



CLIENT NEWS BRIEF

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OFFICE FOR CIVIL RIGHTS ISSUES GUIDANCE ON SEXUAL VIOLENCE IN SCHOOLS

The Office for Civil Rights (OCR) issued a letter with information on how school districts can provide students with an educational environment free from sexual violence. ([Dear Colleague Letter: Sexual Violence Background, Summary and Fast Facts](#) (April 4, 2011)). The letter provides guidance regarding the responsibilities of schools to take immediate and effective steps to respond to sexual violence, a type of sexual harassment, in accordance with Title IX of the Education Amendments of 1972 ("Title IX") (20 U.S.C. section 1681 *et seq.*). Title IX prohibits discrimination on the basis of sex in any federally funded education program or activity.

As the term is used in OCR's guidance, sexual violence refers to physical sexual acts perpetrated against a person's will, or when a person is incapable of giving consent due to drug use, alcohol use, or a disability. Some acts that fall into the category of sexual violence include rape, sexual assault, sexual battery, and sexual coercion. Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

Under Title IX, if a school knows or reasonably should know about student-on-student harassment that may create a hostile environment, the school must take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. The school must promptly investigate regardless of whether a harassed student, his or her parent, or a third party files a complaint. If the complainant is under 18, schools should inform and obtain consent from the complainant's parents before beginning an investigation. The school must also determine whether appropriate law enforcement or other authorities should be notified. It is important to note, however, that a law enforcement investigation does not relieve a school of its independent Title IX obligation to investigate alleged harassing conduct.

If a complainant requests confidentiality, the school must take all reasonable steps necessary to respect that request while conducting its investigation. However, schools may weigh the request for confidentiality against the duty to provide a safe and nondiscriminatory environment for all students. Certain factors should be considered, such as the seriousness of the alleged harassment, the complainant's age, whether there have been other harassment complaints about the same individual, and the alleged harasser's rights to receive information about the allegations.

Title IX requires schools to publish and widely distribute a notice stating that the school does not discriminate on the basis of sex in its educational programs and activities. The notice must state that inquiries regarding Title IX may be referred to OCR or to the designated school employee responsible for coordinating the school's efforts to comply with Title IX. The notice should include this school employee's name or title, office address, telephone number, and email address. To ensure that the notice is easily accessible, OCR recommends posting the notice on school websites and various locations throughout the school, and publishing the notice in electronic and printed materials for students and employees.

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Title IX also requires schools to adopt and publish grievance policies and procedures. The policies should state that prohibited sex discrimination covers sexual harassment, including sexual violence, and include some examples of the types of conduct that are covered. Schools must also have policies and procedures in place to protect complainants against retaliation and ensure that complainants and parents know how to report any retaliation.

Because of the requirements imposed by Title IX, it is necessary for schools to ensure that employees are trained regarding sexual violence issues, which should include practical information about how to identify and report sexual harassment and violence in accordance with published grievance procedures. OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement employees, administrators, counselors, and health personnel.

OCR recommends that schools implement preventive education programs and make victim resources available. The programs should discuss what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the resulting consequences of violating the policies. Such programs could be included in orientation programs for new students, faculty, staff, and employees, training for student athletes and coaches, school assemblies, and "back to school" nights.

Finally, OCR advises that when school districts fail to comply with their obligations under Title IX, OCR may initiate proceedings to withdraw federal funding or refer the matter to the U.S. Department of Justice for litigation. Because OCR is the department that enforces civil rights laws, including Title IX, in educational programs, its letter provides useful guidance for school districts seeking to ensure student safety and well-being and utilize proactive measures to avoid liability for harassment.

For further detailed information regarding OCR's letter, Title IX, and other relevant anti-discrimination statutes, please do not hesitate to contact one of our [eight offices](#) located statewide or consult our [website](#).

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.