



Notice of Language Assistance Dear Colleague Letter on Title IX Coordinators

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 24, 2015

Dear Colleague:

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

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

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

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

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

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

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

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

Designation of a Title IX Coordinator

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

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

A. Independence

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

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

⁴ 34 C.F.R. § 106.8(a).

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

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

B. Full-Time Title IX Coordinator

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

C. Multiple Coordinators

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

Responsibilities and Authority of a Title IX Coordinator

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

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

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

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

Support for Title IX Coordinators

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

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

A. Visibility of Title IX Coordinators

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

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

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

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

⁷ 34 C.F.R. § 106.9.

⁸ 34 C.F.R. § 106.8(a).

⁹ 34 C.F.R. § 106.9.

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

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

B. Training of Title IX Coordinators

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

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

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

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

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

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

Conclusion

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

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

Sincerely,

/s/

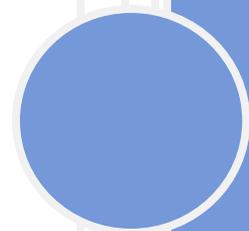
Catherine E. Lhamon

Assistant Secretary for Civil Rights

TITLE IX RESOURCE GUIDE



U.S. Department of Education
Office for Civil Rights
April 2015



U.S. Department of Education
Office for Civil Rights

Catherine E. Lhamon
Assistant Secretary

April 2015

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A. Scope of Title IX

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

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

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

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

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

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

³ 34 C.F.R. § 106.8(a).

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

B. Responsibilities and Authority of a Title IX Coordinator

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

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

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

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

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

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

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

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

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

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

C. Title IX’s Administrative Requirements

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

1. Grievance Procedures

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

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

- First, the Title IX coordinator should work with the recipient to help make sure that the grievance procedures are written in language appropriate for the age of the audience (such as elementary, middle school, high school, or postsecondary students), and that they are easily understood and widely disseminated.
- Second, the Title IX coordinator should review the grievance procedures to help determine whether they incorporate all of the elements required for the prompt and equitable resolution of student and employee complaints under Title IX, consistent with the Title IX regulatory requirement and OCR guidance.
- Third, the Title IX coordinator should communicate with students, parents or guardians, and school employees to help them understand the recipient’s grievance procedures; train employees and students about how Title IX protects against sex discrimination; and provide consultation and information regarding Title IX requirements to potential complainants.

- Fourth, the Title IX coordinator is responsible for coordinating the grievance process and making certain that individual complaints are handled properly. This coordination responsibility may include informing all parties regarding the process, notifying all parties regarding grievance decisions and of the right to and procedures for appeal, if any; monitoring compliance with all of the requirements and timelines specified in the grievance procedures; and maintaining grievance and compliance records and files.
- Finally, the Title IX coordinator should work with the recipient to help ensure that its grievance procedures are accessible to English language learners⁵ and students with disabilities.⁶

For more information about grievance procedures, please review:

- 34 C.F.R. § 106.8(b);
- Questions and Answers on Title IX and Sexual Violence (April 29, 2014), *available at* <http://www.ed.gov/ocr/docs/ga-201404-title-ix.pdf>;
- Dear Colleague Letter: Sexual Violence (April 4, 2011), *available at* <http://www.ed.gov/ocr/letters/colleague-201104.pdf>;
- Dear Colleague Letter: Title IX Grievance Procedures, Postsecondary Education (August 4, 2004), *available at* http://www.ed.gov/ocr/responsibilities_ix_ps.html;
- Dear Colleague Letter: Title IX Grievance Procedures, Elementary and Secondary Education (April 26, 2004), *available at* http://www.ed.gov/ocr/responsibilities_ix.html; and
- Revised Sexual Harassment Guidance (January 19, 2001), *available at* <http://www.ed.gov/ocr/docs/shguide.pdf>.

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

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

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

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

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

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

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

For more information on notices of nondiscrimination, please review:

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

D. Application of Title IX to Various Issues

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

1. Recruitment, Admissions, and Counseling

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

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

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

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

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

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

2. Financial Assistance

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

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

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

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

- 34 C.F.R. §§ 106.31(c) and 106.37.

3. Athletics

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

(a) Student Interests and Abilities

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

1. Whether participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among athletes, and the institution cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

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

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

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

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

(b) Athletic Benefits and Opportunities

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

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

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

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

(c) Athletic Financial Assistance

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

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

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

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

4. Sex-Based Harassment

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

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

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

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

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

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

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

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

- First, the Title IX coordinator should assist in any training the recipient provides to the school community, including all employees, as to what conduct constitutes sexual and gender-based harassment and how to respond appropriately when it occurs.
- Second, the Title IX coordinator should help the recipient develop a method appropriate to their institution to survey the campus climate, evaluate whether any discriminatory attitudes pervade the school culture, and determine whether any harassment or other problematic behaviors are occurring, where they happen, which students are responsible, which students are targeted, and how those conditions may be best remedied.
- Third, because the Title IX coordinator must have knowledge of all Title IX reports and complaints at the recipient institution, the Title IX coordinator is generally in the best position to evaluate confidentiality requests from complainants in the context of providing a safe, nondiscriminatory environment for all students.
- Fourth, the Title IX coordinator should coordinate recordkeeping (for instance, in a confidential log maintained by the Title IX coordinator), monitor incidents to help identify students or employees who have multiple complaints filed against them or who have been repeated targets, and address any patterns or systemic problems that arise, including making school officials aware of these patterns or systemic problems as appropriate.
- Fifth, the Title IX coordinator should recommend, as necessary, that the recipient increase safety measures, such as monitoring, supervision, or security at locations or activities where harassment has occurred.

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

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

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

5. Pregnant and Parenting Students

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

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

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

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

6. Discipline

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

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

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

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

7. Single-Sex Education

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

(a) Schools

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

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

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

(b) Classes and Extracurricular Activities

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

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

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

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

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

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

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

8. Employment

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

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

For more information about employment discrimination, please review:

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

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

9. Retaliation

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

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

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

E. Information Collection and Reporting

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

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

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

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

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

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

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

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



Legal Issues Related to Transgender Students

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The legal rights of transgender students are topics of increased public awareness and interest, especially in light of recent federal guidance and related litigation. At the same time, transgender issues are relatively new in public discourse, understanding, and the law. This article addresses some of the more common questions that school districts face in this emerging area.

Q. Does a student have a right to be recognized as transgender at school?

A: Generally, yes. The extent of the student’s right, and the district’s duty, depends on the specific situation. In Texas, there is no state law that explicitly creates a right to be protected based on a transgender status. However, transgender students are entitled to be free from discrimination based on their gender identity and their free speech expression of that gender identity. As such, transgender students should be permitted to wear clothing that aligns with their gender identity. School districts should also use the preferred name and gender of the transgender student unless specifically prohibited by law.

Like all students, transgender students must be protected by schools from bullying and harassment by students or employees.¹ While all students need a safe place to learn, transgender and gender-nonconforming students face a heightened risk of bullying, violence, and discrimination.² Bullying of a student because of the student’s nonconformity with gender stereotypes could be considered harassment because of sex in violation of federal nondiscrimination law.³ A district may need to group the student with other students of the same gender identity during sex-specific activities or in sex-segregated facilities in order to ensure student safety and minimize disruptions to the educational environment. While these issues have yet to be sufficiently resolved under Texas law, the positions and potential risks are clear. Consequently, districts should apply a common sense, case-by-case approach to reach the best resolution in each specific situation.

¹ U.S. Dep’t of Educ., Office for Civil Rights, and U.S. Dep’t of Justice, Civil Rights Division, [Dear Colleague Letter Withdrawing Previous Guidance on Transgender Students](#) (Feb. 22, 2017).

² See Gay, Lesbian, Straight Education Network, [The 2015 School Climate Survey](#) (2016) (finding 57.6 % of LGBTQ students feel unsafe at school and that school-related supports can improve student experiences).

³ See, e.g., *Carmichael v. Galbraith*, 574 F. App’x 286 (5th Cir. 2014) (holding that parents of middle school male student who committed suicide after allegedly being bullied by male students because of gender-based stereotypes sufficiently stated student-on-student sexual harassment claim under Title IX).

Q: *What are common terms for understanding and discussing transgender issues?*

A: The following terms have been used by the U. S. Department of Education Office for Civil Rights⁴ (OCR) or suggested by the National Center for Transgender Equality.⁵

Assigned sex or sex assigned at birth: the gender designation listed on one's original birth certificate.

Gender identity: One's internal sense of gender, which may be different from one's assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the person's core identity.

Gender expression: How a person represents or expresses gender identity to others, often through behavior, clothing, hairstyles, voice, mannerisms, or physical characteristics.

Gender stereotypes: Stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate their gender to others, such as through behavior, clothing, hairstyles, activities, voice, mannerisms, or physical characteristics.

Transgender: A term for people whose gender identity is different from their assigned sex at birth. Medical treatments or procedures are not a prerequisite for recognition as transgender.

Transgender female: Someone who identifies as a female but was assigned the sex of male at birth.

Transgender male: Someone who identifies as male but was assigned the sex of female at birth.

Gender transition: The process by which a transgender person begins to assert the sex that corresponds to the person's gender identity instead of the person's assigned sex at birth.

Q. *Are school districts subject to OCR Title IX enforcement for claims of gender-based discrimination by transgender students?*

A: Yes. Title IX of the Education Amendments of 1972 (Title IX)⁶ is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. OCR is the federal agency with the responsibility for enforcing Title IX.

⁴ See U.S. Dep't of Educ., Office for Civil Rights, and the U.S. Dep't of Justice, Civil Rights Division, [Resolution Agreement between the Arcadia Unified School District and the U.S. Dep't of Educ.](#), OCR Case No. 09-12-1020, at 1-2 (July 24, 2013).

⁵ National Center for Transgender Equality, [Transgender Terminology](#) (Jan. 2014).

⁶ 20 U.S.C. § 1681.

OCR's written policy guidance on preventing and responding to sexual harassment makes clear that Title IX protects students from gender-based harassment:

[G]ender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program. Thus, it can be discrimination on the basis of sex to harass a student on the basis of the victim's failure to conform to stereotyped notions of masculinity and femininity.⁷

In other words, Title IX protects all students, including transgender students, from harassment because of the student's deviation from stereotypical gender norms. It does not matter whether or not a harasser is the same or opposite sex in relation to the transgender student's assigned sex or gender identity. In addition, school districts may be liable under Title IX and other federal laws for employee or student harassment of transgender students when there is knowledge of harassment, followed by deliberate indifference and a failure to act in response.⁸ If a complaint is filed alleging discrimination against a transgender student, school officials should work closely with the district's attorney.

Q: What does TASB policy say about transgender students?

A: TASB offers a model policy that: (1) prohibits discrimination, harassment, dating violence, and retaliation against students; and (2) outlines remedial steps to report, investigate, and respond to concerns. Since 2005, a version of this policy has been at code FFH(LOCAL) in Texas school districts' policy manuals. The TASB policy prohibits various forms of discrimination, including discrimination on the basis of gender and sex. The policy does not speak directly or solely about the rights of transgendered students. Federal courts have found that discrimination on the basis of gender identity is a form of sex discrimination.⁹

⁷ U.S. Dep't of Educ., Office for Civil Rights, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties at v (Jan. 19, 2001).

⁸ *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998) (Title IX actions for damages may be recovered for teacher-student sexual harassment if a school district official who has authority to institute corrective measures has actual notice of, and is deliberately indifferent to, the teacher's misconduct); *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999) (Title IX action for damages may lie against a school board in cases of student-on-student harassment when there is actual knowledge and deliberate indifference as to severe, pervasive and objectively offensive harassment that deprives the victim of educational opportunities or benefits).

⁹ See *Wittmer v. Phillips 66 Co.*, Civil Action No. H-17-2188, 2018 WL 1626366 (S.D. Tex. 2018) (mem.) (finding Title VII protected transgender woman applicant for employment based on appellate court decisions recognizing Title VII protection from discrimination based on gender identity and sexual orientation, citing *Equal Employment Opportunity Comm'n v. R.G. & G.R. Harris Funeral Homes, Inc.* 884 F.3d 560 (6th Cir. 2018) and *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) (en banc)). See also *Lopez v. River Oaks Imaging & Diagnostic Group, Inc.*, 542 F. Supp. 2d 653 (S.D. Tex. 2008) (finding transgender applicant for employment presented sufficient evidence of Title VII sex discrimination).

Some districts have contacted TASB Policy or Legal Services to ask about the addition of “sex”—in addition to “gender”—into model policy FFH(LOCAL) at Update 104. This change was not intended to expand the meaning or application of the model nondiscrimination statement. Rather, the addition was made at the suggestion of OCR, in the course of its investigation of a TASB member’s policies and practices, to better match the statutory wording and OCR guidance regarding notices of nondiscrimination. TASB Policy Service and Legal Services added the language to the model policy so that all of our members would have policies that meet OCR’s expectations.

Q. What additional guidance should we consider in addressing Title IX compliance?

A. There are many resources available online:

- The OCR’s [Resources for LGBTQ Students](#) Website includes policy guidance, court filings, and examples of resolution agreements regarding Title IX requirements related to transgender students;
- In addition, the National School Boards Association has developed and updated the [2016 Transgender Students in Schools: Frequently Asked Questions and Answers for Public School Boards and Staff](#), a best practices guide regarding common issues such as how to handle a transgender student’s records, accommodate student privacy, and more.

Districts should review the national guidance in light of state law and local policies. In addition, note that the law in this area is rapidly changing; online resource materials may not be updated to reflect the most recent developments. Due to this uncertainty and the high risk of litigation, districts that are considering policies or procedures regarding transgender students should work with an attorney familiar with both the federal interpretation of Title IX and state law.

Q. Do gender nonconforming students have a legal right to wear attire that does not match their assigned sex at birth?

A: Yes, a legal right exists to the extent that a court is likely to conclude that dressing in accordance with a student’s gender expression is a form of protected expression. Courts have found that wearing gender nonconforming clothing may be protected by the First Amendment as free speech, by the Fourteenth Amendment with regard to equal protection as to gender/sex, and by Title IX as gender non-discrimination.¹⁰ In light of this legal authority, a school district could permit a transgender male student to wear a tuxedo for his yearbook photo consistent with his expressed gender identity. Or, similarly, a district might allow a transgender female student to attend the prom in feminine attire.

¹⁰ See, e.g., *McMillen v. Itawamba Cnty. Sch. Dist.*, 702 F. Supp. 2d 699, at 704-5 (N.D. Miss. 2010) (finding that a female student demonstrated her likelihood of success on the merits of a First Amendment claim when school denied her permission to wear a tuxedo or other masculine attire to prom).

Gender nonconforming students are still subject to the established student dress code for the student's preferred gender attire. The dress code must be applied equally to all students. For example, if feminine attire at the prom requires dresses with a certain neckline and length, then all students who dress in feminine attire must abide by those requirements, including a transgender female. At the same time, a gender nonconforming student should not be asked to "tone it down" or be required to dress in a different manner than other students in the expressed gender.

Q. Should a district change school records to reflect a transgender student's preferred name and gender?

A: Texas Education Code section 25.0021 requires that a student be identified by his or her legal surname, or last name, as that name appears (1) on the student's birth certificate or other document suitable as proof for the student's identity, or (2) in a court order changing the student's name. However, Section 25.0021 does not address students' first names or genders.

In general, a student's legal name is used on permanent records, especially when required by state or federal laws and regulations. For example, Texas school districts are required to complete and maintain permanently the academic achievement record, or "AAR" of high school students (often referred to as a "transcript"), including full legal name and gender.¹¹ Following guidelines developed by the Texas Commissioner of Education, the AAR must have the complete name from the student's birth certificate or other legal document, without use of nicknames or abbreviations.¹² The student's legal name, the name submitted to Public Education Information Management System (PEIMS) at the Texas Education Agency (TEA), and the name recorded on the AAR must be identical.¹³ Any changes in the AAR must be dated, explained and kept as part of the student's permanent file.¹⁴ TEA has informally stated that it will accept the student gender that a district reports through PEIMS, including a report that changes the student's gender following a student and/or parent request to alter the record.

In contrast to permanent school records, however, teachers and other school district employees often informally address students by, and have non-permanent school records that reflect, preferred names or nicknames that are not a student's legal first name. A school district should apply this practice equally with transgender students. For example, the transgender student's preferred first name and gender should be used in speaking with the student and for class rosters, identification badges, awards, and any other similar purpose.

¹¹ Tex. Educ. Code § 28.025(e); 19 Tex. Admin. Code § 74.5(b); Tex. Educ. Agency, [Minimum Standards for the Academic Achievement Record](#) (2012).

¹² Tex. Educ. Agency, [Minimum Standards for the Academic Achievement Record](#), Section 1.11.

¹³ Tex. Educ. Agency, [Minimum Standards for the Academic Achievement Record](#), Section 1.11.

¹⁴ Tex. Educ. Agency, [Minimum Standards for the Academic Achievement Record](#), Section 1.9.

Parents or students may request that a district change the student's name and gender in educational records based upon a claim that such records are incorrect, misleading, or a violation of privacy under the Family Educational Rights and Privacy Act (FERPA).¹⁵ In a 1991 letter regarding a former male student who had graduated from a school district and thereafter transitioned to female, the U.S. Department of Education's Family Policy Compliance Office (FPCO), which implements FERPA, advised that "whether to amend the students' education records to reflect a name and gender other than that of the students' [name and gender] during their attendance would be considered a substantive decision of the District" and not a matter of required amendment under FERPA.¹⁶ In assessing a request to change or correct records, a school district should seek specific guidance from FPCO and the district's legal counsel.¹⁷ The district should also communicate and coordinate with any other agency that has authority related to the record at issue, such as TEA.

Note of Caution on Student Privacy

School districts and their employees should exercise caution in the release of information about a transgender student and seek the guidance of the FPCO or the district's attorney when in doubt. Depending on the circumstances, FERPA may protect from disclosure information about a transgender student that would be considered non-confidential directory information for another student. For example, a student may transition genders when moving from one school to another. In the process, the transgender student may request to be addressed by a new preferred first name and gender. The student may also want to keep private the previous name and gender that would be part of the student's educational records. For most students, name and gender are categorized under FERPA regulations and local policy as *directory information* that may be released without parental consent. For the transgender student, however, the former name and gender noted in the previous district's records would not meet the definition of directory information because its release could be considered harmful or an invasion of privacy. In addition, note that all parents, and students aged 18 and older, have the right to opt out of disclosure of directory information and the district must provide annual notice of this right.¹⁸

¹⁵ 20 U.S.C. § 1232g; 34 C.F.R. § 99.7(a)(2)(ii).

¹⁶ U.S. Dep't of Educ., Family Policy Compliance Office, *Letter from FPCO Director Leroy S. Rooper to Karol Johnson, Superintendent, Great Falls Public Schools* (Nov. 13, 1991).

¹⁷ U.S. Dep't of Educ., Office for Civil Rights, and the U.S. Dep't of Justice, Civil Rights Division, [Resolution Agreement between the Arcadia Unified School District and the U.S. Dep't. of Educ.](#), OCR Case No. 09-12-1020, (July 24, 2013); U.S. Dep't of Educ., Office for Civil Rights, and the U.S. Dep't of Justice, Civil Rights Division, [Resolution Agreement Downey Unified School District](#), OCR Case No. 09-12-1095, (Oct. 8, 2014).

¹⁸ 34 C.F.R. §§ 99.3, .37. See TASB Policies FL(LEGAL) and (LOCAL).

Q. What should a school district do if a transgender student requests to use sex-specific restrooms or locker rooms based on the student's gender identity?

A: Texas law does not specifically address this question. Title IX regulations have long permitted school districts to segregate male and female students in separate but comparable toilet, shower, and locker room facilities.¹⁹ The legal issue presented by transgender students is how to define "male" or "female" when a student's expressed gender identity does not match the student's assigned sex at birth. The Title IX statute and regulations were not designed to answer this question when they were adopted in the 1970s. Due to this uncertainty, the issue of a transgender student's legal right to access sex-specific facilities based on gender identity is currently being litigated in many states.

Federal Court Decisions Regarding Access to Single-Sex Facilities

In 2017, the Seventh Circuit Court of Appeals upheld an injunction allowing a transgender male student in Wisconsin to use the boys' bathroom.²⁰ The court held that the student was likely to succeed on the merits of his Title IX claim because the Wisconsin school district's unwritten policy requiring "an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX." The court also found that the student's Equal Protection claim was likely to succeed, because the district had not provided a "genuine and exceedingly persuasive justification" for its sex-based classification.

Similarly, the Third Circuit Court of Appeals recently denied an injunction sought by non-transgender students to block their Pennsylvania school district's policy of accommodating transgender student requests to use bathrooms and locker rooms based on gender identity.²¹ The Seventh Circuit and Third Circuit opinions are not binding on Texas courts, but they would be persuasive authority if a federal court in the Fifth Circuit were to consider these issues.

OCR Guidance Regarding Access to Sex-Specific Facilities

In May 2016, a *Dear Colleague Letter* issued by OCR and the U.S. Department of Justice (DOJ) stated: "A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity."²² The *Dear Colleague Letter* was immediately challenged in a lawsuit brought by the state of Texas

¹⁹ 34 C.F.R. § 106.33.

²⁰ *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034 (7th Cir. 2017), cert. filed Aug. 25, 2017.

²¹ See *Doe v. Boyertown Area Sch. Dist.*, 890 F.3d 1124 (890 F.3d 1124) (upholding denial of injunction to students claiming that district's policy allowing transgender students to use bathroom in accordance with gender identity violated non-transgender students' constitutional right to privacy).

²² U.S. Dep't of Educ., Office for Civil Rights, and U.S. Dep't of Justice, Civil Rights Division, *Dear Colleague Letter on Transgender Students* (May 13, 2016) (citing 34 C.F.R. § 106.33, the Title IX regulation permitting recipients of federal funds to provide separate but comparable facilities based on sex).

and other entities. In February 2017, however, OCR and DOJ issued a new joint *Dear Colleague Letter* rescinding the 2016 *Dear Colleague Letter*.²³ Due to this change in policy the plaintiffs in the Texas case voluntarily dismissed their lawsuit. The rescission of the 2016 *Dear Colleague Letter* also raised questions in ongoing litigation regarding transgender student rights.²⁴

Since OCR's February 2017 *Dear Colleague Letter*, however, the Third Circuit, Seventh Circuit, and other federal courts have held in favor of transgender students.²⁵ Many of these cases are ongoing; the issue may eventually be decided by the U.S. Supreme Court.

A Case-By-Case Approach to Transgender Students' Use of Sex-Specific Facilities

No court with jurisdiction in Texas has issued a final decision that clarifies exactly how a district must respond when a transgender student asks to use communal, sex-specific facilities that correspond to the student's gender identity. In the meantime, it remains clear that the transgender student has a right to be free from discrimination based on gender identity, while other students may claim a right to privacy or raise a safety concern about sharing a sex-specific facility with a transgender student. Districts are tasked with finding a reasonable resolution that addresses each situation as best as possible, in light of nondiscrimination principles and practical options.

As an initial step, the school district should communicate with the transgender student and the student's parents to determine the student's preference as to gender-specific facilities. Some school officials who have worked with parents and transgender students have found that the student voluntarily agrees to or prefers a separate unisex restroom, shower and changing area. If available, the district may make individual-user facilities an option for any student seeking greater privacy. Such facilities should be selected with safety, accessibility, and lack of educational disruption in mind.

While separate unisex facilities may work for some transgender students, others may feel that such an arrangement negatively singles them out and isolates them from their peers. Consequently, the transgender student may request to use communal sex-specific facilities that match his or her gender identity. While OCR has rescinded the guidance that formerly

²³ U.S. Dep't of Educ., Office for Civil Rights, and U.S. Dep't of Justice, Civil Rights Division, *Dear Colleague Letter Withdrawing Previous Guidance on Transgender Students* (Feb. 22, 2017).

²⁴ *G.G. v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2016), *vacated and remanded*, 137 S. Ct. 1239 (2017) (mem.).

²⁵ *See Evancho v. Pine-Richland Sch. Dist.*, 237 F.Supp.3d 267 (W.D. Pa. 2017) (granting transgender students' preliminary injunction against enforcement of school district resolution restricting bathroom use to single user facility or the bathroom of the students' assigned sex); *A.H. v. Minersville Area Sch. Dist.*, 3:17-CV-391, 2017 WL 5632662 (M.D. Pa. Nov. 22, 2017) (mem.) (denying district's motion to dismiss transgender female student's Title IX and Equal Protection claims). *See also Doe v. Boyertown Area Sch. Dist.*, 276 F.Supp.3d 324 (E.D. Pa. Aug. 25, 2017) (denying injunction to students claiming that district's policy allowing transgender students to use bathroom in accordance with gender identity violated non-transgender students' constitutional right to privacy).

required a district to allow a transgender student to use the facilities of the student's gender identity, there is no law that *prohibits* a district from granting the transgender student's request to use these facilities. In addition, changes to OCR's policy guidance do not alter the district's underlying obligation to comply with Title IX. If other students or their parents object to the use of a sex-specific facility by a transgender student, a school district may be able to amicably address the competing interests by making individual-user facilities and private areas available for all students.

Should a district's response to this difficult issue be challenged by a party through a legal action, the result is difficult to predict until the law more fully develops. Due to legal uncertainty and potential risk of litigation, a district should promptly consult with legal counsel in order to determine a defensible plan of action, including documentation of the district's efforts to address legitimate safety and privacy concerns while upholding the principles of nondiscrimination. If the transgender student's requests are not granted, then a school district will need to be prepared to demonstrate all the options considered and attempted, and to articulate a reasonable, non-discriminatory rationale for denying any requests.

Q. What do we do if a transgender student requests to participate in a sport based on gender identity instead of assigned sex on a birth certificate?

A: Texas statutes and case law do not address how to respond to such a request. It may be appropriate to deny a transgender student's request to compete on the team of the student's gender identity, but only if the denial of the request is based on objective, research-based medical information about the activity and the student in question, rather than general assumptions about gender differences or the potential discomfort of others.

If the student's request pertains to a sport under the jurisdiction of the University Interscholastic League (UIL), the district should consider UIL's position as to the student's eligibility.²⁶ Effective August 1, 2016, a UIL policy regarding gender specific sports requires Texas public schools to use a student's birth certificate to determine eligibility.²⁷

While the Texas UIL rule settles that UIL's position on eligibility is based on assigned sex and not on gender identity, a district's decision to enforce such a position is still subject to legal challenge and review by the OCR and the courts. Therefore, school districts should assess each request individually and determine the best course of action based on a thorough evaluation of all of the issues and potential risks. In its review, a school district should consider the issues of eligibility, gender-based discrimination, safety, and fairness. The district should document the steps it takes, including the following: (1) gathering full information as to the basis for and options related to the request, including seeking the UIL position on eligibility; (2) consulting with educational, sports, and health experts about the potential

²⁶ Tex. Educ. Code § 33.081.

²⁷ The University Interscholastic League, [Proposed Recommendation by UIL Review Advisory Committee to Standing Committee on Policy](#).

impact of the transgender student's participation; (3) consulting with the district's attorney regarding how to proceed, including documentation of the district's non-discriminatory rationale for the chosen course of action; and (3) confidentially informing all of the affected parties as to the process, analysis, and ultimate determination.

Q. How should a district handle field trips for transgender students?

A: Districts must not deny a transgender student an equal opportunity to participate in field trips, or any other curricular or extracurricular activity, in which students are segregated by sex. School officials can reduce the risk of complaints by addressing accommodations for individual transgender students in advance with the goals of maximizing the student's opportunity to learn and socialize with peers while ensuring safety and privacy interests for all students.²⁸ When the district agrees on an arrangement for the student's use of private, unisex, or sex-specific facilities at school, school officials must be prepared to ensure that the student has a safe place to use the restroom when away from campus. For example, when planning an event that will occur off-campus, a district employee may be assigned to call the location in advance to get information about private or alternative bathrooms or locker rooms.

For field trips involving overnight stays, an administrator or counselor may ask the student to identify other students with whom the student feels comfortable sharing a room. In this case, the administrator should seek written consent from the parent of a minor transgender student (or the student, if 18 years old) allowing the district to share information with the other students and their parents.²⁹

Q. What if a parent does not support a student's gender transition?

A: The law does not provide a clear path for educators in this difficult situation, but some principles are clear. Under FERPA, parents have a right of access to their minor students' education records; this right transfers when the student turns 18.³⁰ The Texas Education Code also gives parents the right to "full information" about their child's school activities, except for in child abuse investigations, and employees who encourage or coerce a child to withhold information from the child's parent may be subject to discipline, including termination.³¹ In 2016, the Texas attorney general opined that a district's guidelines for transgender student accommodations violated the Texas Education Code to the extent that the guidelines could have limited parental access to full information.³²

²⁸ See U.S. Dep't of Educ., Office for Civil Rights, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (2016) (citing policies and regulations for accommodating transgender students on overnight field trips).

²⁹ 34 C.F.R. §§ 99.31, .5.

³⁰ 34 C.F.R. § 99.5.

³¹ Tex. Educ. Code § 26.008.

³² Tex. Att'y Gen. Op. No. KP-100 (2016).

In light of these parameters, Texas educators typically work with parents to decide on appropriate accommodations for transgender students. Nonetheless, it is important to keep in mind that transgender students are at particular risk of harm, including self-harm, when a parent disagrees with the student's gender identity. The National Association of School Psychologists has advised that transgender youth who experience low family acceptance of their gender identity are more likely than peers to experience depression, substance abuse, and suicidal thoughts.³³ As such, a student may request that a district employee not tell his or her parent about the student's gender identity. School officials should proceed with caution in this case, in accordance with district policy regarding student counseling, crisis intervention, and child abuse.³⁴ It may be possible to reach an agreement with the student and parent that satisfies everyone: for example, schools have instructed staff to call a transgender student by the student's preferred name at school but to refer to the student by the name on the birth certificate in all communications with parents. Ultimately, the best advice is to assess each situation as it comes, working closely with the student, parents and district counsel to reach a resolution that protects the learning environment for all.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/legal_issues_related_to_transgender_students.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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³³ See National Assoc. of School Psychologists (NASP), *Position Statement: Safe Schools for Transgender and Gender Diverse Students* (May, 2014) (citing NASP Standard 1.2.6, "School psychologists . . . do not share information about the sexual orientation, gender identity, or transgender status of a student . . . without that individual's permission").

³⁴ See TASB Policies FFB (Crisis Intervention), FFE (Assistance Programs/Counseling), and FFG (Child Abuse and Neglect).

[[Notice to Readers](#)]

TITLE 34 EDUCATION

SUBTITLE B REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

CHAPTER I OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

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

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

SOURCE: 45 FR 30955, May 9, 1980, unless otherwise noted.

Subpart A—Introduction

§ 106.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93–568, 88 Stat. 1855, and sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93–380)

§ 106.2 Definitions.

As used in this part, the term:

- (a) *Title IX* means title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by section 3 of Pub. L. 93–568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.
- (b) *Department* means the Department of Education.
- (c) *Secretary* means the Secretary of Education.
- (d) *Assistant Secretary* means the Assistant Secretary for Civil Rights of the Department.
- (e) *Reviewing Authority* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.
- (f) *Administrative law judge* means a person appointed by the reviewing authority to preside over a hearing held under this part.
- (g) *Federal financial assistance* means any of the following, when authorized or extended under a law administered by the Department:
 - (1) A grant or loan of Federal financial assistance, including funds made available for:
 - (i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and
 - (ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.
 - (2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.
 - (3) Provision of the services of Federal personnel.
 - (4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.
 - (5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *Program or activity and program* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 20 U.S.C. 1687)

(i) *Recipient* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

(j) *Applicant* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(k) *Educational institution* means a local educational agency (LEA) as defined by section 1001(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (l), (m), (n), or (o) of this section.

(l) *Institution of graduate higher education* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(m) *Institution of undergraduate higher education* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(n) *Institution of professional education* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

(o) *Institution of vocational education* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(p) *Administratively separate unit* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(q) *Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(r) *Student* means a person who has gained admission.

(s) *Transition plan* means a plan subject to the approval of the Secretary pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980; 45 FR 37426, June 3, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Assistant Secretary upon request, a description of any modifications made pursuant to paragraph (c)(ii) of this section and of any remedial steps taken pursuant to paragraph (c)(iii) of this section.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.4 Assurance required.

(a) *General.* Every application for Federal financial assistance shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that the education

program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with §106.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 45 FR 86298, Dec. 30, 1980; 65 FR 68056, Nov. 13, 2000]

§ 106.5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of subpart B of this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.6 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 292d and 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Authority: Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives Federal financial assistance.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.7 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.8 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.9 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents 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, that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to §106.8, or to the Assistant Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in:

(i) Local newspapers;

(ii) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(iii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

Subpart B—Coverage

§ 106.11 Application.

Except as provided in this subpart, this part 106 applies to every recipient and to the education program or activity operated by such recipient which receives Federal financial assistance.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 86298, Dec. 30, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.12 Educational institutions controlled by religious organizations.

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; sec. 3(a) of P.L. 93-568, 88 Stat. 1862 amending Sec. 901)

§ 106.15 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, §§106.16 and 106.17, and subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of subpart C.* Except as provided in paragraphs (d) and (e) of this section, subpart C applies to each recipient. A recipient to which subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 45 FR 86298, Dec. 30, 1980]

§ 106.16 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of subpart C unless it is carrying out a transition plan approved by the Secretary as described in §106.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.17 Transition plans.

(a) *Submission of plans.* An institution to which §106.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which §106.16 applies shall result in treatment of applicants to or students of such recipient in violation of subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b) (3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b) (4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which §106.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment which emphasizes the institution's commitment to enrolling students of the sex previously excluded.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 106.21 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§106.16 and 106.17.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to §106.3(a), and may choose to undertake such efforts as affirmative action pursuant to §106.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 106.31 Education programs or activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which subpart C does not apply, or (2) an entity, not a recipient, to which subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

- (1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
- (3) Deny any person any such aid, benefit, or service;
- (4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- (5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
- (6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;
- (7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aid, benefits or services not provided by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 47 FR 32527, July 28, 1982; 65 FR 68056, Nov. 13, 2000]

§ 106.32 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(i) Proportionate in quantity and

(ii) Comparable in quality and cost to the student.

A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Authority: Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

§ 106.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

§ 106.34 Access to classes and schools.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[71 FR 62542, Oct. 25, 2006]

§ 106.35 Access to institutions of vocational education.

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

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

[71 FR 62543, Oct. 25, 2006]

§ 106.36 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.37 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided*, That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and §106.41.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§ 106.38 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates subpart E of this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.40 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;

- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and services;
- (9) Provision of housing and dining facilities and services;
- (10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§ 106.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.43 Standards for measuring skill or progress in physical education classes.

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

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

[71 FR 62543, Oct. 25, 2006]

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 106.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

- (1) Recruitment, advertising, and the process of application for employment;
- (2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;
- (3) Rates of pay or any other form of compensation, and changes in compensation;
- (4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;
- (5) The terms of any collective bargaining agreement;
- (6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;
- (7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
- (8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;
- (9) Employer-sponsored activities, including those that are social or recreational; and
- (10) Any other term, condition, or privilege of employment.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

§ 106.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

- (a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and
- (b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

- (a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in §106.61.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.56 Fringe benefits.

(a) *Fringe benefits defined.* For purposes of this part, *fringe benefits* means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of §106.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient

shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart F—Procedures [Interim]

§ 106.71 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6–100.11 and 34 CFR, part 101.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Appendix A to Part 106—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs

Editorial Note: For the text of these guidelines, see 34 CFR part 100, appendix B.

[44 FR 17168, Mar. 21, 1979]



OCR Basics: Understanding and Surviving a Civil Rights Investigation

Published online in [TASB School Law eSource](#)

What is OCR?

The Office for Civil Rights (OCR) is an agency within the U.S. Department of Education with the mission to “ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.”¹ OCR focuses on serving student populations that face the following types of unlawful discrimination:

- Race, color, and national origin discrimination prohibited by Title VI of the Civil Rights Act of 1964;
- Sex discrimination prohibited by Title IX of the Education Amendments of 1972;
- Disability discrimination prohibited by Section 504 of the Rehabilitation Act of 1973;
- Age discrimination prohibited by the Age Discrimination Act of 1975;
- Disability discrimination prohibited by the Americans with Disabilities Act of 1990; and
- Violations of the Boy Scouts of America Equal Access Act.

OCR is led by an assistant secretary for civil rights who is appointed by the president and confirmed by the Senate. OCR headquarters are located in Washington D.C., but most of its enforcement activities are carried out by twelve regional offices in locations around the country. The Dallas Regional Office is responsible for public schools and colleges in Texas as well as Arkansas, Louisiana, and Mississippi.

What does OCR do?

A school district or college that receives federal financial assistance may be the subject of an OCR “complaint review,” or investigation of a complaint of discrimination by the district against a student or students. Anyone who believes that a district has discriminated against a student on the basis of race, color, national origin, sex, disability, or age may file a complaint with OCR. The complainant need not be a victim of the alleged discrimination or a member of the protected class; i.e., a complaint may be filed by a district employee or other community member on behalf of a student or students.² Alternatively, OCR may initiate its own investigation to determine whether a school district is practicing compliance with the federal

¹ U.S. Dep’t of Educ., Office for Civil Rights, *About OCR*, ed.gov/about/offices/list/ocr/aboutocr.html.

² U.S. Dep’t of Educ., Office for Civil Rights, *About OCR*, ed.gov/about/offices/list/ocr/aboutocr.html.

laws that OCR enforces. These investigations are called “compliance reviews” or “directed investigations.”³ The procedures used by OCR to conduct enforcement activities are set out in the OCR Case Processing Manual, which is publicly available on the Department of Education Website at ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf.

In addition, OCR issues written policy guidance to assist districts in complying with the above laws. The OCR Reading Room Website contains OCR’s *Dear Colleague Letters* and other policy guidance documents addressing a wide range of issues, including bullying, sexual harassment, nondiscriminatory school discipline, rights of pregnant and parenting students, and equal access to extracurricular activities for students with disabilities.⁴ OCR relies on these documents to communicate its interpretation of federal civil rights laws and regulations to the general public as well as to recipients of federal funds. (OCR frequently refers to school districts and colleges as “recipients.”)

OCR also administers the Civil Rights Data Collection (CRDC), a mandatory, biennial survey designed to collect data, disaggregated by race or ethnicity, sex, limited English proficiency, and disability, on student enrollment and educational programs from every public school in the nation. The CRDC data, which are publicly available on the U.S. Department of Education Website at ed.gov/about/offices/list/ocr/data.html?src=rt/, offer a unique perspective on educational opportunity at the campus level.

What standards does OCR use in enforcement activities?

Federal civil rights statutes and their implementing regulations provide OCR with administrative authority and procedures for addressing and resolving alleged violations, including the authority to withhold federal funding if OCR finds a violation that the district is unwilling to resolve. Districts can also be sued in federal courts by individuals seeking monetary damages or other legal remedies for civil rights violations. Historically, OCR has taken the position that the administrative nature of its authority means that the agency is not restricted by the standards that apply in a court of law. Some critics, including the National School Boards Association (NSBA), have taken issue with OCR’s approach to enforcement.

For example, in October 2010, OCR issued a “Dear Colleague Letter” (DCL) regarding bullying and harassment that gave multiple hypothetical examples of bullying due to a victim’s protected characteristic and discussed how school officials should have responded in each instance.⁵ The DCL emphasized that schools must assess the nature of student misconduct, whether characterized as bullying, teasing, hazing, etc., to determine whether the behavior implicates the victim’s civil rights and, if so, must take comprehensive action in response.

³ See U.S. Dep’t of Educ., Office for Civil Rights, *Case Processing Manual*, Article IV (Feb. 2015), ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf.

⁴ These publications are available online at the OCR Reading Room Website, ed.gov/about/offices/list/ocr/frontpage/faq/readingroom.html.

⁵ U.S. Dep’t of Educ., Office for Civil Rights, *Dear Colleague Letter* (Oct. 26, 2010), ed.gov/about/offices/list/ocr/letters/colleague-201010.html.

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, 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.⁶

NSBA responded to the DCL with a letter expressing solidarity with OCR's mission to address bullying and improve the school climate but urging caution with respect to the DCL's scope.⁷ Among other issues, NSBA raised the concern that OCR's approach to bullying incidents significantly expanded the standard for school district liability previously set out by the U.S. Supreme Court in *Davis v. Monroe County Board of Education*.⁸ Under *Davis*, a district may not be held liable for student-to-student harassment unless the district has "actual knowledge" of the harassment and fails to reasonably respond.⁹ According to the DCL, however, a district is "responsible for addressing harassment incidents about which it *knows or reasonably should have known*."¹⁰ According to NSBA, the DCL's suggestions as to what the schools should have done to respond to the bullying incidents failed to acknowledge the professional judgment of professional educators and threatened to expose districts to increased litigation and liability beyond the limitations established by the *Davis* court. "[A]bsent clarification," NSBA cautioned, OCR's "expansive reading of the law as stated in the DCL will invite misguided litigation that needlessly drains precious school resources and creates adversarial climates that distract schools from their educational mission."¹¹

OCR responded to NSBA's concerns by noting, in correspondence dated March 25, 2011, that its guidance represented the agency's enforcement interpretation and did not purport to replace the standard for legal liability (i.e., money damages) that a plaintiff would have to meet in a federal court.¹²

⁶ U.S. Dep't of Educ., Office for Civil Rights, *Dear Colleague Letter* (Oct. 26, 2010), at 3-4, ed.gov/about/offices/list/ocr/letters/colleague-201010.html.

⁷ Letter from Francisco M. Negron, Jr., General Counsel, Nat'l Sch. Bds. Ass'n, to Charlie Rose, General Counsel, Dep't of Educ. (Dec. 7, 2010), nsba.org/sites/default/files/reports/NSBA%20Response%20to%20OCR%20Guidance%20December%202010.pdf.

⁸ Letter from Francisco M. Negron, Jr., General Counsel, Nat'l Sch. Bds. Ass'n, to Charlie Rose, General Counsel, Dep't of Educ. (Dec. 7, 2010), nsba.org/sites/default/files/reports/NSBA%20Response%20to%20OCR%20Guidance%20December%202010.pdf.

⁹ *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).

¹⁰ U.S. Dep't of Educ., Office for Civil Rights, *Dear Colleague Letter* (Oct. 26, 2010), at 2 (emphasis added), ed.gov/about/offices/list/ocr/letters/colleague-201010.html.

¹¹ Letter from Francisco M. Negron, Jr., General Counsel, Nat'l Sch. Bds. Ass'n, to Charlie Rose, General Counsel, Dep't of Educ. (Dec. 7, 2010), at 1-2, nsba.org/sites/default/files/reports/NSBA%20Response%20to%20OCR%20Guidance%20December%202010.pdf.

¹² Letter from Russlyn Ali, Assistant Sec'y for Civil Rights, Dep't of Educ., to Francisco M. Negron, Jr., General Counsel, Nat'l Sch. Bds. Ass'n (Mar. 25, 2011), nsba.org/sites/default/files/reports/ED_Response_-_NSBA_Bullying_Letter_2011.pdf.

In the years following the DCL, federal courts with jurisdiction over Texas districts have continued to uphold the *Davis* standard of liability.¹³ Nonetheless, districts in Texas have experienced the impact of OCR's broader enforcement interpretation in investigations and compliance reviews.

What is the impact of OCR on Texas school districts?

While OCR has been in existence for decades, in recent years school officials have become more aware of the agency's enforcement activities as the volume of complaints has greatly increased. According to OCR's Fiscal Year 2016 Report to the President and Secretary of Education, in 2016 OCR received a record 16,720 complaints, including significant increases in certain types of complaints. In the area of disability, between 2011 and 2016 the number of complaints regarding restraint and seclusion of students with disabilities increased by 100 percent, and complaints regarding web accessibility for persons with disabilities increased 511 percent. In the same five year time period, sexual violence complaints rose 277 percent in K-12 schools and 831 percent in higher education, and complaints regarding harassment on the basis of race, color, or national origin increased 17 percent.¹⁴

In Texas, complaints resolved in FY 2016 mirror national statistics. According to OCR's FY 2016 Report to the President and Secretary of Education, out of a total of 31 complaints resulting in resolution agreements with Texas districts, 27 involved allegations of disability discrimination.¹⁵ A significantly smaller amount of resolved complaints in 2016 involved allegations of gender discrimination (3) or race, national origin or ethnic discrimination (1).¹⁶

So you're being investigated by OCR. Now what?

Clearly, an OCR complaint has the potential to require a substantial amount of district resources. It can also have a negative effect on morale, as parents, employees, or other community members may cite a complaint or investigation as evidence of unlawful actions. As such, it is important that district officials have a basic understanding of OCR's procedures in

¹³ See, e.g., *Kelly v. Allen Indep. Sch. Dist.*, 602 F. App'x 949, 952-54 (5th Cir. 2015) (discussing that liability under Title IX requires the plaintiff to show that the district had actual knowledge of harassment); *but see T.K. v. New York City Dept. of Educ.*, 32 F.Supp.3d 405 (E.D.N.Y. 2014) (finding that school officials failed to take reasonable steps to address bullying and quoting extensively from 2013 DCL in defining liability standard for bullying in special education context), *aff'd*, 810 F.3d 869 (2d Cir. 2016).

¹⁴ U.S. Dep't of Educ., Office for Civil Rights, *Securing Equal Educational Opportunity: FY 2016 Report to the President and Secretary of Education* (Dec. 2016), ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf.

¹⁵ U.S. Dep't of Educ., Office for Civil Rights, *Securing Equal Educational Opportunity: FY 2016 Report to the President and Secretary of Education* (Dec. 2016), Appendix, ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf.

¹⁶ U.S. Dep't of Educ., Office for Civil Rights, *Securing Equal Educational Opportunity: FY 2016 Report to the President and Secretary of Education* (Dec. 2016), Appendix, ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf.

order to provide others with accurate information, prevent false rumors, and help to mitigate any negative psychological effects.

Initiation of an investigation

OCR must investigate any complaint that meets the basic criteria: a written explanation of the allegation(s) describing a matter under OCR's jurisdiction; identification of the injured person(s); and identification of the alleged perpetrator of the discrimination. According to the OCR Case Processing Manual (CPM), OCR will dismiss a complaint if the allegation: (1) fails to state a violation of one of the laws that OCR enforces; (2) provides insufficient details; or (3) is so "speculative, conclusory, or incoherent" that OCR cannot infer that a violation occurred.¹⁷ Unlike in a lawsuit, however, there is no formal procedure for a district to challenge the adequacy of a complaint prior to initiation of an investigation.

When OCR determines that a complaint is proper, a case number will be assigned and the complainant and district will receive notification that a case has been opened for investigation. OCR will provide the district with the allegations to be investigated and a copy of its complaint processing procedures with the notification.¹⁸ The CPM does not, however, require OCR to provide the district with a copy of the complaint itself. Upon receiving notification of an investigation, the district should immediately contact its attorney in order to begin an internal review of the allegations. It may be necessary to file a Freedom of Information Act request with OCR in order to obtain a copy of a complaint.¹⁹

Conducting the investigation

Depending on the scope of the investigation, the district may be required to direct substantial time and resources responding to the OCR investigator's requests for documents and information. The CPM gives each regional enforcement office the authority to determine the appropriate time for responding to data requests. OCR requests for data in a particular format must be "reasonable and take into consideration the burden placed on the recipient."²⁰ Nonetheless, when district employees are tasked with responding to OCR information requests, in addition to regular job duties, a stressful impact on workplace morale may be inevitable.

OCR may also seek to conduct interviews with relevant employees, which may be in-person and on district property. The purpose of these interviews could be to assess witness credibility, evaluate the district's response to the allegations in a complaint, and/or gain a deeper understanding of the records in a case. Witnesses are entitled to a representative at an interview.

¹⁷ U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual*, § 108 (Feb. 2015), ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf.

¹⁸ U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual*, § 109 (Feb. 2015), ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf.

¹⁹ 5 U.S.C. § 552.

²⁰ U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual*, § 702(c)(3)(ii) (Feb. 2015), ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf.

A district employee may opt to have the district's attorney attend an interview or may invite a personal representative. The OCR investigator must advise witnesses of their rights prior to the interview, including notification that the witness has the right to refuse to have anyone else present during the interview and not to reveal the content of an interview.²¹ However, the CPM provides that "[i]n most cases," the district's attorney will be permitted to attend interviews with "upper level management."²² OCR may also interview student witnesses. Typically, the CPM requires parental consent in order to interview a student.²³

Throughout the investigation, the district should be working with its own attorney. The district's refusal to cooperate with OCR's requests for information or interviews may result in deferral of federal funds and referral of the case to the Department of Justice for judicial enforcement proceedings.²⁴

Concluding an Investigation

An investigation may be resolved at any time if OCR determines that a resolution agreement is appropriate. During the complaint process, OCR may invite the parties to voluntarily resolve the dispute through the Early Complaint Resolution (ECR) process. OCR must consider whether a complaint is appropriate for ECR as early as possible, even during the initial evaluation of a complaint. If the parties agree to participate in ECR, the investigation may be suspended for up to 30 days while OCR acts as a confidential, impartial mediator to facilitate discussions and work towards a mutually acceptable resolution. According to the CPM, "to the extent possible," OCR staff assigned to act as the ECR facilitator will not be the same staff assigned to investigate the complaint.²⁵ OCR may offer assistance with writing a resolution agreement between the parties; however, OCR is not a party to any agreement reached through ECR and will not monitor either party's compliance with the agreement. School districts may also initiate early resolution of a complaint under Section 302 of the CPM. This may be a good strategy where a district's internal investigation reveals compliance issues that require corrective action.

When an investigation is concluded, OCR will determine, based on a preponderance of the evidence standard, whether there is sufficient evidence to support a finding that the district failed to comply with the law. OCR will then issue a letter of finding(s) to the parties explaining the basis for the decision and notifying the complainant that he or she has the right to file a

²¹ U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual*, § 702(d)(2)(iv) (Feb. 2015), ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf; see also U.S. Dep't of Educ., Office for Civil Rights, *OCR Notice of Witness Rights*, ed.gov/about/offices/list/ocr/docs/witness-notice-mw.pdf.

²² U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual*, § 702(d)(2)(vi) (Feb. 2015), ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf.

²³ U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual*, § 702(d)(4) (Feb. 2015), ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf.

²⁴ U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual*, Art. VI (Feb. 2015), ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf.

²⁵ U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual*, §§ 201, 202 (Feb. 2015), ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf.

private lawsuit in federal court whether or not OCR found a violation.²⁶ If OCR determines that a violation has occurred, it will also issue a statement of the case and a draft resolution agreement. Complainants may appeal OCR letters of finding to the Regional Director of the Enforcement Office that issued the letter.²⁷ In contrast, the CPM does not include a procedure for a district to challenge an OCR determination.

If OCR determines through an investigation that a district failed to comply with one of the civil rights laws that OCR enforces, OCR will encourage the district to enter into a voluntary resolution agreement designed to bring the district into compliance. Resolution agreements must include specific steps that the district will take in order to resolve compliance issues, dates for implementation of each step, and requirements for providing documentation of compliance to OCR.²⁸ Resolution agreements further require the district to acknowledge that OCR will monitor the district's implementation of the steps called for in the agreement until the district "has fulfilled the terms of the agreement and is in compliance with the statute(s) and regulation(s) that were at issue in this case."²⁹ In some cases, a board approving a resolution agreement may go beyond the terms of the agreement to make other district-wide changes. For example, a district may decide to modify its procedures for student discipline or hearing grievances based on the issues raised by an OCR complaint or the result of the district's internal investigation.

It is crucial that a district work with its attorney throughout the complaint process to assist in evaluating the allegations, coordinating the district's response, and negotiating with OCR in any resolution discussions. Furthermore, should the district enter into a resolution agreement, an attorney can provide valuable assistance and relieve the district's administrative burden during the monitoring period (which may last for several years) by tracking important deadlines and helping to prepare documentation of compliance.

Conclusion

OCR and school districts want the same thing: to protect students from discrimination and retaliation in school so that they can focus on learning. With mutual understanding as to the policies, issues, and practical constraints that apply to each other, OCR and school districts can improve collaboration in order to achieve this common goal.

²⁶ U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual*, § 301(c) (Feb. 2015), [ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).

²⁷ U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual*, § 306 (Feb. 2015), [ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).

²⁸ U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual*, § 304 (Feb. 2015), [ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).

²⁹ U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual*, § 304 (Feb. 2015), [ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](https://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).

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Updated January 2018

20 U.S. Code § 1681. Sex

U.S. Code Notes

(a) PROHIBITION AGAINST DISCRIMINATION; EXCEPTIONS No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) CLASSES OF EDUCATIONAL INSTITUTIONS SUBJECT TO PROHIBITION

in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) EDUCATIONAL INSTITUTIONS COMMENCING PLANNED CHANGE IN ADMISSIONS

in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) EDUCATIONAL INSTITUTIONS OF RELIGIOUS ORGANIZATIONS WITH CONTRARY RELIGIOUS TENETS

this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) EDUCATIONAL INSTITUTIONS TRAINING INDIVIDUALS FOR MILITARY SERVICES OR MERCHANT MARINE

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) PUBLIC EDUCATIONAL INSTITUTIONS WITH TRADITIONAL AND CONTINUING ADMISSIONS POLICY

in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) SOCIAL FRATERNITIES OR SORORITIES; VOLUNTARY YOUTH SERVICE ORGANIZATIONS this section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) BOY OR GIRL CONFERENCES this section shall not apply to—

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State

conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for—

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) FATHER-SON OR MOTHER-DAUGHTER ACTIVITIES AT EDUCATIONAL INSTITUTIONS

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) INSTITUTION OF HIGHER EDUCATION SCHOLARSHIP AWARDS IN "BEAUTY" PAGEANTS

this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) PREFERENTIAL OR DISPARATE TREATMENT BECAUSE OF IMBALANCE IN PARTICIPATION OR RECEIPT OF FEDERAL BENEFITS; STATISTICAL EVIDENCE OF IMBALANCE

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or

other area: Provided, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) "EDUCATIONAL INSTITUTION" DEFINED

For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

(Pub. L. 92-318, title IX, § 901, June 23, 1972, 86 Stat. 373; Pub. L. 93-568, § 3(a), Dec. 31, 1974, 88 Stat. 1862; Pub. L. 94-482, title IV, § 412(a), Oct. 12, 1976, 90 Stat. 2234; Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

**Questions and Answers on Title IX and Single-Sex Elementary and Secondary
Classes and Extracurricular Activities***

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) has received a number of questions about the legality, under the Department's regulations implementing Title IX of the Education Amendments of 1972 (Title IX), of single-sex elementary and secondary classes and extracurricular activities offered by recipients of funding from the Department.¹

Although Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, regulations issued by the Department authorize schools to offer single-sex classes or extracurricular activities under certain circumstances.² In order to ensure that schools subject to Title IX comply with the Department's requirements if they choose to offer single-sex classes and extracurricular activities, OCR provides the following responses to questions that schools should consider when assessing their compliance with Title IX. Although this document focuses on single-sex classes, some of the legal principles will also apply to single-sex schools. In order to gain a complete understanding of these legal requirements and recommendations, this document should be read in full.

Authorized by

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

December 1, 2014

* The Department has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf. 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 it enforces. OCR's legal authority is based on those laws and regulations. This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

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Overview of Title IX's Application to Single-Sex Classes and Extracurricular Activities*

1. What types of schools are covered by the Department's Title IX regulations on single-sex classes?

Answer: Coeducational elementary and secondary schools and school districts that receive Federal financial assistance from the Department must comply with the Department's Title IX regulations in 34 C.F.R. § 106.34(b) on single-sex classes if they intend to offer such classes. (OCR often refers to these schools and school districts as "recipients.") In practice, the regulations regarding single-sex classes apply to every public school (including traditional, charter, and magnet schools) because every public school is part of a local education agency that receives financial assistance from the Department. The regulations also apply to the few private coeducational schools that receive Federal financial assistance from the Department³ and wish to offer single-sex classes.[†]

2. Are there other legal considerations beyond the Title IX regulations discussed in this guidance document that apply to single-sex classes?

Answer: Yes. While this document only addresses the requirements of the Department's Title IX regulations, public school districts and schools that are currently offering or are interested in offering single-sex classes must comply with the Constitution of the United States and other applicable Federal laws. The Equal Protection Clause of the Fourteenth Amendment prohibits discrimination on the basis of sex by public schools.⁴ In addition, Title IV of the Civil Rights Act of 1964 (Title IV) prohibits public school boards from denying students the equal protection of the laws based on sex,⁵ and the Equal Educational Opportunities Act (EEOA) prohibits some forms of student assignment to schools if the assignment results in sex segregation.⁶

* The Department's regulations clarified in this document apply to all single-sex classes and extracurricular activities covered by 34 C.F.R. § 106.34(b). For simplicity, OCR generally uses the term "classes" or "classes and activities" to refer to "classes and extracurricular activities."

† A private school that is controlled by a religious organization is exempt from Title IX even when it receives Federal financial assistance to the extent that the law's requirements conflict with the organization's religious tenets. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office. (See the response to Question 33 to determine which regional office serves your location.)

All of these legal requirements are enforced in different ways. OCR has authority to investigate a potential Title IX violation in response to a complaint or proactively through a compliance review and may refer a matter to the Department of Justice (DOJ) if voluntary compliance cannot be achieved.⁷ DOJ also has independent authority to enforce the Equal Protection Clause, Title IV, and the EEOA. Additionally, an individual may bring a private lawsuit against a school district or school for alleged violations of Title IX, the Equal Protection Clause, or the EEOA, and DOJ may seek to intervene in such a suit.

Therefore, when public school districts and schools offer single-sex classes, they must ensure that they comply with the Constitution and all applicable Federal laws, not just Title IX. State and local rules cannot limit or override the requirements of Federal laws, including Title IX and its regulations, but States and localities may have constitutions, laws, or regulations that impose additional limitations regarding the offering of single-sex classes.⁸

OCR recommends that a school district or school consult with legal counsel prior to offering single-sex classes.

3. Does this document address single-sex schools?

Answer: This document focuses on the Department’s Title IX regulations pertaining to single-sex classes in public elementary and secondary schools. There are separate Title IX regulations in 34 C.F.R. § 106.34(c) that govern public, nonvocational single-sex schools. Generally, a school district may offer a single-sex nonvocational elementary or secondary school under Title IX only if it offers a substantially equal single-sex or coeducational school to students of the excluded sex.⁹ However, single-sex nonvocational private schools are not governed by the Department’s Title IX regulation requiring a substantially equal single-sex or coeducational school. By contrast, vocational schools that receive Federal financial assistance may never be limited to one sex.¹⁰ There are also Department Title IX regulations that apply to admissions to single-sex nonvocational public and private colleges and universities.¹¹

As noted in the response to Question 2, public single-sex schools are subject to the Equal Protection Clause of the Fourteenth Amendment and other Federal statutes as well as Title IX. The Department requires grant applicants that seek funds or other forms of Federal financial assistance for the establishment or operation of a public single-sex school to demonstrate the school’s compliance with Title IX, the Equal Protection Clause of the Fourteenth Amendment, and all other applicable laws and regulations. Failure to demonstrate compliance with these requirements may lead to a rejection of the grant application or disqualification from receipt of continuation funds or other financial assistance.

4. May schools offer single-sex classes and extracurricular activities under the Department’s Title IX regulations?

Answer: Yes. The Department’s Title IX regulations permit offering single-sex classes under certain circumstances. The general rule under Title IX is that a recipient may not exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex in its education programs or activities—including classes and extracurricular activities—unless expressly authorized to do so under Title IX or the Department’s implementing regulations.¹² The Department’s Title IX regulations identify the following categories for which a recipient may intentionally separate students by sex:¹³

- Contact sports in physical education classes;¹⁴
- Classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality;¹⁵ and
- Nonvocational classes and extracurricular activities within a coeducational, nonvocational elementary or secondary school if certain criteria are met.¹⁶

5. What kinds of classes and activities does this document address?

Answer: This document focuses on the last exception noted in the response to Question 4—nonvocational classes and extracurricular activities in a coeducational, nonvocational elementary or secondary school receiving Federal financial assistance. These include any single-sex curricular activity (such as a class or a field trip) and any single-sex extracurricular activity (such as a before-school or after-school activity, lunch, or recess). The requirements regarding this exception apply to single-sex classes and activities whether they are provided directly by a school district or school or through another entity.¹⁷

Vocational classes are not discussed further in this document because they may never be offered on a single-sex basis.¹⁸ For purposes of this document, vocational classes are those classes that have as their primary purpose the preparation of students to pursue a technical, skilled, or semi-skilled occupation or trade; or to pursue study in a technical field, consistent with the definition of “institution of vocational education” in 34 C.F.R. § 106.2(o).¹⁹

OCR does not address interscholastic, club, or intramural athletics in this document because extracurricular athletics are governed by separate Title IX regulations.²⁰

6. Is a class that is open to all students but in which only members of one sex enroll covered by the Title IX regulations described in this document?

Answer: No. The regulations described in this document apply to a class that excludes students of one sex from enrolling or otherwise participating in that class.

By contrast, a class is not subject to the regulations described in this document if it is open to members of both sexes, even if students of only one sex, or a substantially disproportionate number of students of one sex, enroll. If such disproportion exists in a coeducational class, however, it may be an indication of inappropriate steering or other discrimination in counseling or guidance. Title IX requires that, if such disproportion exists, the school ensure that the disproportionate enrollment is not the result of discrimination on the basis of sex, including in counseling or guidance of students or applicants for admission.²¹

7. What criteria must be met to offer single-sex classes under the Department’s Title IX regulations?

Answer: The Department’s Title IX regulations permit a nonvocational elementary or secondary school to offer a nonvocational single-sex class if it has a two-part justification for doing so that demonstrates that:

- each single-sex class is based on the recipient’s “important objective” either to
 - improve its students’ educational achievement through its overall established policies to provide diverse educational opportunities (the diversity objective), or
 - to meet the particular, identified educational needs of its students (the needs objective); and
- the single-sex nature of the class is “substantially related” to achieving that important objective.²²

In addition to establishing a justification for offering a single-sex class, in order to comply with the Department’s Title IX regulations, the recipient must:

- implement its objective in an evenhanded manner;
- ensure that student enrollment in the single-sex class is completely voluntary;
- provide a substantially equal coeducational class in the same subject; and

- conduct periodic evaluations to determine whether the class complies with Title IX, and if not, modify or discontinue the class to ensure compliance with Title IX.

Each of these elements is discussed below.

Justification for Offering a Single-Sex Class

8. Does a recipient need a justification for each single-sex class or activity it offers?

Answer: Yes. A specific, individual justification (demonstrating the recipient’s objective and the substantial relationship between the objective and the single-sex nature of the class or activity) is necessary for each single-sex class or activity. A recipient may not offer single-sex classes in multiple grades or subjects without separately justifying each class. At the elementary school level, where a class typically covers many subjects, the recipient must separately justify the use of single-sex classes for each subject. This requirement applies to each single-sex curricular activity and each single-sex extracurricular activity offered by the school.

9. When must a recipient establish its justification for a single-sex class?

Answer: A recipient must establish its justification prior to offering the single-sex class.²³

Although OCR does not pre-approve class offerings or offer legal advisory opinions, OCR will request documentation of the justification during a complaint investigation or compliance review. OCR will review the justification to ensure that it was the actual reason that motivated the offering of that single-sex class, rather than an after-the-fact explanation prepared in response to the complaint or investigation.²⁴ A recipient is not required to prepare a written justification, but in the absence of a written justification, OCR will assume that the recipient did not establish its justification prior to offering the single-sex class and that any justification was established after the initiation of the complaint investigation or compliance review, unless the recipient can prove otherwise. Therefore, it is strongly recommended that the recipient articulate its justification in writing prior to offering the single-sex class and preserve that documentation for at least as long as the recipient offers the single-sex class in question and for a reasonable time after the class ends. This documentation may also assist the recipient as it periodically evaluates its single-sex offerings, as discussed in more detail in response to Questions 23 through 28.

10. In what ways can a school identify an important objective for offering a single-sex class?

Answer: To offer a single-sex class, a school district or school must first identify an important objective that the particular single-sex class is intended to address. The Title IX

regulations on single-sex classes describe the following two important objectives, one of which must be the basis for offering a single-sex class.

- **Diversity Objective:** “To improve educational achievement of its students, through a recipient’s overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective.”²⁵

To meet this objective, a recipient must first identify the educational achievement it seeks to improve through the diverse educational opportunities it offers and the proposed single-sex class.²⁶ Recipients may not rely on the diversity objective if the only type of nontraditional class offered is a single-sex class.²⁷ Rather, the recipient must offer a range of diverse educational opportunities beyond single-sex and coeducational classes. Diverse offerings in a school might include, for example, a variety of electives, a variety of curricula (such as a science, technology, engineering, math (STEM) focus or International Baccalaureate classes), co-op or internship opportunities, or the option to take classes at other schools.

- *Example A*^{*}: The students at Options High School earn high grades and above-average scores on State exams, but their enrollment in Advanced Placement (AP) classes is low. Options High School would like to increase enrollment in AP classes in an effort to improve its students’ college preparedness. As part of its college-preparedness effort, Options High School offers diverse educational opportunities, including AP classes, a variety of electives, a STEM-focused curriculum option, and a visual and performing arts-focused curriculum option. Many students who are not enrolled in AP classes have expressed interest in taking AP classes in a single-sex setting. The high school would like to add single-sex AP classes to its class offerings in order to increase enrollment in AP classes and thus improve college preparedness. Under these circumstances, attempting to improve its students’ college preparedness through single-sex AP classes is an appropriate use of the diversity objective.

* This document provides guidance on a number of Title IX requirements applicable to single-sex classes, including justification/important objective; substantial relationship; evenhandedness; voluntariness; a substantially equal coeducational class; and periodic evaluations. Each example in this document is intended to illustrate the principles discussed in the response in which the example appears. Each example also presumes compliance with all the Title IX requirements discussed elsewhere in the document and should be read with that understanding.

- Needs Objective: “To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective.”²⁸

Unlike the diversity objective, to meet the needs objective, the recipient must identify a particular educational need in its student body, evidenced by limited or deficient educational achievement, which is not being met by coeducational classes.²⁹

- *Example B*: Underperforming Elementary School wants to address the fact that its male third-grade students routinely score “not proficient” on the State reading exam. Attempting to increase male students’ performance to proficient on a State exam through the offering of a single-sex third-grade reading class is an appropriate use of the needs objective.

The needs objective also encompasses certain social needs that students may have. The Department recognizes that a school’s educational mission may extend beyond strictly academic objectives, and that classes and activities may provide social benefits that can have a positive effect on students’ educational outcomes.³⁰

- *Example C*: A high school’s Title IX coordinator has received a number of reports of dating violence among the school’s students. All of the reports came from female complainants and were about male aggressors. Many of the female complainants have expressed a fear of interacting with male students. To address the issue, the school offers an after-school, extracurricular program to provide all students with information about dating violence, the cycle of abuse, anger management, and effective methods for ending a violent relationship. The school offers the program to students on a single-sex basis, with boys meeting on one night and girls meeting a different night, as well as a coeducational option.

Given the circumstances at this school, attempting to decrease the prevalence of dating violence among students by offering a single-sex extracurricular activity is an appropriate use of the needs objective.

Regardless of which objective it chooses, the recipient must meet the other Title IX requirements discussed in this document, including showing that the single-sex nature of the class is substantially related (see the responses to Questions 11 and 12) to meeting the identified objective.

Administrative convenience will never justify the offering of single-sex classes.³¹

- *Example D:* Shortcut Elementary School’s fourth-grade class is half female and half male. The fourth-grade students have lunch and recess from 10:30 a.m. to 11:30 a.m., with half an hour allotted for lunch and half an hour for recess. Half of the students have lunch first, followed by recess. The other half of the students go to recess first, followed by lunch. To make it easier for teachers to know whether students are attending their assigned lunch/recess block, Shortcut Elementary has divided the students by sex, with all fourth-grade girls in the first group and all fourth-grade boys in the second group. This is not an appropriate justification for operating single-sex lunch and recess.

11. What kind of evidence may a recipient use to show that the single-sex nature of a class is substantially related to achieving an important objective?

Answer: The substantial relationship between the single-sex nature of the class and the school’s important objective must be directly supported by evidence (as described below) gathered and evaluated prior to offering the single-sex class. Below are examples of types of evidence that a recipient may use to demonstrate the required substantial relationship. A recipient may use more than one type of evidence to determine whether a substantial relationship exists. Regardless of the evidence used, the justification may “not rely on overbroad generalizations about the different talents, capacities, or preferences of” either sex, so, likewise, the evidence cited in the justification may not rely on these overly broad generalizations.³²

Comparator schools: The recipient may obtain data demonstrating a substantial relationship through the use of comparator schools. To do this, the recipient must: (1) identify comparator schools with a student population and school and class setting (*e.g.*, grades served, curricular offerings, geographic location, admissions requirements, educational benefits, etc.) that are similar to the population and setting of the recipient’s school; and (2) obtain data showing that the comparator schools achieved the recipient’s important objective in the relevant subject or with respect to the relevant educational or social need through the use of single-sex classes. When identifying comparator schools, the recipient should consider factors that may distinguish two schools, such as socioeconomic differences among the student population, differences in admissions policies and criteria, or resources available through private funding.

If the recipient can identify appropriate comparator schools that have offered single-sex classes in the same subjects and grades, the recipient should ensure that the comparator school’s success in each class is substantially related to the single-sex nature of the class rather than other simultaneously used strategies (*e.g.*, tutoring, extended class sessions, weekend academic programming, etc.). If the comparator school used other strategies in

its single-sex class, the recipient will need to take further steps in order to show a substantial relationship between its important objective and the single-sex nature of the class because it would be very difficult to determine whether any success in the comparator school was due to the single-sex nature of the class or the other strategies that were used. One way for the recipient school to demonstrate that the single-sex nature of the class contributed to the students' success is to try the other strategies used by the comparator school in a coeducational setting at the recipient's school prior to offering a single-sex class and to compare the results relative to the important objective that the recipient seeks to achieve.

- *Example E:* A majority of seventh-grade boys at Evidentiary Middle School have scored "not proficient" on the State science exam for the past three years. The school has identified a public school in a neighboring district, Comparator Middle School, which has dramatically increased its seventh-grade boys' scores on the State science exam over the past five years. Comparator Middle School is roughly the same size as Evidentiary Middle School, and both schools serve students at the same grade level and of similar socioeconomic status. Evidentiary Middle School would like to implement Comparator Middle School's science program in hopes that Evidentiary's seventh-grade boys will achieve similar success.

In achieving its gains, Comparator Middle School offered a single-sex science class for seventh-grade boys. The State science exam scores of male students in that class increased significantly. The all-boys science class used a newly developed curriculum and textbook, implemented a double-period science class, offered after-school tutoring to all students in the class, and implemented a mandatory robotics-themed Saturday school for the seventh-grade students in those classes.

Evidentiary Middle School implemented these same sex-neutral strategies in its coeducational seventh-grade science classes: it adopted the curriculum and textbook used by Comparator, increased class time to make science a double-period class, offered after-school tutoring, and implemented the same mandatory robotics-themed Saturday school. It offered these classes on a coeducational basis for three years, but the science scores of its seventh-grade boys remained stagnant. At that point, consistent with the needs objective, Evidentiary decided to offer an all-boys seventh-grade science class in conjunction with the sex-neutral strategies listed above.

Given these facts, OCR would find that Evidentiary Middle School had shown a substantial relationship between its objective of increasing its seventh-grade male students' proficiency on the State science exam and the single-sex nature of the boys science class it decided to offer.

- *Example F:* Most girls at Scientific High School do not enroll in AP Chemistry, though their grades and scores on State science exams suggest that they would be good candidates for the class. Boys at Scientific High School do enroll in AP Chemistry and all students otherwise take advantage of the school's widely diverse class offerings. Consistent with the diversity objective, Scientific High School would like to improve the educational achievement of its students by increasing female enrollment in AP Chemistry by further expanding its class offerings to include an all-girls AP Chemistry class.

Scientific High School has identified two schools in nearby districts that have implemented an all-girls AP Chemistry class. These schools are approximately the same size as Scientific High School, and all three schools serve students at the same grade level and of similar socioeconomic status. All three are neighborhood schools with no specific admissions requirements, and all students receive transportation to and from school through the applicable district.

Over the last three years, since the implementation of those classes, the enrollment rate of female students in AP Chemistry has steadily increased at both of the two comparator schools. Female enrollment in those schools' coeducational AP Chemistry classes has stayed roughly the same. The schools did not change any other aspect of their AP Chemistry programs; the single-sex classes are identical to their coeducational counterparts.

Given these facts, OCR would find that, through its overall policy to provide diverse educational opportunities, Scientific High School had shown a substantial relationship between the single-sex nature of the girls science class and its important objective of improving the educational achievement of its students by increasing female enrollment in AP Chemistry.

Research Evidence: Research evidence demonstrating the effectiveness of single-sex classes in circumstances sufficiently similar to the school's circumstances may also satisfy the substantial relationship requirement. A 2005 Department-commissioned survey found the results of available research on the general use of single-sex education were equivocal.³³ Nonetheless, to satisfy the substantial relationship requirement, OCR will accept a research study that: 1) employs a rigorous research design for causal inference; 2) demonstrates the

effectiveness of the single-sex nature of the class with respect to the specific important objective at issue (e.g., improving achievement in Algebra or reducing infractions requiring discipline); and 3) includes a sample that overlaps with the proposed populations or settings (e.g., ninth-grade girls in low-income communities) that the recipient is targeting. The standards set forth in the Department's *What Works Clearinghouse Procedures and Standards Handbook*³⁴ provide an appropriate guide for assessing the strength of a study of the effectiveness of the intervention (e.g., limiting a class to a single sex) in addressing the school's important objective.

- *Example G:* Town Elementary School would like to offer an all-boys fourth-grade class to reduce the discipline problems of the boys in that grade. Before it offers this class, Town Elementary School finds a research study that meets the What Works Clearinghouse Procedures and Standards and concludes that boys ages five through ten in all-boys classrooms committed fewer infractions leading to discipline than boys in coeducational "control" classes with identical rules and procedures for discipline, curricula, educational strategies, teacher-student ratio, and student population (e.g., eligibility for free and reduced-price lunch).³⁵ The population and settings of the single-sex and coeducational classes examined in the study are almost identical to those of Town Elementary School's fourth-grade classes. Absent facts distinguishing the research classes from Town Elementary School's classes, OCR would find this study is sufficient to show a substantial relationship between the school's objective of reducing discipline and the single-sex nature of the class.

12. May a recipient demonstrate a substantial relationship using a claim that a certain strategy, other than single-sex, is more effective for most members of one sex?

Answer: Claims that a certain strategy (such as a teaching method or a specific learning environment) is more effective for most members of one sex will not be sufficient, standing alone, to show a substantial relationship between the single-sex nature of a class and the important objective. This is because such a strategy may be equally effective regardless of whether it is implemented in a single-sex or a coeducational setting. If the recipient wants to use that strategy in a single-sex setting, the recipient still needs to show that students will benefit from the fact that the class is single-sex. Therefore, even assuming a recipient had evidence showing that a certain strategy was particularly effective for one sex, the recipient would need further evidence showing that the exclusion of the other sex was necessary to make the strategy effective or, at the least, substantially more effective. (This showing could be made through the use of comparator schools or research evidence, described in the response to Question 11.)

- *Example H:* A majority of third-grade girls at Cold Elementary School are underperforming on State science tests. Cold Elementary School would like to implement an all-girls third-grade class that keeps the classroom temperature ten degrees higher than the school’s other classrooms, because the school’s principal has read an article suggesting that girls learn better in warmer temperatures and boys learn better in colder temperatures. The article did not cite to any studies comparing students in coeducational warm or cold classes with students in single-sex warm or cold classes, but rather simply concluded that all girls will learn better in a warm environment and that all boys will learn better in a cold environment. Even if this research were reliable, it would not prove that boys would learn better in a cold environment with no girls, or that girls would learn better in a warm environment with no boys.

Thus, the school cannot show a substantial relationship between the single-sex nature of the class and the anticipated increase in girls’ State science test scores. If the school believes temperature affects educational outcomes, it can offer a coeducational “warm” and a coeducational “cool” classroom and use criteria, other than the student’s sex, to decide which students would attend each of those coeducational classrooms, such as allowing students and parents to choose the learning environment they believe best suits each student.

Evenhanded Offerings

13. What is the evenhandedness requirement?

Answer: A recipient must treat male and female students evenhandedly in implementing its important objective.³⁶ The evenhandedness requirement means that a recipient offering single-sex classes must provide equal educational opportunities to students regardless of their sex, with the end result that both sexes receive substantially equal classes.³⁷

14. How does the evenhandedness analysis apply if a recipient is asserting the diversity objective?

Answer: If the recipient asserts the diversity objective, and it has identified single-sex classes for which it can demonstrate a substantial relationship to its important objective, it must still ensure that the choice of diverse educational opportunities, including single-sex or coeducational classes, is offered evenhandedly to male and female students. To do this, it must conduct a thorough and impartial assessment of what single-sex classes to offer to each sex, and then offer those classes evenhandedly to its students.³⁸ Thus, under the diversity objective, if a recipient is able to justify single-sex classes for both sexes, offering single-sex classes for only one sex will likely violate the evenhandedness requirement,

unless the recipient can show that it evenhandedly gauged the interest of both sexes and the excluded sex was not interested in having the option to enroll in single-sex classes. Likewise, if one sex is offered single-sex classes in the school's core subjects, while the other sex is only offered single-sex classes in the school's non-core subjects, OCR would not find that the recipient is offering classes in an evenhanded manner.

- *Example I:* Advanced High School would like to use single-sex classes to increase enrollment of both male and female students in its AP Physics, English, or American History classes. Advanced High School has already determined that it can meet the requisite regulatory requirements of the Department's Title IX regulations for all of these classes, but because of staffing concerns, the school can only offer single-sex classes in one subject. Advanced High School conducted a survey to determine which subject male students would prefer; the male students chose AP Physics. Because it could only devote one teacher to single-sex classes, Advanced High School did not survey its female students, but decided instead to offer the female students a single-sex AP Physics class, as well.

This would violate the evenhandedness requirement. Even though all students are being offered identical single-sex classes, taught by the same teacher, the assessment of which class to offer favored the male students.

This does not mean, however, that male and female students must always be offered single-sex classes in the same subjects. To ensure evenhandedness, once it has completed its justification for each single-sex class, a recipient may wish to collect pre-enrollment information from parents* and students or survey parents and students about interest in enrolling in single-sex classes in each subject. If students of one sex lack interest in a single-sex class in a certain subject, the recipient would not be required to provide them a single-sex class in that subject.

- *Example J:* Nearby Middle School is considering adding single-sex classes to the diverse array of other classes it offers. Having documented its justification for the addition of single-sex classes in Pre-Algebra, American History, English, and Geometry, the school surveys all parents and students to determine whether students would be interested in taking any of these classes on a single-sex basis. Forty eighth-grade boys express interest in all-male Pre-Algebra and American

* When this document refers to "parents," the term encompasses both parents and legal guardians.

History classes, while only two girls request these classes on a single-sex basis. Thirty-five eighth-grade girls request all-female English and Geometry classes, while no boys request these classes on a single-sex basis. In this scenario, Nearby Middle School may offer the all-male Pre-Algebra and American History classes and all-female English and Geometry classes to its eighth-grade students without violating the evenhandedness requirement.

15. How does the evenhandedness analysis apply if a recipient is asserting the needs objective?

Answer: If the recipient asserts the needs objective, the evenhandedness analysis is different from the analysis used under the diversity objective. Under the needs objective, the recipient must first conduct an assessment to identify the educational needs of its students, and then determine how to meet those needs on an evenhanded basis.³⁹ If a recipient has evidence demonstrating that a single-sex class in a particular subject would meet the particular, identified educational needs of students of both sexes and that the single-sex nature of the classes is substantially related to meeting the needs for both sexes, then if the recipient offers a single-sex class in that subject, it must do so for both sexes. On the other hand, if the evidence shows that the single-sex class in that subject would meet the particular, identified needs of only one sex or that the single-sex nature of the class would be substantially related to meeting the needs of only one sex, a recipient may not offer the single-sex class to students of the other sex. That recipient would instead have to determine, based on its assessment of the educational needs of both sexes, whether a single-sex class in another subject should be offered to the excluded sex, in order to meet the evenhandedness requirement.⁴⁰

- *Example K:* Faraway High School intends to offer an all-boys AP English class because the percentage of its male students passing the AP English exam is far below the district average. The school's female students pass the AP English exam at a rate higher than the district average. The reverse is true with respect to AP Physics: the percentage of girls passing the AP Physics exam is far below the district average, while the boys' scores suggest no deficiency.

Under these circumstances, Faraway High School may provide an all-boys AP English class without offering an all-girls AP English class because there is no particular identified need for such an all-girls class. To meet the evenhandedness requirement, however, in light of data showing its female students' deficiency on the AP Physics exam, the school must first research whether an all-girls AP Physics class would be substantially related to increasing

female students' proficiency on that exam. If so, then the school must offer the female-only AP Physics class as well.

Voluntariness

16. Who decides whether a student enrolls in a single-sex class?

Answer: The Department's Title IX regulations require that student "enrollment in a single-sex class or extracurricular activity" be "completely voluntary."⁴¹ To meet this requirement, OCR strongly encourages recipients to obtain the affirmative consent from the parents to enroll a student in a single-sex class.⁴² Nevertheless, OCR will defer to State law to determine whether a student or the student's parents will have ultimate decision-making authority regarding whether a student will be enrolled in a single-sex class. If State law is silent, a recipient may use its educational judgment, based on the age and circumstances of its students and its normal class assignment procedures. The affirmative consent of the designated decision-maker, whether the parent or the student, must be received before assigning a student to a single-sex class.

17. May a recipient assign students to a single-sex class as long as it permits students to opt out of the class?

Answer: No. Regardless of whether the authority rests with the student or the parent, the decision-maker must affirmatively opt into a single-sex class; the student may not simply be assigned to a single-sex class by the school and then be permitted to opt out.⁴³ If no affirmative consent is received, the student must be enrolled in a coeducational class.⁴⁴ OCR recommends that such affirmative consent come in the form of a written, signed document.⁴⁵

18. May a recipient make it easier to enroll in a single-sex class than it is to enroll in a coeducational class?

Answer: No. A school cannot use a less stringent class enrollment procedure for its single-sex classes than it does for its coeducational classes. In order for the choice to be completely voluntary, a school may not influence the choice to enroll in one class over the other. In assessing whether a decision to enroll in a single-sex class was voluntary, OCR will consider, among other things, whether the choice was influenced by extraneous factors. For example, any authorization (*e.g.*, a permission slip) or procedure (*e.g.*, a pre-enrollment meeting with a guidance counselor) that is required for enrolling in a coeducational class, but not for enrolling in the single-sex counterpart would render involuntary the choice to enroll in the single-sex class.

19. How does the breadth of class offerings affect voluntariness?

Answer: For the single-sex class to be voluntary, a recipient must offer a substantially equal coeducational class in the same subject.⁴⁶ (Factors for determining substantial equality are discussed in the response to Question 22.) If a student is forced to choose between taking a single-sex class in a particular subject and not taking a class in that subject, the choice to take the single-sex class is not voluntary. Likewise, if the only honors class in a given subject is a single-sex class, a student's selection of that single-sex class will not be considered voluntary. And if a student must take a single-sex class in order to avoid a coeducational option that is set at a remedial level, the single-sex class will also not be considered voluntary. (Classes with such differences may also violate the requirement of offering a substantially equal coeducational class, discussed in the responses to Questions 21 and 22.)

20. What additional steps should a recipient take to ensure that participation in a single-sex class is completely voluntary?

Answer: Because an uninformed decision may, in many circumstances, not be completely voluntary, OCR recommends that recipients provide pre-enrollment information about each class to students and parents in sufficient time and in a manner that is accessible to those with disabilities and with limited English proficiency so that the decision-maker can make an informed choice.⁴⁷

This pre-enrollment information should explain that the decision-maker has the option of choosing between the coeducational and single-sex class;⁴⁸ describe the similarities and differences between the coeducational and single-sex classes; and provide a summary of the recipient's justification for offering the single-sex option. OCR recommends that pre-enrollment disclosures specify that parents and students have the option of reviewing the recipient's full justification (and any periodic evaluations, described in the responses to Questions 23 through 28) upon request. In providing this pre-enrollment information, recipients must ensure that the information is conveyed in a way that does not pressure parents to enroll students in a single-sex class.

- *Example L:* Steering Elementary School is planning to implement single-sex fifth-grade reading and math classes for both boys and girls. To comply with the Title IX regulatory requirements for establishing new single-sex classes, over the summer, the school sends an information packet to every parent of an incoming fifth-grade student that includes: the school's justification for its single-sex classes; the data upon which the school relied in developing its justification; a statement that substantially equal coeducational reading and math classes are available; and a description of the differences between the single-sex and

coeducational classes. In each packet are two consent forms—one for the reading class and one for the math class—allowing parents to opt in to each single-sex class. The form states that if a parent does not return the form for a given class, his or her child will be placed in a substantially equal coeducational class.

A week before school starts, the principal of Steering Elementary School calls all of the parents who have not returned the consent forms to remind them of the option to enroll their children in single-sex classes. He encourages them to take advantage of the single-sex classes, and explains that if there is not enough interest to sustain them, the school will not be able to provide the classes to anyone. He explains that many people are interested in the single-sex classes, and warns parents against being the individuals who “hold up” implementation of the “unique and beneficial opportunity.”

Although the elementary school’s practice of sending an impartial information packet home to parents, along with an appropriate opt-in form, is a good one, OCR would consider the principal’s later behavior to be inappropriate pressure to enroll in a single-sex class. His warning inappropriately suggested that a parent should consider factors outside of his or her child’s educational well-being (including ensuring that other students have access to single-sex classes). Any consent forms received after the principal’s phone calls would not be valid.

Substantially Equal Coeducational Option

21. Must a recipient offer a substantially equal coeducational option for every single-sex class offered?

Answer: Yes. A recipient that offers a single-sex class must provide all other students, including students of the excluded sex, with a substantially equal coeducational class in the same subject.⁴⁹ At least one substantially equal coeducational section must be offered in each subject for which there is a single-sex class, and more than one section may be needed because every student who requests a coeducational option must be enrolled in one. Once the preferences of students seeking a coeducational class are met, a school may offer more than one single-sex section in a given subject if enrollment in that subject warrants it.

- *Example M:* If a school offers each of its 50 eighth-grade boys the choice between single-sex or coeducational Algebra classes, and 40 choose a single-sex class and 10 choose a coeducational class, the school may offer two single-sex sections and only one coeducational section of Algebra. This is permissible, so long as every student who sought the coeducational option was enrolled in a

substantially equal coeducational class. (Additionally, the school may also be required to provide a substantially equal single-sex class for its eighth-grade girls, consistent with the evenhandedness requirement discussed in the responses to Questions 13 through 15.)⁵⁰

A school is not obligated to provide a single-sex class to any individual student, even if that student opted into the single-sex class. The school must consider the number of students interested in the option and the school's need to provide a substantially equal coeducational class for all other students, including students of the excluded sex. Thus, in the example above, if all of the eighth-grade boys opted into the single-sex Algebra class, resulting in the substantially equal coeducational class enrolling only girls, the school could not honor all of the requests for the single-sex boys class, because doing so would deny the girls a substantially equal coeducational class.

22. What factors will OCR consider in determining whether a coeducational class is substantially equal to the single-sex class?

Answer: OCR will consider all relevant factors, both individually and in the aggregate, in determining whether a coeducational class is substantially equal to the single-sex class.⁵¹ Although the single-sex and coeducational classes do not need to be identical with respect to each factor, they need to be substantially equal. This means that if one class is significantly superior with respect to one factor, or slightly superior with respect to many factors, the classes are likely not substantially equal.⁵² The Department's Title IX regulations include a non-exhaustive list of factors, each of which is addressed individually below, that OCR will consider while conducting a complaint investigation or compliance review. OCR will consider all relevant factors in determining whether a coeducational class and a single-sex class are substantially equal.⁵³ Whether information is relevant will depend on the specific facts and circumstances of each case, because each single-sex class seeks to achieve a different objective and may be offered in a different way.

- The admissions criteria and policies;
 - *Example N:* College-Bound High School offers single-sex and coeducational classes in AP Spanish. Both the coeducational and single-sex AP Spanish classes were open only to students with a grade point average of 3.5 or higher and who participate in a summer language program. On these facts, OCR would consider the admissions criteria and policies to be substantially equal.

- The educational benefits provided, including the quality, range, and content of curriculum and other services, and the quality and availability of books, instructional materials, and technology;
 - *Example O:* Tech-Savvy Middle School offers single-sex and coeducational biology classes. The coeducational classes follow a curriculum that uses textbooks with corresponding videos, which the students watch on a DVD player in the classroom, to teach lessons. The single-sex classes incorporate individually issued laptops, which allow for interactive, technology-based lessons, into the curriculum. On these facts, OCR would not consider the educational benefits provided to be substantially equal.

- The qualifications of faculty and staff;
 - *Example P:* Tenured Middle School ensures that an equal proportion of first- and second-year teachers as compared to more experienced teachers are assigned to its single-sex and coeducational Pre-Algebra classes. All of the Pre-Algebra teachers have a background in mathematics and receive training on teaching the school's Pre-Algebra curriculum. Prior to teaching the class, each teacher must demonstrate content knowledge and competencies in the relevant teaching methods. On these facts, OCR would consider the qualifications of the faculty of the classes to be substantially equal.

- Geographic accessibility;⁵⁴
 - *Example Q:* Centrally Located High School offers one all-male and one all-female chemistry class onsite. For students wishing to take this class on a coeducational basis, Centrally Located High School has entered into an agreement with Distant High School, 15 miles away, which will accept Centrally Located High School's students. Because of traffic in the district, it would take students approximately 30 minutes each way to travel to the class at Distant High School, resulting in an hour of lost instruction time. On these facts, OCR would not consider the geographic accessibility of the classes to be substantially equal.

- The quality, accessibility, and availability of facilities and resources provided to the class;
 - *Example R:* Updated High School offers both coeducational and single-sex Chemistry classes. The coeducational Chemistry class is held in a chemistry lab that was original to the building, constructed in 1970. Updated High School added a new wing in 2010, which includes a new chemistry lab that offers state-of-the-art equipment and incorporates interactive technology. The single-sex

Chemistry classes are held in the new lab. On these facts, OCR would not consider the facilities and resources of the classes to be substantially equal.

- Intangible features, such as the reputation of faculty.
 - *Example 5:* Connected High School offers two single-sex journalism classes: one for boys and one for girls. A journalist for a local newspaper teaches both of these classes. The journalist is well connected in the local media community, and in the past, she has assisted students with obtaining internships at local media outlets. The school also offers a coeducational journalism class that is taught by an individual with a degree in English, but who has never worked in the field or been involved in a school journalism program. On these facts, OCR would not consider the reputation of the faculty (an intangible feature) of the two classes to be substantially equal.

Periodic Evaluations

23. How often must a recipient conduct an evaluation of its single-sex programs?

Answer: The recipient must evaluate each of its single-sex classes, and the original justification behind each single-sex class, at least every two years.⁵⁵ A recipient may decide to conduct evaluations more frequently (because its own findings have identified concerns or for other reasons). If OCR investigates a recipient and identifies compliance problems, OCR may require the recipient to conduct more frequent evaluations.⁵⁶

24. What is the purpose of these evaluations?

Answer: The recipient must use these periodic evaluations to ensure that each single-sex class it offers is based upon genuine justifications, does not rely on overly broad generalizations about either sex, and continues to be substantially related to the achievement of the important objective (*see the responses to Questions 7 through 12*).⁵⁷ The periodic evaluations should also confirm that substantially equal single-sex classes are offered if necessary to comply with the evenhandedness requirement (*see the responses to Questions 13 through 15*), and that a substantially equal coeducational alternative to each single-sex class is available (*see the responses to Questions 21 and 22*). The periodic evaluations must assess evidence and data related to the recipient's single-sex classes, rather than relying on the comparator school or research evidence used at the justification stage (*see the response to Question 27*).

25. Must the periodic evaluation address the way a single-sex class is taught?

Answer: Yes. Because of the risk that single-sex classes may lead to the adoption of classroom methods or strategies that revert to sex stereotypes, the Department's Title IX regulations require that the recipient ensure that each single-sex class is operated in a manner that does not "rely on overly broad generalizations about the different talents, capacities, or preferences of either sex."⁵⁸ Thus, classroom methods or strategies should be chosen on the basis of their effectiveness in teaching the individual students in the class, without regard to the sex of those students. Of course, it may be difficult to ascertain why certain methods or strategies were chosen, so the following information is intended to help schools understand how OCR will conduct its analysis during a complaint investigation or compliance review.

If identical classroom methods and strategies—including choices about classroom activities and environment—are used in single-sex classes for boys and in single-sex classes for girls (or in a single-sex class and a coeducational class), the evaluation of the way the classes are taught is complete. This is because the use of the same methods and strategies for classes for boys and classes for girls offers no reason to believe the decision to use those methods and strategies was based on overly broad generalizations about either sex.

But if different classroom methods or strategies are used in single-sex classes for boys than are used in single-sex classes for girls (or in a single-sex class in comparison with its coeducational counterpart), then the recipient must evaluate whether the decision to adopt these different methods or strategies was made in reliance on overly broad generalizations. In some cases, the different methods or strategies used in single-sex classes may simply be the result of the professional choices of an individual teacher without regard to the sex of his or her students. If the recipient can show that the teacher would have selected identical methods and strategies even if he or she were teaching a single-sex class of the opposite sex or a coeducational class, OCR will likely conclude that the school did not use overly broad generalizations about either sex. In determining whether the recipient has made this showing, OCR will consider such factors as the methods and strategies historically used by the teacher, and the timing of any changes in the teacher's methods and strategies.

If, however, the methods or strategies were selected because of the sex of the students in the class, the risk of sex stereotypes is at its greatest because methods and strategies that are based on sex ignore the differences among students of the same sex. When a teaching method or strategy is, in fact, selected on the basis of the sex of the students, its use must be directly supported by evidence demonstrating that the particular method or strategy is more effective for one sex than the other or is more effective when used in a single-sex setting. (The response to Question 12 addresses the appropriate way to assess whether

strategies that are purported to be more effective for one sex may be used in a single-sex setting.) It would not be enough to show that there is evidence about differences between boys and girls that does not directly involve that particular teaching method or strategy. For example, while there is, of course, evidence that biological differences between males and females exist,⁵⁹ evidence of general biological differences is not sufficient to allow teachers to select different teaching methods or strategies for boys and girls.⁶⁰

- *Example T:* Quiet Elementary School created single-sex fourth-grade classes for both boys and girls. During the school year, the teachers of the single-sex classes became aware of studies that show that girls are born with a significantly more sensitive sense of hearing than boys, and that the differences grow larger as the children grow older. Relying on those studies, the school decided that the boys class would incorporate speaking in a loud tone, while the girls class would not.

A periodic evaluation of the boys class would indicate reliance on overly broad generalizations about the sexes with respect to teaching methods. Use of the specific teaching method (loud talking) would not comply with Title IX because the teachers did not rely on evidence that directly linked that particular teaching method or strategy to improved educational achievement for boys. Instead, they relied on a purported biological difference (that there are, on average, biological differences in the hearing sensitivity of the sexes) to conclude that the particular teaching method or strategy was appropriate. This general difference between the sexes, even if true, does not by itself provide evidence that loud talking will be more effective in teaching for one sex than the other or more effective in a single-sex setting. The leap from the biological differences to the use of a particular teaching method or strategy for students of one sex, without the support of evidence regarding the educational effectiveness of the method or strategy for one sex over the other, resulted in an overly broad generalization (that loud talking would improve boys' ability to learn). Because of the overly broad generalization, the school would have to discontinue its use of this teaching method for the all-boys class.

The teaching method itself is permissible. A recipient is still free to incorporate loud talking in a coeducational class or in single-sex classes for both boys and girls. But a recipient may not limit that method of instruction only to the single-sex class for boys on the basis of the overly broad generalization described above.

26. How should the evaluations be made available to the public?

Answer: OCR recommends wide distribution of the evaluations, through the recipient’s website and otherwise. Like the initial justification, these evaluations could be useful to parents who are deciding whether to enroll their children in single-sex classes and would help ensure the choice is completely voluntary.

27. How will OCR determine whether a periodic evaluation demonstrates that a single-sex class is still substantially related to the recipient’s important objective?

Answer: OCR will consider all relevant sources of evidence in determining whether the single-sex nature of the class remains substantially related to the recipient’s important objective. Whether evidence is relevant will depend on the specific facts and circumstances of each case, because each single-sex class seeks to achieve a different objective and may be offered in a different way. The evidence presented in a recipient’s periodic evaluation must be related to the recipient’s single-sex classes, rather than the evidence relied upon in the justification stage. Possible sources of evidence include, but are not limited to: students’ grades; students’ scores on standardized statewide or districtwide exams; discipline rates; attendance data; enrollment data; and educators’ observation and evaluation of the effectiveness of each class.

Because the biennial evaluations must show that the single-sex nature of the class results in achievement of, or progress toward, the recipient’s important objective, a comparison between the students in the single-sex class and the substantially equal coeducational class is appropriate.⁶¹ To best assess the effectiveness of each class, OCR recommends that schools monitor the progress of the individual students in each class from year to year. This will help ensure that any comparison between a single-sex class and a substantially equal coeducational class controls for variations among students. Positive or negative changes related to the recipient’s objective for all students in the single-sex class should be averaged together; the same should be done for students in the coeducational class. The school can then compare these averages to see how students in the single-sex class fared in comparison to their peers in the substantially equal coeducational class. The same procedure should be used to assess the single-sex class the following year. If, based on these averages, a coeducational class outperforms a substantially equal single-sex class, it is likely that OCR would find that the single-sex class is not substantially related to the recipient’s objective. Of course, the evidence will vary based on the school’s objective. For example, if the school implemented a single-sex class in an attempt to lower discipline rates, discipline statistics should be analyzed.

- *Example U:* A middle school offers three substantially equal sections of tenth-grade American Literature: an all-girls class, an all-boys class, and a coeducational class. The school's objective is to increase proficiency on the State English exam. At the end of the first school year, to gather information for the periodic evaluation required at the end of the second school year, each student's score on the state English exam is compared to his or her score on the previous year's exam. The school averages the change in scores of students in the all-girls class, the all-boys class, and the coeducational class, respectively. The proficiency rate of students in the coeducational class increased slightly. By contrast, the proficiency rates of the students in the all-boys and all-girls classes both increased significantly. The difference in average increases between the single-sex classes and the coeducational class is statistically significant. The averages are similar the following year. Under these circumstances, the evidence in this periodic evaluation would suffice to show a continuing substantial relationship between the single-sex nature of the classes and the objective to increase student's proficiency on the State English exam. Note, however, that the school must continue to conduct biennial evaluations to show that a substantial relationship between the single-sex nature of the classes and the school's objective persists.

Every recipient's ability to continue each single-sex class will depend on the recipient's circumstances, the particular objective articulated in the recipient's justification, and whether the comparative class data over time demonstrate a substantial relationship between that objective and the single-sex nature of the class. A recipient's evaluation should analyze and explain all factors that influenced the achievement of, or failure to achieve, the recipient's objective.

28. What is the role of the recipient's Title IX coordinator in conducting these evaluations?

Answer: Every recipient must designate an employee to coordinate its efforts to comply with Title IX.⁶² The Title IX coordinator is responsible for overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. This means that the Title IX coordinator must have knowledge of the requirements of Title IX, of the school's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the school. The Title IX coordinator must also track and review complaints to identify and correct any systemic compliance issues. This would include any complaints that single-sex classes are being offered in violation of Title IX. Because of these responsibilities, OCR recommends that the Title IX coordinator be involved in assessing the compliance of the

recipient's single-sex classes, both when determining whether and how single-sex classes can be offered and during the recipient's periodic review of single-sex offerings.

Employment

29. May a recipient assign teachers to single-sex classes based on the sex of the teacher?

Answer: No. A recipient must not assign teachers to single-sex classes on the basis that boys should be taught by men and girls should be taught by women or vice versa.⁶³ Title IX prohibits recipients from discriminating on the basis of sex in: employment; recruitment; compensation and benefits; job assignment, classification, and structure; and consideration and selection of individuals for jobs in any education program or activity operated by a recipient.⁶⁴ Although Title IX allows employment decisions based on sex "provided it is shown that sex is a bona-fide occupational qualification for that action,"⁶⁵ a school may not, for example, assign a male teacher, on the basis of his sex, to teach an all-boys class because the school thinks male students will prefer, respond better to, or learn more effectively from, a man.⁶⁶

Other Federal Protections for Students in Single-Sex Classes

30. May a recipient exclude students with disabilities or English language learners from a single-sex class so long as it permits them to participate in the substantially equal coeducational class?

Answer: No. Students with disabilities or English language learners may not be excluded from single-sex classes because of their need for special education or related aids and services or English language services.⁶⁷ Schools must ensure that students with disabilities participating in single-sex classes receive needed special education and related services in accordance with their individualized education programs, developed under Part B of the Individuals with Disabilities Education Act⁶⁸ (including, if applicable, the Part B educational placement provisions), or their plans developed under Section 504 of the Rehabilitation Act of 1973. Likewise, the school must provide the same English language services in single-sex classes as in coeducational classes.

31. How do the Title IX requirements on single-sex classes apply to transgender students?

Answer: All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX. Under Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes.

Additional Topics

32. Which set of regulations governs a school within a school—the regulations governing single-sex schools or the regulations governing single-sex classes?

Answer: If a recipient operates a single-sex school within another school or two single-sex academies, OCR will consider these to be single-sex classes within a coeducational school unless the two entities are administratively separate from each other.⁶⁹ This is a fact-specific inquiry and will depend on the specific organization of the school within a school.

- *Example V:* A district operates dual single-sex academies that are housed in the same facility and share the same principal and certain support staff. The district claims that it need not comply with the Department’s Title IX regulations on single-sex classes because each academy is a single-sex school. Because the two academies are not administratively separate, OCR would instead view the academies as one coeducational school offering single-sex classes in every subject.

33. How can I contact OCR to get additional information or to file a complaint?

Answer: A recipient, parent, student, or other member of the public who has a question or concern about a particular single-sex offering may contact the appropriate OCR regional enforcement office. To determine which OCR regional enforcement office handles inquiries and complaints in your State, please call 1-800-421-3481 or 1-800-877-8339 (TDD) or check OCR’s website at <http://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm>.

OTHER FEDERAL LEGAL RESOURCES RELATED TO SINGLE-SEX EDUCATION:

Department of Education Title IX regulations: 34 C.F.R. part 106, available at <http://www2.ed.gov/policy/rights/reg/ocr/34cfr106.pdf>

OCR Dear Colleague Letter on Single-Sex Title IX Regulations, dated January 31, 2007, available at <http://www.ed.gov/ocr/letters/single-sex-20070131.pdf>

Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 71 Fed. Reg. 62,530 (October 25, 2006), available at <http://www2.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>

Brief for the United States as *Amicus Curiae*, *Doe v. Vermilion Parish Sch. Bd.*, No. 10-30378 (5th Cir.) (filed June 4, 2010), available at http://www.justice.gov/crt/about/app/briefs/vermillion_brief.pdf

¹ 20 U.S.C. §§ 1681-1688.

² *Id.*; see also 34 C.F.R. § 106.34.

³ Private elementary and secondary schools are subject to the Department’s regulatory requirements for single-sex classes if they receive Federal financial assistance directly from the Department or indirectly through an intermediary. Private elementary and secondary schools are not considered recipients of Federal financial assistance if the only form of assistance that they receive is through their students’ participation in programs conducted by public school districts that are funded under Federal programs such as Title I of the Elementary and Secondary Education Act of 1965 or the Individuals with Disabilities Education Act. These private schools are not subject to these regulations, but public school districts must ensure that their programs, including services to private school students, are consistent with Title IX. See *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Final Regulations*, 71 Fed. Reg. 62,530, 62,530 n.7 (Oct. 25, 2006).

⁴ U.S. CONST. amend. XIV, § 1; see also *United States v. Virginia*, 518 U.S. 515, 531, 533 (1996) (holding, in a challenge to an all-male public postsecondary institution, that a party “seek[ing] to defend gender-based government action” under the Equal Protection Clause “must demonstrate an exceedingly persuasive justification for that action,” which means the government “must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives” (citations, brackets, and internal quotation marks omitted)).

⁵ 42 U.S.C. §§ 2000c to c-9.

⁶ 20 U.S.C. §§ 1703(c), 1705, 1720(c); see also 71 Fed. Reg. at 62,533 n.18 (referencing same).

⁷ 34 C.F.R. § 106.71 (incorporating by reference 34 C.F.R. §§ 100.6-100.11 and 34 C.F.R. part 101).

⁸ 34 C.F.R. § 106.6(b); see also 71 Fed. Reg. at 62,533 n.18 (“Public school and private school recipients also may be subject to State or local laws prohibiting single-sex classes or schools.”).

⁹ 34 C.F.R. § 106.34(c).

¹⁰ 34 C.F.R. § 106.35; 34 C.F.R. § 106.2(o) (defining “institution of vocational education”).

¹¹ 34 C.F.R. § 106.15(c)–(e).

¹² 20 U.S.C. §§ 1681-1688; 34 C.F.R. § 106.34(a).

¹³ In addition to these exceptions, the Department’s Title IX regulations do not prohibit schools from employing the following facially neutral tests or criteria even if they have a disproportionate effect on persons on the basis of sex: the grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex; and the use of requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex. 34 C.F.R. § 106.34(a)(2) and (4).

¹⁴ 34 C.F.R. § 106.34(a)(1).

¹⁵ 34 C.F.R. § 106.34(a)(3).

¹⁶ 34 C.F.R. § 106.34(b).

¹⁷ 34 C.F.R. § 106.34(b)(5).

¹⁸ 34 C.F.R. § 106.35; 34 C.F.R. Appendix A to Part 106; *see also* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Notice of Proposed Rulemaking, 69 Fed. Reg. 11,276, 11,278 (Mar. 9, 2004) (“Even in these elementary and secondary schools that are not vocational schools, the proposed amendments do not change the applicability of the current general regulatory prohibition against single-sex vocational education classes.”).

¹⁹ This document refers to vocational classes because the Department’s Title IX regulations refer to “nonvocational” classes. The Department currently prefers the term “career and technical” courses.

²⁰ The Department’s Title IX regulations governing athletics appear at 34 C.F.R. §§ 106.41 and 106.37(c).

²¹ 34 C.F.R. § 106.36(c).

²² 34 C.F.R. § 106.34(b)(1)(i).

²³ 71 Fed. Reg. at 62,533 (citing *Virginia*, 518 U.S. at 533) (“The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation.”).

²⁴ *Id.*

²⁵ 34 C.F.R. § 106.34(b)(1)(i)(A).

²⁶ “For example, a recipient may seek to achieve an educational benefit for its students such as improvement in class work.” 71 Fed. Reg. at 62,534 n.26.

²⁷ 71 Fed. Reg. at 62,535.

²⁸ 34 C.F.R. § 106.34(b)(1)(i)(B).

²⁹ 71 Fed. Reg. at 62,535 & n.30.

³⁰ 71 Fed. Reg. at 62,536.

³¹ 71 Fed. Reg. at 62,535 (citing *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 151-52 (1980) and *Frontiero v. Richardson*, 411 U.S. 677, 689-90 (1973)).

³² 71 Fed. Reg. at 62,533 (citing *Virginia*, 518 U.S. at 533).

³³ The 2005 Department-commissioned survey of research on single-sex schooling found that for “many outcomes, there is no evidence of either benefit or harm.” OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT, U.S. DEPARTMENT OF EDUCATION, SINGLE-SEX VERSUS COEDUCATIONAL SCHOOLING: A SYSTEMATIC REVIEW x (2005), *available at* <http://www2.ed.gov/rschstat/eval/other/single-sex/single-sex.pdf>.

³⁴ The WWC Procedures and Standards Handbook is available at http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v3_0_standards_handbook.pdf.

³⁵ This example, like all the examples provided in this document, is based on hypothetical facts to help readers understand how OCR would evaluate a recipient’s single-sex class for compliance with the Department’s Title IX regulations. A recipient cannot rely on the hypothetical research described in this example to show a substantial relationship between its important objective and the single-sex nature of the class.

³⁶ 34 C.F.R. § 106.34(b)(1)(ii).

³⁷ 71 Fed. Reg. at 62,536 (citing *Virginia*, 518 U.S. at 554).

³⁸ 71 Fed. Reg. at 62,536.

³⁹ *Id.*

⁴⁰ *Id.* at 62,536-37 (“[A]lthough a single-sex class would not be required in that subject, evenhanded implementation of the recipient’s objective does require the recipient to determine, based on its assessment of educational needs of students, whether a class in another subject should be offered on a single-sex basis to meet the particular, identified needs of the students of the excluded sex.”).

⁴¹ 34 C.F.R. § 106.34(b)(1)(iii).

⁴² 71 Fed. Reg. at 62,537.

⁴³ *Id.*; *Doe v. Wood Cnty. Bd. of Educ.*, 888 F. Supp. 2d 771, 776 (S.D. W. Va. 2012) (“An opt-out provision is insufficient to meet the requirement that single-sex classes be ‘completely voluntary.’”).

⁴⁴ 71 Fed. Reg. at 62,537; *Doe*, 888 F. Supp. 2d at 776 (“[T]he Department of Education regulations require an affirmative assent by parents or guardians before placing children in single-sex classrooms.”).

⁴⁵ 71 Fed. Reg. at 62,537; *Doe*, 888 F. Supp. 2d at 776 (“Such affirmative assent would preferably come in the form of a written, signed agreement by the parent explicitly opting *into* a single-sex program.”).

⁴⁶ 71 Fed. Reg. at 62,537.

⁴⁷ *Doe*, 888 F. Supp. 2d at 777 (“The close proximity of the notices to the beginning of the school year, after students have already enrolled, suggest[s] that their choice was not fully voluntary.”).

⁴⁸ 71 Fed. Reg. at 62,537.

⁴⁹ 34 C.F.R. § 106.34(b)(1)(iv).

⁵⁰ 34 C.F.R. § 106.34(b)(2).

⁵¹ 34 C.F.R. § 106.34(b)(3); 71 Fed. Reg. at 62,538.

⁵² 71 Fed. Reg. at 62,538.

⁵³ 34 C.F.R. § 106.34(b)(3); *see also* 71 Fed. Reg. at 62,538.

⁵⁴ 71 Fed. Reg. at 62,538 (“[There are] situations in which geographic accessibility will be relevant for classes. For example, if a recipient operates a consortium of schools whereby students at three neighboring high schools [take classes at all three schools, the] location, *i.e.*, geographic accessibility, of the classes in the same subject, would be relevant to the issue of substantial equality.”).

⁵⁵ 34 C.F.R. § 106.34(b)(4).

⁵⁶ 71 Fed. Reg. at 62,539.

⁵⁷ 34 C.F.R. § 106.34(b)(4)(i).

⁵⁸ *Id.*

⁵⁹ *United States v. Virginia*, 518 U.S. 515, 533 (1996) (“Physical differences between men and women, however, are enduring . . .”).

⁶⁰ *See J.E. B. v. Alabama*, 511 U.S. 127, 139 n.11 (1994) (“We have made abundantly clear in past cases that gender classifications that rest on impermissible stereotypes violate the Equal Protection Clause, even when some statistical support can be conjured up for the generalization.”).

⁶¹ 71 Fed. Reg. at 62,539 (“Part of the periodic evaluation requirement involves an assessment of the degree to which the recipient’s important objective has been achieved and an assessment of whether the single-sex nature of the class is substantially related to achievement of the recipient’s objective.”).

⁶² 34 C.F.R. § 106.8(a).

⁶³ 71 Fed. Reg. at 62,534 (“Among other things, the Title IX regulations prohibit recipients from making job assignments on the basis of sex, § 106.51(b)(4), and from classifying jobs as being for males or females, § 106.55(a). Both of these provisions would prohibit schools from assigning teachers to single-sex classes based on their sex.”).

⁶⁴ 34 C.F.R. part 106, subpart E.

⁶⁵ 34 C.F.R. § 106.61.

⁶⁶ *Id.* (“A recipient shall not take action pursuant to this section [regarding bona-fide occupational qualifications] which is based upon . . . preference based on sex of the recipient, employees, students, or other persons.”).

⁶⁷ 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973) and 34 C.F.R. part 104; 42 U.S.C. §§ 12131-12165 (Title II of the Americans with Disabilities Act of 1990) and 28 C.F.R. part 35; 42 U.S.C. §§ 2000d to d-7 (Title VI of the Civil Rights Act of 1964) and 34 C.F.R. part 100. OCR enforces Section 504 as it applies to recipients of Federal financial assistance from the Department and shares enforcement responsibility with the U.S. Department of Justice for Title II in the education context. Title II prohibits discrimination on the basis of disability by public entities, including public school districts, in their services, programs, and activities, regardless of receipt of Federal funds.

⁶⁸ 20 U.S.C. §§ 1411-1414; 34 C.F.R. part 300.

⁶⁹ 34 C.F.R. § 106.34(c)(4).

Training for Title IX Coordinators

Q&A Sheet

The TASB Risk Management Fund's online course, Training for Title IX Coordinators, provides designated Title IX coordinators and other staff members with an in-depth understanding of Title IX of the Education Amendments of 1972, the federal law that prohibits sex discrimination in schools. The course also provides access to the learning tools that will help coordinators and other school district and community college administrators effectively implement Title IX's requirements. Consisting of two modules available on TASB's Online Learning Center, the training begins with an overview of Title IX's requirements and concludes with a focused look at investigating student-to-student sexual harassment.

Part One: Title IX Basics

What is Title IX?

Title IX of the Education Amendments of 1972 is a law that prohibits sex discrimination in any education program or activity receiving federal funds. It specifically states:

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

Who does it apply to?

Title IX applies to any public or private educational institution that receives federal funds and protects any person taking part in a program or activity of those institutions.

What does Title IX require?

Title IX requires schools and colleges that receive federal funds to provide equal access to their education programs, benefits, and services, regardless of a person's sex. This includes both curricular and extracurricular programs and activities.



It requires schools and colleges to **equitably** provide programs and activities for male and female students.

Do facilities have to be the same for males and females?

No. Title IX requires that schools have comparable facilities. Additionally, the law allows schools and colleges to provide separate bathrooms, showers, and locker rooms on the basis of sex.

How is Title IX applied to students' access to classes and schools?

Title IX prohibits education programs or activities from being provided or carried out separately on the basis of sex. However, there are exceptions to this rule. For instance, boys and girls can have separate instruction regarding human sexuality classes in K-12 schools. Choirs can also be single-sex if the choir separation is based on vocal range or quality.

What are some examples of what it means to have gender equity in instructional programs?

Counseling and career aptitude materials should encourage gender equity, and schools should take steps to promote access to CTE programs regardless of sex. For example, teachers and counselors should not discourage a female student who wants to take a class in a field in which women are underrepresented, such as mechanics or engineering, based on gender stereotypes. Similarly, a male student should not be discouraged from enrolling in a program to prepare him for a career in nursing or early childhood education.

Are schools that are only for boys and girls prohibited by Title IX?

Title IX does not prohibit single-sex education in public K-12 school districts, but it does require that single-sex programs be carried out in an equitable manner. Title IX regulations regarding admissions do apply, however, to vocational schools and colleges.

How does Title IX apply to pregnant and parenting students?

The regulations prohibit schools from applying any rule related to pregnancy, parenting, or marital status differently to male and female students.

If a separate program or activity specifically for pregnant or parenting students is offered, it must be completely voluntary and must be comparable to the programs for other students.

Additionally, pregnancy, childbirth, and related conditions, including termination of pregnancy (abortion), must be treated just like any other temporary medical condition that requires the attention of a physician.

Can a school require a doctor's note from a pregnant student before she competes in a sport?

It depends. Teachers and coaches cannot assume that a pregnant student is unable to participate in an activity. If your school requires a doctor's note in order for a student with another type of temporary medical condition to compete in the activity, then it can require a doctor's note from a pregnant student. The school should not require a doctor's note only because of pregnancy.

How does Title IX apply to athletics?

Title IX does not require your male and female athletic programs to be identical, but it does require that female students are provided with equal athletic opportunities.

What are some examples for how Title IX applies to athletics?

- If only a males' team exists for a non-contact sport, such as baseball or tennis, then girls have to be allowed to try out for that team.
- If you have a males' and females' team for a particular sport, like basketball, Title IX does not give a student the right to switch teams.
- If only a females' team exists for a sport, like volleyball or field hockey, Title IX does not require you to allow boys to join the team. This is mainly because Title IX was designed to increase opportunities for females, the underrepresented sex. However, non-athletic school activities, including dance and cheerleading, should be equally available to male and female students.

What does equal athletic opportunity mean?

This means providing athletic opportunities and levels of competition in a manner that accommodates student interests and abilities. It also means fairness concerning provision of equipment and supplies, scheduling games and practices, coaching, tutoring, publicity, training and support, as well as facilities.

What does Title IX harassment include?

It includes sexual harassment, sexual violence, and gender-based harassment.

- Sexual harassment is unwelcome conduct of a sexual nature.
- Sexual violence is a form of harassment that refers to physical acts done against a person's will or when a person is incapable of consent, including rape and sexual assault.
- Gender-based harassment is unwelcome conduct that is not sexually motivated, but is based on the target's actual or perceived sex.
- Harassment can be verbal, nonverbal, physical, and can include electronic communication.

What is the Title IX Coordinator's role?

Each school or college must designate at least one employee to serve as a Title IX Coordinator. He or she should be a high level administrator.

The coordinator's role includes overseeing compliance, monitoring complaint outcomes, identifying and addressing patterns, and assessing campus climate. The coordinator is also responsible for providing resources and maintaining expertise.

Multiple assistant coordinators may be designated with each coordinator responsible for specific programs such as athletics or specific campuses. Districts and colleges must provide notice of the Title IX coordinator's name or title, office address, telephone number, and email address.

What does Title IX require regarding policies?

Title IX requires all covered institutions to adopt and publish a policy that prohibits sex discrimination, including harassment and retaliation. It also requires adopting complaint procedures that can be used for prompt and equitable resolution of complaints alleging violations of Title IX.

Such policies should have procedures for an employee or student to report an incident of alleged sexual harassment, discrimination, or retaliation to an appropriate person, including the Title IX Coordinator. The policy should also indicate the school district or college's intent to investigate and respond to the alleged incident with appropriate measures.

How is Title IX enforced?

It is enforced through two separate, but related processes: administrative enforcement by the U.S. Department of Education, Office for Civil Rights (OCR) and legal enforcement through lawsuits filed by plaintiffs in federal courts.

Anyone may file a complaint with OCR. The person complaining does not have to be a target of the alleged discrimination or a member of the protected class. Also, OCR may initiate its own investigation to determine whether a school district or college is complying with the federal laws that OCR enforces.

Can there be liability for sex-based harassment?

Yes. A court could find that a school district or college must pay monetary damages to a plaintiff because of a Title IX violation, including a failure to respond appropriately to known harassment based on sex. It is important for Title IX Coordinators to know when their employer can be sued and held liable for violating Title IX.

What is required to show that a school is liable for Title IX sexual harassment violations?

In order to successfully sue a school district or college for monetary damages under Title IX, a plaintiff has to show that the harasser was under the school or college's control and that the school or college had actual knowledge of the harassment.

In the case of student-to-student harassment, the harassment must be so severe, persistent or pervasive, and objectively offensive that the victim was essentially rendered unable to learn or participate in school or college activities.

Lastly, the plaintiff has to show that the school or college responded to the harassment with deliberate indifference.

Disclaimer: This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter and is not legal advice. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional advisor. Consult with your attorney or professional advisor for legal advice regarding these principles. Information provided in this document is subject to change without notice and the publisher makes no warranties, either express or implied.

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Greg Bower

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Training for Title IX Coordinators

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