

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.

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-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 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.

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 Clery

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 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>.

³⁴ Available at <http://www.ed.gov/ocr/firstamend.html>.

³⁵ Available at <http://www.ed.gov/ocr/letters/colleague-201010.html>.

³⁶ 34 C.F.R. § 106.42.

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>.

N. Other 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/>



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 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

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>.

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.

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



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 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.

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.

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 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.

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).

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.

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.

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

⁷ 34 C.F.R. § 106.9.

⁸ 34 C.F.R. § 106.8(a).

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.

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

⁹ 34 C.F.R. § 106.9.

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>.

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 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.

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.

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

ADDITIONAL TITLE IX-RELATED DEAR COLLEAGUE LETTERS



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

January 25, 2013

Dear Colleague:

Extracurricular athletics—which include club, intramural, or interscholastic (e.g., freshman, junior varsity, varsity) athletics at all education levels—are an important component of an overall education program. The United States Government Accountability Office (GAO) published a report that underscored that access to, and participation in, extracurricular athletic opportunities provide important health and social benefits to all students, particularly those with disabilities.¹ These benefits can include socialization, improved teamwork and leadership skills, and fitness. Unfortunately, the GAO found that students with disabilities are not being afforded an equal opportunity to participate in extracurricular athletics in public elementary and secondary schools.²

To ensure that students with disabilities consistently have opportunities to participate in extracurricular athletics equal to those of other students, the GAO recommended that the United States Department of Education (Department) clarify and communicate schools' responsibilities under Section 504 of the Rehabilitation Act of 1973 (Section 504) regarding the provision of extracurricular athletics. The Department's Office for Civil Rights (OCR) is responsible for enforcing Section 504, which is a Federal law designed to protect the rights of individuals with disabilities in programs and activities (including traditional public schools and charter schools) that receive Federal financial assistance.³

In response to the GAO's recommendation, this guidance provides an overview of the obligations of public elementary and secondary schools under Section 504 and the Department's Section 504 regulations, cautions against making decisions based on presumptions and stereotypes, details the specific Section 504 regulations that require students with disabilities to have an equal opportunity for participation in nonacademic and extracurricular services and activities, and discusses the provision of separate or different athletic opportunities. The specific details of the illustrative examples offered in this guidance are focused on the elementary and secondary school context. Nonetheless, students with disabilities at the postsecondary level must also be provided an equal opportunity to participate in athletics, including intercollegiate, club, and intramural athletics.⁴

I. Overview of Section 504 Requirements

To better understand the obligations of school districts with respect to extracurricular athletics for students with disabilities, it is helpful to review Section 504's requirements.

Under the Department's Section 504 regulations, a school district is required to provide a qualified student with a disability an opportunity to benefit from the school district's program equal to that of students without

disabilities. For purposes of Section 504, a person with a disability is one who (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.⁵ With respect to public elementary and secondary educational services, “qualified” means a person (i) of an age during which persons without disabilities are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to persons with disabilities, or (iii) to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).⁶

Of course, simply because a student is a “qualified” student with a disability does not mean that the student must be allowed to participate in any selective or competitive program offered by a school district; school districts may require a level of skill or ability of a student in order for that student to participate in a selective or competitive program or activity, so long as the selection or competition criteria are not discriminatory.

Among other things, the Department’s Section 504 regulations prohibit school districts from:

- denying a qualified student with a disability the opportunity to participate in or benefit from an aid, benefit, or service;

- affording a qualified student with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others;

- providing a qualified student with a disability with an aid, benefit, or service that is not as effective as that provided to others and does not afford that student with an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement in the most integrated setting appropriate to the student’s needs;

- providing different or separate aid, benefits, or services to students with disabilities or to any class of students with disabilities unless such action is necessary to provide a qualified student with a disability with aid, benefits, or services that are as effective as those provided to others; and

- otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.⁷

The Department’s Section 504 regulations also require school districts to provide a free appropriate public education (Section 504 FAPE) to each qualified person with a disability who is in the school district’s jurisdiction, regardless of the nature or severity of the person’s disability.⁸

A school district must also adopt grievance procedures that incorporate appropriate due process standards and that provide for prompt and equitable resolution of complaints alleging violations of the Section 504 regulations.⁹

A school district’s legal obligation to comply with Section 504 and the Department’s regulations supersedes any rule of any association, organization, club, or league that would render a student ineligible to participate, or limit the eligibility of a student to participate, in any aid, benefit, or service on the basis of disability.¹⁰ Indeed, it would violate a school district’s obligations under Section 504 to provide significant assistance to

any association, organization, club, league, or other third party that discriminates on the basis of disability in providing any aid, benefit, or service to the school district's students.¹¹ To avoid violating their Section 504 obligations in the context of extracurricular athletics, school districts should work with their athletic associations to ensure that students with disabilities are not denied an equal opportunity to participate in interscholastic athletics.¹²

II. Do Not Act On Generalizations and Stereotypes

A school district may not operate its program or activity on the basis of generalizations, assumptions, prejudices, or stereotypes about disability generally, or specific disabilities in particular. A school district also may not rely on generalizations about what students with a type of disability are capable of—one student with a certain type of disability may not be able to play a certain type of sport, but another student with the same disability may be able to play that sport.

Example 1: A student has a learning disability and is a person with a disability as defined by Section 504. While in middle school, this student enjoyed participating in her school's lacrosse club. As she enters the ninth grade in high school, she tries out and is selected as a member of the high school's lacrosse team. The coach is aware of this student's learning disability and believes that all students with the student's particular learning disability would be unable to play successfully under the time constraints and pressures of an actual game. Based on this assumption, the coach decides never to play this student during games. In his opinion, participating fully in all the team practice sessions is good enough.

Analysis: OCR would find that the coach's decision violates Section 504. The coach denied this student an equal opportunity to participate on the team by relying solely on characteristics he believed to be associated with her disability. A school district, including its athletic staff, must not operate on generalizations or assumptions about disability or how a particular disability limits any particular student. Rather, the coach should have permitted this student an equal opportunity to participate in this athletic activity, which includes the opportunity to participate in the games as well as the practices. The student, of course, does not have a right to participate in the games; but the coach's decision on whether the student gets to participate in games must be based on the same criteria the coach uses for all other players (such as performance reflected during practice sessions).

III. Ensure Equal Opportunity for Participation

A school district that offers extracurricular athletics must do so in such manner as is necessary to afford qualified students with disabilities an equal opportunity for participation.¹³ This means making reasonable modifications and providing those aids and services that are necessary to ensure an equal opportunity to participate, unless the school district can show that doing so would be a fundamental alteration to its program.¹⁴ Of course, a school district may adopt bona fide safety standards needed to implement its extracurricular athletic program or activity. A school district, however, must consider whether safe participation by any particular student with a disability can be assured through reasonable modifications or the provision of aids and services.¹⁵

Schools may require a level of skill or ability for participation in a competitive program or activity; equal opportunity does not mean, for example, that every student with a disability is guaranteed a spot on an

athletic team for which other students must try out. A school district must, however, afford qualified students with disabilities an equal opportunity for participation in extracurricular athletics in an integrated manner to the maximum extent appropriate to the needs of the student.¹⁶ This means that a school district must make reasonable modifications to its policies, practices, or procedure whenever such modifications are necessary to ensure equal opportunity, unless the school district can demonstrate that the requested modification would constitute a fundamental alteration of the nature of the extracurricular athletic activity.

In considering whether a reasonable modification is legally required, the school district must first engage in an individualized inquiry to determine whether the modification is necessary. If the modification is necessary, the school district must allow it unless doing so would result in a fundamental alteration of the nature of the extracurricular athletic activity. A modification might constitute a fundamental alteration if it alters such an essential aspect of the activity or game that it would be unacceptable even if it affected all competitors equally (such as adding an extra base in baseball). Alternatively, a change that has only a peripheral impact on the activity or game itself might nevertheless give a particular player with a disability an unfair advantage over others and, for that reason, fundamentally alter the character of the competition. Even if a specific modification would constitute a fundamental alteration, the school district would still be required to determine if other modifications might be available that would permit the student's participation. To comply with its obligations under Section 504, a school district must also provide a qualified student with a disability with needed aids and services, if the failure to do so would deny that student an equal opportunity for participation in extracurricular activities in an integrated manner to the maximum extent appropriate to the needs of the student.¹⁷

Example 2: A high school student has a disability as defined by Section 504 due to a hearing impairment. The student is interested in running track for the school team. He is especially interested in the sprinting events such as the 100 and 200 meter dashes. At the tryouts for the track team, the start of each race was signaled by the coach's assistant using a visual cue, and the student's speed was fast enough to qualify him for the team in those events. After the student makes the team, the coach also signals the start of races during practice with the same visual cue. Before the first scheduled meet, the student asks the district that a visual cue be used at the meet simultaneously when the starter pistol sounds to alert him to the start of the race. Two neighboring districts use a visual cue as an alternative start in their track and field meets. Those districts report that their runners easily adjusted to the visual cue and did not complain about being distracted by the use of the visual cue.

After conducting an individualized inquiry and determining that the modification is necessary for the student to compete at meets, the district nevertheless refuses the student's request because the district is concerned that the use of a visual cue may distract other runners and trigger complaints once the track season begins. The coach tells the student that although he may practice with the team, he will not be allowed to participate in meets.

Analysis: OCR would find that the school district's decision violates Section 504.

While a school district is entitled to set its requirements as to skill, ability, and other benchmarks, it must provide a reasonable modification if necessary, unless doing so would fundamentally alter the nature of the activity. Here, the student met the benchmark requirements as to speed and skill in the 100 and 200 meter dashes to make the team. Once the school district determined that the requested modification was necessary, the school district was then obligated to provide the visual cue unless it determined that providing it

would constitute a fundamental alteration of the activity. In this example, OCR would find that the evidence demonstrated that the use of a visual cue does not alter an essential aspect of the activity or give this student an unfair advantage over others. The school district should have permitted the use of a visual cue and allowed the student to compete.

Example 3: A high school student was born with only one hand and is a student with a disability as defined by Section 504. This student would like to participate on the school's swim team. The requirements for joining the swim team include having a certain level of swimming ability and being able to compete at meets. The student has the required swimming ability and wishes to compete. She asks the school district to waive the "two-hand touch" finish it requires of all swimmers in swim meets, and to permit her to finish with a "one-hand touch." The school district refuses the request because it determines that permitting the student to finish with a "one-hand touch" would give the student an unfair advantage over the other swimmers.

Analysis: A school district must conduct an individualized assessment to determine whether the requested modification is necessary for the student's participation, and must determine whether permitting it would fundamentally alter the nature of the activity. Here, modification of the two-hand touch is necessary for the student to participate. In determining whether making the necessary modification – eliminating the two-hand touch rule – would fundamentally alter the nature of the swim competition, the school district must evaluate whether the requested modification alters an essential aspect of the activity or would give this student an unfair advantage over other swimmers.

OCR would find a one-hand touch does not alter an essential aspect of the activity. If, however, the evidence demonstrated that the school district's judgment was correct that she would gain an unfair advantage over others who are judged on the touching of both hands, then a complete waiver of the rule would constitute a fundamental alteration and not be required.

In such circumstances, the school district would still be required to determine if other modifications were available that would permit her participation. In this situation, for example, the school district might determine that it would not constitute an unfair advantage over other swimmers to judge the student to have finished when she touched the wall with one hand and her other arm was simultaneously stretched forward. If so, the school district should have permitted this modification of this rule and allowed the student to compete.

Example 4: An elementary school student with diabetes is determined not eligible for services under the IDEA. Under the school district's Section 504 procedures, however, he is determined to have a disability. In order to participate in the regular classroom setting, the student is provided services under Section 504 that include assistance with glucose testing and insulin administration from trained school personnel. Later in the year, this student wants to join the school-sponsored gymnastics club that meets after school. The only eligibility requirement is that all gymnastics club members must attend that school. When the parent asks the school to provide the glucose testing and insulin administration that the student needs to participate in the gymnastics club, school personnel agree that it is necessary but respond that they are not required to provide him with such assistance because gymnastics club is an extracurricular activity.

Analysis: OCR would find that the school's decision violates Section 504.

The student needs assistance in glucose testing and insulin administration in order to participate in activities during and after school. To meet the requirements of Section 504 FAPE, the school district

must provide this needed assistance during the school day.

In addition, the school district must provide this assistance after school under Section 504 so that the student can participate in the gymnastics club, unless doing so would be a fundamental alteration of the district's education program. Because the school district always has a legal obligation under IDEA to provide aids or services in its education program to enable any IDEA-eligible students to participate in extracurricular activities,¹⁸ providing these aids or services after school to a student with a disability not eligible under the IDEA would rarely, if ever, be a fundamental alteration of its education program. This remains true even if there are currently no IDEA-eligible students in the district who need these aids or services.

In this example, OCR would find that the school district must provide glucose testing and insulin administration for this student during the gymnastics club in order to comply with its Section 504 obligations. The student needs this assistance in order to participate in the gymnastics club, and because this assistance is available under the IDEA for extracurricular activities, providing this assistance to this student would not constitute a fundamental alteration of the district's education program.¹⁹

IV. Offering Separate or Different Athletic Opportunities

As stated above, in providing or arranging for the provision of extracurricular athletics, a school district must ensure that a student with a disability participates with students without disabilities to the maximum extent appropriate to the needs of that student with a disability.²⁰ The provision of *unnecessarily* separate or different services is discriminatory.²¹ OCR thus encourages school districts to work with their community and athletic associations to develop broad opportunities to include students with disabilities in all extracurricular athletic activities. Students with disabilities who cannot participate in the school district's existing extracurricular athletics program – even with reasonable modifications or aids and services – should still have an equal opportunity to receive the benefits of extracurricular athletics. When the interests and abilities of some students with disabilities cannot be as fully and effectively met by the school district's existing extracurricular athletic program, the school district should create additional opportunities for those students with disabilities.

In those circumstances, a school district should offer students with disabilities opportunities for athletic activities that are separate or different from those offered to students without disabilities. These athletic opportunities provided by school districts should be supported equally, as with a school district's other athletic activities. School districts must be flexible as they develop programs that consider the unmet interests of students with disabilities. For example, an ever-increasing number of school districts across the country are creating disability-specific teams for sports such as wheelchair tennis or wheelchair basketball. When the number of students with disabilities at an individual school is insufficient to field a team, school districts can also: (1) develop district-wide or regional teams for students with disabilities as opposed to a school-based team in order to provide competitive experiences; (2) mix male and female students with disabilities on teams together; or (3) offer "allied" or "unified" sports teams on which students with disabilities participate with students without disabilities.²² OCR urges school districts, in coordination with students, families, community and advocacy organizations, athletic associations, and other interested parties, to support these and other creative ways to expand such opportunities for students with disabilities.²³

V. Conclusion

OCR is committed to working with schools, students, families, community and advocacy organizations, athletic associations, and other interested parties to ensure that students with disabilities are provided an equal opportunity to participate in extracurricular athletics. Individuals who believe they have been subjected to discrimination may also file a complaint with OCR or in court.²⁴

For the OCR regional office serving your area, please visit:
<http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>, or call OCR's Customer Service Team at 1-800-421-3481 (TDD 1-877-521-2172).

Please do not hesitate to contact us if we can provide assistance in your efforts to address this issue or if you have other civil rights concerns. I look forward to continuing our work together to ensure that students with disabilities receive an equal opportunity to participate in a school district's education program.

Sincerely,

/s/

Seth M. Galanter
Acting Assistant Secretary for Civil Rights

¹ United States Government Accountability Office, *Students with Disabilities: More Information and Guidance Could Improve Opportunities in Physical Education and Athletics*, No. GAO-10-519, at 1, 31 (June 2010), available at <http://www.gao.gov/assets/310/305770.pdf>.

² *Id.* at 20-22, 25-26.

³ 29 U.S.C. § 794(a), (b). Pursuant to a delegation by the Attorney General of the United States, OCR shares in the enforcement of Title II of the Americans with Disabilities Act of 1990, which is a Federal law prohibiting disability discrimination in the services, programs, and activities of state and local governments (including public school districts), regardless of whether they receive Federal financial assistance. 42 U.S.C. § 12132. Violations of Section 504 that result from school districts' failure to meet the obligations identified in this letter also constitute violations of Title II. 42 U.S.C. § 12201(a). To the extent that Title II provides greater protection than Section 504, covered entities must comply with Title II's substantive requirements.

OCR also enforces Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs that receive Federal financial assistance. 20 U.S.C. § 1681. For more information about the application of Title IX in athletics, see OCR's "Reading Room," "Documents – Title IX," at <http://www.ed.gov/ocr/publications.html#TitleIX-Docs>.

⁴ 34 C.F.R. §§ 104.4, 104.47. The U.S. Department of Education 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). 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.

⁵ 29 U.S.C. § 705(9)(B), (20)(B) (as amended by the Americans with Disabilities Act Amendments Act of 2008); 34 C.F.R. § 104.3(j). For additional information on the broadened meaning of disability after the effective date of the 2008 Amendments Act, see OCR's 2012 Dear Colleague Letter and Frequently Asked Questions document, available at <http://www.ed.gov/ocr/letters/colleague-201109.html>, and <http://www.ed.gov/ocr/docs/dcl-504faq-201109.html>.

⁶ 34 C.F.R. § 104.3(l)(2).

⁷ 34 C.F.R. § 104.4(b)(1)(i)-(iv), (vii), (2), (3). Among the many specific applications of these general requirements, Section 504 prohibits harassment on the basis of disability, including harassment that occurs during extracurricular athletic activities. OCR issued a Dear Colleague letter dated October 26, 2010, that addresses harassment, including disability harassment, in educational settings. See Dear Colleague Letter: Harassment and Bullying, available at <http://www.ed.gov/ocr/letters/colleague-201010.html>. For additional information on disability-based harassment, see OCR's Dear Colleague Letter: Prohibited Disability Harassment (July 25, 2000), available at <http://www.ed.gov/ocr/docs/disabarassltr.html>.

⁸ 34 C.F.R. § 104.33(a). Section 504 FAPE may include services a student requires in order to ensure that he or she has an equal opportunity to participate in extracurricular and other nonacademic activities. One way to meet the Section 504 FAPE obligation is to implement an individualized education program (IEP) developed in accordance with the IDEA. 34 C.F.R. § 104.33(b)(2). Because the IDEA is not enforced by OCR, this document is not intended as an explanation of IDEA requirements or implementing regulations, which include the requirement that a student's IEP address the special education, related services, supplementary aids and services, program modifications, and supports for school personnel to be provided to enable the student to, among other things, participate in extracurricular and other nonacademic activities. 34 C.F.R. § 300.320(a)(4)(ii). In general, OCR would view a school district's failure to address participation or requests for participation in extracurricular athletics for a qualified student with a disability with an IEP in a manner consistent with IDEA requirements as a failure to ensure Section 504 FAPE and an equal opportunity for participation.

⁹ 34 C.F.R. § 104.7(b).

¹⁰ 34 C.F.R. § 104.10(a), 34 C.F.R. § 104.4(b)(1).

¹¹ 34 C.F.R. § 104.4(b)(1)(v); 34 C.F.R. pt. 104, App. A § 104.4 at 367 (2012).

¹² OCR would find that an interscholastic athletic association is subject to Section 504 if it receives Federal financial assistance or its members are recipients of Federal financial assistance who have ceded to the association controlling authority over portions of their athletic program. Cf. *Cmtys. for Equity v. Mich. High Sch. Athletic Ass'n, Inc.*, 80 F.Supp.2d 729, 733-35 (W.D. Mich. 2000) (at urging of the United States, court finding that an entity with controlling authority over a program or activity receiving Federal financial assistance is subject to Title IX's anti-discrimination rule). Where an athletic association is covered by Section 504, OCR would find that the school district's obligations set out in this letter would apply with equal force to the covered athletic association.

¹³ 34 C.F.R. § 104.37(a), (c).

¹⁴ See *Alexander v. Choate*, 469 U.S. 287, 300-01 (1985) (Section 504 may require reasonable modifications to a program or benefit to assure meaningful access to qualified persons with disabilities); *Southeastern Cmty. Coll. v. Davis*, 442 U.S. 397 (1979) (Section 504 does not prohibit a college from excluding a person with a serious hearing impairment as not qualified where accommodating the impairment would require a fundamental alteration in the college's program).

¹⁵ 34 C.F.R. § 104.4(b)(1).

¹⁶ 34 C.F.R. § 104.37(a), (c); 34 C.F.R. § 104.34(b); 34 C.F.R. § 104.4(b)(1)(ii).

¹⁷ 34 C.F.R. § 104.37(a), (c); 34 C.F.R. § 104.34(b); 34 C.F.R. § 104.4(b)(1)(ii). Although a school district may also raise the defense that a needed modification or aid or service would constitute an undue burden to its program, based on OCR's experience, such a defense would rarely, if ever, prevail in the context of extracurricular athletics; for this reason, to the extent the examples in this letter touch on applicable defenses, the discussion focuses on the fundamental alteration defense. To be clear, however, neither the fundamental alteration nor undue burden defense is available in the context of a school district's obligation to provide a FAPE under the IDEA or Section 504. See 20 U.S.C. § 1414(d)(1); 34 C.F.R. § 104.33. Moreover, whenever the IDEA would impose a duty to provide aids and services needed for participation in extracurricular athletics (as discussed in footnote 8 above), OCR would likewise rarely, if ever, find that providing the same needed aids and services for extracurricular athletics constitutes a fundamental alteration under Section 504 for students not eligible under the IDEA.

¹⁸ 20 U.S.C. §§ 1412(a)(1), 1414(d)(1)(A)(i)(IV)(bb); 34 CFR §§ 300.320(a)(4)(ii), 300.107, 300.117; see also footnotes 8 & 17, above.

¹⁹ 34 C.F.R. § 104.37.

²⁰ 34 C.F.R. § 104.34(b).

²¹ 34 C.F.R. pt. 104, App. A § 104.4 at 367 (2012); 34 C.F.R. pt. 104, App. A § 104.37 at 376 (2012).

²² The Department's Office of Special Education and Rehabilitative Services issued a guidance document that, among other things, includes suggestions on ways to increase opportunities for children with disabilities to participate in physical education and athletic activities. That guidance, *Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics*, dated August 2011, is available at <http://www2.ed.gov/policy/speced/guid/idea/equal-pe.pdf>.

²³ It bears repeating, however, that a qualified student with a disability who would be able to participate in the school district's existing extracurricular athletics program, with or without reasonable modifications or the provision of aids and services that would not fundamentally alter the program, may neither be denied that opportunity nor be limited to opportunities to participate in athletic activities that are separate or different. 34 C.F.R. § 104.37(c)(2).

²⁴ 34 C.F.R. § 104.61 (incorporating 34 C.F.R. § 100.7(b)); *Barnes v. Gorman*, 536 U.S. 181, 185 (2002).



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
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.

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)

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 Galanter
Acting Assistant Secretary for Civil Rights

(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.



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.

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.

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.

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

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 (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973 (Section 504); and Title II of the Americans with Disabilities Act of 1990 (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 rights laws

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.

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. 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.

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 environment and its

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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>.

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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*.

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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.

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 hostile environment created by the harassment,

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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).

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 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

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

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>.

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 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.

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>.

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 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.

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>.

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 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 bullying¹⁹ and harassment to ensure that they comply with the mandates of the federal civil rights laws.

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>.

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>

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://wdcrobcop01.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

KEY TITLE IX RESOLUTION AGREEMENTS

VOLUNTARY RESOLUTION AGREEMENT

State University of New York OCR Docket No. 02-11-6001

In order to resolve Case No. 02-11-6001, the State University of New York (SUNY) assures the U.S. Department of Education, New York Office for Civil Rights (OCR), that it will take the actions detailed below pursuant to the requirements of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106.

The U.S. Department of Education, Office for Civil Rights (OCR) initiated a compliance review of the State University of New York (SUNY) in December 2010 under Title IX. During the course of the investigation, SUNY implemented a number of policies, procedures, and practices in an effort to improve its response to complaints of alleged sex discrimination, including sexual violence and sexual harassment, in accord with detailed OCR guidance that was released four months into the compliance review.

This Resolution Agreement has been entered into voluntarily by SUNY and does not constitute an admission by SUNY that it is not in compliance with Title IX and/or its implementing regulation. SUNY voluntarily agrees to the following to assure that it and each SUNY campus¹ will continue to: promptly investigate all incidents of sex discrimination of which SUNY and/or the campus has notice (including incidents that SUNY knew or reasonably should have known about); take appropriate disciplinary action against those who violate University/campus policies and procedures addressing sex discrimination; and take prompt and effective responsive action reasonably designed to end a hostile environment if one has been created, prevent its recurrence, and, where appropriate, take steps to remedy the effects of the hostile environment.

A. Title IX Coordinators

SUNY System Administration and each SUNY campus has designated a Title IX Coordinator. No later than March 31, 2014, SUNY will provide certification that each SUNY campus has continued to revise relevant publications disseminated to students and employees to notify all students and employees of the name and/or title, office address, electronic mail (email) address and telephone number of the person(s) designated to coordinate its efforts to comply with Title IX. SUNY System Administration will notify all employees of the same information. The Title IX Coordinator or a qualified designee will annually review all formal and informal complaints of discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence) received as well as the information collected pursuant to Items I and J of this Agreement, in order to identify any patterns or systemic problems; and, will take appropriate action to address any patterns or problems identified.

Reporting Requirement 1: By July 31, 2014, July 31, 2015, and July 31, 2016, SUNY will provide documentation to OCR showing that each Title IX coordinator completed an annual review. This documentation will include information about the number of complaints received, the type of complaint (sexual harassment, sexual violence, pregnancy discrimination, etc.), a general description of the outcome of the complaints (such as, referred to discipline or human resources, accused found responsible, accused found not responsible), any trends or patterns identified, and any actions taken in response to trends or patterns identified.

¹ The twenty-nine state-operated campuses of the State University of New York established by New York State Education Law §352 are Albany, Alfred State, Binghamton, Brockport, University at Buffalo, Buffalo State, Canton, Cobleskill, Cortland, Delhi, Downstate Medical, Empire State, Environmental Science and Forestry, Farmingdale, Fredonia, Geneseo, SUNYIT, Maritime, Morrisville, New Paltz, Old Westbury, Oneonta, Optometry, Oswego, Plattsburgh, Potsdam, Purchase, Stony Brook, Upstate Medical.

Reporting Requirement 2: By March 31, 2014, SUNY will provide to OCR a certification from each Title IX Coordinator that SUNY System Administration and each SUNY campus has revised its relevant publications pursuant to Section A above, and will include a list of the titles of the publications in which the information appears (e.g. college catalog, Title IX web site, student handbook) as well as a copy of at least one publication disseminated to students and/or employees containing the required notification, or printouts or a link to an on-line publication containing the required notification. Inserts may be used pending reprinting of these publications.

B. Notices of Nondiscrimination

No later than January 31, 2014, SUNY's System Administration and each SUNY campus will continue to revise and publish notices of nondiscrimination to state that SUNY System Administration and each SUNY campus, respectively, does not discriminate on the basis of sex in the educational programs or activities which it operates or in employment (and may include other bases such as race, color, national origin, disability and age). Notices will include a statement that inquiries concerning the application of Title IX and its implementing regulation may be referred to the designated Title IX Coordinators or to OCR. Additionally, by the same date, notices of nondiscrimination for each SUNY campus will be published broadly, including on a campus web site, and in the college catalog, student handbook, and application form/web site.

Reporting Requirement: By March 31, 2014, SUNY will provide to OCR a certification from each Title IX Coordinator that the campus has revised and published its notice of nondiscrimination. This certification will include a list of the titles of the publications in which the information appears (e.g. college catalog, Title IX web site, student handbook) and a copy of at least one publication disseminated to the campus community, or printouts or a link to an on-line publication containing the notice. Additionally, SUNY will provide copies of applications for employment for SUNY System Administration and each SUNY campus containing the appropriate notice. Inserts may be used pending reprinting of these publications.

C. Grievance Procedures

SUNY has revised its SUNY System grievance procedures addressing complaints alleging discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence), known as the SUNY-Wide Discrimination Complaint Procedure, to include the bulleted points below, so that such procedures provide for the prompt and equitable resolution of complaints by students and all types of employees alleging all forms of sex discrimination (including sexual harassment, sexual assault, and sexual violence) against students, employees and third parties. No later than March 31, 2014, SUNY will determine whether at that time each SUNY campus is utilizing the SUNY-Wide Discrimination Complaint Procedure or is utilizing different grievance procedures to address complaints alleging discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence). Each SUNY campus utilizing a grievance procedure other than the SUNY-Wide Discrimination Complaint Procedure must revise it as necessary and as indicated in the bulleted points below, to include at a minimum:

- notice that the procedures apply to complaints alleging all forms of sex discrimination (including sexual harassment, sexual assault, and sexual violence) against employees, students, or third parties;
- an explanation to students and all types of employees of how to file a complaint pursuant to the procedures;
- the name or title, office address, email address, and telephone number of the individual(s) with whom to file a complaint;
- definitions and examples of what types of actions may constitute sex discrimination (including sexual harassment, sexual assault and sexual violence);

- a statement that responsible employees are expected to promptly report sexual harassment that they observe or learn about;
- provisions for the prompt, adequate, reliable, and impartial investigation of all complaints, including the opportunity for the parties to present witnesses and other evidence;
- provisions for the investigation of complaints when the complainant does not choose to proceed with an informal or formal resolution or a hearing;
- provisions to indicate that SUNY has an obligation to make reasonable efforts to investigate and address instances of sex discrimination when it knows or should have known about such instances, regardless of complainant cooperation and involvement;
- provisions ensuring that the parties are afforded similar and timely access to any information used at the hearing;
- clarification that any informal resolution mechanism set forth in the procedures will only be used if the parties voluntarily agree to do so, that the complainant should not be required to resolve the problem directly with the respondent and that there will be instances when the informal resolution mechanism may be inappropriate (e.g., mediation is prohibited in cases of sexual assault, and those involving a student complaining of sexual harassment against an employee in a position of authority over the student); and that 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;
- a statement that the preponderance of the evidence standard will be used for investigating alleged sex discrimination and sexual harassment;
- designated and reasonably prompt timeframes for the major stages of the grievance process that apply equally to the parties of the complaint, including the investigation, complaint resolution, and appeal processes, if any;
- an assurance that victims will be made aware of their Title IX rights and available resources, such as counseling, the local rape crisis center, and their right to file a complaint with a local law enforcement agency;
- a provision indicating that SUNY will comply with law enforcement requests for cooperation and such cooperation may require SUNY to temporarily suspend the fact-finding aspect of a Title IX investigation while the law enforcement agency is in the process of gathering evidence, and that SUNY will promptly resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process;
- a provision indicating that SUNY will implement appropriate interim steps during the law enforcement agency's investigation period to provide for the safety of the victim(s) and the campus community and the avoidance of retaliation;
- provisions indicating the availability of interim measures during the University's investigation of possible sexual harassment (such as how to obtain counseling and academic assistance in the event of a sexual assault, and what interim measures can be taken if the alleged perpetrator lives on campus and/or attends classes with the victim), and that such interim measures will not disproportionately impact the complainant;
- an assurance that the complaint and investigation will be kept confidential to the extent possible;
- written notice to both parties of the outcome;
- notice of the opportunity of both parties to appeal the findings, if the procedures allow appeals;
- an assurance that any appeal will be conducted in an impartial manner by an impartial decision maker;
- an assurance that steps will be taken to prevent discrimination and harassment, to prevent the recurrence of discrimination and harassment, and to remedy the discriminatory effects on the victim(s) and others, if appropriate;
- examples of the range of possible disciplinary sanctions, and the types of remedies available to victims and others; and

- a statement that retaliation is prohibited against any individual who files a sex discrimination complaint under Title IX or participates in a complaint investigation in any way.

Reporting Requirement 1: By March 31, 2014, for each SUNY campus, SUNY will indicate whether at that time the institution is utilizing the SUNY-Wide Discrimination Complaint Procedure to address complaints alleging discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence), or has chosen to utilize a grievance procedure other than the SUNY System grievance procedures. SUNY may choose to provide to OCR an updated version of the list it previously provided to OCR of the campuses that have chosen to utilize a grievance procedure other than the SUNY System Grievance Procedures, if there have been any changes. As per policy, all campuses must use the SUNY-Wide Discrimination Complaint Procedure unless the campus has made application for an exception. Requests for exception, along with a copy of the requesting campus's discrimination complaint procedure, must be filed with the SUNY Office of General Counsel. The request for an exception will be acted upon by the SUNY Office of General Counsel after a review of the campus's complaint procedure.

Reporting Requirement 2: As of this Resolution Agreement's execution date, SUNY has provided for OCR's review a draft of the revised SUNY-Wide Discrimination Complaint Procedure. SUNY will share with OCR the approved procedures for SUNY campuses that have chosen to use a grievance procedure other than the SUNY-Wide Discrimination Complaint Procedure as these become available; by no later than March 31, 2014, SUNY will have provided to OCR a draft of the grievance procedures for any SUNY campus that, by that time, has chosen to utilize a grievance procedure other than the SUNY-Wide Discrimination Complaint Procedure to address complaints alleging discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence), which will have already received approval from the SUNY Office of General Counsel. OCR will review these grievance procedures in order to ensure that they comply with Title IX.

Reporting Requirement 3: Within six (6) months of OCR's confirmation that the revised SUNY-Wide Discrimination Complaint Procedures, and any other sex discrimination grievance procedures used by a SUNY campus that differs from the SUNY-Wide Discrimination Complaint Procedures, conform with Title IX, each SUNY Title IX Coordinator will certify that the campus or SUNY System Administration has formally adopted its revised procedures; updated their printed publications and on-line publications with the revised procedures (inserts may be used pending reprinting of these publications); and electronically disseminated the revised grievance procedures to students and employees. This documentation will include evidence of the electronic dissemination of the revised grievance procedures to students and employees, a list of the titles of the publications in which the information appears (e.g. college catalog, Title IX web site, student handbook) as well as a copy of at least one publication, either a printout or a link to an on-line publication containing the revised grievance procedures or if not yet finalized, a copy of the insert for printed publications.

D. Individuals On-Call to Notify Complainants of Options and Coordination with Law Enforcement Agencies

SUNY asserts that each SUNY campus has procedures that allow victims to report complaints of sexual violence and sexual assault at any time of day. During general business hours the Title IX Coordinator and/or designees are available to assist victims, and at all other times campus police are available. The Campus Police departments are 24-hour operations and they are equipped to receive reports from victims at any time. By January 31, 2014, each SUNY campus' policies and procedures will codify existing practices and require the following:

1. Upon receipt of a sex discrimination complaint or report (including receipt by any SUNY campus police department), each SUNY campus will provide to the complainant a written notice describing the available options, including pursuing a criminal complaint with a law enforcement agency, pursuing SUNY's investigation and disciplinary process, or pursuing both options at the same time; and the potential consequences of pursuing both options (*i.e.*, possible temporary suspension of the fact-finding aspect of SUNY's investigation while the law enforcement agency is in the process of gathering evidence). The SUNY campus will document which option(s) the complainant wishes to pursue.
2. SUNY campus police will promptly notify the campus Title IX Coordinator upon receipt of any complaint or report of alleged sexual misconduct/assault. The SUNY campus will not wait for the conclusion of the criminal investigation or criminal proceeding to begin its own sex discrimination investigation, and if needed, will take immediate steps to protect the student in the educational setting.

Reporting Requirement: Within a month of the signing of this agreement, SUNY will provide a copy of a written notice to a victim developed consistent with Section D above. This notice will be a model for each SUNY campus, which will develop campus-specific notices that will contain at a minimum, the information contained in the model notice sent from SUNY to OCR. By June 30, 2014, copies of or a website link to each campus' notice will be submitted to OCR.

E. Title IX Training

SUNY System and/or each SUNY campus will continue to provide regular in-person or online training to all staff responsible for recognizing and reporting incidents of sexual harassment and staff with Title IX compliance and implementation responsibilities, which may include Title IX Coordinators, deputy coordinators, residential assistants, and campus police. By December 31, 2013, and by the same date in 2014 and 2015, SUNY will demonstrate that training was provided by SUNY System Administration and/or by each SUNY campus and covered, at a minimum: the grievance procedures; how to recognize and appropriately address allegations and complaints pursuant to Title IX; identifying sex discrimination, sexual harassment, sexual assault, and sexual violence; SUNY's responsibilities under Title IX to address such allegations; and the relevant resources available. The training for Title IX Coordinators and designees will include instruction on how to conduct and document adequate, reliable, and impartial Title IX investigations. During the training, SUNY will provide copies of revised nondiscrimination notices and Title IX grievance procedures, as these become available, to all attendees or refer them to their location within the publications they already possess.

Reporting Requirement: By December 31, 2013, and by the same date in 2014 and 2015, SUNY will provide documentation to OCR demonstrating that training was provided by SUNY System Administration and/or by each SUNY campus in accordance with Section E above. The documentation will include, at a minimum, the name(s) and credentials of the trainer(s); the date(s) and time(s) of the training(s); the type of audience and estimated number of attendees; and copies of any training materials distributed.

F. Campus-Based Committees

SUNY has asserted that its campuses already operate personal safety committees consisting of representative student leaders that, among other duties, identify strategies for ensuring that students understand their rights under Title IX, how to report possible violations of Title IX, and feel comfortable and confident that campus officials to whom they make such reports will take them seriously and promptly and equitably respond. By June 30, 2014,

the committees at each SUNY campus will identify and recommend strategies for the prevention of sexual harassment/sexual assault incidents, including outreach and educational activities; such as providing for incoming freshmen to take a course or attend a workshop that highlights the connection between alcohol abuse and sexual harassment and sexual violence, which will be recommended to the campus for implementation.

Reporting Requirement: Within a month of the signing of this agreement, SUNY will provide OCR with a copy of a communication sent to Personal Safety Committee Chairs about Title IX and the goals outlined in section F above. By June 30, 2014, SUNY will provide a written description of the strategies identified and recommended by the committees for the prevention of sexual harassment/sexual assault incidents. SUNY will also provide OCR with a list of the current membership of the Personal Safety Committee on each SUNY campus and the committee's web site, if applicable.

G. Information Sessions

By December 31, 2014, and annually thereafter during the course of the monitoring, each SUNY campus will offer a series of information sessions to students so that they are aware of the campus' prohibition against sex discrimination (including sexual harassment, sexual assault, and sexual violence); how to recognize such sex discrimination and sexual harassment when it occurs; and how and with whom to report any incidents of sex discrimination (including sexual harassment, sexual assault, and sexual violence). In addition, the sessions will cover the campus' revised grievance procedures for Title IX complaints, as well as a general overview of Title IX, the rights it confers on students, the resources available to students who believe that they have been victims of sexual harassment/assault/violence, and the existence of OCR and its authority to enforce Title IX. These sessions may be provided as part of the existing annual student orientation for new and returning students, and existing annual residence life orientation for students residing in campus housing.

Reporting Requirement: By December 31, 2014, and annually thereafter during the course of the monitoring, SUNY will provide to OCR documentation demonstrating implementation of Action Item G above at each SUNY campus, including a description of each information session and the dates the information sessions were held.

H. Dissemination of Information Regarding Sex Discrimination

SUNY has asserted that each of its campuses distributes information that identifies sex discrimination, sexual harassment and sexual assault (including sexual violence); what to do if a student has been the victim of sexual assault; how to obtain counseling and academic assistance in the event of a sexual assault; available interim measures of protection; contact information for on and off-campus resources for victims of sexual assault; the campus' grievance procedure(s) for addressing Title IX complaints raised by students and staff; and the name or title and contact information for the campus' Title IX Coordinator(s) and a description of the Title IX Coordinator's role.

Reporting Requirement: By September 30, 2014, SUNY will provide confirmation that each campus distributes the information referenced in Action Item H. If the information is posted on a website, SUNY may provide the website link. SUNY will also provide samples of campus-created brochures or pamphlets, which will also be shared with all Title IX Coordinators as examples or models. By September 30, 2015, and the same date in 2016, SUNY will provide a sample of website links and brochures or pamphlets that have been revised in the previous year.

I. Climate Checks

By the end of academic years 2013-2014, 2014-2015, and 2015-2016, each SUNY campus will conduct (with the support and assistance of the committees referenced above) periodic assessments of campus climate to assess the effectiveness of steps taken pursuant to this Resolution Agreement, or otherwise by the campus, to provide for a campus free of sexual harassment, in particular sexual assaults and sexual violence. The campus will seek input from the campus community, which includes students (including victims and witnesses to sexual harassment), the personal safety committee, the Title IX Coordinator, and any deputy coordinators or designees. Campuses will use information gathered during these climate checks to inform future proactive steps taken by the campus to provide for a safe educational environment and compliance with Title IX. Campuses will share information gathered and recommendations with each campus' respective Title IX Coordinator. A climate check can be conducted in many ways, including but not limited to a survey distributed in-person or online, or a poll conducted in-person or online. In addition, the campus may organize an open forum information session for students and employees, and designated, publicized walk-in hours for campus community input.

Reporting Requirement: By July 31, 2014, and by the same date in 2015 and 2016, SUNY will provide documentation to OCR demonstrating implementation of Section I above at each SUNY campus, including any resulting summaries of the information obtained and any proposed and/or completed actions based on that information.

J. Remedies for Other Complainants

By December 31, 2013, each SUNY campus will publish an invitation to those who have reported alleged sexual misconduct or otherwise believe they have been subjected to sexual misconduct on campus to provide to the Title IX Coordinator any recommendations regarding ways to improve the effectiveness of the campus' implementation of its sexual harassment policies and procedures. These notices must be widely distributed and may be published on the campus web site, sent via email to the campus community, or posted in a conspicuous on-campus location.

Reporting Requirement: By February 28, 2014, SUNY will report in writing to OCR that each SUNY campus has published the notices consistent with Section J above, including a link to the notices and/or a description of where the paper notice was posted; and by June 30, 2014, will provide to OCR copies of any recommendations received as a result of the published notices.

K. Complaint Reviews

By January 31, 2014, SUNY Albany, SUNY New Paltz, SUNY Buffalo State College, and SUNY Morrisville will review all complaints filed during and since academic year 2011-2012, to determine whether each complaint was handled consistent with the criteria set forth in Section C above. These four campuses will take appropriate action to address any problems identified in the manner in which these complaints were handled; including providing appropriate remedies that may still be available for the complainants in these cases, such as counseling or academic adjustments. These reviews will carefully scrutinize areas of concern noted by OCR during the course of this compliance review; i.e., whether the campus failed to investigate a complaint of which it had notice; whether the campus failed to promptly and adequately investigate a complaint or report of harassment; whether the campus failed to use the preponderance of the evidence standard in investigating allegations of sexual harassment; whether the campus provided notice of the outcome of the complaint investigation to the alleged victim and the alleged harasser; and, whether the campus took steps to prevent the recurrence of harassment and to address any hostile environment created by the harassment.

Reporting Requirement: By January 31, 2014, SUNY will provide to OCR a report of each campus' review of complaints filed during and since academic year 2011-2012 at SUNY Albany, SUNY New Paltz, SUNY Buffalo

State College, and SUNY Morrisville. At a minimum, this report will identify any complaints that were not handled consistent with the criteria set forth in Section C above; and, will indicate the action that will be taken to address any problems identified.

L. Documentation

By one month of signing the RA, SUNY agrees to provide the following checklist to Title IX Coordinators and designees so that they can make their best efforts to include in their written reports of complaint investigations, at a minimum, the following information:

- the name and sex of the alleged victim, and if different, the name and sex of the person reporting the allegation;
- a statement of the allegation, a description of the incident(s), and the date(s) and time(s) (if known) of the alleged incident(s);
- the date that the complaint or other report was made;
- the date the accused was interviewed;
- the names and sex of all persons alleged to have committed the alleged harassment;
- the names and sex of all known witnesses to the alleged incident(s);
- the dates that any relevant documentary evidence (including medical, cell phone and other records as appropriate) was obtained;
- any written statements of the complainant (or victim, if different from the complainant);
- the date on which SUNY or the campus temporarily suspended the fact-finding aspect of its Title IX investigation while the law enforcement agency was in the process of gathering evidence, and as applicable, the date on which SUNY or the campus resumed its investigation process;
- the outcome of the investigation, and if any, the disciplinary process;
- the response of SUNY or campus personnel, including any interim and permanent steps taken with respect to the complainant and the accused; and
- a narrative of all action taken to prevent recurrence of any harassing incident(s), including any written documentation.

Reporting Requirement: By within two months of signing the RA, SUNY will submit to OCR documentation confirming completion of Section L above.

SUNY understands that OCR will not close the monitoring of this agreement until OCR determines that SUNY has fulfilled the terms of this agreement and is in compliance with the regulations implementing Title IX, at 34 C.F.R. §§106.8, 106.9, and 106.31, which were at issue in this case. SUNY also understands that by signing this agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, SUNY understands that during the monitoring of this agreement, if necessary, and with notice to SUNY, OCR may visit SUNY campuses, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether SUNY has fulfilled the terms of this agreement and is in compliance with the regulations implementing Title IX, at 34 C.F.R. §§106.8, 106.9 and 106.31, which were at issue in this case. SUNY understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceeding to enforce this agreement, OCR shall give SUNY written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

September 30, 2013

Date

/s/

William F. Howard

Senior Vice Chancellor, General Counsel and Secretary
of the University

This document has been reformatted from its original version to fit this document.