

“DEAR COLLEAGUE”

A SUMMARY OF THE NEW TITLE IX GUIDANCE ON SEXUAL HARASSMENT AND SEXUAL VIOLENCE IN SCHOOLS

On April 4, 2011, the United States Department of Education’s Office for Civil Rights (“OCR”) issued new guidance regarding schools’ compliance with Title IX of the Education Amendments of 1972 (“Title IX”).¹ Title IX prohibits discrimination on the basis of sex - including sexual harassment and sexual violence - in any educational program or activity operated by a recipient of Federal funding.

This document highlights key points in the new guidance from OCR.²

Schools must respond to sexual harassment and sexual violence. If a school knows or reasonably should know about student-on-student sexual harassment or sexual violence, Title IX requires that the school act immediately to eliminate it, prevent its recurrence, and address its effects.³ This is true even if the harassment or violence occurred off school grounds.⁴

School officers and employees must be properly trained. Schools must designate a Title IX Coordinator to coordinate efforts to comply with and carry out the school’s Title IX responsibilities.⁵ Additionally, school employees likely to witness or receive reports of sexual harassment and violence must be trained in how and to whom they should report any such incidents.⁶ School employees involved in implementing a school’s grievance procedures should be trained in the school’s grievance procedures, how to handle sexual harassment and sexual violence complaints, and any confidentiality requirements.⁷

Police involvement does not relieve a school of its duty to investigate. Police reports and police investigations are not determinative of whether conduct violates Title IX; a school is still obligated to conduct its own, independent investigation to determine whether sexual harassment or violence occurred.⁸ Schools must carry out a Title IX investigation even if the complainant hasn’t filed criminal charges, and even if police are still investigating the incident.

Investigations must be prompt, thorough and impartial, and use a “preponderance of the evidence” standard. If anyone – a student, parent or third party – files a complaint of harassment with the school, or the school knows or should know about possible harassment, it must conduct a prompt, thorough and impartial investigation. Schools must use the “preponderance of the evidence” standard in resolving allegations of sexual harassment or sexual violence.⁹ Schools using a different standard of proof, such as the higher “clear and convincing” standard, are not in compliance with Title IX.

Schools must notify both parties of the outcome. Schools must notify both the complainant and the alleged perpetrator, in writing, as to the outcome of the complaint and any appeal.¹⁰ If the school determines that sexual harassment or sexual violence did occur, it may disclose to the complainant information about the sanction imposed on the perpetrator if the sanction relates directly to the harassed student.¹¹

Emphasis on prevention, protecting alleged victims. OCR recommends that schools take proactive measures to prevent sexual harassment and sexual violence by implementing preventive education programs, and developing sexual harassment and sexual violence materials to educate students and employees.¹² Further, schools should make efforts to protect the alleged victim from any additional trauma, placing the burden of moves or rescheduling on the alleged perpetrator if the two must be separated.¹³ OCR also recommends such remedial measures as providing the alleged victim with an escort, counseling, medical and academic support, and allowing the alleged victim to drop and retake classes without penalty.¹⁴

¹ Office for Civil Rights, U.S. Dept. of Educ., Dear Colleague Letter 3 (Apr. 4, 2011), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> [hereinafter *Dear Colleague Letter*].

² This document is intended to provide a summary of the Office for Civil Rights’ guidance issued on April 4, 2011. Receiving and/or reading this document does not make you a client of the California Women’s Law Center. It is not intended to be nor should it be relied upon as legal advice.

³ *Dear Colleague Letter*, *supra* note 1, at 4.

⁴ *Id.* at 3-4.

⁵ *Id.* at 6.

⁶ *Id.* at 4. This includes teachers, administrators, counselors, general counsels, school law enforcement, health personnel, and resident advisors.

⁷ *Id.* at 12.

⁸ *Id.* at 10.

⁹ *Id.* at 10-11. This standard requires that the school determine whether it is more likely than not that sexual harassment or violence occurred.

¹⁰ *Id.* at 13.

¹¹ *Id.* at 13.

¹² *Id.* at 14-15.

¹³ *Id.* at 15-16.

¹⁴ *Id.* at 16-17.