of athletes in the school? _____	Example: Your school's enrollment is 52% male and 48% female and 52% of the participants in your athletic program are male and 48% female, your school would clearly satisfy part one of the three-part test.
	How many are female?____ How many are male?____	However, because in some circumstances it may be unreasonable to expect a school to achieve exact proportionality — for instance because of natural fluctuations in enrollment and participate rates or because it would be unreasonable to expect a school to add athletic opportunities in light of the small number of students that would have to be accommodated to achieve exact proportionality — OCR examines whether participation opportunities are "substantially" proportionate to enrollment rates.
	What are the percentages of female and male students? ___% female ____% male	
	Compare the percentages of male and female athletes to the percentages of male and female students enrolled.	

Question	Short Answer	Explanation
Question 2: ***If the percentage of female representation in athletic opportunities is within 5% of the percentage of females in the student enrollment, are we in compliance?*** *OCR Clarification 1996*	Maybe.	"Substantial proportionality" is not a statistical test. Rather, the determination of compliance is made on a case-by-case basis. OCR has clarified that opportunities may be considered substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a team. However, keep in mind the option of cooperating with another nearby school.
	Probably yes, if ...	For example, at your school girls make up 52% of the school's enrollment, 47% of the athletes, and the athletic program consists of only 60 participants. If the school provided girls with 52% of athletic opportunities, approximately 6 additional girls would be able to participate. Since 6 participants are unlikely to support a viable team, the school would meet part one.
	Probably no, if ...	For example, at your school girls make up 52% of the school's enrollment, 47% of the athletes, and the athletic program consists of 600 participants. If the school provided girls with 52% of athletic opportunities, approximately 62 additional girls would be able to participate. Because this is a significant number of unaccommodated girls, it is likely that a viable sport could be added. If so, your school would not meet part one.
Question 3: ***How do we determine if our school meets part two – history and continuing practice – of the three-part test?*** *OCR Clarification 1996*	By showing your school has a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex. This part looks at a school's past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion.	OCR will assess whether the program expansion was responsive to developing interests and abilities of the underrepresented sex. In addition, your school must demonstrate a continuing (i.e., present) practice of program expansion as warranted by developing interests and abilities. OCR will consider the following factors, among others, as evidence that may indicate a history of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex: 1) A school's record of adding teams for the underrepresented sex; 2) A school's record of increasing the number of participants in athletics who are members of the underrepresented sex; and 3) A school's affirmative responses to requests by students or others for addition or elevation of sports.

Question

Short Answer

Explanation

Question 3:
(continued)



OCR will consider the following factors, among others, as evidence that may indicate a continuing practice or program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

1) A school's current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports and the effective communication of the policy or procedure to students; and
2) A school's current implementation of a plan or program expansion that is responsive to developing interests and abilities.

OCR would find persuasive a school's efforts to monitor developing interests and abilities of the underrepresented sex, for example, by conducting periodic nondiscriminatory assessments of developing interests and abilities and taking timely actions in response to the results.

OCR would not find a history and continuing practice of program expansion where an institution increases the proportional participation opportunities for the underrepresented sex by reducing opportunities for the overrepresented sex alone or by reducing participation opportunities for the overrepresented sex to a proportionately greater degree than for the underrepresented sex.

OCR will not find that a school satisfies part two where it established teams for the underrepresented sex only at the initiation of its program for the underrepresented sex or where it merely promises to expand its program for the underrepresented sex at some time in the future.

Question 4:
How do we determine if our school meets part three – fully and effectively accommodating interests and abilities of the under-represented sex — of the three-part test?

OCR Clarification 2010
OCR Q & A 2010
OCR Clarification 1996

Under part three, the focus in on full and effective accommodation of the interests and abilities of the school's students who are members of the underrepresented sex.

OCR will assess the following three questions:

1) Is there unmet interest in a particular sport?
   a) Whether the school uses nondiscriminatory methods of assessment when determining the athletic interests and abilities of its students;
      i) The processes take into account the nationally increasing levels of females' interests and abilities;
      ii) The methods of determining interest and ability do not disadvantage the members of an underrepresented sex;

Question

Question 4:
How do we determine if our school meets part three – fully and effectively accommodating interests and abilities of the under-represented sex — of the three-part test?
(continued)

Short Answer

In determining compliance with part three, OCR considers all of the following three questions:

1) Is there unmet interest in a particular sport?
2) Is there sufficient ability to sustain a team in the sport?
3) Is there a reasonable expectation of competition for the team?

If the answer to all three questions is "yes," OCR will find that a school is not fully and effectively accommodating the interests and abilities of the underrepresented sex and therefor is not in compliance.

OCR considers multiple indicators in evaluating compliance with part three and will not accept a school's reliance on a survey alone, regardless of the response rate, to determine compliance.

OCR does not consider nonresponses to surveys as evidence of lack of interest or ability in athletics.

Explanation

iii) The methods of determining ability take into account team performance records; and

iv) The methods are responsive to the expressed interests of students capable of competition who are members of an underrepresented sex.

b) Whether a viable team for the underrepresented sex recently was eliminated;

i) If a school recently has eliminated a viable team for the underrepresented sex from the program, OCR will find that there is sufficient interest, ability, and available competition to sustain a team in that sport and thus there would be a presumption that the school is not in compliance with part three. This presumption can be overcome if the school can provide strong evidence that interest, ability, or competition no longer exists.

ii) OCR does not consider the failure by students to express interest during a survey under part three as evidence sufficient to justify the elimination of a current and viable team for the underrepresent sex. In other words, students participating on a viable team have expressed interest by active participation, and OCR does not use survey results to nullify that expressed interest.

c) Multiple indicators of interest;

i) Requests by students that a particular sport be added;

ii) Requests for the elevation of an existing club sport to interscholastic status;

iii) Participation in club or intramural sports;

iv) Interviews with students, admitted students, coaches, administrators and other regarding interests in particular sports;

v) Results of surveys or questionnaires of students and admitted students regarding interests in particular sports; and

vi) Participation rates in amateur athletic associations and community sports leagues that operate in areas from which the school draws its students.

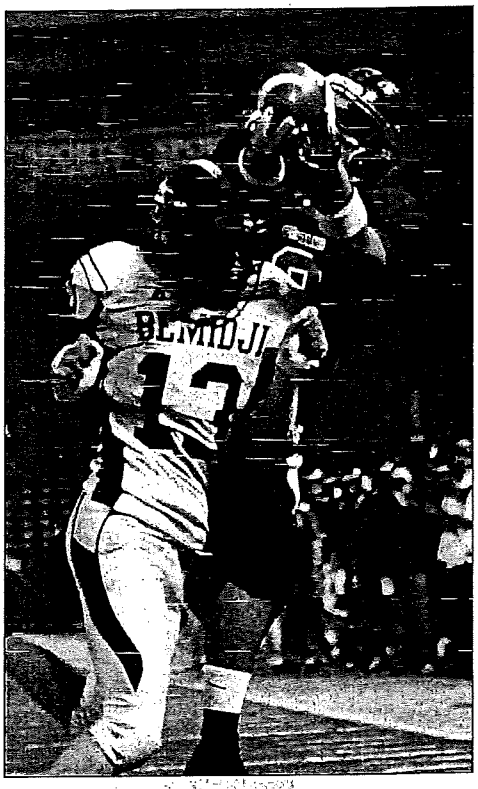
Question

Question 4:
How do we determine if our school meets part three – fully and effectively accommodating interests and abilities of the under-represented sex — of the three-part test?
(continued)

Short Answer

OCR evaluates the overall weight it will accord the results of a survey by examining the following factors, among others:

1) Content of the survey;
2) Target population surveyed;
3) Response rates and treatment of nonresponses;
4) Confidentiality protections; and
5) Frequency of conducting the survey.



Explanation

d) Multiple indicators of ability;
   i) The athletic experience and accomplishments of underrepresented students in playing the sport;
   ii) Opinions of coaches, administrators, and athletes at the school regarding whether interested students have the potential to sustain a team;
   iii) If the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an interscholastic team; and
   iv) OCR has indicated that neither a poor competitive record, nor the inability of interested students to play at the same level of competition engaged in by the school's other athletes, is conclusive evidence of lack of ability. For the purposes of assessing ability, it is sufficient that interested students and admitted students have the potential to sustain a team.

and

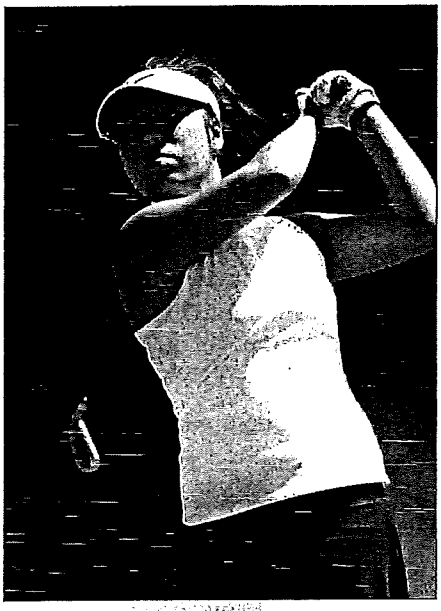
e) Frequency of conducting assessments;
   i) Whether a school assesses interest and ability periodically so that the school can identify in a timely and responsive manner any developing interests and abilities of the underrepresented sex;
   ii) The degree to which the previous assessment captured the interests and abilities of the school's students of the underrepresented sex;
   iii) Changes in demographics or student population at the school; and
   iv) Whether there have been complaints from the underrepresented sex with regard to a lack of athletic opportunities or requests for the addition of new teams.

Question

Short Answer

Explanation

Question 4: How do we determine if our school meets part three – fully and effectively accommodating interests and abilities of the under-represented sex — of the three-part test?
(continued)





f) Effective procedures for evaluating requests to add teams and assessing participation;

i) OCR recommends that schools have effective ongoing procedures for collecting, maintaining, and analyzing information on the interests and abilities of students of the underrepresented sex, including easily understood policies and procedures for receiving and responding to requests for additional teams, and wide dissemination of such policies and procedures to existing and newly admitted students, as well as to coaches and other employees;

ii) OCR also recommends that schools develop procedures for, and maintain documentation from, routine monitoring of participation of the underrepresented sex in club and intramural sports as part of their assessment of student interests and abilities; and

iii) OCR further recommends that schools develop procedures for, and maintain documentation from, evaluations of the participation of the underrepresented sex in amateur athletic associations, and community sports leagues that operate in areas from which the school draws its students.

g) Survey may assist in capturing information on students' interests and abilities.

2) Is there sufficient ability to sustain a team in the sport?

a) Minimum number of participants needed for a particular sport;

b) Opinions of athletic directors and coaches concerning the abilities required to field a team; and

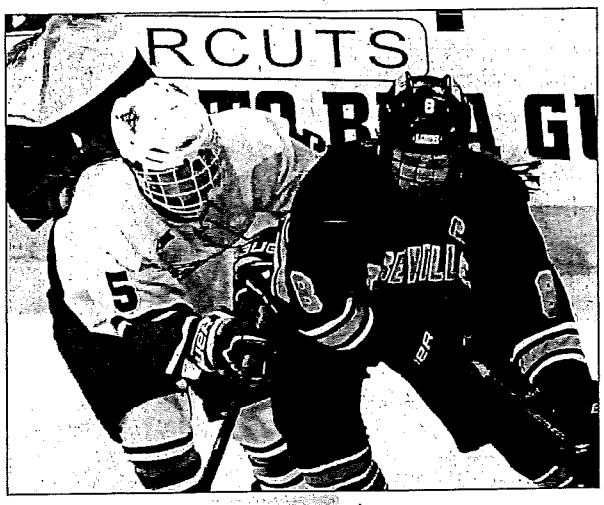
c) Size of a team in a particular sport at schools in the governing athletic association or conference to which the school belongs or in the school's competitive regions.

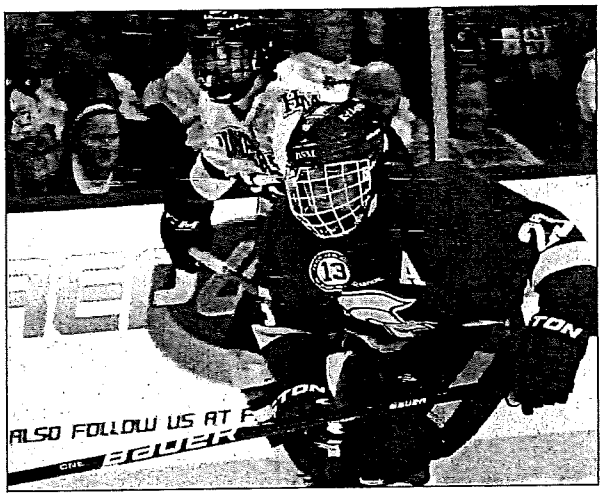
3) Is there a reasonable expectation of competition for the team?

a) OCR considers available competitive opportunities in the geographic area in which the school's athletes primarily compete.

Question	Short Answer	Explanation
Question 5: How do we measure the students' interests in athletic activities? *Minn. R. 3535.3300*	As described above, schools must use multiple indicators to determine students' interest. One method used to determine unmet interests in a particular sport is the required biennial determination of student interest; the student interest survey.	In Minnesota, all public and private elementary and secondary schools are required to make a biennial determination of student demonstrated interest. The method used to make the determination must be reported to MDE, via the athletic program report. Student demonstrated interest must be considered in the selection of athletic activities provided in the athletic program for the purpose of providing separate teams or sports for members of the previously excluded sex. The method used to determine student interest must reach a wide audience and be open ended. The MSHSL has a sample student interest survey on its website at www.mshsl.org.
Question 6: In determining if our school is providing equal opportunity in athletics, do we review interscholastic and intramural athletic activities together? *Minn. R. 3535.3300* *Minn. R. 3535.3000, subp. 3* *Minn. R. 3535.3000, subp. 4*	No. Public and private elementary and secondary schools shall provide equal opportunity for members of each sex to participate in both their intramural and interscholastic athletic program.	Under Minnesota law, the number of opportunities for females to participate on teams is to be comparable to the number of opportunities for males to participate on teams in each school year in the interscholastic athletic program and comparable, as well as in the intramural athletic program. The equipment, supplies, and uniforms for each sport are to be comparable for both sexes. The locker rooms, practice, and competitive facilities are to be comparable for both sexes. The medical services are to be comparable for both sexes. The participation rates for members of both sexes are to be comparable while recognizing the voluntary nature of student involvement in interscholastic and intramural activities. Interscholastic athletic program: means all athletic activities offered within a school the purpose of which is to provide opportunities for students to compete with other students on like teams in other schools within an organized conference under the auspices of the MSHSL or with other teams in other schools operating under separate jurisdictions. A complete list of MSHSL sponsored activities may be found at http://www.mshsl.org. Intramural athletic program: means all non-interscholastic activities offered within a school, which are not a part of the regular physical education curriculum, designed to provide students athletic opportunities, experiences, and the development of competencies in a variety of sports. Participation rate for a particular sex in the interscholastic athletic program: means the ratio of the number of participants of that sex in the athletic program to the number of students of that sex in the student body.

Question	Short Answer	Explanation
Question 6: *(continued)*		Participation rate for a particular sex in the intramural athletic program: means the ratio of the number of participations of that sex in the athletic program to the number of student of that sex in the student body.
Question 7: ***If our school provides an equal number of male and female sports, does that mean we are in compliance with providing equal opportunity?*** *OCR Policy Interpretation 1979*	Not necessarily.	Providing the same number of male and female sport teams does not, in and of itself, guarantee compliance.
	Probably yes, if ...	The sports offered are representative of the students' interests and abilities (see the first factor that must be considered in determining whether equal opportunity in athletic programs is available above).
	Probably no, if ...	The sports offered are not representative of the interests and abilities and therefore, there are few participants on the teams.
Question 8: ***If our school determines we are not in compliance, should we eliminate a sport in order to bring us into compliance?*** *OCR Policy Interpretation 1979* *OCR Clarification 2003*	Not the recommended answer.	OCR has repeatedly stated that nothing in Title IX requires the cutting or reduction of teams in order to demonstrate compliance with Title IX and that the elimination of teams is a disfavored practice. Because the elimination of teams diminishes opportunities for students who are interested in participating in athletics instead of enhancing opportunities for students who have suffered from discrimination, it is contrary to the spirit of Title IX for the government to require or encourage a school to eliminate athletic teams.





Question	Short Answer	Explanation
Question 9: May we include dance team as a sport? *OCR Letter to Aitkin* *OCR Letter to MSHSL*	Historically, no.	Despite OCR's longstanding position that dance teams are in the same extracurricular category as cheerleaders, rather than athletic programs, OCR has recently provided guidance to schools to conduct their own assessments and make their own determinations of whether dance team, as conducted by the school, falls within its athletic program. OCR has provided several factors for the schools to review in order to make this determination.
	Currently determined on a case-by-case basis.	
	Probably yes, if ...	The primary purpose of dance team is athletic competition; it is a stand-alone activity and administered by the school's athletic department; coaches are selected/compensated in the same manner as other current sports; coaches/judges are certified in a comparable manner as other current sports; a primary selection criteria for making the team is based on athletic ability; it has a defined season with a practice schedule and competitive opportunities that are comparable to other sports; it has post-season opportunities; participants are eligible for varsity letters and similar awards available to other athletes in the interscholastic athletic program; the activity falls within an organized conference under the auspices of the MSHSL and is governed by a specific set of published rules.
	Probably no, if ...	The primary purpose of dance team is the support or promotion of other athletes; the selection criteria for making the team is not based on athletic ability; and it does not have a defined season, practice schedule or competitive opportunities that are comparable to other sports.
	How do I make this assessment and determination?	Contact Sara Winter at MDE, 651-582-8237, and an Assessment and Determination Worksheet will be sent out to you.
Question 10: Our district is facing substantial budget cuts and must cut sports from our athletic program; how do we ensure we continue to provide equal athletic opportunities? *OCR Letter to Jurupa Unified*	By continuing to assess your program under all the factors listed above. Lack of funds does not excuse discrimination.	Schools should, in advance of proposed budget cuts, develop a mechanism to ensure that equivalent benefits, treatment, services and opportunities are provided for males and females as programs face elimination or as resources are reallocated. While determining which sport(s) to eliminate from your program, continue to assess each of the factors outlined above that must be considered in determining whether equal opportunity still exists in your athletic program.

Question	Short Answer	Explanation
Question 11: May our school accept private funds, including student-initiated fundraising or booster club money? *OCR Letter to Jurupa Unified*	Maybe. Each school has a responsibility under Title IX to ensure that males' and females' programs are provided with equivalent benefits, treatment, services or opportunities regardless of their source.	When determining equivalency, benefits, services or opportunities attained through the use of private funds, such funds are considered in combination with all benefits, services or opportunities. Private fundraising, including student-initiated fundraising, has been, and continues to be, permissible under Title IX. This does not mean that teams must "share" proceeds from fundraising activities. It does, however, place a responsibility on the school to insure that benefits, services, treatment and opportunities overall, regardless of funding sources, are equivalent for male and female athletes. In the experience of OCR, sponsors, as a whole, are more interested and willing to assist male teams than female teams. Further, male-oriented "booster" activities generate more public interest than female-oriented activities. If all benefits are not considered in examining athletics, the purpose of Title IX requirements could be routinely undermined by the provision of unequal benefits through private financial assistance.
	Probably yes, if ...	The school has a mechanism in place to ensure that equivalent benefits, treatment, services and opportunities are provided to males and females despite large portions of funding being raised specifically for one team.
	Probably no, if ...	The school has no mechanism in place to ensure equivalency and the money is being given solely to the football or wrestling teams.
Question 12: Our school has two teams in the same sport that are separated according to sex, i.e., basketball; must the two teams have substantially equal budgets per participant? *Minn.Stat. § 121A.04, Subd. 3(c)*	Yes.	When two teams in the same sport are in fact separated or substantially separated according to sex, the two teams shall be provided with substantially equal budgets per participant, exclusive of gate receipts and other revenues generated by that sport, and in all other respects shall be treated in a substantially equal manner.

Question	Short Answer	Explanation
Question 13: ***This year our school had to replace major equipment for a male sport, i.e., wrestling mats, and that made our expenditures seem disproportionate; does that mean our school is now out of compliance?*** *OCR Policy Interpretation 1979*	Probably not. Some aspects of athletic programs may not be equivalent for males and females because of unique aspects of particular sports or athletic activities.	Generally, these differences will be the result of factors that are inherent to the basic operation of specific sports. Such factors may include rules of play, nature/replacement of equipment, rates of injury resulting from participation, nature of facilities required for competition, and the maintenance/upkeep requirements of those facilities. If sport-specific needs are met equivalently in both males' and females' programs, differences in particular program components will be found to be justifiable.
Question 14: ***Must our school have identical female and male locker rooms in order to be in compliance?*** *OCR Policy Interpretation 1979* *OCR Policy Statement 1991*	No. However, the overall effect of any differences must be negligible. OCR will look for overall "equivalence" which is interpreted as "equal or equal in effect."	OCR recognizes and permits differences in locker rooms that are the result of factors "inherent to the basic operation of specific sports." Such factors may include the nature of equipment, nature of facilities required for competition, and the maintenance/upkeep of those facilities. If sport-specific needs are met equivalently in both male and female programs, these differences may be found to be justifiable. For example, because of the nature of football equipment, it may be justifiable for football players to have larger lockers and for the football team to have more extra lockers (e.g., to store large football equipment). Generally, these differences are acceptable provided the locker rooms and facilities meet the sport-specific needs of other males' teams and females' teams equivalently.
Question 15: ***Must our school's baseball fields and softball fields be equivalent?*** *OCR Success Stories 2005*	Yes.	OCR reports the following scenario: A brand-new high school included a state-of-the-art baseball facility for males, including dugouts, generous seating, lockers, a storage room and PA system. In additional, the field was large enough for both the junior and senior players to practice and play. In contrast, the girls were told there was no softball field for them: instead, the school had made arrangements with a local church to share their field. This field had no seating, locker room, dugout, storage room or PA system, and the field itself was not comparable in quality or size to the one provided to males. After OCR's intervention, the school district not only built a comparable softball facility for females but it also reviewed facilities for females at other schools to determine any needed upgrades.

Question	Short Answer	Explanation
Question 16: Must our school provide the same sports for both males and females? *OCR Policy Interpretation 1979* *OCR Policy Statement 1991*	Probably not. Schools are not required to offer particular sports or the same sports for each sex. However, schools must accommodate to the same degree the athletic interests and abilities of each sex in the selection of sports.	In the selection of sports, schools are not required to integrate their teams nor to provide exactly the same choice of sports to males and females. However, where the school sponsors a team in a particular sport for members of one sex, it may be required either to permit the excluded sex to try out for the team or to sponsor a separate team for the previously excluded sex.
Question 17: When is it permissible to provide separate male and female teams? *OCR Policy Interpretation 1979* *OCR Policy Statement 1991* *Minn. Stat. § 121A.04, Subd. 4*	Schools may sponsor separate teams for males and females where selection is based on competitive skill or when the activity is a contact sport.	Contact sports: if a school sponsors a team for members of one sex in a contact sport, it must do so for members of the other sex under the following circumstances: 1) The opportunities for members of the excluded sex have historically been limited; and 2) There is sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of competition for that team. Contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports in which the purpose or major activity involves bodily contact. When an equal opportunity to participate in the elementary or secondary school level athletic program of an educational institution or public service is not provided to members of a sex whose overall athletic opportunities have previously been limited, that educational institution or public service shall, where there is demonstrated interest, provide separate teams for members of the excluded sex in sports which it determines will provide members of that excluded sex with an equal opportunity to participate in its athletic program and which will attempt to accommodate their demonstrated interests. Any public or private elementary or secondary school may provide in the same sport two teams which are separated according to sex when overall athletic opportunities for one sex have previously been limited, but the team for the other sex may only be substantially separated by sex. When an equal opportunity to participate is not provided to members of a sex whose overall athletic opportunities to participate have previously been limited, the school, where there is a demonstrated interest, shall provide separate teams in sports which it determines will provide members of the excluded sex with an equal opportunity and which will attempt to accommodate their demonstrated interest.

Question

Question 18:
When does our school have to allow females to try-out for male teams and vice-versa?

OCR Policy Interpretation 1979

OCR Policy Statement 1991

Minn. Stat. § 121A.04, Subd. 3(d)

Minn. R. 3525.3200, subp. 4

Short Answer

Where a school sponsors a team in a particular non-contact sport for members of one sex, it must allow athletes of the other sex to try-out for the team, if historically, there have been limited athletic opportunities for members of the other sex.

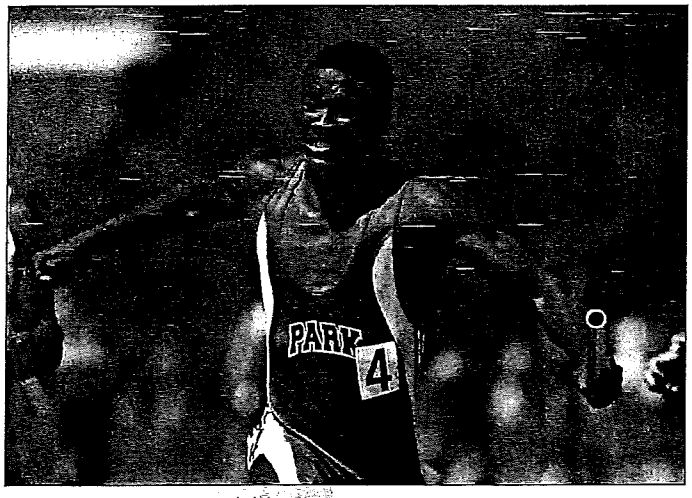
Explanation

Non-contact sports: if a school sponsors a team for members of one sex in a non-contact sport, it must do so for members of the other sex under the following circumstances:

1) The opportunities for members of the excluded sex have historically been limited;
2) There is sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of competition for that team; and
3) Members of the excluded sex do not possess sufficient skill to be selected for a single integrated team, or to compete actively on such a team if selected.

If two teams are provided in the same sport, one of these teams may be restricted to members of a sex whose overall athletic opportunities have previously been limited, and members of either sex shall be permitted to try out for the other team.

When overall athletic opportunities for one sex have previously been limited, members of that sex shall be permitted to try out and, if successful, to participate on any team in any sport. This part does not prohibit any elementary or secondary school from making participation on a team in a sport dependent upon a demonstrated level of skill and ability. When an educational institution has established a team exclusively for members of the sex whose overall athletic opportunities have previously been limited, members of the other sex may not try out for or participate on that team.





Question

Question 19: What is the athletic program report?

Minn. R. 3525.3600
Minn. R. 3525.3700
Minn. Stat. § 127A.42

Short Answer

A report you are required to submit to MDE on or before October 15 of each year containing information about both intramural and interscholastic athletics your school provides.

Explanation

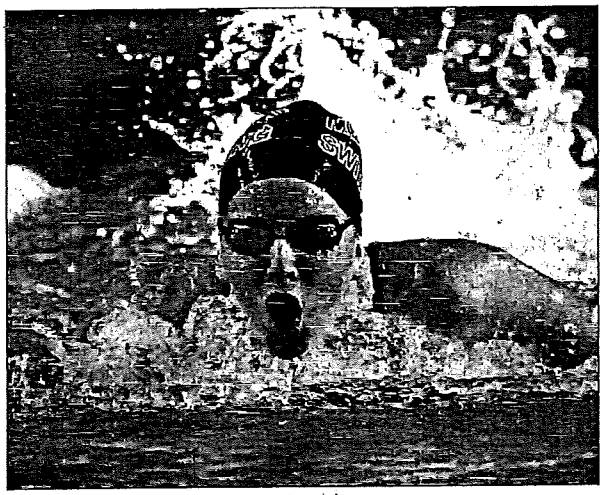
MDE is to assure schools/school districts provide an equal opportunity for members of both sexes to participate in athletic programs.

Annually, on or before October 15, all public and private elementary and secondary schools that offer interscholastic and intramural sports must submit, to MDE, an elementary and secondary athletic program report containing information about both interscholastic and intramural athletics provided.

The report shall contain by building:

1. Number of sports offered for each sex;
2. The season each sport is offered for each sex;
3. Number of weeks each sport is offered;
4. Number of teams in each sport;
5. Number of coaches assigned each sport;
6. Number of students by sex participating in each sport;
7. Dollar expenditure per sport;
8. Total unduplicated count of student participation in the interscholastic program by sex; and
9. Total unduplicated count of student participation in the intramural program by sex.

The report is submitted to MDE electronically, via the internet, at https://education.state.mn.us/Athletics. Upon receipt of a school's athletic program report, MDE must evaluate the data contained in the report and forward reports requiring additional attention to the commissioner of human rights. MDE may reduce or withhold the school's/school district's state aid for any school year for noncompliance with state laws prohibiting discrimination because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance or disability.





Question	Short Answer	Explanation
Question 20: For the athletic program report required to be submitted to MDE, what sports are considered co-ed sports?	Co-ed sports are generally limited to adapted sports or intramural sports.	*Co-ed:* means a team that is open to both sexes. Co-ed teams are generally limited to adapted athletic programs or intramural athletic programs. If both your female team and male team share a coach, for example in golf, that does not make your sport a co-ed sport and each team must be listed out separately in your athletic program report.
Question 21: Our school is in a cooperative for one or more sports, how do we report this information on the athletic program report required to be submitted to MDE?	Report the information as it pertains to the students participating from your school only.	Submit the information on the athletic program report as it pertains only to the students/staff in your school building. For example, if your school building is not providing a coach, put 0 for the number of coaches.
Question 22: Do we have to report athletic numbers to the MSHSL?	Yes. You are asked to submit participation numbers, by sport and by gender, to MSHSL on or before June 1 of each year.	MSHSL gathers participation numbers by sport and by gender and forwards them to the National Federation of State High School Associations to compile nation-wide participation numbers. Athletic administrators are asked to access the administrative side of the MSHSL's web site at the conclusion of the fall and winter activities and on May 1 each spring. The form used to collect participation data is entitled Activity Participation Survey, and each school is required to provide the data not later than June 1 of each school year.

Resources

The United States Department of Education, Office for Civil Rights (OCR) enforces the Federal Title IX law. The OCR office for Minnesota is located at:

Chicago Office

Office for Civil Rights
U.S. Department of Education
500 W. Madison Street, Suite 1475
Chicago, IL 60661-4544

Customer Service Hotline:
1-800-421-3481
Telephone: 312-730-1560
FAX: 312-730-1576

Email: OCR.Chicago@ed.gov
Website: www.ed.gov/ocr

The Minnesota Department of Education (MDE) reviews school compliance with state and federal anti-discrimination laws. MDE is located at:

Minnesota Department of Education

Division of Compliance and Monitoring
Attention: Sara Winter
1500 Highway 36 West
Roseville, MN 55113

Telephone: 651-582-8237
FAX: 651-582-8725

Email: sara.winter@state.mn.us
Website: www.education.state.mn.us

The Minnesota Department of Human Rights (MDHR) enforces state anti-discrimination laws and investigates all charges alleging sex discrimination in athletic programs in schools. MDHR is located at:

Minnesota Department of Human Rights

Freeman Building
625 Robert Street North
Saint Paul, MN 55155

Telephone: 651-539-1100
TTY: 651-296-1283
Toll Free: 1-800-657-3704

Website: www.humanrights.state.mn.us

The Minnesota State High School League (MSHSL) is a 501-c(3) nonprofit corporation that is a voluntary association of high schools. The MSHSL controls contests by and between Minnesota High Schools, and the eligibility rules for such competitions are developed by the member schools themselves. The MSHSL Board of Directors administers post-season tournaments and develops policies which direct MSHSL initiatives. MSHSL is located at:

Minnesota State High School League

Attention: Dave Stead
2100 Freeway Blvd.
Brooklyn Center, MN 55430-1735

Telephone: 763-560-2262
FAX: 763-569-0499

Email: dstead@mshsl.org
Website: www.mshsl.org

Legal Resources and Documents Cited

20 U.S.C. §§ 1681 *et seq.*

34 C.F.R. § 106.41. Athletics.

Minn. Stat. § 121A.04. Athletic Programs: Sex Discrimination.

Minn. Stat. § 127A.42. Reduction of Aid for Violation of Law.

Minn. Stat. § 363A.23. Exemption Based on Education.

Minn. R. 3535.3000. Definitions.

Minn. R. 3535.3200. Separation by Teams.

Minn. R. 3535.3300. Biennial Determination of Student Interest.

Minn. R. 3535.3400. Creating Equal Opportunity for Two Teams.

Minn. R. 3535.3600. Compliance Reports and Submission of Data.

Minn. R. 3535.3700. Duties of the Commissioner of Education.

Dear Colleague Letter - Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three (April 20, 2010) (OCR Clarification 2010).

Questions and Answers about Dear Colleague Letter – Intercollegiate Athletics Policy Clarification: The Three – Part Test – Part Three (April 20, 2010) (OCR Q & A 2010).

Athletic Equity Success Stories (March 9, 2005) (OCR Success Stories 2005).

OCR Letter to Aitkin (March 18, 2004) (regarding whether dance team is a "sport" for purposes of Title IX) (OCR Letter to Aitkin).

Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance (July 11, 2003) (OCR Clarification 2003).

OCR Letter to Minnesota State High School League (April 11, 2000) (regarding definition of sport) (OCR Letter to MSHSL).

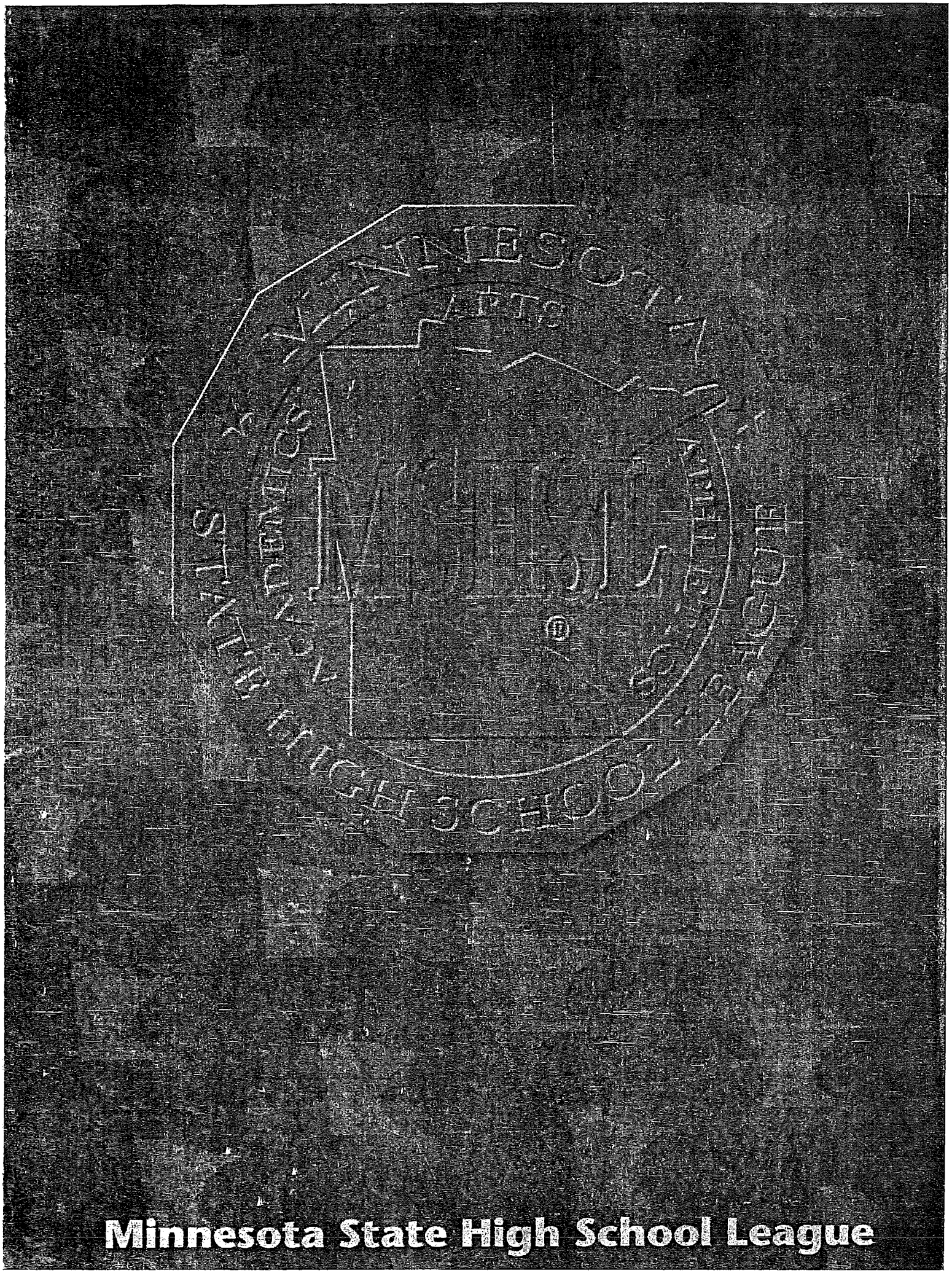
Check it Out: Is the Playing Field Level for Women and Girls at Your School? An Athletics Equity Checklist for Students, Athletes, Coaches, Parents, Administrators, and Advocates, National Women's Law Center (2000) (National Women's Law Center Checklist 2000).

Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (Jan. 16, 1996) (OCR Clarification 1996).

OCR Letter to Jurupa Unified School District (Feb. 7, 1995) (regarding private financial assistance and Title IX) (OCR Letter to Jurupa Unified).

Equal Opportunity in Intercollegiate Athletics: Requirements Under Title IX of the Education Amendments of 1972 (OCR Policy Statement 1991).

Intercollegiate Athletics Policy Interpretation (Dec. 11, 1979) (OCR Policy Interpretation 1979).


Minnesota State High School League

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Questions and Answers on Title IX and Sexual Violence[1]

Title IX of the Education Amendments of 1972 ("Title IX")[2] is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities receiving any federal financial assistance (hereinafter "schools", "recipients", or "recipient institutions") must comply with Title IX.[3]

On April 4, 2011, the Office for Civil Rights (OCR) in the U.S. Department of Education issued a Dear Colleague Letter on student-on-student sexual harassment and sexual violence ("DCL").[4] The DCL explains a school's responsibility to respond promptly and effectively to sexual violence against students in accordance with the requirements of Title IX.[5] Specifically, the DCL:

- Provides guidance on the unique concerns that arise in sexual violence cases, such as a school's independent responsibility under Title IX to investigate (apart from any separate criminal investigation by local police) and address sexual violence.

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[1] The Department has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), *available at* www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf. The Office for Civil Rights (OCR) issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

[2] 20 U.S.C. § 1681 *et seq*.

[3] Throughout this document the term "schools" refers to recipients of federal financial assistance that operate educational programs or activities. For Title IX purposes, at the elementary and secondary school level, the recipient generally is the school district; and at the postsecondary level, the recipient is the individual institution of higher education. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that the law's requirements conflict with the organization's religious tenets. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office.

[4] Available at http://www.ed.gov/ocr/letters/colleague-201104.html.

[5] Although this document and the DCL focus on sexual violence, the legal principles generally also apply to other forms of sexual harassment.

- Provides guidance and examples about key Title IX requirements and how they relate to sexual violence, such as the requirements to publish a policy against sex discrimination, designate a Title IX coordinator, and adopt and publish grievance procedures.

- Discusses proactive efforts schools can take to prevent sexual violence.

- Discusses the interplay between Title IX, the Family Educational Rights and Privacy Act ("FERPA"),[6] and the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act ("Clery Act")[7] as it relates to a complainant's right to know the outcome of his or her complaint, including relevant sanctions imposed on the perpetrator.

- Provides examples of remedies and enforcement strategies that schools and OCR may use to respond to sexual violence.

The DCL supplements OCR's *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, issued in 2001 (*2001 Guidance*).[8] The *2001 Guidance* discusses in detail the Title IX requirements related to sexual harassment of students by school employees, other students, or third parties. The DCL and the *2001 Guidance* remain in full force and we recommend reading these Questions and Answers in conjunction with these documents.

In responding to requests for technical assistance, OCR has determined that elementary and secondary schools and postsecondary institutions would benefit from additional guidance concerning their obligations under Title IX to address sexual violence as a form of sexual harassment. The following questions and answers further clarify the legal requirements and guidance articulated in the DCL and the *2001 Guidance* and include examples of proactive efforts schools can take to prevent sexual violence and remedies schools may use to end such conduct, prevent its recurrence, and address its effects. In order to gain a complete understanding of these legal requirements and recommendations, this document should be read in full.

Authorized by

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

April 29, 2014

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[6] 20 U.S.C. §1232g; 34 C.F.R. Part 99.
[7] 20 U.S.C. §1092(f).
[8] Available at http://www.ed.gov/ocr/docs/shguide.html.

Notice of Language Assistance
Questions and Answers on Title IX and Sexual Violence

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TABLE OF CONTENTS

Notice of Language Assistance iii

A. A School's Obligation to Respond to Sexual Violence 1

A-1. What is sexual violence? 1

A-2. How does Title IX apply to student-on-student sexual violence? 1

A-3. How does OCR determine if a hostile environment has been created? 1

A-4. When does OCR consider a school to have notice of student-on-student sexual violence? 2

A-5. What are a school's basic responsibilities to address student-on-student sexual violence? 2

A-6. Does Title IX cover employee-on-student sexual violence, such as sexual abuse of children? 3

B. Students Protected by Title IX 5

B-1. Does Title IX protect all students from sexual violence? 5

B-2. How should a school handle sexual violence complaints in which the complainant and the alleged perpetrator are members of the same sex? 5

B-3. What issues may arise with respect to students with disabilities who experience sexual violence? 6

B-4. What issues arise with respect to international students and undocumented students who experience sexual violence? 7

B-5. How should a school respond to sexual violence when the alleged perpetrator is not affiliated with the school? 9

C. Title IX Procedural Requirements 9

C-1. What procedures must a school have in place to prevent sexual violence and resolve complaints? 9

C-2. What information must be included in a school's notice of nondiscrimination? 10

C-3. What are a Title IX coordinator's responsibilities? 10

C-4. Are there any employees who should not serve as the Title IX coordinator? 11

C-5. Under Title IX, what elements should be included in a school's procedures for responding to complaints of sexual violence? 12

C-6. Is a school required to use separate grievance procedures for sexual violence complaints? 14

D. Responsible Employees and Reporting 14

D-1. Which school employees are obligated to report incidents of possible sexual violence to school officials? 14

D-2. Who is a "responsible employee"? 15

D-3. What information is a responsible employee obligated to report about an incident of possible student-on-student sexual violence? 16

D-4. What should a responsible employee tell a student who discloses an incident of sexual violence? 16

D-5. If a student informs a resident assistant/advisor (RA) that he or she was subjected to sexual violence by a fellow student, is the RA obligated under Title IX to report the incident to school officials? 17

E. Confidentiality and a School's Obligation to Respond to Sexual Violence 18

E-1. How should a school respond to a student's request that his or her name not be disclosed to the alleged perpetrator or that no investigation or disciplinary action be pursued to address the alleged sexual violence? 18

E-2. What factors should a school consider in weighing a student's request for confidentiality? 21

E-3. What are the reporting responsibilities of school employees who provide or support the provision of counseling, advocacy, health, mental health, or sexual assault-related services to students who have experienced sexual violence? 22

E-4. Is a school required to investigate information regarding sexual violence incidents shared by survivors during public awareness events, such as "Take Back the Night"? 24

F. Investigations and Hearings 24

F-1. What elements should a school's Title IX investigation include? 24

F-2. What are the key differences between a school's Title IX investigation into allegations of sexual violence and a criminal investigation? 27

F-3. How should a school proceed when campus or local law enforcement agencies are conducting a criminal investigation while the school is conducting a parallel Title IX investigation? 28

F-4. Is a school required to process complaints of alleged sexual violence that occurred off campus? 29

F-5. Must a school allow or require the parties to be present during an entire hearing? 30

F-6. May every witness at the hearing, including the parties, be cross-examined? 31

F-7. May the complainant's sexual history be introduced at hearings? 31

F-8. What stages of the investigation are included in the 60-day timeframe referenced in the DCL as the length for a typical investigation? 31

G. Interim Measures 32

G-1. Is a school required to take any interim measures before the completion of its investigation? 32

G-2. How should a school determine what interim measures to take? 33

G-3. If a school provides all students with access to counseling on a fee basis, does that suffice for providing counseling as an interim measure? 33

H. Remedies and Notice of Outcome 34

H-1. What remedies should a school consider in a case of student-on-student sexual violence? 34

H-2. If, after an investigation, a school finds the alleged perpetrator responsible and determines that, as part of the remedies for the complainant, it must separate the complainant and perpetrator, how should the school accomplish this if both students share the same major and there are limited course options? 36

H-3. What information must be provided to the complainant in the notice of the outcome? 36

I. Appeals 37

I-1. What are the requirements for an appeals process? 37

I-2. Must an appeal be available to a complainant who receives a favorable finding but does not believe a sanction that directly relates to him or her was sufficient? 38

J. Title IX Training, Education and Prevention 38

J-1. What type of training on Title IX and sexual violence should a school provide to its employees? 38

J-2. How should a school train responsible employees to report incidents of possible sexual harassment or sexual violence? 39

J-3. What type of training should a school provide to employees who are involved in implementing the school's grievance procedures? 40

J-4. What type of training on sexual violence should a school provide to its students? 41

K. Retaliation 42

K-1. Does Title IX protect against retaliation? 42

L. First Amendment 43

L-1. How should a school handle its obligation to respond to sexual harassment and sexual violence while still respecting free-speech rights guaranteed by the Constitution? 43

M. The Clery Act and the Violence Against Women Reauthorization Act of 2013 44

M-1. How does the Clery Act affect the Title IX obligations of institutions of higher education that participate in the federal student financial aid programs? 44

M-2. Were a school's obligations under Title IX and the DCL altered in any way by the Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, including Section 304 of that Act, which amends the Clery Act? 44

N. Further Federal Guidance 45

N-1. Whom should I contact if I have additional questions about the DCL or OCR's other Title IX guidance? 45

N-2. Are there other resources available to assist a school in complying with Title IX and preventing and responding to sexual violence? 45

A. A School's Obligation to Respond to Sexual Violence

A-1. What is sexual violence?

Answer: Sexual violence, as that term is used in this document and prior OCR guidance, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

A-2. How does Title IX apply to student-on-student sexual violence?

Answer: Under Title IX, federally funded schools must ensure that students of all ages are not denied or limited in their ability to participate in or benefit from the school's educational programs or activities on the basis of sex. A school violates a student's rights under Title IX regarding student-on-student sexual violence when the following conditions are met: (1) the alleged conduct is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program, *i.e.* creates a hostile environment; and (2) the school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.[9]

A-3. How does OCR determine if a hostile environment has been created?

Answer: As discussed more fully in OCR's *2001 Guidance*, OCR considers a variety of related factors to determine if a hostile environment has been created; and also considers the conduct in question from both a subjective and an objective perspective. Specifically, OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.

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[9] This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. *See 2001 Guidance* at ii-v; 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. *See Davis v. Monroe Cnty Bd. of Educ.*, 526 U.S. 629, 643 (1999).

A-4. When does OCR consider a school to have notice of student-on-student sexual violence?

Answer: OCR deems a school to have notice of student-on-student sexual violence if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual violence. See question D-2 regarding who is a responsible employee.

A school can receive notice of sexual violence in many different ways. Some examples of notice include: a student may have filed a grievance with or otherwise informed the school's Title IX coordinator; a student, parent, friend, or other individual may have reported an incident to a teacher, principal, campus law enforcement, staff in the office of student affairs, or other responsible employee; or a teacher or dean may have witnessed the sexual violence.

The school may also receive notice about sexual violence in an indirect manner, from sources such as a member of the local community, social networking sites, or the media. In some situations, if the school knows of incidents of sexual violence, the exercise of reasonable care should trigger an investigation that would lead to the discovery of additional incidents. For example, if school officials receive a credible report that a student has perpetrated several acts of sexual violence against different students, that pattern of conduct should trigger an inquiry as to whether other students have been subjected to sexual violence by that student. In other cases, the pervasiveness of the sexual violence may be widespread, openly practiced, or well-known among students or employees. In those cases, OCR may conclude that the school should have known of the hostile environment. In other words, if the school would have found out about the sexual violence had it made a proper inquiry, knowledge of the sexual violence will be imputed to the school even if the school failed to make an inquiry. A school's failure to take prompt and effective corrective action in such cases (as described in questions G-1 to G-3 and H-1 to H-3) would violate Title IX even if the student did not use the school's grievance procedures or otherwise inform the school of the sexual violence.

A-5. What are a school's basic responsibilities to address student-on-student sexual violence?

Answer: When a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E). If an investigation reveals that sexual violence created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its

effects. But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

Title IX requires a school to protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of any investigation.[10] The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. If the school determines that the sexual violence occurred, the school must continue to take these steps to protect the complainant and ensure his or her safety, as necessary. The school should also ensure that the complainant is aware of any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. For additional information on interim measures, see questions G-1 to G-3.

If a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to a hostile environment. If it does, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately. For example, if a school's ignoring of a student's complaints of sexual assault by a fellow student results in the complaining student having to remain in classes with the other student for several weeks and the complaining student's grades suffer because he or she was unable to concentrate in these classes, the school may need to permit the complaining student to retake the classes without an academic or financial penalty (in addition to any other remedies) in order to address the effects of the sexual violence.

A-6. Does Title IX cover employee-on-student sexual violence, such as sexual abuse of children?

Answer: Yes. Although this document and the DCL focus on student-on-student sexual violence, Title IX also protects students from other forms of sexual harassment (including sexual violence and sexual abuse), such as sexual harassment carried out by school employees. Sexual harassment by school employees can include unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, including but not limited to sexual activity. Title IX's prohibition against

[10] Throughout this document, unless otherwise noted, the term "complainant" refers to the student who allegedly experienced the sexual violence.

sexual harassment generally does not extend to legitimate nonsexual touching or other nonsexual conduct. But in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment. Early signs of inappropriate behavior with a child can be the key to identifying and preventing sexual abuse by school personnel.

A school's Title IX obligations regarding sexual harassment by employees can, in some instances, be greater than those described in this document and the DCL. Recipients should refer to OCR's *2001 Guidance* for further information about Title IX obligations regarding harassment of students by school employees. In addition, many state and local laws have mandatory reporting requirements for schools working with minors. Recipients should be careful to satisfy their state and local legal obligations in addition to their Title IX obligations, including training to ensure that school employees are aware of their obligations under such state and local laws and the consequences for failing to satisfy those obligations.

With respect to sexual activity in particular, OCR will always view as unwelcome and nonconsensual sexual activity between an adult school employee and an elementary school student or any student below the legal age of consent in his or her state. In cases involving a student who meets the legal age of consent in his or her state, there will still be a strong presumption that sexual activity between an adult school employee and a student is unwelcome and nonconsensual. When a school is on notice that a school employee has sexually harassed a student, it is responsible for taking prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects. Indeed, even if a school was not on notice, the school is nonetheless responsible for remedying any effects of the sexual harassment on the student, as well as for ending the sexual harassment and preventing its recurrence, when the employee engaged in the sexual activity in the context of the employee's provision of aid, benefits, or services to students (*e.g.*, teaching, counseling, supervising, advising, or transporting students).

A school should take steps to protect its students from sexual abuse by its employees. It is therefore imperative for a school to develop policies prohibiting inappropriate conduct by school personnel and procedures for identifying and responding to such conduct. For example, this could include implementing codes of conduct, which might address what is commonly known as grooming – a desensitization strategy common in adult educator sexual misconduct. Such policies and procedures can ensure that students, parents, and

school personnel have clear guidelines on what are appropriate and inappropriate interactions between adults and students in a school setting or in school-sponsored activities. Additionally, a school should provide training for administrators, teachers, staff, parents, and age-appropriate classroom information for students to ensure that everyone understands what types of conduct are prohibited and knows how to respond when problems arise.[11]

B. Students Protected by Title IX

B-1. Does Title IX protect all students from sexual violence?

Answer: Yes. Title IX protects all students at recipient institutions from sex discrimination, including sexual violence. Any student can experience sexual violence: from elementary to professional school students; male and female students; straight, gay, lesbian, bisexual and transgender students; part-time and full-time students; students with and without disabilities; and students of different races and national origins.

B-2. How should a school handle sexual violence complaints in which the complainant and the alleged perpetrator are members of the same sex?

Answer: A school's obligation to respond appropriately to sexual violence complaints is the same irrespective of the sex or sexes of the parties involved. Title IX protects all students from sexual violence, regardless of the sex of the alleged perpetrator or complainant, including when they are members of the same sex. A school must investigate and resolve allegations of sexual violence involving parties of the same sex using the same procedures and standards that it uses in all complaints involving sexual violence.

Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations. Indeed, lesbian, gay, bisexual, and transgender (LGBT) youth report high rates of sexual harassment and sexual violence. A school should investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards that it

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[11] For additional informational on training please see the Department of Education's Resource and Emergency Management for Schools Technical Assistance Center – Adult Sexual Misconduct in Schools: Prevention and Management Training, available at http://rems.ed.gov/Docs/ASM_Marketing_Flyer.pdf.

uses in all complaints involving sexual violence. The fact that incidents of sexual violence may be accompanied by anti-gay comments or be partly based on a student's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy those instances of sexual violence.

If a school's policies related to sexual violence include examples of particular types of conduct that violate the school's prohibition on sexual violence, the school should consider including examples of same-sex conduct. In addition, a school should ensure that staff are capable of providing culturally competent counseling to all complainants. Thus, a school should ensure that its counselors and other staff who are responsible for receiving and responding to complaints of sexual violence, including investigators and hearing board members, receive appropriate training about working with LGBT and gender-nonconforming students and same-sex sexual violence. See questions J-1 to J-4 for additional information regarding training.

Gay-straight alliances and similar student-initiated groups can also play an important role in creating safer school environments for LGBT students. On June 14, 2011, the Department issued guidance about the rights of student-initiated groups in public secondary schools under the Equal Access Act. That guidance is available at http://www2.ed.gov/policy/elsec/guid/secletter/110607.html.

B-3. What issues may arise with respect to students with disabilities who experience sexual violence?

Answer: When students with disabilities experience sexual violence, federal civil rights laws other than Title IX may also be relevant to a school's responsibility to investigate and address such incidents.[12] Certain students require additional assistance and support. For example, students with intellectual disabilities may need additional help in learning about sexual violence, including a school's sexual violence education and prevention programs, what constitutes sexual violence and how students can report incidents of sexual

[12] OCR enforces two civil rights laws that prohibit disability discrimination. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits disability discrimination by public or private entities that receive federal financial assistance, and Title II of the American with Disabilities Act of 1990 (Title II) prohibits disability discrimination by all state and local public entities, regardless of whether they receive federal funding. *See* 29 U.S.C. § 794 and 34 C.F.R. part 104; 42 U.S.C. § 12131 *et seq.* and 28 C.F.R. part 35. OCR and the U.S. Department of Justice (DOJ) share the responsibility of enforcing Title II in the educational context. The Department of Education's Office of Special Education Programs in the Office of Special Education and Rehabilitative Services administers Part B of the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. 1400 *et seq.* and 34 C.F.R. part 300. IDEA provides financial assistance to states, and through them to local educational agencies, to assist in providing special education and related services to eligible children with disabilities ages three through twenty-one, inclusive.

violence. In addition, students with disabilities who experience sexual violence may require additional services and supports, including psychological services and counseling services. Postsecondary students who need these additional services and supports can seek assistance from the institution's disability resource office.

A student who has not been previously determined to have a disability may, as a result of experiencing sexual violence, develop a mental health-related disability that could cause the student to need special education and related services. At the elementary and secondary education level, this may trigger a school's child find obligations under IDEA and the evaluation and placement requirements under Section 504, which together require a school to evaluate a student suspected of having a disability to determine if he or she has a disability that requires special education or related aids and services.[13]

A school must also ensure that any school reporting forms, information, or training about sexual violence be provided in a manner that is accessible to students and employees with disabilities, for example, by providing electronically-accessible versions of paper forms to individuals with print disabilities, or by providing a sign language interpreter to a deaf individual attending a training. See question J-4 for more detailed information on student training.

B-4. What issues arise with respect to international students and undocumented students who experience sexual violence?

Answer: Title IX protects all students at recipient institutions in the United States regardless of national origin, immigration status, or citizenship status.[14] A school should ensure that all students regardless of their immigration status, including undocumented students and international students, are aware of their rights under Title IX. A school must also ensure that any school reporting forms, information, or training about sexual violence be provided in a manner accessible to students who are English language learners. OCR recommends that a school coordinate with its international office and its undocumented student program coordinator, if applicable, to help communicate information about Title IX in languages that are accessible to these groups of students. OCR also encourages schools to provide foreign national complainants with information about the U nonimmigrant status and the T nonimmigrant status. The U nonimmigrant status is set

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[13] *See* 34 C.F.R. §§ 300.8; 300.111; 300.201; 300.300-300.311 (IDEA); 34 C.F.R. §§ 104.3(j) and 104.35 (Section 504). Schools must comply with applicable consent requirements with respect to evaluations. *See* 34 C.F.R. § 300.300.

[14] OCR enforces Title VI of the Civil Rights Act of 1964, which prohibits discrimination by recipients of federal financial assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d.

aside for victims of certain crimes who have suffered substantial mental or physical abuse as a result of the crime and are helpful to law enforcement agency in the investigation or prosecution of the qualifying criminal activity.[15] The T nonimmigrant status is available for victims of severe forms of human trafficking who generally comply with a law enforcement agency in the investigation or prosecution of the human trafficking and who would suffer extreme hardship involving unusual and severe harm if they were removed from the United States.[16]

A school should be mindful that unique issues may arise when a foreign student on a student visa experiences sexual violence. For example, certain student visas require the student to maintain a full-time course load (generally at least 12 academic credit hours per term), but a student may need to take a reduced course load while recovering from the immediate effects of the sexual violence. OCR recommends that a school take steps to ensure that international students on student visas understand that they must typically seek prior approval of the designated school official (DSO) for student visas to drop below a full-time course load. A school may also want to encourage its employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence to approach the DSO on the student's behalf if the student wishes to drop below a full-time course load. OCR recommends that a school take steps to ensure that its employees who work with international students, including the school's DSO, are trained on the school's sexual violence policies and that employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence are aware of the special issues that international students may encounter. See questions J-1 to J-4 for additional information regarding training.

A school should also be aware that threatening students with deportation or invoking a student's immigration status in an attempt to intimidate or deter a student from filing a Title IX complaint would violate Title IX's protections against retaliation. For more information on retaliation see question K-1.

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[15] For more information on the U nonimmigrant status, see http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/questions-answers-victims-criminal-activity-u-nonimmigrant-status.

[16] For more information on the T nonimmigrant status, see http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status.

B-5. How should a school respond to sexual violence when the alleged perpetrator is not affiliated with the school?

Answer: The appropriate response will differ depending on the level of control the school has over the alleged perpetrator. For example, if an athlete or band member from a visiting school sexually assaults a student at the home school, the home school may not be able to discipline or take other direct action against the visiting athlete or band member. However (and subject to the confidentiality provisions discussed in Section E), it should conduct an inquiry into what occurred and should report the incident to the visiting school and encourage the visiting school to take appropriate action to prevent further sexual violence. The home school should also notify the student of any right to file a complaint with the alleged perpetrator's school or local law enforcement. The home school may also decide not to invite the visiting school back to its campus.

Even though a school's ability to take direct action against a particular perpetrator may be limited, the school must still take steps to provide appropriate remedies for the complainant and, where appropriate, the broader school population. This may include providing support services for the complainant, and issuing new policy statements making it clear that the school does not tolerate sexual violence and will respond to any reports about such incidents. For additional information on interim measures see questions G-1 to G-3.

C. Title IX Procedural Requirements

Overview

C-1. What procedures must a school have in place to prevent sexual violence and resolve complaints?

Answer: The Title IX regulations outline three key procedural requirements. Each school must:

(1) disseminate a notice of nondiscrimination (see question C-2);[17]

(2) designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (see questions C-3 to C-4);[18] and

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[17] 34 C.F.R. § 106.9.
[18] *Id.* § 106.8(a).

(3) adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee sex discrimination complaints (see questions C-5 to C-6).[19]

These requirements apply to all forms of sex discrimination and are particularly important for preventing and effectively responding to sexual violence.

Procedural requirements under other federal laws may also apply to complaints of sexual violence, including the requirements of the Clery Act.[20] For additional information about the procedural requirements in the Clery Act, please see http://www2.ed.gov/admins/lead/safety/campus.html.

Notice of Nondiscrimination

C-2. What information must be included in a school's notice of nondiscrimination?

Answer: The notice of nondiscrimination must state that the school does not discriminate on the basis of sex in its education programs and activities, and that it is required by Title IX not to discriminate in such a manner. The notice must state that questions regarding Title IX may be referred to the school's Title IX coordinator or to OCR. The school must notify all of its students and employees of the name or title, office address, telephone number, and email address of the school's designated Title IX coordinator.[21]

Title IX Coordinator

C-3. What are a Title IX coordinator's responsibilities?

Answer: A Title IX coordinator's core responsibilities include overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. This means that the Title IX coordinator must have knowledge of the requirements of Title IX, of the school's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the school. To accomplish this, subject to the exemption for school counseling employees discussed in question E-3, the Title IX coordinator must be informed of all

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[19] *Id.* § 106.8(b).

[20] All postsecondary institutions participating in the Higher Education Act's Title IV student financial assistance programs must comply with the Clery Act.

[21] For more information on notices of nondiscrimination, please see OCR's Notice of Nondiscrimination (August 2010), available at http://www.ed.gov/ocr/docs/nondisc.pdf.

reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office. The school should ensure that the Title IX coordinator is given the training, authority, and visibility necessary to fulfill these responsibilities.

Because the Title IX coordinator must have knowledge of all Title IX reports and complaints at the school, this individual (when properly trained) is generally in the best position to evaluate a student's request for confidentiality in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students. A school may determine, however, that another individual should perform this role. For additional information on confidentiality requests, see questions E-1 to E-4. If a school relies in part on its disciplinary procedures to meet its Title IX obligations, the Title IX coordinator should review the disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX as discussed in question C-5.

In addition to these core responsibilities, a school may decide to give its Title IX coordinator additional responsibilities, such as: providing training to students, faculty, and staff on Title IX issues; conducting Title IX investigations, including investigating facts relevant to a complaint, and determining appropriate sanctions against the perpetrator and remedies for the complainant; determining appropriate interim measures for a complainant upon learning of a report or complaint of sexual violence; and ensuring that appropriate policies and procedures are in place for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers, including rape crisis centers. A school must ensure that its Title IX coordinator is appropriately trained in all areas over which he or she has responsibility. The Title IX coordinator or designee should also be available to meet with students as needed.

If a school designates more than one Title IX coordinator, the school's notice of nondiscrimination and Title IX grievance procedures should describe each coordinator's responsibilities, and one coordinator should be designated as having ultimate oversight responsibility.

C-4. Are there any employees who should not serve as the Title IX coordinator?

Answer: Title IX does not categorically preclude particular employees from serving as Title IX coordinators. However, Title IX coordinators should not have other job responsibilities that may create a conflict of interest. Because some complaints may raise issues as to whether or how well the school has met its Title IX obligations, designating

the same employee to serve both as the Title IX coordinator and the general counsel (which could include representing the school in legal claims alleging Title IX violations) poses a serious risk of a conflict of interest. Other employees whose job responsibilities may conflict with a Title IX coordinator's responsibilities include Directors of Athletics, Deans of Students, and any employee who serves on the judicial/hearing board or to whom an appeal might be made. Designating a full-time Title IX coordinator will minimize the risk of a conflict of interest.

Grievance Procedures

C-5. Under Title IX, what elements should be included in a school's procedures for responding to complaints of sexual violence?

Answer: Title IX requires that a school adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints of sex discrimination, including sexual violence. In evaluating whether a school's grievance procedures satisfy this requirement, OCR will review all aspects of a school's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

(1) notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;

(2) application of the grievance procedures to complaints filed by students or on their behalf alleging sexual violence carried out by employees, other students, or third parties;

(3) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;

(4) designated and reasonably prompt time frames for the major stages of the complaint process (see question F-8);

(5) written notice to the complainant and alleged perpetrator of the outcome of the complaint (see question H-3); and

(6) assurance that the school will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the school processes complaints, a school's Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX:

(1) a statement of the school's jurisdiction over Title IX complaints;

(2) adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;

(3) reporting policies and protocols, including provisions for confidential reporting;

(4) identification of the employee or employees responsible for evaluating requests for confidentiality;

(5) notice that Title IX prohibits retaliation;

(6) notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;

(7) notice of available interim measures that may be taken to protect the student in the educational setting;

(8) the evidentiary standard that must be used (preponderance of the evidence) (*i.e.*, more likely than not that sexual violence occurred) in resolving a complaint;

(9) notice of potential remedies for students;

(10) notice of potential sanctions against perpetrators; and

(11) sources of counseling, advocacy, and support.

For more information on interim measures, see questions G-1 to G-3.

The rights established under Title IX must be interpreted consistently with any federally guaranteed due process rights. Procedures that ensure the Title IX rights of the complainant, while at the same time according any federally guaranteed due process to both parties involved, will lead to sound and supportable decisions. Of course, a school should ensure that steps to accord any due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.

A school's procedures and practices will vary in detail, specificity, and components, reflecting differences in the age of its students, school size and administrative structure, state or local legal requirements (*e.g.*, mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

C-6. Is a school required to use separate grievance procedures for sexual violence complaints?

Answer: No. Under Title IX, a school may use student disciplinary procedures, general Title IX grievance procedures, sexual harassment procedures, or separate procedures to resolve sexual violence complaints. However, any procedures used for sexual violence complaints, including disciplinary procedures, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution (as discussed in question C-5), including applying the preponderance of the evidence standard of review. As discussed in question C-3, the Title IX coordinator should review any process used to resolve complaints of sexual violence to ensure it complies with requirements for prompt and equitable resolution of these complaints. When using disciplinary procedures, which are often focused on the alleged perpetrator and can take considerable time, a school should be mindful of its obligation to provide interim measures to protect the complainant in the educational setting. For more information on timeframes and interim measures, see questions F-8 and G-1 to G-3.

D. Responsible Employees and Reporting[22]

D-1. Which school employees are obligated to report incidents of possible sexual violence to school officials?

Answer: Under Title IX, whether an individual is obligated to report incidents of alleged sexual violence generally depends on whether the individual is a responsible employee of the school. A responsible employee must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee, subject to the exemption for school counseling employees discussed in question E-3. This is because, as discussed in question A-4, a school is obligated to address sexual violence about which a responsible employee knew or should have known. As explained in question C-3, the Title IX coordinator must be informed of all reports and complaints raising Title IX issues, even if the report or

[22] This document addresses only Title IX's reporting requirements. It does not address requirements under the Clery Act or other federal, state, or local laws, or an individual school's code of conduct.

complaint was initially filed with another individual or office, subject to the exemption for school counseling employees discussed in question E-3.

D-2. Who is a "responsible employee"?

Answer: According to OCR's *2001 Guidance*, a responsible employee includes any employee: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.[23]

A school must make clear to all of its employees and students which staff members are responsible employees so that students can make informed decisions about whether to disclose information to those employees. A school must also inform all employees of their own reporting responsibilities and the importance of informing complainants of: the reporting obligations of responsible employees; complainants' option to request confidentiality and available confidential advocacy, counseling, or other support services; and complainants' right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement.

Whether an employee is a responsible employee will vary depending on factors such as the age and education level of the student, the type of position held by the employee, and consideration of both formal and informal school practices and procedures. For example, while it may be reasonable for an elementary school student to believe that a custodial staff member or cafeteria worker has the authority or responsibility to address student misconduct, it is less reasonable for a college student to believe that a custodial staff member or dining hall employee has this same authority.

As noted in response to question A-4, when a responsible employee knows or reasonably should know of possible sexual violence, OCR deems a school to have notice of the sexual violence. The school must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E), and, if the school determines that sexual violence created a hostile environment, the school must then take appropriate steps to address the situation. The

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[23] The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. *Gebser v. Lago Vista Ind. Sch. Dist.*, 524 U.S. 274, 290 (1998), and *Davis*, 524 U.S. at 642. The concept of a "responsible employee" under OCR's guidance for administrative enforcement of Title IX is broader.

school has this obligation regardless of whether the student, student's parent, or a third party files a formal complaint. For additional information on a school's responsibilities to address student-on-student sexual violence, see question A-5. For additional information on training for school employees, see questions J-1 to J-3.

D-3. What information is a responsible employee obligated to report about an incident of possible student-on-student sexual violence?

Answer: Subject to the exemption for school counseling employees discussed in question E-3, a responsible employee must report to the school's Title IX coordinator, or other appropriate school designee, all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location. A school must make clear to its responsible employees to whom they should report an incident of alleged sexual violence.

To ensure compliance with these reporting obligations, it is important for a school to train its responsible employees on Title IX and the school's sexual violence policies and procedures. For more information on appropriate training for school employees, see question J-1 to J-3.

D-4. What should a responsible employee tell a student who discloses an incident of sexual violence?

Answer: Before a student reveals information that he or she may wish to keep confidential, a responsible employee should make every effort to ensure that the student understands: (i) the employee's obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator or other appropriate school officials, (ii) the student's option to request that the school maintain his or her confidentiality, which the school (*e.g.*, Title IX coordinator) will consider, and (iii) the student's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (*e.g.*, sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers). As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request

and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

D-5. If a student informs a resident assistant/advisor (RA) that he or she was subjected to sexual violence by a fellow student, is the RA obligated under Title IX to report the incident to school officials?

Answer: As discussed in questions D-1 and D-2, for Title IX purposes, whether an individual is obligated under Title IX to report alleged sexual violence to the school's Title IX coordinator or other appropriate school designee generally depends on whether the individual is a responsible employee.

The duties and responsibilities of RAs vary among schools, and, therefore, a school should consider its own policies and procedures to determine whether its RAs are responsible employees who must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee.[24] When making this determination, a school should consider if its RAs have the general authority to take action to redress misconduct or the duty to report misconduct to appropriate school officials, as well as whether students could reasonably believe that RAs have this authority or duty. A school should also consider whether it has determined and clearly informed students that RAs are generally available for confidential discussions and do not have the authority or responsibility to take action to redress any misconduct or to report any misconduct to the Title IX coordinator or other appropriate school officials. A school should pay particular attention to its RAs' obligations to report other student violations of school policy (*e.g.*, drug and alcohol violations or physical assault). If an RA is required to report other misconduct that violates school policy, then the RA would be considered a responsible employee obligated to report incidents of sexual violence that violate school policy.

If an RA is a responsible employee, the RA should make every effort to ensure that *before* the student reveals information that he or she may wish to keep confidential, the student understands the RA's reporting obligation and the student's option to request that the school maintain confidentiality. It is therefore important that schools widely disseminate policies and provide regular training clearly identifying the places where students can seek confidential support services so that students are aware of this information. The RA

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[24] Postsecondary institutions should be aware that, regardless of whether an RA is a responsible employee under Title IX, RAs are considered "campus security authorities" under the Clery Act. A school's responsibilities in regard to crimes reported to campus security authorities are discussed in the Department's regulations on the Clery Act at 34 C.F.R. § 668.46.

should also explain to the student (again, before the student reveals information that he or she may wish to keep confidential) that, although the RA must report the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location to the Title IX coordinator or other appropriate school designee, the school will protect the student's confidentiality to the greatest extent possible. Prior to providing information about the incident to the Title IX coordinator or other appropriate school designee, the RA should consult with the student about how to protect his or her safety and the details of what will be shared with the Title IX coordinator. The RA should explain to the student that reporting this information to the Title IX coordinator or other appropriate school designee does not necessarily mean that a formal complaint or investigation under the school's Title IX grievance procedure must be initiated if the student requests confidentiality. As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

Regardless of whether a reporting obligation exists, all RAs should inform students of their right to file a Title IX complaint with the school and report a crime to campus or local law enforcement. If a student discloses sexual violence to an RA who is a responsible employee, the school will be deemed to have notice of the sexual violence even if the student does not file a Title IX complaint. Additionally, all RAs should provide students with information regarding on-campus resources, including victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. RAs should also be familiar with local rape crisis centers or other off-campus resources and provide this information to students.

E. Confidentiality and a School's Obligation to Respond to Sexual Violence

E-1. How should a school respond to a student's request that his or her name not be disclosed to the alleged perpetrator or that no investigation or disciplinary action be pursued to address the alleged sexual violence?

Answer: Students, or parents of minor students, reporting incidents of sexual violence sometimes ask that the students' names not be disclosed to the alleged perpetrators or that no investigation or disciplinary action be pursued to address the alleged sexual violence. OCR strongly supports a student's interest in confidentiality in cases involving sexual violence. There are situations in which a school must override a student's request

for confidentiality in order to meet its Title IX obligations; however, these instances will be limited and the information should only be shared with individuals who are responsible for handling the school's response to incidents of sexual violence. Given the sensitive nature of reports of sexual violence, a school should ensure that the information is maintained in a secure manner. A school should be aware that disregarding requests for confidentiality can have a chilling effect and discourage other students from reporting sexual violence. In the case of minors, state mandatory reporting laws may require disclosure, but can generally be followed without disclosing information to school personnel who are not responsible for handling the school's response to incidents of sexual violence.[25]

Even if a student does not specifically ask for confidentiality, to the extent possible, a school should only disclose information regarding alleged incidents of sexual violence to individuals who are responsible for handling the school's response. To improve trust in the process for investigating sexual violence complaints, a school should notify students of the information that will be disclosed, to whom it will be disclosed, and why. Regardless of whether a student complainant requests confidentiality, a school must take steps to protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. For additional information on interim measures see questions G-1 to G-3.

For Title IX purposes, if a student requests that his or her name not be revealed to the alleged perpetrator or asks that the school not investigate or seek action against the alleged perpetrator, the school should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. The school should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate

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[25] The school should be aware of the alleged student perpetrator's right under the Family Educational Rights and Privacy Act ("FERPA") torequest to inspect and review information about the allegations if the information directly relates to the alleged student perpetrator and the information is maintained by the school as an education record. In such a case, the school must either redact the complainant's name and all identifying information before allowing the alleged perpetrator to inspect and review the sections of the complaint that relate to him or her, or must inform the alleged perpetrator of the specific information in the complaint that are about the alleged perpetrator. *See* 34 C.F.R. § 99.12(a) The school should also make complainants aware of this right and explain how it might affect the school's ability to maintain complete confidentiality.

and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary. See question K-1 regarding retaliation.

If the student still requests that his or her name not be disclosed to the alleged perpetrator or that the school not investigate or seek action against the alleged perpetrator, the school will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. As discussed in question C-3, the Title IX coordinator is generally in the best position to evaluate confidentiality requests. Because schools vary widely in size and administrative structure, OCR recognizes that a school may reasonably determine that an employee other than the Title IX coordinator, such as a sexual assault response coordinator, dean, or other school official, is better suited to evaluate such requests. Addressing the needs of a student reporting sexual violence while determining an appropriate institutional response requires expertise and attention, and a school should ensure that it assigns these responsibilities to employees with the capability and training to fulfill them. For example, if a school has a sexual assault response coordinator, that person should be consulted in evaluating requests for confidentiality. The school should identify in its Title IX policies and procedures the employee or employees responsible for making such determinations.

If the school determines that it can respect the student's request not to disclose his or her identity to the alleged perpetrator, it should take all reasonable steps to respond to the complaint consistent with the request. Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual allegation of sexual violence, other means may be available to address the sexual violence. There are steps a school can take to limit the effects of the alleged sexual violence and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; changing and publicizing the school's policies on sexual violence; and conducting climate surveys regarding sexual violence. In instances affecting many students, an alleged perpetrator can be put on notice of allegations of harassing behavior and be counseled appropriately without revealing, even indirectly, the identity of the student complainant. A school must also take immediate action as necessary to protect the student while keeping the identity of the student confidential. These actions may include providing support services to the student and changing living arrangements or course schedules, assignments, or tests.

E-2. What factors should a school consider in weighing a student's request for confidentiality?

Answer: When weighing a student's request for confidentiality that could preclude a meaningful investigation or potential discipline of the alleged perpetrator, a school should consider a range of factors.

These factors include circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual violence or other violence (e.g., whether there have been other sexual violence complaints about the same alleged perpetrator, whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence, whether the alleged perpetrator threatened further sexual violence or other violence against the student or others, and whether the sexual violence was committed by multiple perpetrators). These factors also include circumstances that suggest there is an increased risk of future acts of sexual violence under similar circumstances (e.g., whether the student's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group). Other factors that should be considered in assessing a student's request for confidentiality include whether the sexual violence was perpetrated with a weapon; the age of the student subjected to the sexual violence; and whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

A school should take requests for confidentiality seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. For example, if the school has credible information that the alleged perpetrator has committed one or more prior rapes, the balance of factors would compel the school to investigate the allegation of sexual violence, and if appropriate, pursue disciplinary action in a manner that may require disclosure of the student's identity to the alleged perpetrator. If the school determines that it must disclose a student's identity to an alleged perpetrator, it should inform the student prior to making this disclosure. In these cases, it is also especially important for schools to take whatever interim measures are necessary to protect the student and ensure the safety of other students. If a school has a sexual assault response coordinator, that person should be consulted in identifying safety risks and interim measures that are necessary to protect the student. In the event the student requests that the school inform the perpetrator that the student asked the school not to investigate or seek discipline, the school should honor this request and inform the alleged perpetrator that the school made the decision to go forward. For additional information on interim measures see questions G-1 to G-3. Any school officials responsible for

discussing safety and confidentiality with students should be trained on the effects of trauma and the appropriate methods to communicate with students subjected to sexual violence. See questions J-1 to J-3.

On the other hand, if, for example, the school has no credible information about prior sexual violence committed by the alleged perpetrator and the alleged sexual violence was not perpetrated with a weapon or accompanied by threats to repeat the sexual violence against the complainant or others or part of a larger pattern at a given location or by a particular group, the balance of factors would likely compel the school to respect the student's request for confidentiality. In this case the school should still take all reasonable steps to respond to the complaint consistent with the student's confidentiality request and determine whether interim measures are appropriate or necessary. Schools should be mindful that traumatic events such as sexual violence can result in delayed decisionmaking by a student who has experienced sexual violence. Hence, a student who initially requests confidentiality might later request that a full investigation be conducted.

E-3. What are the reporting responsibilities of school employees who provide or support the provision of counseling, advocacy, health, mental health, or sexual assault-related services to students who have experienced sexual violence?

Answer: OCR does not require campus mental-health counselors, pastoral counselors, social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality, or who is supervised by such a person, to report, without the student's consent, incidents of sexual violence to the school in a way that identifies the student. Although these employees may have responsibilities that would otherwise make them responsible employees for Title IX purposes, OCR recognizes the importance of protecting the counselor-client relationship, which often requires confidentiality to ensure that students will seek the help they need.

Professional counselors and pastoral counselors whose official responsibilities include providing mental-health counseling to members of the school community are not required by Title IX to report *any* information regarding an incident of alleged sexual violence to the Title IX coordinator or other appropriate school designee.[26]

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[26] The exemption from reporting obligations for pastoral and professional counselors under Title IX is consistent with the Clery Act. For additional information on reporting obligations under the Clery Act, see Office of Postsecondary Education, *Handbook for Campus Safety and Security Reporting* (2011), available at http://www2.ed.gov/admins/lead/safety/handbook.pdf. Similar to the Clery Act, for Title IX purposes, a pastoral counselor is a person who is associated with a religious order or denomination, is recognized by that religious

OCR recognizes that some people who provide assistance to students who experience sexual violence are not professional or pastoral counselors. They include all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers, or health centers ("non-professional counselors or advocates"), including front desk staff and students. OCR wants students to feel free to seek their assistance and therefore interprets Title IX to give schools the latitude not to require these individuals to report incidents of sexual violence in a way that identifies the student without the student's consent.[27] These non-professional counselors or advocates are valuable sources of support for students, and OCR strongly encourages schools to designate these individuals as confidential sources.

Pastoral and professional counselors and non-professional counselors or advocates should be instructed to inform students of their right to file a Title IX complaint with the school and a separate complaint with campus or local law enforcement. In addition to informing students about campus resources for counseling, medical, and academic support, these persons should also indicate that they are available to assist students in filing such complaints. They should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary.

In order to identify patterns or systemic problems related to sexual violence, a school should collect aggregate data about sexual violence incidents from non-professional counselors or advocates in their on-campus sexual assault centers, women's centers, or

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order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. A professional counselor is a person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification. This definition applies even to professional counselors who are not employees of the school, but are under contract to provide counseling at the school. This includes individuals who are not yet licensed or certified as a counselor, but are acting in that role under the supervision of an individual who is licensed or certified. An example is a Ph.D. counselor-trainee acting under the supervision of a professional counselor at the school.

[27] Postsecondary institutions should be aware that an individual who is counseling students, but who does not meet the Clery Act definition of a pastoral or professional counselor, is not exempt from being a campus security authority if he or she otherwise has significant responsibility for student and campus activities. See fn. 24.

health centers. Such individuals should report only general information about incidents of sexual violence such as the nature, date, time, and general location of the incident and should take care to avoid reporting personally identifiable information about a student. Non-professional counselors and advocates should consult with students regarding what information needs to be withheld to protect their identity.

E-4. Is a school required to investigate information regarding sexual violence incidents shared by survivors during public awareness events, such as "Take Back the Night"?

Answer: No. OCR wants students to feel free to participate in preventive education programs and access resources for survivors. Therefore, public awareness events such as "Take Back the Night" or other forums at which students disclose experiences with sexual violence are not considered notice to the school for the purpose of triggering an individual investigation unless the survivor initiates a complaint. The school should instead respond to these disclosures by reviewing sexual assault policies, creating campus-wide educational programs, and conducting climate surveys to learn more about the prevalence of sexual violence at the school. Although Title IX does not require the school to investigate particular incidents discussed at such events, the school should ensure that survivors are aware of any available resources, including counseling, health, and mental health services. To ensure that the entire school community understands their Title IX rights related to sexual violence, the school should also provide information at these events on Title IX and how to file a Title IX complaint with the school, as well as options for reporting an incident of sexual violence to campus or local law enforcement.

F. Investigations and Hearings

Overview

F-1. What elements should a school's Title IX investigation include?

Answer: The specific steps in a school's Title IX investigation will vary depending on the nature of the allegation, the age of the student or students involved, the size and administrative structure of the school, state or local legal requirements (including mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

For the purposes of this document the term "investigation" refers to the process the school uses to resolve sexual violence complaints. This includes the fact-finding investigation and any hearing and decision-making process the school uses to determine: (1) whether or not the conduct occurred; and, (2) if the conduct occurred, what actions

the school will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, which may include imposing sanctions on the perpetrator and providing remedies for the complainant and broader student population.

In all cases, a school's Title IX investigation must be adequate, reliable, impartial, and prompt and include the opportunity for both parties to present witnesses and other evidence. The investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing.[28] Furthermore, neither Title IX nor the DCL specifies who should conduct the investigation. It could be the Title IX coordinator, provided there are no conflicts of interest, but it does not have to be. All persons involved in conducting a school's Title IX investigations must have training or experience in handling complaints of sexual violence and in the school's grievance procedures. For additional information on training, see question J-3.

When investigating an incident of alleged sexual violence for Title IX purposes, to the extent possible, a school should coordinate with any other ongoing school or criminal investigations of the incident and establish appropriate fact-finding roles for each investigator. A school should also consider whether information can be shared among the investigators so that complainants are not unnecessarily required to give multiple statements about a traumatic event. If the investigation includes forensic evidence, it may be helpful for a school to consult with local or campus law enforcement or a forensic expert to ensure that the evidence is correctly interpreted by school officials. For additional information on working with campus or local law enforcement see question F-3.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without additional remedies, likely will not be sufficient to eliminate the hostile environment and prevent recurrence as required by Title IX. If a school typically processes complaints of sexual violence through its disciplinary process and that process, including any investigation and hearing, meets the Title IX requirements discussed above and enables the school to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, then the school may use that process to satisfy its Title IX obligations and does not need to conduct a separate Title IX investigation. As discussed in question C-3, the Title IX coordinator should review the disciplinary process

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[28] This answer addresses only Title IX's requirements for investigations. It does not address legal rights or requirements under the U.S. Constitution, the Clery Act, or other federal, state, or local laws.

to ensure that it: (1) complies with the prompt and equitable requirements of Title IX; (2) allows for appropriate interim measures to be taken to protect the complainant during the process; and (3) provides for remedies to the complainant and school community where appropriate. For more information about interim measures, see questions G-1 to G-3, and about remedies, see questions H-1 and H-2.

The investigation may include, but is not limited to, conducting interviews of the complainant, the alleged perpetrator, and any witnesses; reviewing law enforcement investigation documents, if applicable; reviewing student and personnel files; and gathering and examining other relevant documents or evidence. While a school has flexibility in how it structures the investigative process, for Title IX purposes, a school must give the complainant any rights that it gives to the alleged perpetrator. A balanced and fair process that provides the same opportunities to both parties will lead to sound and supportable decisions.[29] Specifically:

- Throughout the investigation, the parties must have an equal opportunity to present relevant witnesses and other evidence.
- The school must use a preponderance-of-the-evidence (*i.e.*, more likely than not) standard in any Title IX proceedings, including any fact-finding and hearings.
- If the school permits one party to have lawyers or other advisors at any stage of the proceedings, it must do so equally for both parties. Any school-imposed restrictions on the ability of lawyers or other advisors to speak or otherwise participate in the proceedings must also apply equally.
- If the school permits one party to submit third-party expert testimony, it must do so equally for both parties.
- If the school provides for an appeal, it must do so equally for both parties.
- Both parties must be notified, in writing, of the outcome of both the complaint and any appeal (see question H-3).

[29] As explained in question C-5, the parties may have certain due process rights under the U.S. Constitution.

Intersection with Criminal Investigations

F-2. What are the key differences between a school's Title IX investigation into allegations of sexual violence and a criminal investigation?

Answer: A criminal investigation is intended to determine whether an individual violated criminal law; and, if at the conclusion of the investigation, the individual is tried and found guilty, the individual may be imprisoned or subject to criminal penalties. The U.S. Constitution affords criminal defendants who face the risk of incarceration numerous protections, including, but not limited to, the right to counsel, the right to a speedy trial, the right to a jury trial, the right against self-incrimination, and the right to confrontation. In addition, government officials responsible for criminal investigations (including police and prosecutors) normally have discretion as to which complaints from the public they will investigate.

By contrast, a Title IX investigation will never result in incarceration of an individual and, therefore, the same procedural protections and legal standards are not required. Further, while a criminal investigation is initiated at the discretion of law enforcement authorities, a Title IX investigation is not discretionary; a school has a duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for all students, free from sexual harassment and sexual violence. Because the standards for pursuing and completing criminal investigations are different from those used for Title IX investigations, the termination of a criminal investigation without an arrest or conviction does not affect the school's Title IX obligations.

Of course, criminal investigations conducted by local or campus law enforcement may be useful for fact gathering if the criminal investigation occurs within the recommended timeframe for Title IX investigations; but, even if a criminal investigation is ongoing, a school must still conduct its own Title IX investigation.

A school should notify complainants of the right to file a criminal complaint and should not dissuade a complainant from doing so either during or after the school's internal Title IX investigation. Title IX does not require a school to report alleged incidents of sexual violence to law enforcement, but a school may have reporting obligations under state, local, or other federal laws.

F-3. How should a school proceed when campus or local law enforcement agencies are conducting a criminal investigation while the school is conducting a parallel Title IX investigation?

Answer: A school should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, it is important for a school to understand that during this brief delay in the Title IX investigation, it must take interim measures to protect the complainant in the educational setting. The school should also continue to update the parties on the status of the investigation and inform the parties when the school resumes its Title IX investigation. For additional information on interim measures see questions G-1 to G-3.

If a school delays the fact-finding portion of a Title IX investigation, the school must promptly resume and complete its fact-finding for the Title IX investigation once it learns that the police department has completed its evidence gathering stage of the criminal investigation. The school should not delay its investigation until the ultimate outcome of the criminal investigation or the filing of any charges. OCR recommends that a school work with its campus police, local law enforcement, and local prosecutor's office to learn when the evidence gathering stage of the criminal investigation is complete. A school may also want to enter into a memorandum of understanding (MOU) or other agreement with these agencies regarding the protocols and procedures for referring allegations of sexual violence, sharing information, and conducting contemporaneous investigations. Any MOU or other agreement must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably, and must comply with the Family Educational Rights and Privacy Act ("FERPA") and other applicable privacy laws.

The DCL states that in one instance a prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances. OCR understands that this example may not be representative and that the law enforcement agency's process often takes more than ten days. OCR recognizes that the length of time for evidence gathering by criminal investigators will vary depending on the specific circumstances of each case.

Off-Campus Conduct

F-4. Is a school required to process complaints of alleged sexual violence that occurred off campus?

Answer: Yes. Under Title IX, a school must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

A school must determine whether the alleged off-campus sexual violence occurred in the context of an education program or activity of the school; if so, the school must treat the complaint in the same manner that it treats complaints regarding on-campus conduct. In other words, if a school determines that the alleged misconduct took place in the context of an education program or activity of the school, the fact that the alleged misconduct took place off campus does not relieve the school of its obligation to investigate the complaint as it would investigate a complaint of sexual violence that occurred on campus.

Whether the alleged misconduct occurred in this context may not always be apparent from the complaint, so a school may need to gather additional information in order to make such a determination. Off-campus education programs and activities are clearly covered and include, but are not limited to: activities that take place at houses of fraternities or sororities recognized by the school; school-sponsored field trips, including athletic team travel; and events for school clubs that occur off campus (*e.g.*, a debate team trip to another school or to a weekend competition).

Even if the misconduct did not occur in the context of an education program or activity, a school must consider the effects of the off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus sexual violence while at school or in an off-campus education program or activity. The school cannot address the continuing effects of the off-campus sexual violence at school or in an off-campus education program or activity unless it processes the complaint and gathers appropriate additional information in accordance with its established procedures.

Once a school is on notice of off-campus sexual violence against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment and, if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct. The mere presence on campus or in an

off-campus education program or activity of the alleged perpetrator of off-campus sexual violence can have continuing effects that create a hostile environment. A school should also take steps to protect a student who alleges off-campus sexual violence from further harassment by the alleged perpetrator or his or her friends, and a school may have to take steps to protect other students from possible assault by the alleged perpetrator. In other words, the school should protect the school community in the same way it would had the sexual violence occurred on campus. Even if there are no continuing effects of the off-campus sexual violence experienced by the student on campus or in an off-campus education program or activity, the school still should handle these incidents as it would handle other off-campus incidents of misconduct or violence and consistent with any other applicable laws. For example, if a school, under its code of conduct, exercises jurisdiction over physical altercations between students that occur off campus outside of an education program or activity, it should also exercise jurisdiction over incidents of student-on-student sexual violence that occur off campus outside of an education program or activity.

Hearings[30]

F-5. Must a school allow or require the parties to be present during an entire hearing?

Answer: If a school uses a hearing process to determine responsibility for acts of sexual violence, OCR does not require that the school allow a complainant to be present for the entire hearing; it is up to each school to make this determination. But if the school allows one party to be present for the entirety of a hearing, it must do so equally for both parties. At the same time, when requested, a school should make arrangements so that the complainant and the alleged perpetrator do not have to be present in the same room at the same time. These two objectives may be achieved by using closed circuit television or other means. Because a school has a Title IX obligation to investigate possible sexual violence, if a hearing is part of the school's Title IX investigation process, the school must not require a complainant to be present at the hearing as a prerequisite to proceed with the hearing.

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[30] As noted in question F-1, the investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing. Although Title IX does not dictate the membership of a hearing board, OCR discourages schools from allowing students to serve on hearing boards in cases involving allegations of sexual violence.

F-6. May every witness at the hearing, including the parties, be cross-examined?

Answer: OCR does not require that a school allow cross-examination of witnesses, including the parties, if they testify at the hearing. But if the school allows one party to cross-examine witnesses, it must do so equally for both parties.

OCR strongly discourages a school from allowing the parties to personally question or cross-examine each other during a hearing on alleged sexual violence. Allowing an alleged perpetrator to question a complainant directly may be traumatic or intimidating, and may perpetuate a hostile environment. A school may choose, instead, to allow the parties to submit questions to a trained third party (*e.g.*, the hearing panel) to ask the questions on their behalf. OCR recommends that the third party screen the questions submitted by the parties and only ask those it deems appropriate and relevant to the case.

F-7. May the complainant's sexual history be introduced at hearings?

Answer: Questioning about the complainant's sexual history with anyone other than the alleged perpetrator should not be permitted. Further, a school should recognize that the mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence. The school should also ensure that hearings are conducted in a manner that does not inflict additional trauma on the complainant.

Timeframes

F-8. What stages of the investigation are included in the 60-day timeframe referenced in the DCL as the length for a typical investigation?

Answer: As noted in the DCL, the 60-calendar day timeframe for investigations is based on OCR's experience in typical cases. The 60-calendar day timeframe refers to the entire investigation process, which includes conducting the fact-finding investigation, holding a hearing or engaging in another decision-making process to determine whether the alleged sexual violence occurred and created a hostile environment, and determining what actions the school will take to eliminate the hostile environment and prevent its recurrence, including imposing sanctions against the perpetrator and providing remedies for the complainant and school community, as appropriate. Although this timeframe does not include appeals, a school should be aware that an unduly long appeals process may impact whether the school's response was prompt and equitable as required by Title IX.

OCR does not require a school to complete investigations within 60 days; rather OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks. A school may need to stop an investigation during school breaks or between school years, although a school should make every effort to try to conduct an investigation during these breaks unless so doing would sacrifice witness availability or otherwise compromise the process.

Because timeframes for investigations vary and a school may need to depart from the timeframes designated in its grievance procedures, both parties should be given periodic status updates throughout the process.

G. Interim Measures

G-1. Is a school required to take any interim measures before the completion of its investigation?

Answer: Title IX requires a school to take steps to ensure equal access to its education programs and activities and protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation as appropriate. The school should also ensure that the complainant is aware of his or her Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. If a school does not offer these services on campus, it should enter into an MOU with a local victim services provider if possible.

Even when a school has determined that it can respect a complainant's request for confidentiality and therefore may not be able to respond fully to an allegation of sexual violence and initiate formal action against an alleged perpetrator, the school must take immediate action to protect the complainant while keeping the identity of the complainant confidential. These actions may include: providing support services to the

complainant; changing living arrangements or course schedules, assignments, or tests; and providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred.

G-2. How should a school determine what interim measures to take?

Answer: The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. A school should consider a number of factors in determining what interim measures to take, including, for example, the specific need expressed by the complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged perpetrator share the same residence hall, dining hall, class, transportation, or job location; and whether other judicial measures have been taken to protect the complainant (*e.g.*, civil protection orders).

In general, when taking interim measures, schools should minimize the burden on the complainant. For example, if the complainant and alleged perpetrator share the same class or residence hall, the school should not, as a matter of course, remove the complainant from the class or housing while allowing the alleged perpetrator to remain without carefully considering the facts of the case.

G-3. If a school provides all students with access to counseling on a fee basis, does that suffice for providing counseling as an interim measure?

Answer: No. Interim measures are determined by a school on a case-by-case basis. If a school determines that it needs to offer counseling to the complainant as part of its Title IX obligation to take steps to protect the complainant while the investigation is ongoing, it must not require the complainant to pay for this service.

H. Remedies and Notice of Outcome[31]

H-1. What remedies should a school consider in a case of student-on-student sexual violence?

Answer: Effective remedial action may include disciplinary action against the perpetrator, providing counseling for the perpetrator, remedies for the complainant and others, as well as changes to the school's overall services or policies. All services needed to remedy the hostile environment should be offered to the complainant. These remedies are separate from, and in addition to, any interim measure that may have been provided prior to the conclusion of the school's investigation. In any instance in which the complainant did not take advantage of a specific service (*e.g.*, counseling) when offered as an interim measure, the complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the complainant declined as an interim measure. A refusal at the interim stage does not mean the refused service or set of services should not be offered as a remedy.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without more, likely will not be sufficient to satisfy its Title IX obligation to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. Additional remedies for the complainant and the school community may be necessary. If the school's student disciplinary procedure does not include a process for determining and implementing these remedies for the complainant and school community, the school will need to use another process for this purpose.

Depending on the specific nature of the problem, remedies for the complainant may include, but are not limited to:

- Providing an effective escort to ensure that the complainant can move safely between classes and activities;

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[31] As explained in question A-5, if a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to be subjected to a hostile environment. In this case, in addition to the remedies discussed in this section, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately.

- Ensuring the complainant and perpetrator do not share classes or extracurricular activities;

- Moving the perpetrator or complainant (if the complainant requests to be moved) to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;

- Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;

- Arranging for the complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty; and

- Reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the sexual violence and the misconduct that may have resulted in the complainant being disciplined.[32]

Remedies for the broader student population may include, but are not limited to:

- Designating an individual from the school's counseling center who is specifically trained in providing trauma-informed comprehensive services to victims of sexual violence to be on call to assist students whenever needed;

- Training or retraining school employees on the school's responsibilities to address allegations of sexual violence and how to conduct Title IX investigations;

- Developing materials on sexual violence, which should be distributed to all students;

- Conducting bystander intervention and sexual violence prevention programs with students;

- Issuing policy statements or taking other steps that clearly communicate that the school does not tolerate sexual violence and will respond to any incidents and to any student who reports such incidents;

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[32] For example, if the complainant was disciplined for skipping a class in which the perpetrator was enrolled, the school should review the incident to determine if the complainant skipped class to avoid contact with the perpetrator.

- Conducting, in conjunction with student leaders, a campus climate check to assess the effectiveness of efforts to ensure that the school is free from sexual violence, and using that information to inform future proactive steps that the school will take;

- Targeted training for a group of students if, for example, the sexual violence created a hostile environment in a residence hall, fraternity or sorority, or on an athletic team; and

- Developing a protocol for working with local law enforcement as discussed in question F-3.

When a school is unable to conduct a full investigation into a particular incident (*i.e.*, when it received a general report of sexual violence without any personally identifying information), it should consider remedies for the broader student population in response.

H-2. If, after an investigation, a school finds the alleged perpetrator responsible and determines that, as part of the remedies for the complainant, it must separate the complainant and perpetrator, how should the school accomplish this if both students share the same major and there are limited course options?

Answer: If there are limited sections of required courses offered at a school and both the complainant and perpetrator are required to take those classes, the school may need to make alternate arrangements in a manner that minimizes the burden on the complainant. For example, the school may allow the complainant to take the regular sections of the courses while arranging for the perpetrator to take the same courses online or through independent study.

H-3. What information must be provided to the complainant in the notice of the outcome?

Answer: Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal. OCR recommends that a school provide written notice of the outcome to the complainant and the alleged perpetrator concurrently.

For Title IX purposes, a school must inform the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence. The perpetrator should not be notified of the individual remedies offered or provided to the complainant.

Sanctions that directly relate to the complainant (but that may also relate to eliminating the hostile environment and preventing recurrence) include, but are not limited to, requiring that the perpetrator stay away from the complainant until both parties graduate, prohibiting the perpetrator from attending school for a period of time, or transferring the perpetrator to another residence hall, other classes, or another school. Additional steps the school has taken to eliminate the hostile environment may include counseling and academic support services for the complainant and other affected students. Additional steps the school has taken to prevent recurrence may include sexual violence training for faculty and staff, revisions to the school's policies on sexual violence, and campus climate surveys. Further discussion of appropriate remedies is included in question H-1.

In addition to the Title IX requirements described above, the Clery Act requires, and FERPA permits, postsecondary institutions to inform the complainant of the institution's final determination and any disciplinary sanctions imposed on the perpetrator in sexual violence cases (as opposed to all harassment and misconduct covered by Title IX) not just those sanctions that directly relate to the complainant.[33]

I. Appeals

I-1. What are the requirements for an appeals process?

Answer: While Title IX does not require that a school provide an appeals process, OCR does recommend that the school do so where procedural error or previously unavailable relevant evidence could significantly impact the outcome of a case or where a sanction is substantially disproportionate to the findings. If a school chooses to provide for an appeal of the findings or remedy or both, it must do so equally for both parties. The specific design of the appeals process is up to the school, as long as the entire grievance process, including any appeals, provides prompt and equitable resolutions of sexual violence complaints, and the school takes steps to protect the complainant in the educational setting during the process. Any individual or body handling appeals should be trained in the dynamics of and trauma associated with sexual violence.

If a school chooses to offer an appeals process it has flexibility to determine the type of review it will apply to appeals, but the type of review the school applies must be the same regardless of which party files the appeal.

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[33] 20 U.S.C. § 1092(f) and 20 U.S.C. § 1232g(b)(6)(A).

I-2. Must an appeal be available to a complainant who receives a favorable finding but does not believe a sanction that directly relates to him or her was sufficient?

Answer: The appeals process must be equal for both parties. For example, if a school allows a perpetrator to appeal a suspension on the grounds that it is too severe, the school must also allow a complainant to appeal a suspension on the grounds that it was not severe enough. See question H-3 for more information on what must be provided to the complainant in the notice of the outcome.

J. Title IX Training, Education and Prevention[34]

J-1. What type of training on Title IX and sexual violence should a school provide to its employees?

Answer: A school needs to ensure that responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence, that other responsible employees know that they are obligated to report sexual violence to appropriate school officials, and that all other employees understand how to respond to reports of sexual violence. A school should ensure that professional counselors, pastoral counselors, and non-professional counselors or advocates also understand the extent to which they may keep a report confidential. A school should provide training to all employees likely to witness or receive reports of sexual violence, including teachers, professors, school law enforcement unit employees, school administrators, school counselors, general counsels, athletic coaches, health personnel, and resident advisors. Training for employees should include practical information about how to prevent and identify sexual violence, including same-sex sexual violence; the behaviors that may lead to and result in sexual violence; the attitudes of bystanders that may allow conduct to continue; the potential for revictimization by responders and its effect on students; appropriate methods for responding to a student who may have experienced sexual violence, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The training should also explain responsible employees' reporting obligation, including what should be included in a report and any consequences for the failure to report and the procedure for responding to students' requests for confidentiality, as well as provide the contact

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[34] As explained earlier, although this document focuses on sexual violence, the legal principles apply to other forms of sexual harassment. Schools should ensure that any training they provide on Title IX and sexual violence also covers other forms of sexual harassment. Postsecondary institutions should also be aware of training requirements imposed under the Clery Act.

information for the school's Title IX coordinator. A school also should train responsible employees to inform students of: the reporting obligations of responsible employees; students' option to request confidentiality and available confidential advocacy, counseling, or other support services; and their right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement. For additional information on the reporting obligations of responsible employees and others see questions D-1 to D-5.

There is no minimum number of hours required for Title IX and sexual violence training at every school, but this training should be provided on a regular basis. Each school should determine based on its particular circumstances how such training should be conducted, who has the relevant expertise required to conduct the training, and who should receive the training to ensure that the training adequately prepares employees, particularly responsible employees, to fulfill their duties under Title IX. A school should also have methods for verifying that the training was effective.

J-2. How should a school train responsible employees to report incidents of possible sexual harassment or sexual violence?

Answer: Title IX requires a school to take prompt and effective steps reasonably calculated to end sexual harassment and sexual violence that creates a hostile environment (*i.e.*, conduct that is sufficiently serious as to limit or deny a student's ability to participate in or benefit from the school's educational program and activity). But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

OCR therefore recommends that a school train responsible employees to report to the Title IX coordinator or other appropriate school official any incidents of sexual harassment or sexual violence that may violate the school's code of conduct or may create or contribute to the creation of a hostile environment. The school can then take steps to investigate and prevent any harassment or violence from recurring or escalating, as appropriate. For example, the school may separate the complainant and alleged perpetrator or conduct sexual harassment and sexual violence training for the school's students and employees. Responsible employees should understand that they do not need to determine whether the alleged sexual harassment or sexual violence actually occurred or that a hostile environment has been created before reporting an incident to the school's Title IX coordinator. Because the Title IX coordinator should have in-depth knowledge of Title IX and Title IX complaints at the school, he or she is likely to be in a better position than are other employees to evaluate whether an incident of sexual

harassment or sexual violence creates a hostile environment and how the school should respond. There may also be situations in which individual incidents of sexual harassment do not, by themselves, create a hostile environment; however when considered together, those incidents may create a hostile environment.

J-3. What type of training should a school provide to employees who are involved in implementing the school's grievance procedures?

Answer: All persons involved in implementing a school's grievance procedures (*e.g.*, Title IX coordinators, others who receive complaints, investigators, and adjudicators) must have training or experience in handling sexual violence complaints, and in the operation of the school's grievance procedures. The training should include information on working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including same-sex sexual violence; the proper standard of review for sexual violence complaints (preponderance of the evidence); information on consent and the role drugs or alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual violence; the need for remedial actions for the perpetrator, complainant, and school community; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to conduct investigations; confidentiality; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.

In rare circumstances, employees involved in implementing a school's grievance procedures may be able to demonstrate that prior training and experience has provided them with competency in the areas covered in the school's training. For example, the combination of effective prior training and experience investigating complaints of sexual violence, together with training on the school's current grievance procedures may be sufficient preparation for an employee to resolve Title IX complaints consistent with the school's grievance procedures. In-depth knowledge regarding Title IX and sexual violence is particularly helpful. Because laws and school policies and procedures may change, the only way to ensure that all employees involved in implementing the school's grievance procedures have the requisite training or experience is for the school to provide regular training to all individuals involved in implementing the school's Title IX grievance procedures even if such individuals also have prior relevant experience.

J-4. What type of training on sexual violence should a school provide to its students?

Answer: To ensure that students understand their rights under Title IX, a school should provide age-appropriate training to its students regarding Title IX and sexual violence. At the elementary and secondary school level, schools should consider whether sexual violence training should also be offered to parents, particularly training on the school's process for handling complaints of sexual violence. Training may be provided separately or as part of the school's broader training on sex discrimination and sexual harassment. However, sexual violence is a unique topic that should not be assumed to be covered adequately in other educational programming or training provided to students. The school may want to include this training in its orientation programs for new students; training for student athletes and members of student organizations; and back-to-school nights. A school should consider educational methods that are most likely to help students retain information when designing its training, including repeating the training at regular intervals. OCR recommends that, at a minimum, the following topics (as appropriate) be covered in this training:

- Title IX and what constitutes sexual violence, including same-sex sexual violence, under the school's policies;
- the school's definition of consent applicable to sexual conduct, including examples;
- how the school analyzes whether conduct was unwelcome under Title IX;
- how the school analyzes whether unwelcome sexual conduct creates a hostile environment;
- reporting options, including formal reporting and confidential disclosure options and any timeframes set by the school for reporting;
- the school's grievance procedures used to process sexual violence complaints;
- disciplinary code provisions relating to sexual violence and the consequences of violating those provisions;
- effects of trauma, including neurobiological changes;
- the role alcohol and drugs often play in sexual violence incidents, including the deliberate use of alcohol and/or other drugs to perpetrate sexual violence;
- strategies and skills for bystanders to intervene to prevent possible sexual violence;
- how to report sexual violence to campus or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance; and
- Title IX's protections against retaliation.

The training should also encourage students to report incidents of sexual violence. The training should explain that students (and their parents or friends) do not need to determine whether incidents of sexual violence or other sexual harassment created a

hostile environment before reporting the incident. A school also should be aware that persons may be deterred from reporting incidents if, for example, violations of school or campus rules regarding alcohol or drugs were involved. As a result, a school should review its disciplinary policy to ensure it does not have a chilling effect on students' reporting of sexual violence offenses or participating as witnesses. OCR recommends that a school inform students that the school's primary concern is student safety, and that use of alcohol or drugs never makes the survivor at fault for sexual violence.

It is also important for a school to educate students about the persons on campus to whom they can confidentially report incidents of sexual violence. A school's sexual violence education and prevention program should clearly identify the offices or individuals with whom students can speak confidentially and the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. It should also identify the school's responsible employees and explain that if students report incidents to responsible employees (except as noted in question E-3) these employees are required to report the incident to the Title IX coordinator or other appropriate official. This reporting includes the names of the alleged perpetrator and student involved in the sexual violence, as well as relevant facts including the date, time, and location, although efforts should be made to comply with requests for confidentiality from the complainant. For more detailed information regarding reporting and responsible employees and confidentiality, see questions D-1 to D-5 and E-1 to E-4.

K. Retaliation

K-1. Does Title IX protect against retaliation?

Answer: Yes. The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual violence or filing a sexual violence complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an OCR or school's investigation or proceeding. Therefore, if a student, parent, teacher, coach, or other individual complains formally or informally about sexual violence or participates in an OCR or school's investigation or proceedings related to sexual violence, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way

discriminating against the individual) because of the individual's complaint or participation.

A school should take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses.

Schools should be aware that complaints of sexual violence may be followed by retaliation against the complainant or witnesses by the alleged perpetrator or his or her associates. When a school knows or reasonably should know of possible retaliation by other students or third parties, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and witnesses and ensure their safety as necessary. At a minimum, this includes making sure that the complainant and his or her parents, if the complainant is in elementary or secondary school, and witnesses know how to report retaliation by school officials, other students, or third parties by making follow-up inquiries to see if there have been any new incidents or acts of retaliation, and by responding promptly and appropriately to address continuing or new problems. A school should also tell complainants and witnesses that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation, but will also take strong responsive action if it occurs.

L. First Amendment

L-1. How should a school handle its obligation to respond to sexual harassment and sexual violence while still respecting free-speech rights guaranteed by the Constitution?

Answer: The DCL on sexual violence did not expressly address First Amendment issues because it focuses on unlawful physical sexual violence, which is not speech or expression protected by the First Amendment.

However, OCR's previous guidance on the First Amendment, including the 2001 Guidance, OCR's July 28, 2003, Dear Colleague Letter on the First Amendment,[35] and OCR's October 26, 2010, Dear Colleague Letter on harassment and bullying,[36] remain fully in effect. OCR has made it clear that the laws and regulations it enforces protect students from prohibited discrimination and do not restrict the exercise of any expressive activities or speech protected under the U.S. Constitution. Therefore, when a school works to prevent

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[35] Available at http://www.ed.gov/ocr/firstamend.html.
[36] Available at http://www.ed.gov/ocr/letters/colleague-201010.html.

and redress discrimination, it must respect the free-speech rights of students, faculty, and other speakers.

Title IX protects students from sex discrimination; it does not regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a hostile environment under Title IX. Title IX also does not require, prohibit, or abridge the use of particular textbooks or curricular materials.[37]

M. The Clery Act and the Violence Against Women Reauthorization Act of 2013

M-1. How does the Clery Act affect the Title IX obligations of institutions of higher education that participate in the federal student financial aid programs?

Answer: Institutions of higher education that participate in the federal student financial aid programs are subject to the requirements of the Clery Act as well as Title IX. The Clery Act requires institutions of higher education to provide current and prospective students and employees, the public, and the Department with crime statistics and information about campus crime prevention programs and policies. The Clery Act requirements apply to many crimes other than those addressed by Title IX. For those areas in which the Clery Act and Title IX both apply, the institution must comply with both laws. For additional information about the Clery Act and its regulations, please see http://www2.ed.gov/admins/lead/safety/campus.html.

M-2. Were a school's obligations under Title IX and the DCL altered in any way by the Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, including Section 304 of that Act, which amends the Clery Act?

Answer: No. The Violence Against Women Reauthorization Act has no effect on a school's obligations under Title IX or the DCL. The Violence Against Women Reauthorization Act amended the Violence Against Women Act and the Clery Act, which are separate statutes. Nothing in Section 304 or any other part of the Violence Against Women Reauthorization Act relieves a school of its obligation to comply with the requirements of Title IX, including those set forth in these Questions and Answers, the 2011 DCL, and the *2001 Guidance*. For additional information about the Department's negotiated rulemaking related to the Violence Against Women Reauthorization Act please see http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa.html.

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[37] 34 C.F.R. § 106.42.

N. Further Federal Guidance

N-1. Whom should I contact if I have additional questions about the DCL or OCR's other Title IX guidance?

Answer: Anyone who has questions regarding this guidance, or Title IX should contact the OCR regional office that serves his or her state. Contact information for OCR regional offices can be found on OCR's webpage at https://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm. If you wish to file a complaint of discrimination with OCR, you may use the online complaint form available at http://www.ed.gov/ocr/complaintintro.html or send a letter to the OCR enforcement office responsible for the state in which the school is located. You may also email general questions to OCR at ocr@ed.gov.

N-2. Are there other resources available to assist a school in complying with Title IX and preventing and responding to sexual violence?

Answer: Yes. OCR's policy guidance on Title IX is available on OCR's webpage at http://www.ed.gov/ocr/publications.html#TitleIX. In addition to the April 4, 2011, Dear Colleague Letter, OCR has issued the following resources that further discuss a school's obligation to respond to allegations of sexual harassment and sexual violence:

- Dear Colleague Letter: Harassment and Bullying (October 26, 2010), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf
- *Sexual Harassment: It's Not Academic* (Revised September 2008), http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf
- *Revised Sexual Harassment Guidance: Harassment of Students by Employees, Other Students, or Third Parties* (January 19, 2001), http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf

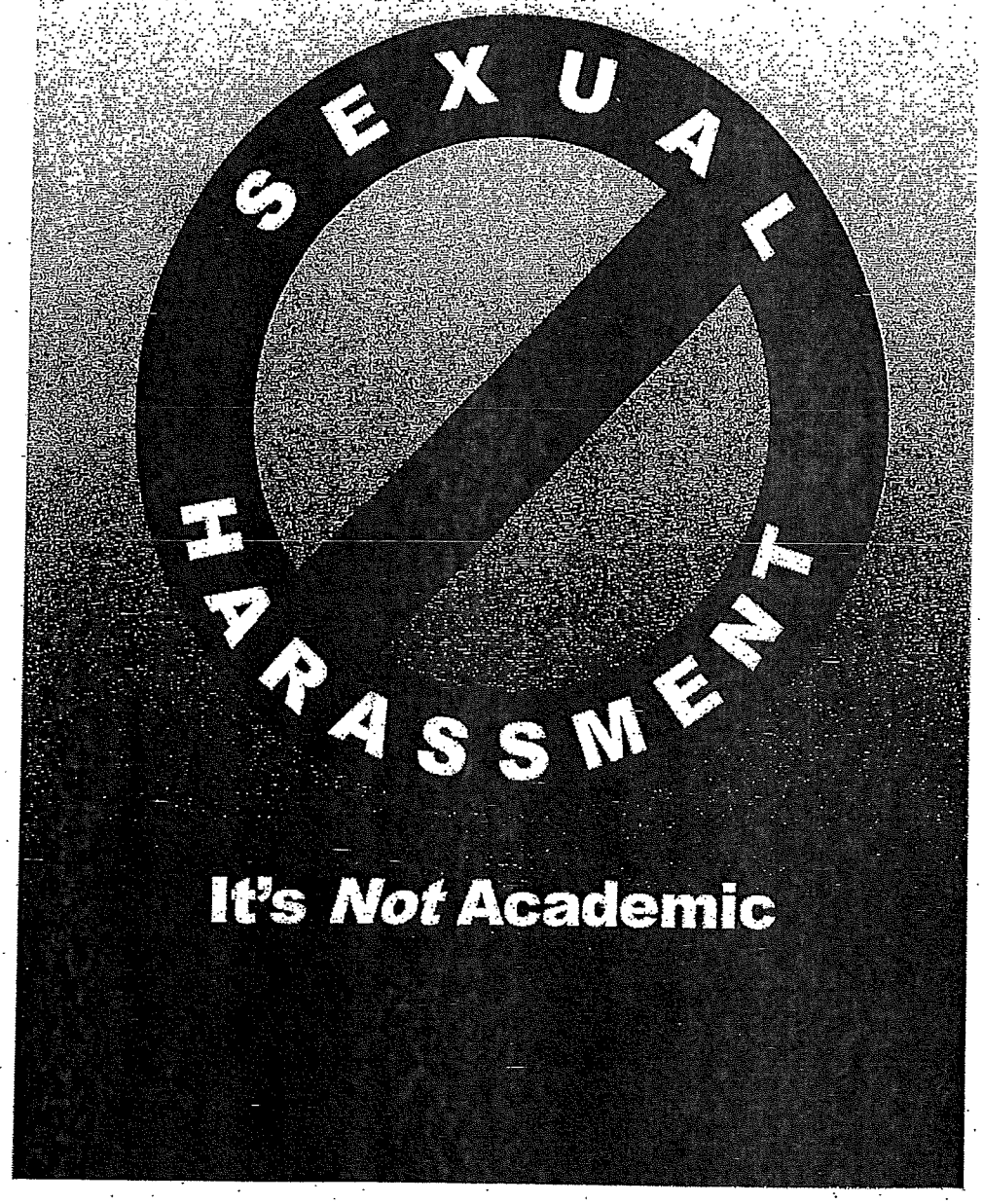
In addition to guidance from OCR, a school may also find resources from the Departments of Education and Justice helpful in preventing and responding to sexual violence:

- Department of Education's Letter to Chief State School Officers on Teen Dating Violence Awareness and Prevention (February 28, 2013)
  https://www2.ed.gov/policy/gen/guid/secletter/130228.html

- Department of Education's National Center on Safe Supportive Learning Environments
  http://safesupportivelearning.ed.gov/

- Department of Justice, Office on Violence Against Women
  http://www.ovw.usdoj.gov/

U.S. DEPARTMENT OF EDUCATION



Sexual Harassment

It's Not Academic

September 2008

Office for Civil Rights
U.S. Department of Education

U.S. Department of Education
Margaret Spellings
Secretary

Office for Civil Rights
Stephanie Monroe
Assistant Secretary

Revised September 2008.

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Contents

Introduction 1

Part One: Defining Sexual Harassment 3

What is sexual harassment? 3

What are some examples of sexual conduct? 3

Is all physical contact sexual in nature? 4

What if the sexual conduct is criminal in nature? 4

Must the sexual conduct be unwelcome? 5

When does sexual conduct "deny or limit a student's ability to participate in or benefit from a school's education program?" 5

Can young school children engage in sexual harassment? 7

Are gay and lesbian students protected from sexual harassment? 8

Part Two: Responding to Sexual Harassment 9

How should a school respond when it receives information about alleged sexual harassment? 9

What if the victim requests confidentiality or asks that the complaint not be pursued? 9

Does a school have to do anything about sexual harassment if a particular incident is not reported to the school? 10

What actions, if any, should schools take while investigating a complaint? 11

What does a school have to do once the investigation is complete? 11

What are some examples of the steps a school should take to end harassment and prevent it from happening again? 13

What are some examples of how a school can remedy the effects of sexual harassment? 13

Part Three: Reporting and Preventing Sexual Harassment 15
Who should report incidents of sexual harassment? 15
To whom should a victim or other individual report the harassment? 15
What if the harasser threatens to retaliate against the victim if he or she reports the incident? 15
What procedures must a school have in place to prevent sexual harassment and resolve complaints? 16
What are grievance procedures? 16
What does the *Title IX* coordinator do? 16
How do I know who my school's *Title IX* coordinator is? 17
What other steps can a school take to prevent sexual harassment? 17
What is OCR, and how do I report incidents of sexual harassment to that office? 17
Where can I get more information about a school's responsibilities to address and prevent sexual harassment? 18

Introduction

Sexual harassment of students is illegal. A federal law, *Title IX of the Education Amendments of 1972* (*Title IX*), prohibits discrimination on the basis of sex, including sexual harassment, in education programs and activities. All public and private education institutions that receive any federal funds must comply with *Title IX*. *Title IX* protects students from harassment connected to any of the academic, educational, extracurricular, athletic, and other programs or activities of schools, regardless of the location. *Title IX* protects both male and female students from sexual harassment by any school employee, another student, or a non-employee third party.

Preventing and remedying sexual harassment in schools is essential to ensure a nondiscriminatory, safe environment in which students can learn. Unfortunately, students, parents, and school staff may not know what sexual harassment is, how to stop it, and what can be done to prevent it from happening. This pamphlet uses a question-and-answer format to provide students, parents, school administrators, school employees, and others with fundamental information on recognizing and addressing sexual harassment under *Title IX* as it is interpreted by the U.S. Department of Education's Office for Civil Rights (OCR). OCR is the federal agency responsible for enforcing *Title IX* in schools that receive federal funds from the U.S. Department of Education.

Part One: Defining Sexual Harassment

What is sexual harassment?

Sexual harassment is conduct that:

1) is sexual in nature;
2) is unwelcome; and
3) denies or limits a student's ability to participate in or benefit from a school's education program.

Sexual harassment can take different forms depending on the harasser and the nature of the harassment. The conduct can be carried out by school employees, other students, and non-employee third parties, such as a visiting speaker. Both male and female students can be victims of sexual harassment, and the harasser and the victim can be of the same sex.

The conduct can occur in any school program or activity and can take place in school facilities, on a school bus, or at other off-campus locations, such as a school-sponsored field trip or a training program at another location. The conduct can be verbal, nonverbal, or physical.

The judgment and common sense of teachers and school administrators are very important elements in determining whether sexual harassment has occurred and in determining an appropriate response, especially when dealing with young children.

What are some examples of sexual conduct?

Examples of sexual conduct include:

- making sexual propositions or pressuring students for sexual favors;
- touching of a sexual nature;
- writing graffiti of a sexual nature;
- displaying or distributing sexually explicit drawings, pictures, or written materials;

- performing sexual gestures or touching oneself sexually in front of others;
- telling sexual or dirty jokes;
- spreading sexual rumors or rating other students as to sexual activity or performance; or
- circulating or showing e-mails or Web sites of a sexual nature.

Example: A school official sends a student a text message to arrange a time to meet for a sexual encounter. Sending such a text message would constitute sexual conduct.

Is all physical contact sexual in nature?

No. Legitimate nonsexual touching or conduct generally will not be considered sexual harassment. However, it may rise to that level if it takes on sexual connotations.

Example: A high school athletic coach hugs a student who makes a goal. This by itself is not considered sexual conduct. However, a coach's hugging of a student could be considered sexual conduct if it is unwelcome and occurs under inappropriate circumstances.

What if the sexual conduct is criminal in nature?

Sexual harassment includes conduct that is criminal in nature, such as rape, sexual assault, dating violence, and sexually motivated stalking. Even if a school reports possible criminal conduct to the police, that does not relieve the school of its responsibilities under *Title IX*, which are discussed in Part Two.

Must the sexual conduct be unwelcome?

Yes. Conduct is considered unwelcome if the student did not request or invite it and considered the conduct to be undesirable or offensive. The age of the student, the nature of the conduct, and other relevant factors affect whether a student was capable of welcoming the sexual conduct. A student's submission to the conduct or failure to complain does not always mean that the conduct was welcome.

Example 1: A middle school student makes offensive sexual jokes to another student, but the student does not object to the jokes or speak out against them. The student's failure to object does not mean that he or she has welcomed the comments.

Example 2: A female high school student willingly kisses a male student on one occasion. When the student subsequently attempts to kiss her again, she objects, but he kisses her anyway. This subsequent kiss is considered to be unwelcome despite the welcomeness of the first kiss.

When does sexual conduct "deny or limit a student's ability to participate in or benefit from a school's education program?"

Two general types of sexual conduct can deny or limit a student's ability to participate in or benefit from a school's program. As discussed below, teachers and other school employees can engage in either type of conduct, while students and third parties can engage in only one type.

One form of sexual harassment occurs when a teacher or other school employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct. If this

occurs, it does not matter whether the student resists and suffers the threatened harm or submits to and avoids the threatened harm.

> Example: A high school drama teacher tells a student that if she engages in sexual activity with the teacher, she will be given the lead part in a school play. The student agrees to participate in the sexual act but without desiring to do so. The drama teacher thus has limited the student's ability to benefit from the school's education program by conditioning the benefit of receiving the lead role in the school play on the student's submission to unwelcome sexual conduct.

Sexual harassment also occurs when a teacher, school employee, other student, or third party creates a hostile environment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program. Whether such a hostile environment has been created depends on the particular circumstances of the incident(s). Relevant considerations include, but are not limited to:

- how much of an adverse effect the conduct had on the student's education;
- the type, frequency, or duration of the conduct;
- the identity, age, and sex of the harasser(s) and the victim(s), and the relationship between them;
- the number of individuals who engaged in the harassing conduct and at whom the harassment was directed;
- the size of the school, location of the incidents, and context in which they occurred; and
- whether other incidents occurred at the school involving different students.

The conduct does not necessarily have to be repetitive. If sufficiently severe, single or isolated incidents can create a hostile environment.

Example 1: Throughout the school year, Student A repeatedly passes sexually explicit photographs to Student B during class. The photographs are offensive to Student B, and, consequently, Student B is unable to concentrate during class or focus on the subject. Student A has created a hostile environment that limits Student B's ability to participate in the class.

Example 2: A high school student sexually assaulted another high school student on one occasion when the two were alone in a classroom. As a result, the victim is afraid of attending any classes or coming into contact with the harasser. Although this was an isolated incident, it is sufficiently severe to create a hostile environment.

Can young school children engage in sexual harassment?

School personnel should consider the age and maturity of students in responding to allegations of sexual harassment. When determining whether a young child has committed sexual harassment, it is important for teachers and school administrators to use good judgment and common sense.

Example 1: On one occasion, a first-grade student kisses another first-grade student on the cheek in the playground. This behavior does not constitute sexual harassment.

Example 2: On numerous occasions over a period of several months, a fifth-grade student inappropriately touches another fifth-grade student and makes overtly sexual comments and gestures to that student. The conduct is unwelcome and results in the victim's grades falling because he or she is unable to concentrate on studying. This behavior constitutes sexual harassment.

Are gay and lesbian students protected from sexual harassment?

Title IX prohibits harassing conduct that is of a sexual nature if it is unwelcome and denies or limits a student's ability to participate in or benefit from a school's program, regardless of whether the harassment is aimed at gay or lesbian students or is perpetrated by individuals of the same or opposite sex. *Title IX* does not address discrimination or other issues related to sexual orientation.

Example 1: Throughout football season, a male member of the high school football team makes unwelcome sexual advances toward another member of the football team, who is a homosexual male. As a result, the victim quits the football team. This conduct is sexual in nature, unwelcome, and has denied the victim the ability to participate on the school football team. This is sexual harassment covered by *Title IX*.

Example 2: Students heckle another student with comments that are based on the student's sexual orientation but are not sexual in nature (e.g., "gay students are not welcome at this table in the lunch room"). Even if these comments are unwelcome and deny the student's ability to benefit from or participate in the school's education program, the conduct is not sexual, and this is not sexual harassment covered by *Title IX*.

Part Two: Responding to Sexual Harassment

How should a school respond when it receives information about alleged sexual harassment?

If a student, his or her parent, or a responsible employee reports the harassment, or a school employee observes the harassment, the school should inform the harassed student (and the student's parent depending on the student's age) of the options for formal and informal action and of the school's responsibilities, which are discussed below. Regardless of whether the victim files a formal complaint or requests action, the school must conduct a prompt, impartial, and thorough investigation to determine what happened and must take appropriate steps to resolve the situation.

If other sources, such as a witness to the incident, an anonymous letter or phone call, or the media, report the harassment, the school should respond in the same manner described above if it is reasonable for the school to conduct an investigation and the school can confirm the allegations. Considerations relevant to this determination may include, but are not limited to, the:

- source and nature of the information;
- seriousness of the alleged incident;
- specificity of the information;
- objectivity and credibility of the source that made the report;
- ability to identify the alleged victims; and
- cooperation from the alleged victims in pursuing the matter.

What if the victim requests confidentiality or asks that the complaint not be pursued?

The school should take all reasonable steps to investigate and respond to the complaint in a manner consistent with a request for confidentiality from a student. If a student insists that his or her

name not be disclosed to the harasser, the school's ability to respond may be limited. The school also must consider its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school must weigh the confidentiality request against the following factors:

- seriousness of the alleged harassment;
- age of the harassed student; and
- other complaints that the same individual has harassed others.

Example: A female elementary school student describes an incident to her teacher that involved another teacher forcing her to engage in sexual activity. The student begs the teacher to not tell anybody what happened. This is a situation in which the school's duty to provide all students with a safe environment might outweigh the student's request.

Additionally, state or local laws may require schools to report incidents to the police.

Does a school have to do anything about sexual harassment if a particular incident is not reported to the school?

If the harasser is a teacher or another school employee and if the harassment occurs while the school employee is acting, or reasonably appears to be acting, in the context of his or her responsibilities to provide aid, benefits, and services to students, the school is directly responsible for and must remedy the harassment regardless of whether the school knew or should have known that the incident occurred.

If the harasser is another student, a third party, or a school employee who is not acting within the context of his or her responsibility to provide aid, benefits, or services to students, then the school is responsible for investigating the conduct and taking appropriate steps to resolve the situation only when it knows or should have known that the harassment occurred.

Example: It is well-known to students and staff that graffiti of a sexual nature appears on the sides of buildings throughout a school's campus in plain sight. The pervasiveness of this harassment may be enough to conclude that the school should have known that the harassment occurred. If so, then the school is responsible for investigating and responding to the harassment regardless of whether it received a specific complaint about the graffiti.

What actions, if any, should schools take while investigating a complaint?

It may be necessary for schools to take interim measures during the investigation of a complaint. For instance, if a student alleges harassment by another student, the school may keep those students separated until the investigation is complete. If a teacher is the alleged harasser, it may be appropriate for the student to transfer to another class.

It is a good practice for schools to keep the student who alleged the harassment informed of the status of the investigation.

What does a school have to do once the investigation is complete?

The school must notify the victim (and his or her parents depending on the age of the victim) of the outcome of its investigation and of any punishments imposed that directly relate to the victim, such as an order for the harasser to stay away from the victim.

If the school determines that a student was sexually harassed, the school must take reasonable, prompt, age-appropriate, and effective action to end the harassment and prevent it from happening again to the victim or to others. If the school fails to do so, it must remedy the effects of the harassment on the victim that could have been avoided if the school had responded promptly and effectively.

In addition, if the harasser is a school employee and if the harassment occurs while the employee is acting, or reasonably appears to be acting, in the context of carrying out his or her responsibilities to provide aid, benefits, and services, the school must remedy the effects of the harassment on the victim.

Example 1: A teacher sexually harasses an eighth-grade student in the school hallway. The student is not in any of the teacher's classes and the teacher is not a hall monitor. However, in light of the age and educational level of the student and the status and degree of influence of teachers in secondary schools, the student could reasonably believe that the teacher had at least informal disciplinary authority over him or her. Therefore, this conduct is considered to have occurred in the context of the teacher's responsibility to provide aid, benefits, and services to students, and thus the school must remedy the effects of the harassment in addition to stopping it and preventing it from recurring.

Example 2: A faculty member of a university's history department repeatedly, over several weeks, touches and makes sexually suggestive remarks to a female graduate engineering student while waiting for the university shuttle bus, riding on the bus, and exiting the bus. As a result, the student stops using the bus and walks the long distances between her classes. This conduct occurred outside of the context of the faculty member's duties to provide aid, benefits, or services to the student, and thus the school is not required to remedy the effects of the harassment. However, if the school fails to take reasonable and effective action to end the harassment after it has received notice of the harassment, the school must remedy the effects of the harassment that could have been avoided if the school had responded promptly and effectively.

What are some examples of the steps a school should take to end harassment and prevent it from happening again?

The appropriate steps should be tailored to the specific situation. For example, the school may need to develop and publicize new policies or conduct training. Depending on the nature and severity of the harassment, counseling, discipline, or further separation of the victim and harasser may be necessary.

Responsive measures should be designed to minimize the burden on the victim as much as possible. If the school's initial response does not stop the harassment and prevent it from happening again, the school may need to take additional, stronger measures.

What are some examples of how a school can remedy the effects of sexual harassment?

If the school is required to remedy the effects of the harassment on the victim, the types of action required will vary depending on the circumstances.

Example 1: A college professor sexually harassed a student in his or her class in the context of the professor's duty to provide services to the student. Consequently, the student was unable to concentrate during class and did not learn the course material. To remedy the effects of the harassment, the school may be required to take such actions as:

- arranging for an independent assessment of the student's work;
- arranging for the student to take the course again with a different instructor;
- providing tutoring;
- making tuition adjustments; or
- offering reimbursements for professional counseling.

Example 2: A high school student informs the school that another student in her class has been sexually harassing her and that, to avoid him, she has been coming to class late. As a result, she has missed some pop quizzes. If the school delays its response to this complaint and the victim suffers additional effects of the harassment, such as missing additional pop quizzes because she has to continue coming to class late, the school must remedy the effects of the harassment that could have been prevented if the school had responded promptly and effectively. In this case, the appropriate remedy may include such actions as calculating the student's grade without factoring in the student's failure to take the quizzes, giving the student another opportunity to take the quizzes, or arranging for an independent assessment of the student's work.

Part Three: Reporting and Preventing Sexual Harassment

Who should report incidents of sexual harassment?

Anybody who sees sexual harassment occur should report it; the individual need not be the victim of the harassment. Schools should ensure that employees clearly understand the extent of their responsibilities for reporting sexual harassment.

To whom should a victim or other individual report the harassment?

The harassment should be reported to a responsible school employee, such as a teacher, principal, faculty member, administrator, security officer, affirmative action officer, or professional staff member in the office of student affairs. Additionally, as every school must have a *Title IX* coordinator, the harassment can be reported to this individual as well.

A student, parent, or other individual also may file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR), as explained below.

What if the harasser threatens to retaliate against the victim if he or she reports the incident?

Title IX also protects students from retaliation. The school must take steps to prevent the alleged harasser or anybody else at the school from retaliating against the victim. Such steps include informing students that *Title IX* protects them from retaliation, making sure that victims know how to report any future problems, and making follow-up inquiries to see if there have been any new incidents. It also may be appropriate to counsel the harasser to ensure that he or she understands that retaliation is prohibited. If retaliation occurs, the school should take strong responsive actions.

What procedures must a school have in place to prevent sexual harassment and resolve complaints?

Every school must:

- issue a policy against sex discrimination;
- adopt and publicize grievance procedures; and
- have a *Title IX* coordinator.

What are grievance procedures?

Grievance procedures are internal school procedures that address violations of a school's policy against discrimination, including sexual harassment. Grievance procedures must provide for prompt and equitable resolution of complaints of sex discrimination.

The school should make sure that its policy against sex discrimination and grievance procedures are widely distributed and easily understood by students, parents of elementary and secondary school students, and employees. At a minimum, students must know that the grievance procedure exists, know how it works, and know how to file a complaint. When a student or parent reports sexual harassment, the school should explain how its grievance procedures work and offer the student or parent the opportunity to use them.

If a student or parent chooses to not use the school's grievance procedures, that does not relieve the school of its responsibilities to investigate and take appropriate action, as explained above in Part Two.

What does the Title IX *coordinator do?*

The *Title IX* coordinator is responsible for coordinating a school's efforts to comply with and carry out its *Title IX* responsibilities. Every school must have a *Title IX* coordinator. *Title IX* coordinators must have adequate training in sexual harassment and must be able to explain the operation of the school's grievance procedure.

How do I know who my school's Title IX *coordinator is?*

Every school must notify all students and employees of the name, office address, and telephone number of its *Title IX* coordinator(s).

What other steps can a school take to prevent sexual harassment?

OCR's experience shows that the best way for a school to deal with sexual harassment is to prevent it from occurring in the first place. In addition to the requirements explained above (well-publicized nondiscrimination policy, grievance procedures, and *Title IX* coordinator), a school may take a number of other steps to prevent harassment.

For example, a school may conduct periodic sexual harassment awareness training for all school staff, including administrators, teachers, and guidance counselors, and age-appropriate sexual harassment training for students. The training can include information on the types of conduct that will be considered sexual harassment and the range of possible consequences, the damage that results from harassment, where students can find help, ways to oppose harassment, and what to do about it.

What is OCR, and how do I report incidents of sexual harassment to that office?

OCR is the federal agency responsible for ensuring that schools comply with *Title IX* and other federal civil rights laws. One of OCR's responsibilities is to resolve complaints of discrimination, including sexual harassment complaints. OCR has 12 enforcement offices located throughout the country that carry out this responsibility.

An individual who wishes to file a complaint with OCR should do so by contacting the enforcement office responsible for the state in which that school is located. To find out which office is responsible for your state and how to contact them, call 1-800-421-3481 or

check OCR's Web site at http://www.ed.gov/ocr. Generally, the complaint must be filed within 180 days of the date of the incident. Students and parents are not required to use a school's grievance procedures before filing a compliant with OCR.

Where can I get more information about a school's responsibilities to address and prevent sexual harassment?

Please read OCR's *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, available on the Department's Web site at http://www.ed.gov/ocr/publications.html or from any OCR enforcement office.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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Minnesota Department of
Education

Strategies and Resources to Create a Positive School Climate

When students, educators and school staff members go to school each day, they bring along their experiences, including their opinions, feelings and knowledge of current events and issues. As evidenced in news stories and social media, current events, including a contentious election can impact students and the climate in schools they attend. During this time, it will be important for teachers, school support staff and school administrators to tend to students and to the climate of their schools.

The Minnesota Department of Education School Safety Technical Assistance Center offers strategies and resources to help you foster a safe and supportive environment for all students.

Creating a positive school climate begins with school district and school leaders, teachers and school support staff. You can begin with an escalation of kindness. It's simple, doesn't require a budget and can begin immediately. Intentional but essential actions, including an emphasis on acts of kindness can help foster a healthy and positive school environment. The more people practice acts of kindness, the more likely they are to recognize and act in situations in which others are in need. Acts of kindness help students develop compassion and empathy.

Teach Kindness

How do you teach kindness?

- As an adult, model kind behavior in your interactions with other adults and with students. The way adults behave influences student behavior. Calm, caring and consistent encouragement and high expectations provide a predictable environment for all students.
- Ask students kindness and empathy questions in class. All teachers can incorporate kindness and empathy questions into their classes related to the subject they're teaching. For example, in English class, you could ask "What would have happened if Captain Ahab was kind to the white whale?" Kindness and empathy questions help students better relate to other people's situations and feelings.
- Ask kindness/empathy questions when someone has been mean to someone else. "How do you think X felt when he was called that name?"

Find more resources and activities for teaching kindness, empathy and creating positive learning environments at MindUp and at Mindful Schools.

When people practice acts of kindness and gratitude, dopamine – the feel good hormone – is released in their brains. Not only do people feel more positive when dopamine is released, but it also helps with focus and memory.

Identify Challenges to Your School's Climate

Identify what challenges there are to your school's climate and determine how to best address those challenges. Events that happened in our world can have a traumatic impact on some people or everyone in the school, including: leaders, teachers, staff members, students and parents.

Some students may come to school with extra stress and even fear as a result of the contentious campaign and the election. Some students may have a personal connection to events and some students may have experienced or witnessed harassment, bullying and discrimination based on race, color, religion, national origin, sex, sexual orientation or gender identity. Other students may come to school stressed because of fighting at home or because their socks are wet from walking through snow without boots.

Ensure that staff can recognize students who might need extra help because of stress or trauma. Make sure staff members are aware of resources or training opportunities on trauma-informed practices. Look for local resources for help in the community. Encourage staff members to form partnerships with outside agencies and organizations to help.

Current Events/Issues Provide Opportunity

The election, current events and societal issues can provide a rich opportunity for education, but school administrators, teachers and school support staff need to guide the conversations to ensure that people are respectful and kind.

Strategies for Adults to Set a Positive Tone in School

Adults set the tone for the school climate. To create a positive and welcoming environment, take the following steps:

- Smile and greet staff and students by name and learn how to pronounce their names correctly.
- Get to know people and build relationships with them. The more we know a person, the more we understand them and empathize with them.
- Do administrator walkthroughs to connect with students and staff. Students like to see the leaders and the principals outside of their offices.
- Prior to the first day of school, ask all staff members to join you in emphasizing kindness.
- Model the behavior expectations you have for students.

Give Adults Time to Talk

Adults need time to get to know one another, talk with each other about their feelings and emotions and to strengthen their relationships with each other. To do this:

- Take time to get to know each other on a personal level.
- Establish common courtesies for talking with each other.
- Take time to talk about your values before you talk about your opinions.

- Take time to discuss how you will take care of yourself in a good way. This could include: getting plenty of rest, water and exercise; eating a healthy diet; spending time with friends and family and laughing.
- Talk about how you will discuss the election, societal issues and current events. All teachers and support staff will need to know how to do this because discussions will arise in classes regardless of the subject being taught. Discussions will also take place in school settings outside of the classroom.
- School staff can share tips with each other on how to guide discussions.

Engage Students and Give Them Time to Talk

Students are in the best position to help create healthy, caring school climates if they are engaged and empowered to do so. In order to grow the muscles of resiliency, students need to practice responding to difficulties and challenges. Look to the already existing student leadership groups for assistance in setting up discussions with the student body. Just like the adults, students need time to get to know one another and build community. To do this:

- Help students establish and agree on common courtesies and expectations for their discussions about current events and issues inside and outside of class and online and in social media.
- Allow time for students to talk about their values before they talk about their opinions or feelings.
- Model and encourage to use of "affective statements" – statements where they say how they feel in response to someone else's behavior.
- Allow regular, consistent time to get to know each other.
- Allow time to discuss how students can be kind to each other in this school year.

Be intentional about choosing a format for the discussion or class. Using the circle process is one effective approach that many schools use as part of Restorative Practices work. A circle gives each person the opportunity to speak as well as listen to others in a respectful, equal, safe and supportive atmosphere. The School Safety Technical Assistance Center has resources on Restorative Practices and links to videos on the circle process. Living Justice Press also has several resources about circles.

Teach Students Skills for Discussions

It is important for teachers and school staff to make time with students in class for constructive discussions about current events and issues. Such discussions can improve school climate and help prevent bullying and harassment. Equip students with the tools they need for discussions by teaching:

- Ways to respectfully communicate with one another.
- Conflict resolution. Conflict Resolution Education resources are available to educators.
- Many Restorative Practices programs also teach mediation or provide trained mediators to schools. Find teachers/mediators in the Restorative Practices in Schools Program Directory.

- Basic rules of debate.
- Peer mediation or peer mentoring.
- How to use the circle process for discussions. Circles provide everyone with the opportunity to speak.

Review What You Have

Policies and practices in place in your school district and school often already provide the foundation for building a good climate and improving the school climate.

To support a strong, caring environment at school, review:

- Bullying prevention and intervention policies and practices and ensure all staff are aware of district policy and are trained in how to identify, intervene and report. Use the School Safety Technical Assistance Center's ready-to-go resources and videos for staff training.
- Restorative community-building practices.
- Trauma-informed practices. Ensure all staff members are aware of resources or training opportunities to help them identify students who need extra help. The American Psychological Association has several resources to assist educators such as "How to Talk to Children about Difficult News and Tragedies."

Other Resources for Educators

- Teaching Tolerance offers several resources for schools and teachers including the Speak Up at School Guide that offers tools and strategies to speak up against prejudice, bias and stereotypes at school. Teaching Tolerance also offers Civil Discourse in the Classroom and Ground Rules for Discussion.
- Collaborative for Academic, Social, and Emotional Learning (CASEL) offers resources on using evidence-based social and emotional learning (SEL) in schools. Research shows that SEL can be an important part of improving school climate, including preventing and reducing bullying, harassment and discrimination.
- Conflict Resolution Education website has a wide array of materials that support conflict resolution education.
- The Jigsaw Classroom is a cooperative learning technique that reduces racial conflict among school children, promotes better learning, improves student motivation and increases enjoyment of the learning experience.
- Morningside Center for Teaching Social Responsibility Teachable Moment Classroom Lessons, foster social responsibility by sharing free K-12 classroom lessons, activities and ideas with educators, including Election Emotions: Sharing and Community-Building and Teaching about Controversial or Difficult Issues.

Title IX Coordinator Roles and Responsibilities
Local School Districts

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Legal Citation: *Title IX of the Education Amendments of 1972, and its implementing regulation at 34 C.F.R. Part 106 (Title IX)*

Designation of a Coordinator

A. School systems or other recipients of federal funds (including all public schools, charter schools and magnet schools) must designate at least one professional employee as the Title IX coordinator to oversee compliance efforts and investigate any complaints of sex discrimination.

B. All students, employees and parents/guardians must be notified of the names, office address(es), and telephone number(s) of the designated coordinator(s) of Title IX.

Dissemination of Policy

The school district's policy of nondiscrimination must be prominently included in each student handbook, bulletin, catalog, booklet, announcement, brochure, student application form or other publication distributed to students, potential students, parents, and any other persons benefiting from the school district's activities and programs. The name and contact information(office address , telephone number, fax number, email address) of the Title IX Coordinator must also be included in this announcement.

Monitoring compliance

The Title IX Coordinator is responsible for monitoring the overall implementation of Title IX for the school district and coordinating the institution's compliance with Title IX in all areas covered by the implementing regulations. The major responsibility is the prevention of sexual harassment and discrimination. Other major monitoring duties include, but are not limited to, the following:

Admissions: Admissions and Recruitment

Education Programs and Activities: Housing, Comparable Facilities, Access to Course Offerings, Access to Schools operated by the School District, Counseling and Related Materials, participation in extra-curricular activities, Financial Assistance, Employment Assistance, Health Services and Insurance, Marital/Parental Status, Athletics and Physical Education.

Employment in Education Programs and Activities: Employment Criteria, Recruitment, Compensation, Job Classification, Fringe Benefits, Marital or Parental Status, Advertising, Pre-employment Activities

Other areas of consideration include:

- Developing a committee to assist in meeting Title IX obligations is highly recommended.
- Arranging to have a Title IX/Equity coordinator in each school building enables better monitoring of Title IX in individual schools leaving the District Title IX Coordinator to take care of the district as a whole.
- Participating in the development and implementation of the school system's sexual harassment policy. Be aware of new needs which may dictate changes or revisions in existing policies or practices. For example, since sexual harassment is a violation of Title IX, you should include a prohibition of sexual harassment in the school district's list of disciplinary infractions.
- Assisting faculty, counselors and administrators in complying with Title IX, and when a need arises, planning remedial actions. For example, if females are under-represented in advanced mathematics, science or computer programming courses, ask the faculty to plan for several workshops, student tutorial services, or other ways to increase enrollment of females in these advanced courses.
- Making your presence known in the community by disseminating civil rights information or by speaking at parent-teacher group meetings, social or professional organization meetings, and other community functions.
- Serving as a resource to the local superintendent of schools on Title IX/Gender issues, and submitting annual reports on Title IX compliance activities to the district superintendent.
- Monitoring and evaluating the district's Title IX compliance efforts and making recommendations for any appropriate changes.
- Providing updated information to schools on Title IX implementation and issues
- Maintaining contact with the state education agency Title IX coordinator and with the federal regional equity assistance center
- Identifying and disseminating information about Title IX educational resources (organizations, individuals, print, internet, and audio-visual)

Grievance Procedures

Adoption and publication of procedures providing prompt and equitable resolution of complaints is critical. Nondiscrimination policy notices and their attendant Grievance Procedures must be made public and disseminated throughout the educational

community. Develop Title IX grievance procedures for students and teachers in cooperation with local student service and human resources staff; give public notice of the procedures and the name and contact information of the school system Title IX coordinator.

Have copies of the grievance procedure and any related forms available in schools and libraries to students, parents or school personnel alleging sexual harassment or discrimination. Assist them in filing their grievance and oversee the step-by-step procedure to be sure that time frames are met. Assist administrative personnel who need a better understanding of the grievance based on Title IX. Keep records of all grievances filed.

In carrying out this responsibility, the Title IX coordinator may actually investigate any complaint filed under the institution's grievance procedures. If the Title IX coordinator does not conduct the investigation of complaints, she or he should receive information about any grievance filed. This will allow the institution to identify any patterns, and repeat offenders that may be missed when grievances are handled by several individuals. The coordinator should also receive sufficient information throughout the process so that she or he can provide guidance or information
to ensure that the institution carries out its responsibilities under Title IX. The Title IX coordinator should also be sufficiently knowledgeable about the requirements of the regulations to advise the institution about policies and practices, which may violate Title IX.

Core Responsibilities of Title IX Coordinators

- Develop a working knowledge of the federal Title IX (of the Education Amendments of 1972) law and its implementation regulations. Have a copy of Title IX readily available and understand the requirements and the intent of the law. Keep informed of current research and legal and judicial decisions related to Title IX and gender equity.
- Be informed about state laws, regulations and policies on all equity issues, including bullying and harassment and child abuse laws.
- Be knowledgeable of federal and state laws (e.g. ADA, Section 504, IDEA) prohibiting discrimination against all protected classes (including race, religion and sexual orientation) and assist whenever possible.
- Be sure female and male students participating in work-based learning programs are guaranteed equal treatment by their employers.
- Coordinate with other staff and document an internal self-evaluation of practices and policies with respect to treatment of female and male students, **if** this responsibility was never completed. If the evaluation was completed by a previous Title IX coordinator, check if the evaluation's remedies for eliminating segregation and discrimination were carried out.
- Provide program development, including in-service training, to eliminate sex discrimination in the district. You may also want to consider conducting a

school-wide in-service or assembly on sexual harassment. For another example, continued gender-segregated classes in workforce development education courses should prompt you to plan special on-going activities for lessening students' gender-role stereotypes.

- Attend state and national conferences specifically for Title IX coordinators and/or on gender equity issues generally, and share the information with local administrators, staff and faculty.
- Provide updated resources on Title IX and gender equity to local school districts

*Adapted from the US Department of Education/Office for Civil Rights/Boston Regional Office, North Carolina State Board of Education, the New Hampshire Department of Education, the Connecticut State Department of Education and the Equity Assistance Center/NYU at Rutgers University, and the Maryland State Department of Education

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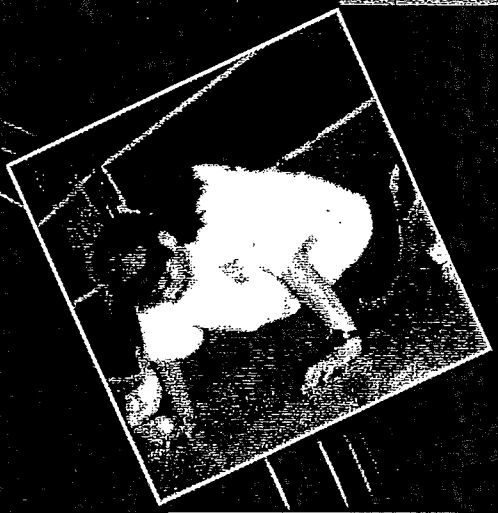
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JUNE 2012





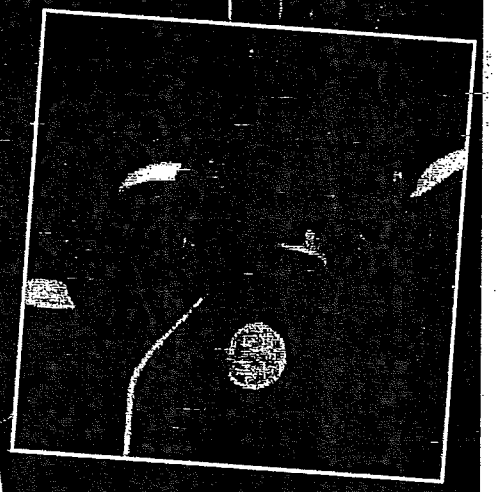




ENFORCEMENT HIGHLIGHTS

OFFICE FOR CIVIL RIGHTS

U.S. Department of Education







U.S. Department of Education
Arne Duncan
Secretary

Office for Civil Rights
Russlynn Ali
Assistant Secretary

June 2012

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This report is available on the Department's Web site at: www.ed.gov/ocr.

On request, this publication is available in alternate formats, such as Braille, large print or CD. For more information, please contact the Department's Alternate Format Center at 202-260-9895 or 202-205-8113.

The purpose of this document is to provide accurate, understandable information to the general public about the work of the Office for Civil Rights (OCR), not to provide official policy guidance of OCR. For official policy guidance of OCR, please visit www.ed.gov/ocr.

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If you have difficulty understanding English you may request language assistance services for Department information that is available to the public. These language assistance services are available free of charge. If you need more information about interpretation or translation services, please call 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-437-0833), or email us at: OCR@ed.gov.

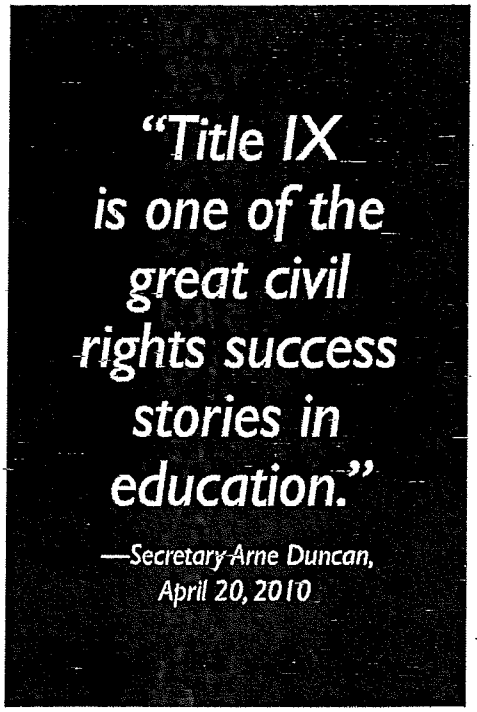
Or write to:
U.S. Department of Education
Office for Civil Rights
LBJ Education Building
400 Maryland Ave., S.W.
Washington, DC 20202

"The steady movement to a more fair and just society plays out every day in the classrooms, colleges and universities all across America—and I believe that the only way to achieve equity in society is to achieve equity in the classroom."

—Secretary Arne Duncan, July 14, 2010

TITLE IX ENFORCEMENT HIGHLIGHTS

Title IX of the Education Amendments of 1972 is a federal law prohibiting discrimination on the basis of sex in all education programs and activities operated by recipients of federal funds. It states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance."



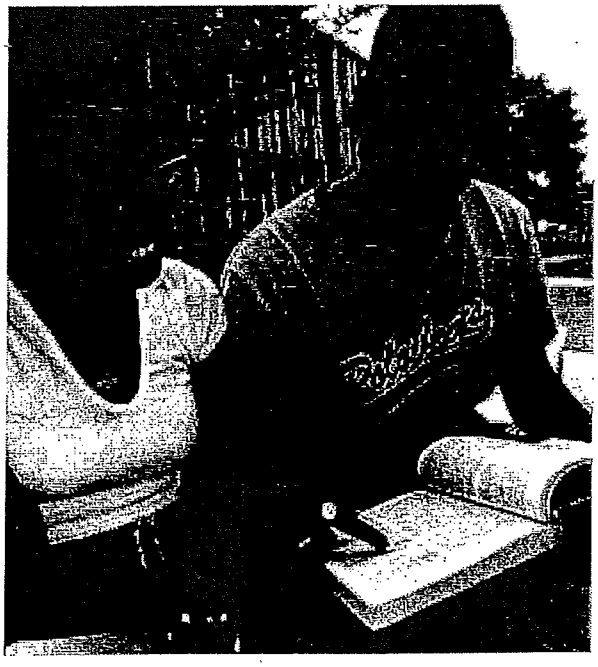
Title IX's protection applies at all elementary and secondary schools, colleges and universities—public or private—that receive federal financial assistance, and at certain other educational institutions. The protection extends to all aspects of these institutions' education programs and activities. Title IX prohibits all forms of sex discrimination, including gender-based harassment, sexual harassment, and sexual violence.

As we mark the 40th anniversary of Title IX, we celebrate the great progress made toward ensuring equality on the basis of sex, and at the same time remind ourselves of how far we have left to go. The law remains an important guarantor of civil rights, and the U.S. Department of Education's Office for Civil Rights will continue to vigorously enforce Title IX and work hard to help realize its vision.

TITLE IX ENFORCEMENT HIGHLIGHTS

The Office for Civil Rights (OCR) works to eradicate discrimination and create environments in which all students can learn safely. OCR has taken on tough issues arising under Title IX and vigorously enforced its protections at educational institutions of all types and sizes, including some of the nation's largest K-12 school districts, colleges, and universities. In doing so, we've used the following tools:

Policy Guidance: To help schools and colleges and the public understand what Title IX requires, OCR provides detailed policy guidance documents. These documents, which we send to institutions around the country, address the legal requirements and considerations governing situations frequently encountered by schools, and provide recommendations for how they can meet their legal obligations. Since January of 2009, OCR has issued nine such policy guidance documents, three of which pertain to Title IX on topics such as bullying, sexual harassment, sexual violence, and equity in athletics programs.



Enforcement: OCR investigates allegations of discrimination and obtains robust remedies that address the root causes of the discrimination. Almost 600 OCR team members lead this work in headquarters and 12 regional offices around the country.

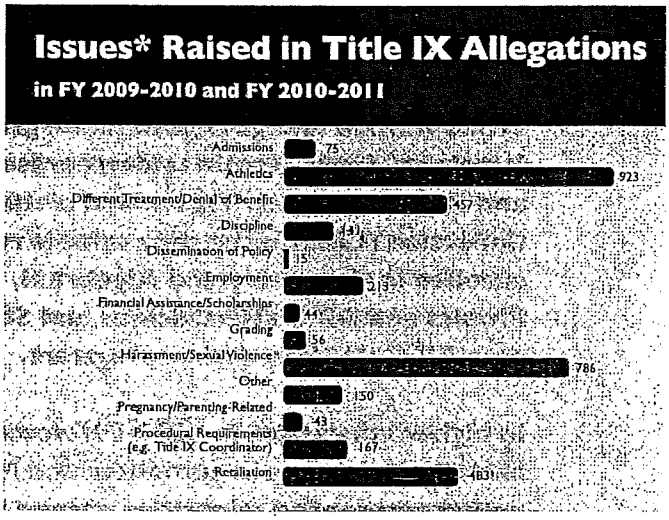
Complaints and Proactive Investigations: In the last three fiscal years[1], OCR received nearly 3,000 Title IX-related complaints – more than ever before in a similar period – and launched more than 35 proactive, system-wide investigations that, collectively, address a broad range of Title IX-related issues and systemic discrimination in institutions across the nation.

Technical Assistance: Educators, as well as parents and students, must have the knowledge and skills to identify discrimination, to prevent discrimination from occurring, and to address it or get help when it does occur. Every year, OCR provides technical assistance to schools and communities around the country on both longstanding and emerging civil rights issues. In the last three years OCR has conducted hundreds of Title IX technical assistance activities, 65 in the first six months of FY 2012 alone.

Enforcing Title IX

This document highlights a small sample of OCR's Title IX work on the following issues:

- **COMPARABLE EDUCATIONAL OPPORTUNITIES, INCLUDING COLLEGE AND CAREER PREPARATORY PROGRAMS:** Promoting girls' and women's access to courses that promote college and career readiness, such as science, technology, engineering and math ("STEM") courses.
- **THE RIGHT TO EQUAL TREATMENT:** Requiring that schools treat students equally on the basis of sex in all programmatic areas, including academic and extracurricular activities, financial aid, facilities, and housing.
- **ATHLETICS:** Requiring that schools provide equal access to athletic opportunities and benefits at all levels.
- **SEXUAL VIOLENCE:** Requiring that schools protect students from and adequately respond to sexual violence.
- **SEXUAL AND GENDER-BASED HARASSMENT** (INCLUDING BULLYING THAT RISES TO THE LEVEL OF HARASSMENT): Enforcing the prohibition against sexual harassment as well as bullying and harassment based on gender or sex stereotypes (including sexual harassment and gender-based harassment of lesbian, gay, bisexual and transgender (LGBT) students because of their nonconformity to sex stereotypes).



- **ADDITIONAL AREAS OF FOCUS:** Beyond the issues addressed in this document, OCR routinely handles an array of topics related to Title IX, including admissions, financial aid, academic programs, rights of pregnant and parenting students, student treatment and services, counseling and guidance, discipline, grading, vocational education, housing, and employment.
- **THE TRANSFORMED CIVIL RIGHTS DATA COLLECTION:** Providing new information from schools across the country to improve compliance with Title IX. The Civil Rights Data Collection now covers issues ranging from access to college and career preparatory courses to discipline to school finances, which can be analyzed by race, gender and disability status.

* A single complaint can raise multiple issues; therefore the total number of issues raised will exceed the number of complaints received.

Equal Access to Comparable Educational Opportunities including College and Career Preparatory Programs

While women and girls have made great progress in an array of fields of study, female students remain underrepresented in many of the most rigorous math and science courses. This mixed picture is shown in OCR's Civil Rights Data Collection (CRDC): the data sample reveals that more girls than boys are enrolled in Geometry and Algebra II, but girls remain underrepresented in Physics and AP Math (Calculus and Statistics) and are less likely to take and pass AP tests than their male peers.

In higher education, in 2008-09, women earned fewer than 18 percent of all bachelor's degrees in computer and information sciences, and women from underrepresented minorities earned less than 7 percent of bachelor's degrees in computer and information sciences. Similarly, fewer than 17 percent of all bachelor's degrees in engineering were awarded to women, and less than 4 percent were awarded to women from underrepresented minorities.[ii]

Enforcement: College and Career Readiness and Success OCR works to ensure gender equity in access to courses and to career training. For example, in one proactive investigation of a school district, OCR is examining the underrepresentation of girls in advanced math and science courses. OCR's goals for a resolution in this type of case include the development of policies and procedures to ensure fair and equitable access to AP STEM courses for female high school students as well as better preparation of K-8 female students for their future success in such courses.

In a similar proactive investigation of a community college, OCR is examining the disparity between male and female participation and graduation rates and degree attainment in programs traditionally dominated by men, like engineering and computer science.

A third example responded to the insults and harassment experienced by the sole female student in a college's aviation maintenance technology program. The harassment was so severe that the student was forced to drop out of the program. In that case, the college and OCR reached a resolution that helped both the individual student as well as the overall college community. The resolution agreement required the college to reimburse the student for the educational costs she incurred while attending the college, and to eradicate the culture of hostility by, for example, issuing an anti-discrimination statement to students and staff, revising its non-discrimination and anti-harassment policies and procedures, and providing training for staff.

The Right to Equal Treatment

Under Title IX, OCR works to ensure equal access to education services and benefits and to prevent acts of retaliation against those who report Title IX violations. Title IX prohibits treating individuals differently on the basis of sex when providing services or benefits.

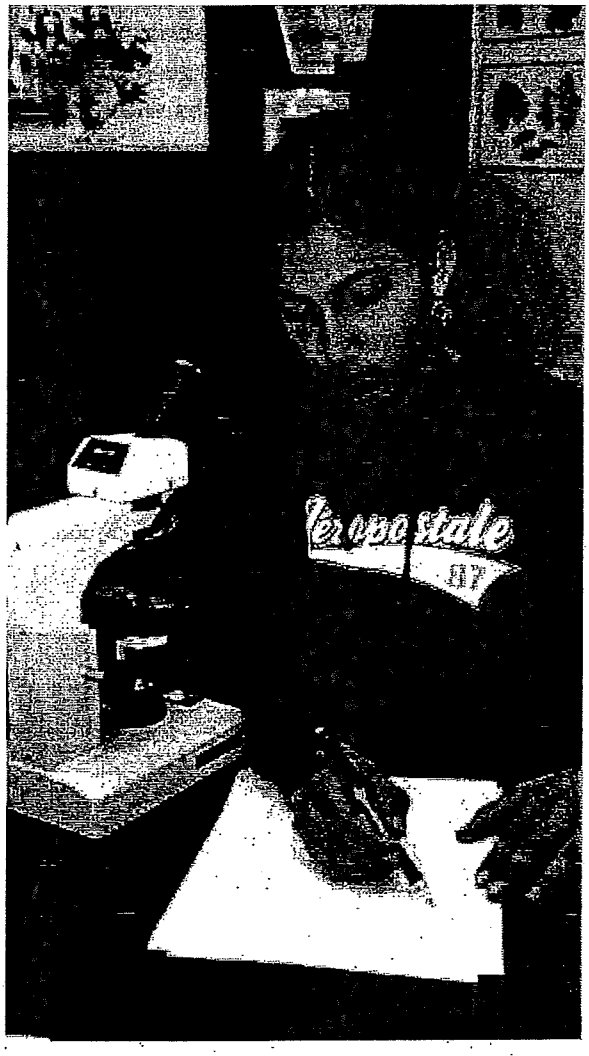
Enforcement: Equal Treatment

In responding to Title IX complaints at the K-12 level, OCR has addressed issues such as disparate discipline, denial of extracurricular opportunities, and denial of access to educational programs of students based on sex. Cases include:

- The suspension of male but not female students for wearing earrings and the harsher treatment of male students compared to female students by school resource officers.
- Allegations of the denial of academic and extracurricular services based on a student's sex, including the failure to provide reading and math instruction to male students.
- The failure to implement the IEP of female students; and the denial of an opportunity to participate on (or the removal from) athletic and dance teams and music groups.

OCR addresses similar issues at the postsecondary level. Cases include allegations that, based on their sex:

- Students received different treatment in admissions, registration, and granting of fellowships and internships.
- Students were suspended, placed on academic probation, forced to withdraw or dismissed from programs.
- Male students were being held to a higher standard than female students during the physical fitness portion of law enforcement training classes.



Equal Access to Athletic Opportunities and Benefits

From scholarships to placement on teams to other athletic program resources such as facilities, coaching, and equipment, women and girls still do not have equal access to opportunities and benefits in athletics. Although there has been undisputable progress since Title IX was enacted, women and girls continue to represent a disproportionately low percentage of college and high school athletes when compared to their enrollment rates. Women make up 57 percent of college students but receive only 43 percent of positions on varsity sports teams.[iii] And girls make up roughly half of all high school students but receive only 41 percent of positions on varsity sports teams.[iv]

Policy Guidance: Athletics As part of an ongoing effort to ensure the equal opportunities guaranteed by Title IX, OCR issued policy guidance in April 2010 on how to assess whether an institution is providing nondiscriminatory athletic participation opportunities based on its students' interests and abilities. The guidance reinstated the Department's longstanding policy that it will analyze multiple indicators to determine whether the school's athletics program is meeting the interests and abilities of the school's underrepresented sex, usually women.



The letter withdrew policy guidance issued in 2005 that had inappropriately changed the Department's longstanding policy to allow an institution to rely on a single e-mail survey to assess the interests of the underrepresented sex, to count non-responses to the survey as indicating a lack of interest in athletics, and thereby to presumptively comply with Title IX—and in so doing potentially significantly underestimated the interests and abilities of its students.

OCR's April 2010 policy guidance ensures that institutions will be held accountable for meeting the full range of athletic interests and abilities of the underrepresented sex. The letter also provides institutions with recommendations for developing effective procedures for collecting, maintaining, and evaluating information on students' interests and abilities as this information is critical to determining whether institutions are providing nondiscriminatory athletic opportunities.

Enforcement: Athletics OCR's investigations have ensured that thousands of female students at an array of schools, including some known for athletic prowess, have an equal opportunity to participate in varsity sports. From FY2009 through FY2011, OCR initiated 17 proactive in-

vestigations of possible Title IX violations in athletics programs. During the same time period, OCR received more than 900 complaints from students, parents, coaches, and others alleging Title IX violations in athletics programs. Where appropriate, OCR has obtained resolution agreements from school districts and universities to ensure that female students have an equal opportunity to participate in sports programs across the country. Recipients have agreed to provide female athletes with additional opportunities to participate in sports and receive financial aid. For example, recipients have agreed to provide female athletes with additional financial aid; they have added new teams; and they have taken steps to ensure that female athletes have comparable quality coaching, facilities, equipment and other athletics-related benefits.

For example:

- OCR is investigating fundraising by athletic booster clubs predominantly for male teams to determine if this is creating inequities in benefits between male and female athletes in violation of Title IX.
- In another investigation of an entire sports league, OCR is ensuring equal opportunities for secondary school athletes by requiring the league and its member school districts to equitably treat female and male students in "primetime" scheduling of athletic events, in scheduling of practice times and in providing publicity for their events.
- OCR obtained redress for women athletes at a university that was providing significantly fewer and inferior resources to its women's sports teams in comparison to the men's programs. Among other things, the university failed to maintain adequate equipment and locker room facilities for its female athletes, who were forced to change in cars and sheds. Female student athletes often received inferior medical and training services from less experienced staff. In addition, unlike the men's teams, when the women's teams went on "away" games, they were crowded into hotel rooms or had to make long journeys back home on the same day as their games. A robust resolution agreement between the university and OCR resulted in the construction of upgraded practice and competitive facilities, new and improved locker rooms, appropriately sized equipment and other equitable treatment for the women's athletic program.
- OCR helped expand opportunities for girls in a school district that had roughly equal enrollment of boys and girls but a 57 percent-to-43 percent split between boys'



and girls' participation in interscholastic athletics. OCR negotiated an agreement with the district that resulted in athletic participation opportunities for girls and boys that are substantially proportionate to their respective enrollments, without cutting any sports or spots on individual teams. The district has hired a new athletic director with significant Title IX experience; added girls' sports teams, such as bowling, water polo, and wrestling; developed outreach activities at middle schools to encourage participation in interscholastic athletics; and created an athletics improvement committee.

Prohibiting Sexual Assault and Violence on Campus

Too often, women and girls are victims of sexual harassment or sexual violence. About one in five women will be a victim of actual or attempted sexual assault while in college, as will about 6 percent of undergraduate men.[v] Public high school students reported nearly 3,600 incidents of sexual battery and over 600 rapes and attempted rapes in a recent year.[vi] That is why addressing sexual violence is a top priority of OCR. Through policy guidance, proactive investigations, complaint resolution, and other responses to events around the country, OCR aims to ensure that no student fears for his or her safety or loses out on educational benefits and opportunities because of sexual violence.

Policy Guidance: Sexual Violence OCR issued a first-of-its-kind policy guidance on April 2011 to ensure that schools and colleges fully understand their Title IX obligations relating to sexual violence. The letter advises institutions on how they can prevent assault and sexual violence from occurring and ensure it gets identified and reported when it does occur, and explains their responsibility to respond to any incident of sexual violence swiftly and effectively. It includes examples of the types of remedies institutions can implement for the victim and the entire school community. It also describes proactive measures schools and colleges can take to prevent sexual violence. Additionally, the guidance emphasizes the need to keep students notified of nondiscrimination and anti-harassment

"We're taking new steps to help our nation's schools, universities and colleges end the cycle of sexual violence on campus."

–Vice President Joe Biden on releasing new guidance on sexual violence protections under Title IX (April 4, 2011).

policies and to involve law enforcement agencies when necessary. Since the guidance's release, dozens of colleges and universities have made changes to their policies and procedures consistent with the guidance.

Enforcement: Sexual Violence OCR received nearly 100 complaints relating to sexual violence and launched multiple proactive investigations on sexual violence at dozens of college campuses and school districts in the last three years. These have led to groundbreaking remedies such as the implementation of procedures by which schools address alleged sexual violence as a Title IX civil rights issue, rather than leaving this matter to be handled only by the criminal justice system; providing interim protection and services for victims of sexual violence; systematizing cooperation between school officials and local law enforcement authorities to ensure Title IX investigations are completed promptly; conducting climate surveys; establishing advisory committees comprising students, faculty, and community members to monitor the school climate and advise the school's administration; conducting peer-to-peer sexual harassment training; and publicizing school policies so that students know where and with whom to file reports and what to expect from the process.

The facts surrounding the sexual violence cases investigated and resolved by OCR are tragic. In one college, several incidents of student-on-student sexual assault had occurred. The college referred the complaints to the police for treatment solely as a criminal matter while other sexual assaults took place, notwithstanding the college's Title IX obligation to address the incidents through in-school measures. In another, a local prosecutor threatened to charge college officials with obstruction of justice when they tried to conduct the school's Title IX investigation while the criminal investigation was pending. In a third, a student was found murdered in her dorm room after a fellow student had allegedly sneaked into her room, raped her, and then smothered her with a pillow; for ten weeks school officials maintained that no foul play was involved.

In another case, three victims did not receive an equitable hearing—they were made to sit very close to the accused; the accused was allowed to review evidence in advance of the hearing while the accusers were not; the accused was allowed to question the complainant and the two other accusers directly, including questions about their sexual histories; the accused, but not the accusers, was allowed to present character witnesses; and a victim was not allowed to present a witness to testify regarding the underlying events.

- OCR has also launched two proactive system-wide investigations into K-12 school districts where gang rape allegedly occurred, in one case by students and community members. Investigations have uncovered widespread peer-to-peer sexual violence and harassment suffered by middle and high school students, as well as some evidence of teacher-student violence or harassment.

- Where appropriate, OCR also works with the local prosecutor's office and police department to ensure that the college will be able to meet its Title IX obligation to conduct prompt investigations when it receives complaints of sexual harassment, even if there is a concurrent criminal investigation; and OCR requires the school to publish revised Title IX grievance procedures and nondiscrimination notices, to develop a Title IX training program for students and staff, and to conduct periodic assessments of campus climate to assess the effectiveness of its efforts to respond to and prevent sexual misconduct.

In addition, OCR has required schools and colleges to ensure that victims of harassment are provided services as needed, even before the outcome of the Title IX or criminal investigations, which can include counseling and academic support services, compensatory services and interim remedies. OCR has made it clear that hearings must be equitable—and what is provided to the accused during the hearing, such as the ability to present witnesses and the right to an appeal, must also be provided to the victim. OCR has also made clear that schools and colleges must keep accurate records and monitor progress in creating a safer campus in part by conducting community meetings and periodic assessments of the campus climate.

Prohibiting Sexual and Gender-based Harassment

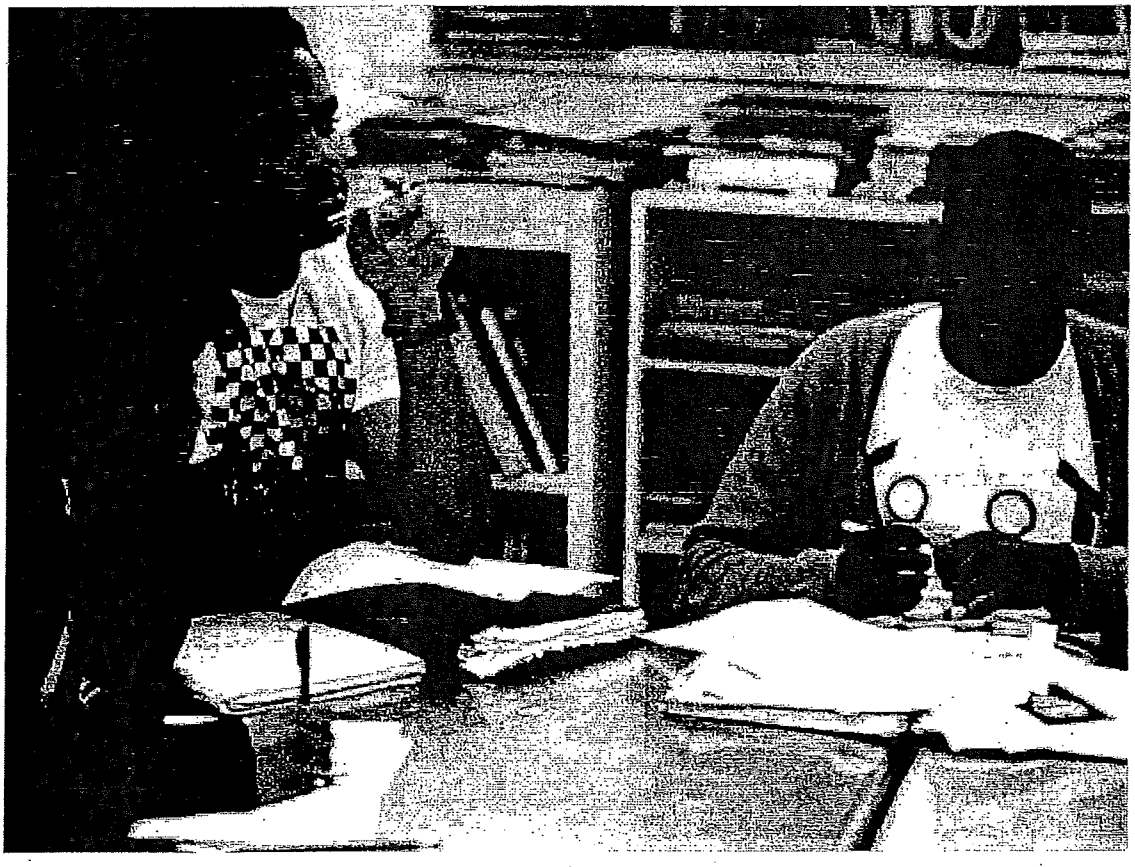
(Including Bullying that Rises to the Level of Harassment)

Sex- and gender-based harassment inflicts profound educational, emotional and physical consequences for the harassed students and their peers. Harassing conduct may take many forms, including bullying and name-calling, graphic and written statements, or other conduct that may be physically threatening, harmful, or humiliating. OCR seeks to eradicate discriminatory harassment and create environments in which all students are safe to learn.

Policy Guidance: Harassment The Department's first-of-its kind 2010 policy guidance on harassment and bullying explains that when bullying or other harassment based on sex or gender creates a hostile environment that is serious enough to limit or interfere with a student's ability to benefit from the services, activities, or opportunities offered by the school, the harassment violates Title IX. If an institution knows or has reason to know about student-on-student harassment, Title IX requires that the school take immediate and effective action to eliminate the harassment, to prevent its recurrence, and, when appropriate, to address its effects on the harassed student and the school community. OCR's policy guidance provides examples of harassment and illustrates how a school should respond in each

case. (The policy guidance also addresses harassment based on race, color, national origin and disability, which is covered by the other statutes OCR enforces.)

The 2010 guidance document also made clear that schools may violate Title IX by failing to effectively respond to bullying or harassment of LGBT students. Although Title IX does not cover discrimination based solely on sexual orientation, harassment of LGBT students constitutes sex-based discrimination if it is based on the student's failure to conform to sex stereotypes. For example, a student may be bullied because he or she does not act or dress according to his or her classmates' gender-based expectations for boys or girls. In addition, the guidance makes it clear that Title IX prohibits sexual harassment of all students, regardless of their actual or perceived sexual orientation or gender identity. The guidance reminds schools and universities that when harassment targets LGBT students, includes anti-gay comments, or is partly based on a target's actual or perceived sexual orientation, Title IX obligates the institution to investigate and remedy any overlapping sexual or gender-based harassment of those students.



Enforcement: Harassment In FY2009 through FY2011, OCR received nearly 700 complaints involving sexual or gender-based harassment. The types of sexual harassment found in OCR investigations include student-on-student harassment as well as teacher-student harassment. Recently, this behavior included:

- Two separate investigations involved students who were bullied and subjected to chronic sexual and gender-based harassment at school for not acting and dressing in ways that conformed to traditional gender stereotypes. Students were routinely called hostile and demeaning names. Female students reported being called "manly," "guy," or "he-she"; male students reported being called "girl," and "gay boy." In one case a middle school student was subject to insult and harassment for years, including being called "sissy" and "girl" and was the target of insults meant to question his masculinity, including references to his clothing as "girly" and suggestions that he "get surgery" to become a female. Students in these investigations were physically threatened and assaulted because of their nonconformity to gender stereotypes. Some of these students suffered physical and mental health problems or stopped attending school for periods of time, left the school district, entered into independent study programs, or dropped out of school entirely. One student committed suicide after experiencing prolonged harassment.
- In another case, a teacher allegedly bribed a student with candy and money and inquired about which students were homosexual, and locked another student in a classroom and sexually assaulted him.



These investigations led to resolution agreements in which the school districts agreed to take steps to prevent, eliminate and respond appropriately to sex-based harassment and to take certain further actions such as the revision of harassment policies, mandatory trainings on harassment, including training on empowering bystanders and the community to help stop bullying, hiring of new staff assigned to ensure equity and safety, mental health counseling for students who had been harassed, implementation of school climate surveys to assess school climate and student behavior, the formation of an advisory committee composed of diverse members of the school community, and the establishment of a student peer-based leadership program.

The Transformed Civil Rights Data Collection: *New Information to Improve Compliance With Title IX*

Information and transparency about disparities in educational opportunities and resources are powerful tools to aid schools in crafting policy to advance equity. Beginning in the summer of 2009, OCR worked to transform the Civil Rights Data Collection (CRDC) so that the 2009-10 collection released in 2012 includes a vast array of new indicators on the differences in the educational experiences of male and female students, including more data than ever on high school course offerings, course taking, and discipline, as well as long-standing indicators on single-sex classes and interscholastic athletics. For the 2011-12 school year, the CRDC will be conducted universally to include every school and district in the nation.

The data paint a picture of great success for girls in some areas and a need for more progress in others. Some of the key findings include the following:

College and Career Readiness:
Boys take AP tests and pass AP tests at a higher rate than girls. In fact, 73 percent of boys enrolled in an AP course took an AP exam, compared to 70 percent of girls. And 60 percent of boys passed an AP exam, compared to 55 percent of girls.

Interscholastic Athletics:
Across the CRDC sample, girls represented 42 percent of the interscholastic athletics participants and 49 percent of enrollment in schools. 35 percent of the schools offering interscholastic athletics reported a gap of 10 percentage points or more between the percentage of girls enrolled and the percentage of athletes who are girls.

Bullying and Harassment:
- 55 percent of students bullied or harassed on the basis of sex were female, although females represent 51 percent of the population.
- 79.6 percent of students disciplined for bullying or harassment on the basis of sex were male.

CRDC's New Functionality: A new Web tool now includes the ability to search the database for types of schools as well as schools or districts meeting certain criteria, and most indicators collected by OCR's CRDC are now capable of being cross-cut by race, disability status and sex. For example:

- **DISCIPLINE** Although the data show more males disciplined by every measure (e.g., male and female students each represent about half the student population, and males made up 74 percent of the students expelled), African American girls are suspended at higher rates than boys of most other races.

Expanding the Data Set: For the 2011-12 school year, the CRDC will include every school and district in the nation.

While data alone cannot be a substitute for the thorough investigation necessary to establish violations of civil rights law, this treasure trove of new data should help schools, districts and communities deepen their self-analysis and understanding of where change is needed.

Endnotes

i Note: Each federal fiscal year runs from October to September. For example, "fiscal year 2011" or "FY2011" runs from October 1, 2010 to September 30, 2011.

ii Digest of Education Statistics 2010, Table 316. Available at http://nces.ed.gov/programs/digest/2010menu_tables.asp. See also http://www.nsf.gov/statistics/wmpd/minwomen.cfm.

iii NCAA Sports Sponsorship and Participation Rates Report Student Athlete Participation 1981/1982-2010-2011. Available at: http://www.ncaapublications.com/productdownloads/PR2012.pdf

iv National Federation of State High School Associations 2010-11 High School Athletes Participation Survey. Available at: http://www.nfhs.org/content.aspx?id=3282

v Christopher P. Krebs et al., The Campus Sexual Assault Study Final Report xiii, 5-5 (Nat'l Criminal Justice Reference Service, Oct. 2007.

vi National Center for Education Statistics, Indicators of School Crime and Safety: 2011. Available at http://nces.ed.gov/programs/crimeindicators/crimeindicators2011/tables/table_06_1.asp.

Office for Civil Rights Mission:

To ensure equal access to education and to promote educational excellence throughout the nation through the vigorous enforcement of civil rights.

OCR's Goals:

- Protect individual complainants' civil rights through the complaint investigation and resolution process.
- Identify and eliminate any systemic violations of civil rights laws through proactive compliance reviews.
- Increase students and their families' awareness of students' civil rights by releasing policy guidance and providing technical assistance and outreach services.
- Record-keeping and monitoring requirements that promote accurate and immediate identification and resolution of harassment-related issues, patterns and problems.
- Increase schools', colleges', and universities' understanding of their civil rights obligations by releasing policy guidance documents and providing technical assistance and outreach services.

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THE DEPARTMENT OF EDUCATION'S MISSION IS TO PROMOTE STUDENT ACHIEVEMENT AND PREPARATION FOR GLOBAL COMPETITIVENESS BY FOSTERING EDUCATIONAL EXCELLENCE AND ENSURING EQUAL ACCESS.

A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students

Revised September 25, 2017

MINNESOTA

DEPARTMENT OF EDUCATION

A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students

Table of Contents

Introduction 1

Defining Transgender and Gender Nonconforming Students 1

Transgender and Gender Nonconforming Students at Risk 2

Drafting School Policies 2

Overview of Federal and State Law 3

Working with Parents, Community, School Officials and Board Members 4

- Parents 5
- Community, School Officials and Board Members 6

Names, Pronouns, and Student Records 7

Activities 8

- Athletics 8
- Homecoming, Prom and School Events 8

Dress Code 9

Restrooms, Locker Rooms and Hotel Accommodations 10

- Restrooms 10
- Locker Rooms 10
- Hotel Accommodations 10

September 25, 2017

Introduction

Safe, supportive and welcoming schools play a pivotal role in ensuring students are engaged in learning and that nothing hinders their ability to achieve their best in the classroom. The School Safety Technical Assistance Council seeks to help all schools in Minnesota ensure that all students in Minnesota regardless of their color, race, religion, gender or sexual orientation are afforded a safe, supportive and welcoming school environment where they can achieve success.

Ensuring that transgender and gender nonconforming students are safe and supported in school has been an emerging issue throughout the nation and in school districts and charter schools throughout Minnesota. During the last three years, an increasing number of school and school district administrators and staff members as well as students and families have contacted the Minnesota Department of Education and the School Safety Technical Assistance Center (http://education.state.mn.us/MDE/dse/safe/) seeking technical assistance on how to ensure safe, supportive and inclusive environments for all students, including transgender and gender nonconforming students.

In response, the council, which oversees the center, formed a workgroup to develop this toolkit to help school districts and charter schools create school environments where transgender and gender nonconforming students are safe, supported and fully included, and have equal access to the educational opportunities provided to all students as required by federal or state law.

Defining Transgender and Gender Nonconforming Students

Gender identity, assigned sex and sexual orientation are separate identity characteristics according to the American Psychological Association and National Association of School Psychologists.[1] Any student, including transgender and gender nonconforming students, may be heterosexual, gay, lesbian or bisexual. Gender identity does not correlate with sexual orientation.

Understanding the terminology associated with gender identity is important to providing a safe and supportive school environment for students. The following terms and definitions are included in this toolkit to assist school leaders and staff in understanding the information presented in this resource:

- Gender identity – an individual's innate sense of one's own gender; a deeply held sense of psychological knowledge of one's own gender, regardless of the gender assigned at birth.
- Gender expression – the external appearance, characteristics or behaviors typically associated with a specific gender.
- Gender nonconforming – people whose gender expression differs from stereotypical expectations, such as "feminine" boys, "masculine" girls, and those who are perceived as androgynous or gender nonbinary.
- Sexual orientation – refers to the sex of those to whom one is sexually and romantically attracted. Categories of sexual orientation typically have included attraction to members of one's own sex (gay or

[1] American Psychological Association & National Association of School Psychologists. (2015). Resolution On Gender And Sexual Orientation Diversity In Children And Adolescents In Schools. (http://www.apa.org/about/policy/orientation-diversity.aspx)

lesbian), attraction to members of the other sex (heterosexual) and attraction to members of both sexes (bisexual).

- Transgender – an umbrella term for people whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth.

Transgender and Gender Nonconforming Students at Risk

School officials play powerful proactive roles in creating safe environments for transgender and gender nonconforming students. In 2015, the National Center for Transgender Equality found that 77 percent of students who identify as transgender or gender nonconforming reported being harassed at some point between kindergarten and grade 12.[2] Specifically, 54 percent of the above individuals were verbally harassed, 24 percent were physically attacked and 13 percent were sexually assaulted during this time because of being transgender. These students faced such severe mistreatment that 17 percent dropped out of school. Additionally, a recent national study of more than 10,000 youth found that 50 percent of gender nonconforming students reported that they did not participate in school activities because they feared being discriminated against, 42 percent were called derogatory names on a consistent basis and 40 percent reported that they were frequently and often excluded from school activities.[3]

In Minnesota, the Minnesota Student Survey data for transgender and gender nonconforming students are consistent with national data. Transgender and gender nonconforming students in the 9th and 11th grades reported elevated levels of bullying and harassment.[4] Additionally, 31 percent of transgender and gender nonconforming students have attempted suicide and 61 percent had seriously considered attempting suicide.

Drafting School Policies

This toolkit has been compiled to provide information to assist schools in establishing or amending school policies to ensure that all students are provided with a safe and supportive school environment. The information provided within this document to assist schools does not create new legal obligations or requirements under federal or state law.

Several Minnesota schools have already drafted school policies on creating a safe, supportive and welcoming environment for transgender and gender nonconforming students.[5] The council has also located several similar policies across the United States that have been used to support transgender and gender nonconforming

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[2] James, S.E., Herman, J.L., Rankin, S. Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, D.C., National Center for Transgender Equality.

[3] See, Human Rights Campaign Foundation survey "Growing Up LGBT in America." (http://issuu.com/humanrightscampaign/docs/growing-up-lgbt-in-america?e=0)

[4] See, 2016 Minnesota Student Survey (MSS). (http://education.state.mn.us/MDE/dse/health/mss/index.htm)

[5] See, Minneapolis Public Schools Policies Supporting All Genders (http://osfce.mpls.k12.mn.us/policy); Mounds Park Academy Guidelines on Transgender and Gender Diverse Students (https://www.moundsparkacademy.org/news/2015/10/01/guidelines-on-transgender-and-gender-diverse-students/) ; Saint Paul Public Schools Gender Inclusion Policy. (http://www.spps.org/cms/lib010/MN01910242/Centricity/Domain/1254/gender_inclusion_policy_final_v3_17_15.pdf)

students.[6] The majority of the policies identify how staff can support transgender and gender nonconforming students, discuss the obligations of staff to prevent discrimination, bullying and harassment and outline how school officials will coordinate and collaborate with each other and with parents.

Overview of Federal and State Law

In 2011, the U.S. Department of Education Office for Civil Rights (OCR) stated that school officials, under Title IX, have a duty to investigate gender discrimination and harassment claims concerning actual or perceived sexual orientation as well as failure to conform to traditional societal notions of male and female.[7] In 2014, OCR provided additional guidance to schools investigating claims based on gender identity and failure to conform to societal stereotypes and actual or perceived sexual orientation.[8]

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[6] El Rancho Unified School District, Transgender and Gender-nonconforming students (http://www.erusd.org/pdf/board_policies/5145_3.pdf), New York State Education Department, Guidance to Schools on Creating Safe and Supportive School Environments for Transgender and Gender-Nonconforming Students (http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf), Washington Office of State Superintendent of Public Instruction, Prohibiting Discrimination in Washington Public Schools (2012), Prohibiting Discrimination in Public Schools http://www.k12.wa.us/Equity/pubdocs/ProhibitingDiscriminationInPublicSchools.pdf), Kansas City 33 School District (MO), Prohibition Against Discrimination, Harassment and Retaliation Transgender and Gender Nonconforming Employees and Students (https://simbli.eboardsolutions.com/ePolicy/policy.aspx?PC=AC-AP(1)&Sch=228&S=228&RevNo=1.01&C=A&Z=R), Atherton High School, Jefferson County School District (KY), Policy on School Space (http://schools.jefferson.kyschools.us/high/atherton/PDFs/SBDM Documents/Policy500DraftLosAngelesUnifiedSchoolDistrictRevisedModel.pdf), Los Angeles Unified School District (CA), Transgender Students- Ensuring Equity and Nondiscrimination (http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/FLDR_GENERAL_COUNSEL/BUL-6224.1 TRANSGENDER POLICY%2C 08-15-14 - ADDED ED CODE 221 5.PDF), Maryland State Department of Education, Providing Safe Spaces for Transgender and Gender Nonconforming Youth: Guidelines for Gender Identity Nondiscrimination, Massachusetts Department of Elementary and Secondary Education (http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/ProvidingSafeSpacesTransgendergenderNonConforming Youth012016.pdf), Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment - Nondiscrimination on the Basis of Gender Identity (2014) (http://www.doe.mass.edu/sfs/lgbtq/GenderIdentity.html), Alaska Matanuska-Susitna Borough School District (AK), Transgender Student Guidelines (2015) (https://www.matsuk12.us/site/handlers/filedownload.ashx?moduleinstanceid=10846&dataid=41646&FileName=Title%20IX--Transgender%20Students%20Guidelines.pdf), Oregon Department of Education (http://www.ode.state.or.us/groups/supportstaff/hklb/schoolnurses/transgenderstudentguidance.pdf), Guidance to School Districts: Creating Safe and Supportive School Environments for Transgender and Gender-Nonconforming Students, Wisconsin Shorewood School District (WI), Nondiscrimination Guidelines Related to Students Who Are Transgender and Students Nonconforming to Gender Role Stereotypes (2014) (http://www.shorewood.k12.wi.us/uploaded/Board_Documents/Policies/411_Guidelines_and_Exhibit.pdf?1393865642372), Nevada Washoe County School District (NV), Gender Identity and Gender Non-Conformity - Students, (http://washoecountyschools.net/csi/pdf_files/5161 Reg - Gender Identity v1.pdf)

[7] U.S. Department of Education Office for Civil Rights (OCR) Dear Colleague Letter (April 4, 2011). (https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html)

[8] U.S. Department of Education Office for Civil Rights (OCR) Questions and Answers on Title IX and Sexual Violence (2014). (https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf)

The Minnesota Human Rights Act (https://www.revisor.mn.gov/statutes/?id=363a) prohibits discrimination and harassment in education based on gender expression, actual or perceived gender identity and actual or perceived sexual orientation.[9] Minnesota law provides that all students have the right to attend school in a safe and supportive environment where they can learn and have equal access to all educational opportunities.[10] Illegal discrimination can occur if a student is expressly denied full utilization of a benefit at school, is indirectly denied full utilization of a benefit at school due to a policy, practice or procedure of the school or if a student is exposed to a hostile environment that interferes with the student's ability to learn or participate in activities at school.

The Safe and Supportive Minnesota Schools Act[11] (https://www.revisor.mn.gov/statutes/?id=363a) prohibits bullying and harassment of all students, including bullying and harassment of students based on gender expression, actual or perceived gender identity and actual or perceived sexual orientation. Under the Safe and Supportive Minnesota Schools Act, public school districts and charter schools are required to adopt a policy that prohibits bullying and harassment of all students, including bullying and harassment based on sex, gender identity, gender expression and sexual orientation.[12] Bullying may also rise to the level of a discriminatory hostile educational environment under Title IX or the Minnesota Human Rights Act.

Students who believe their rights under one of the above laws may have been violated may contact:

Title IX – the U.S. Department of Education regional office in Chicago (mailto:OCR.Chicago@ed.gov), (312) 730-1560 or by fax at (312) 730-1576.

MDHR – the Minnesota Department of Human Rights, (651) 539-1121, 1-800-657-3704 Toll Free, 1-800-627-3529 MN Relay, or by email at www.mn.gov/mdhr.

To seek assistance related to school bullying, contact the School Safety Technical Assistance Center, 651-582-8364. Find immediate resources to address bullying. (http://education.state.mn.us/MDE/dse/safe/bprev/)

Working with Parents, Community, School Officials and Board Members

Research shows that communicating and engaging with parents, members of the school community and throughout the school is important to ensure that transgender and gender nonconforming students are safe and supported in school.

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[9] See, Minn. Stat. §363A.03, Subd. 44, Sexual Orientation is defined as "having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. Sexual orientation does not include a physical or sexual attraction to children by an adult."

[10] See, Minn. Stat. §363A.13.

[11] See, Minn. Stat. §121A.031.

[12] See, Minn. Stat. §121A.031, Subd. 6.

Parents

Families of transgender and gender nonconforming students play a critical role in their child's well-being and success at school. A family's acceptance and support of their child's gender identity is strongly associated with positive mental health and academic achievement.

Schools should collaborate closely with parents to address the individualized needs of transgender or gender nonconforming students. Schools can offer parents educational information and professional resources to help families meet the needs of their transgender or gender nonconforming child. School-based mental health professionals can direct families to additional resources for family support and medical and mental health resources for the child or adolescent.

When students transition, they may need more support. *Students and their families make their own decisions about what the student needs during transition as every student's transition is unique.*

Some students will embark upon a social transition but may or may not undergo medical transition. During a social transition, a student may change their name and/or their pronouns, clothing, hair, use of make-up and overall personal style. Medical transition may include surgical procedures but may be limited to hormone medication. Schools generally play a very limited role in the medical aspects of a student's transition as the medical choice is a private decision that does not need to be shared with the school.

To ensure a safe and supportive transition at school, school leaders and staff should meet with the student and parents to actively discuss transition. The Gender Spectrum's Student Gender Transition Plan (https://www.dropbox.com/s/wgtsogsv1rnthvr/Student_Gender_Transition_Plan_030215.pdf?dl=0) may be a helpful resource for school staff when planning with the student and family. Schools should appreciate that it is helpful to the student to have support before, during and after transition. As there is no standard timeframe or sequence of steps in which a student transitions, schools should remain flexible and responsive to the student and their family during a student's gender transition and be open to the possibility that the needs of the student may evolve during the transition process.

While students often feel excited, happy and relieved to have their gender affirmed at school, transition may also be a time of great stress for them, their family and guardians. Family may fear that the student will be excluded, isolated, harassed or physically harmed at school. Stress may also be compounded for individuals who are members of racially or other historically disenfranchised communities. For instance, a transgender student who is black may experience compounding stress from discrimination based on racial identity and gender identity.

> Language around gender is evolving. In some Native American communities, the term "Two-Spirit" is used for an American Indian person possessing a blend of male and female spirits. The term honors people of native heritage. Two-spirit students traditionally do not seek out medical transition nor use the language of transgender nor gender nonconforming to describe their gender.

The transition experience of one student and family may be very different than that of another student and family. For instance, a student and family may want a very private and slow transition. They may request to move schools or wait until the student enters the next grade level in a new building. In other cases, a student and family may want a very public and immediate transition at their present school, including formal class announcements and/or an optional after school meeting to discuss the transition with families and peers.

Racial, cultural, economic, religious or other factors influence the transition experience the student and family choices and decisions. Transgender and gender nonconforming students and their families are racially and

culturally diverse. During transition, diverse and unique needs may arise. For example, a transgender or gender nonconforming student's family who does not speak English may need a translator or interpreter who understands and knows key terminology to properly support the student and the student's family.

School is often the safest environment for transgender and gender nonconforming students. Some transgender and gender nonconforming students are abused by family members at home. When concerned about a student's well-being and safety at home, it is best practice for school staff such as social workers or counselors to work directly with the student to develop a plan to ensure their safety. If school staff determines the student is not safe, the student support team should follow their protocol for reporting child neglect or harm. Research shows that transgender and gender-nonconforming students are at high risk for self-harm.

Community, School Officials and Board Members

School leaders can create a safe and supportive environment by engaging a broad and diverse group of stakeholders within the school community. Stakeholders to be considered include school staff members, students, parents, student groups, family groups, racial and cultural groups as well as representatives from churches, businesses and community organizations.

School officials should consider holding small, on-going meetings to specifically listen to the needs of transgender and gender nonconforming students and their families and to gain an understanding of the current environment and needs in the school or district. In addition, holding larger, informational listening sessions with stakeholders early in the process will help build trust and provide schools and school districts with a broader understanding of the concerns and needs of the school community.

Feedback provided during listening sessions will help school leaders better understand the concerns, questions and needs of students and this will inform their work. What school leaders learn during these sessions will not only help them develop the best policies and practices for their school but it will often help them communicate more effectively with all stakeholders and prepare stakeholders for implementation of new policies and practices.

Best practice tips for community engagement:

1. Make the focus of the meetings clear to all who attend. For example, if the meeting focus is on the development of policies and practices to meet the needs of transgender and gender nonconforming students and all students, the focus would not be about the value of or the existence of transgender and gender nonconforming people.

2. Set clear expectations for a respectful, non-discriminatory dialogue. For example, one expectation can be that participants speak and act in a kind and respectful way. When needed, school leaders should offer clarifying statements about non-discrimination. If appropriate, school leaders may also wish to remind people of the school's mission statement or the school's climate improvement work.

3. Allow all stakeholders the opportunity to ask questions or raise concerns, set time limits for speaking and remind participants about individual privacy.

4. Include students and families from across racial, cultural and religious groups in appropriate meetings.

5. School leaders should be prepared to quickly respond to questions raised and concerns expressed. School officials may wish to develop some simple talking points to address questions and concerns raised. For example, *"I know this is new territory for many of us. Sometimes change can be challenging. Perhaps I can share some information with you about gender identity and transgender people?"* Example talking points including the sample below can be found in "Schools in Transition – A Guide for Supporting

Transgender Students in K-12 Schools."[13] (https://www.genderspectrum.org/staging/wp-content/uploads/2015/08/Schools-in-Transition-2015.pdf)

Names, Pronouns, and Student Records

Schools should not assume a student's name or pronoun. School officials should ask the student and use the requested name and pronouns. Students need not provide schools with legal documents to correct their first name or gender within their student records. When students are referred to by the wrong pronoun by peers or school staff, students may feel intimidated, threatened, harassed or bullied. School staff can ensure a more respectful environment for all students when efforts are made to correct the misuse of pronouns, as well as names, in student records.

Teachers can support inclusion of all students, including transgender and gender-nonconforming students, by embracing simple classroom practices that allow for all students to participate in accordance with their gender identity. Classroom practices that recognize and affirm all students, including transgender and gender-nonconforming students, are varied and can include how the teacher addresses the classroom and how the teacher separates students into groups.

Family Educational Rights and Privacy Act (FERPA) (https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=rn) protects the privacy of students. Schools should note that neither a student's gender nor pronouns are considered public or directory information. Casual use of a student's incorrect pronoun or incorrect name may violate FERPA. FERPA also permits families to elect not to disclose directory information about their student.

1. Because schools have multiple student record systems, schools should inventory all of their student record systems to ensure that they have implemented a systemic process that ensures that the names of students are consistently used as they wish to be identified. Schools should consider adding a customized data field for pronouns in their student record system. Schools should ensure that information for the student is properly recorded within the Minnesota Automated Reporting Student System (MARSS). If you have questions or need assistance with this, contact Minnesota Department of Education staff, (marss@state.mn.us).

2. A school administrator or designee should meet with the student and family to discuss how the student's name and gender will be communicated to peers and the school community. School principals should consider periodically reminding all staff personnel to consistently use the requested name and pronouns of students.

3. Teachers could address students as "students" and "scholars" to be inclusive as opposed to "boys and girls." You can learn more about what schools are doing to make transgender students comfortable in the

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[13] Gender Spectrum et al., 2015, Schools in Transition – A Guide for Supporting Transgender Students in K-12 Schools.

(https://www.genderspectrum.org/staging/wp-content/uploads/2015/08/Schools-in-Transition-2015.pdf)

classroom on page 10 of Example Policies and Emerging Practices for Supporting Transgender Students.[14] (http://education.state.mn.us/mdeprod/idcplg?IdcService=GET_FILE&dDocName=MDE070891&RevisionSelectionMethod=latestReleased&Rendition=primary)

Activities

Schools should not exclude any student from participation in a school-affiliated activity based on a student's gender identity or transgender status. Schools should not treat students differently on the basis of sex, including gender identity, in any school activities or the application of any school rule. Schools must provide the same opportunities to transgender and gender nonconforming students that they provide to all students. Transgender or gender nonconforming students should be able to participate in activities in a manner that is consistent with their gender identity.

Athletics

Sports provide youth with unique opportunities to improve their physical fitness and develop valuable life skills such as goal setting, perseverance, teamwork and a commitment to fair play. Title IX requires schools provide transgender students with the right to participate in such activities, including athletics, in a manner consistent with their gender identity.[15] The Minnesota State High School League allows participation for all students regardless of their gender identity or expression in an environment free from discrimination with an equal opportunity for participation in athletics and fine arts.

If a school does not allow a student to participate on the team consistent with their gender identity or gender expression, a student or the student's family can make an appeal to the Minnesota State High School League (MSHSL) (http://www.mshsl.org/mshsl/index.asp). The Eligibility Appeal Procedures for a transgender student is outlined in the 300.00 Bylaws: Administration of Student Eligibility (http://www.mshsl.org/mshsl/Publications/code/handbook/300 Bylaws.pdf?year=2016) section of MSHSL's Official Handbook For questions and assistance regarding eligibility appeal procedures, contact the MSHSL at (763) 560-2262.

Homecoming, Prom and School Events

School traditions are important to all students, and transgender and gender nonconforming students are no exception. Students should not be prohibited from attending homecoming, prom or other social events because they are transgender or gender nonconforming. Students who are transgender or gender nonconforming should be allowed to socialize, dance, request songs and take photos similar to any other students in the school.

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[14] U.S. Department of Education, Office of Elementary and Secondary Education, Office of Safe and Healthy Students, Examples of Policies and Emerging Practices for Supporting Transgender Students (http://education.state.mn.us/mdeprod/idcplg?IdcService=GET_FILE&dDocName=MDE070891&RevisionSelectionMethod=latestReleased&Rendition=primary) (May 2016).

[15] See, 34 C.F.R. §106.41(a) which provides "No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis."

Under the Minnesota Human Rights Law, schools must allow transgender and gender-nonconforming students to participate fully in all school activities, including traditions that incorporate gender roles categorized as "male" and "female." For example, one tradition of many schools is to have a male homecoming king and a female homecoming queen. In these situations, the school should allow a student to participate according to their gender identity.

In an effort for inclusivity, schools may wish to consider revisiting existing traditions or establishing new traditions. For example, instead of electing a homecoming king and homecoming queen, some schools have chosen to nominate "prom ambassadors," "homecoming court" or "homecoming royalty." At the University of Minnesota, for example, the titles of homecoming king and queen have been replaced with the title "Homecoming Royalty" and students selected as royalty will now be called "royals."[16]

Dress Code

Gender nonconforming students and transgender students experience elevated rates of bullying and harassment based on gender identity or how they express their gender, which can include how they dress. In a recent study, 52 percent of transgender and gender nonconforming students report that they were not allowed to dress in a way that fit their gender identity or expression.[17]

While school dress codes need to be inclusive, it is equally important that school staff support transgender and gender nonconforming students and take steps to prevent bullying and harassment of these students during the school day and at school events as well.

All students often use clothing to express many facets of their identity. Clothing choices are informed by ethnicity, culture, religious beliefs and other aspects of identity, including gender identity. Schools routinely take into consideration the religious and cultural expressions of students when establishing dress codes. Schools should similarly take into consideration the expression of gender identity of students.

1. No student should be disciplined for wearing clothing that fails to conform to perceptions of gender based stereotypes.

2. School staff should not pressure or coerce any student into wearing certain attire choices over others that are provided. Here is one example of gender inclusive dress guidelines for a school event: *"All students are expected to wear: a) black pants, a white collared shirt and a solid color tie;* OR *b) a knee-length black dress OR c) a black skirt that is knee length or longer and a white blouse OR c) black dress pants and a white collared shirt or white blouse."*

3. Where students are expected to dress formally, it is best practice to allow students to dress in formal wear that aligns with their gender identity while adhering to a gender inclusive dress code.

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[16] Verges, J. (February 27, 2017). UMN Homecoming will crown gender-neutral 'royals,' not king and queen. Pioneer Press. Retrieved from http://www.twincities.com.

[17] James, S.E., Herman, J.L., Rankin, S. Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, D.C., National Center for Transgender Equality.

Restrooms, Locker Rooms and Hotel Accommodations

Title IX and the Minnesota Human Rights Act declare that it is an unfair discriminatory to deny any student the full and equal enjoyment of any educational institution such as a public school. Schools ensure full and equal enjoyment of public accommodations for students where they are not stigmatized or segregated from the rest of the general student population when in exercising their right to the public accommodation.

> "A policy that requires an individual to use a bathroom that does not conform to his or her gender identity punishes that individual for his or her gender nonconformance, which in turn violates Title IX." Whitaker v. Kenosha Unified School District, (7th U.S. Circuit Court of Appeals, May 30, 2017).[18]

Within the school setting, school officials and leaders need to ensure that all students have access to restrooms, have access to locker rooms to fully participate in classes, sports and activities and have access to hotel accommodations when travelling with school groups for athletic, educational and/or cultural purposes.

Schools should work with transgender and gender nonconforming students to ensure that they are able to access needed facilities in a manner that is safe, consistent with their gender identity and does not stigmatize them. Privacy objections raised by a student in interacting with a transgender or gender nonconforming student may be addressed by segregating the student raising the objection provided that the action of the school officials does not result in stigmatizing the transgender and gender nonconforming student.

Restrooms

Transgender and gender nonconforming students should be afforded the opportunity to use the restroom of their choice. Some students may feel uncomfortable with using a restroom with a transgender or gender nonconforming student. Any student who wishes not to share a restroom with a transgender or gender nonconforming student can be provided a private space such as a single-user restroom. Many schools have chosen to make single-stall restrooms available to all students. For example, some schools have re-purposed a staff restroom into a single user restroom for all students to use.

Locker Rooms

Students use locker rooms during their school day for physical education classes, sports and other activities. Some transgender and gender nonconforming students may prefer a private space while others may wish to use the locker room consistent with their gender identity. Coaches should consider how they can utilize privacy curtains, restrooms and separate changing schedules to provide for privacy for all students.

Hotel Accommodations

If students are to be separated based on gender when travelling for athletic, educational or cultural activities, school officials should allow a transgender or gender nonconforming student the opportunity to room with peers who match the student's gender identity unless the transgender or gender nonconforming student requests otherwise. At times, any student may have specific needs for privacy and the school can make arrangements based on that student's wishes.

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[18] Ashton Whitaker v. Kenosha Unified School District (http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2017/D05-30/C:16-3522:J:Williams:aut:T:fnOp:N:1971382:S:0) (7th Circuit Court of Appeals May 30, 2017).