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(08:! F ^MT!MPRIT^R!PReOZPRURNT_!WVP!MN!MSSRM_!SPVYR__h

"N_` RPH!!While Title IX does not require that a school provide an appeals process, OCR does recommend that the school do so where procedural error or previously unavailable relevant evidence c

findings or
remedy or both, it must do so equally for both parties. The specific design of the appeals process is up to the school, as long as the entire grievance process, including any appeals, provides prompt and equitable resolutions of sexual violence complaints, and the school takes steps to protect the complainant in the educational setting during the process. Any individual or body handling appeals should be trained in the dynamics of and trauma associated with sexual violence.

If a school chooses to offer an appeals process it has flexibility to determine the type of review it will apply to appeals, but the type of review the school applies must be the same regardless of which party files the appeal.

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aRVR[R!M!_MNYTVN!T^MT!XZPRYTQ!PRMTR_!TV!^ZU!VP!^RP!` M!_!OMWYZRNTh

"N_` RPH!!The appeals process must be equal for both parties. For example, if a school allows a perpetrator to appeal a suspension on the grounds that it is too severe, the school must also allow a complainant to appeal a suspension on the grounds that it was not severe enough. See question H- for more information on what must be provided to the complainant in the notice of the outcome.

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^MPM__URNT!VP!_RbOM![Z\VRNYRh!

"N_` RPH!!Title IX requires a school to take prompt and effective steps reasonably calculated to end sexual harassment and "P69.12 BT /TT2 1
sexual violence that creates a hostile enviro

LD>:!!! F ^MT!TQSR!VW!TPMZNZN]!VN!_RbOM![ZVRNYR!_^VOIX!M!_Y^VV!SPV[ZXR!TV!ZT!_!_TOXRNT_h

"N_` RPH!!To ensure that students understand their rights under Title IX, a school should provide age-appropriate training to its students regarding Title IX and sexual violence. At the elementary and secondary school level, schools should consider whether sexual violence training should also be offered to parents, particularly training on the school's process for handling complaints of sexual violence. Training may be provided separately or as part of the school's broader training on sex discrimination and sexual harassment. However, sexual violence is a unique topic that should not be assumed to be covered adequately in other educational programming or training provided to students. The school may want to include this training in its orientation programs for new students; training for student athletes and members of student organizations; and back-to-school nights. A school should c

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` ^ZR!_TZ\!PR_SRYTZN]!WPRRD_SRRY^!PZ]^T_!]OMPMNTRRX!aQ!T^R!#VN_TZTOTZVNh

"N_` RPH!!The DCL on sexual violence did not expressly address First Amendment issues because it focuses on unlawful physical sexual violence, which is not speech or expression protected by the First Amendment.

However, OC

<http://safesupportivelearning.ed.gov/>

- Department of Justice, Office on Violence Against Women
<http://www.ovw.usdoj.gov/>

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April ,

Dear Title IX Coordinator:

Thank you for serving as the Title IX coordinator for your school, school district, college, or university. Your work, and that of your fellow coordinators across the country, is essential to ensuring that all students in the United States, regardless of their sex, have an equal educational opportunity. As a Title IX coordinator, you are an invaluable resource for every person in

IX coordinator affects educational institutions of every size and at every educational level, there are a variety of ways to ensure that Title IX coordinators have the necessary support to help institutions meet their obligations under Title IX. For more information, visit [www.ed.gov/officeofeducationpolicy/officeofcivilrights](#).

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT

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.

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40SSVPT!WVPI)ZTR!(5!#VVPXZNMTP_!

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

demonstrates to the school community its commitment to complying with Title IX and its support of the Title IX coordinator's efforts.

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

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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



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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

January ,

Dear Colleague:

Extracurricular athletics—which include club, intramural, or interscholastic (freshman, junior varsity, varsity) athletics at all education levels—are an important component of an overall education program. The United States Government Accountability Office (GAO) published a report that underscored that access to, and participation in, extracurricular athletic opportunities provide important health and social benefits to all students, particularly those with disabilities. This report is a historic turning

disabilities. For purposes of Section 161.02, a person with a disability is one who (a) has a physical or mental impairment that substantially limits one or more major life activities; (b) has a record of such an impairment; or (c) is regarded as having such an impairment. With respect to public elementary and secondary educational services, "qualified" means a person (i) of an age during which persons without disabilities are

any association, organization, club, league, or other third party that d

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

In considering whether a reasonable modification is legally required, the school district must first engage in an individualized inquiry to determine whether the modification is necessary. If the modification is necessary, the school district must allow it unless doing so would result in a fundamental alteration of the nature of the extracurricular athletic activity. A modification might constitute a fundamental alteration if it alters such an

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

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

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

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

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

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

_____ : OCR would find that the school's decision violates Section _____. The student needs assistance in glucose testing and insulin administration in order to participate in activities during and after school. To meet the requirements of Section _____ FAPE, the school district

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C.F.R. . (b).

C.F.R. pt. , App. A . at (); C.F.R. pt. , App. A . at ().

The Department's Office of Special Education and Rehabilitative Services issued a guidance document that, among other things, includes suggestions on ways to increase opportunities for children with disabilities to participate in physical education and athletic activities. That guidance, dated August , is available at <http://www .ed.gov/policy/speced/guid/idea/equal-pe.pdf>.

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

C.F.R. . (incorporating C.F.R. . (b)); , U.S. , ().



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

April ,

Dear Colleague:

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

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

The Federal civil rights laws make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. If, for example, an individual brings concerns about possible civil rig



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

June ,

Dear Colleague:

We as a nation need to do more to help the hundreds of thousands of young people who become mothers and fathers each year graduate from high school ready for college and successful careers. According to studies cited in the attached pamphlet,

percent of young men and young women combined who had dropped out of public his college. Let's start by focusing on the "first-year" students who are at risk of dropping out of college. Let's start by focusing on the "first-year" students who are at risk of dropping out of college.

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

October ,

rights violation, schools should still seek to prevent it in order to protect students from the physical and emotional harms that it may cause.

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

A school is responsible for preventing harassment if it has knowledge of the harassment and fails to take prompt and effective steps to address it.

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

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In this example, the school failed to recognize the misconduct as disability harassment under Section 504 and Title II. The harassing conduct included behavior based on the student's disability, and limited the student's ability to benefit fully from the school's education program (

Please also note that OCR has added new data items to be collected through its Civil Rights Data Collection (CRDC),

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

The U.S. Department of Education, Office for Civil Rights (OCR) initiated a compliance review of the State University

3RSVPTZN]!3Re0ZPRURNT!6!! By March , , SUNY will provide to OCR a certification from each Title IX Coordinator that SUNY System Administration and each SUNY campus has revised its relevant publications pursuant to Section A above, and will include a list of the titles of the publications in which the information appears (e.g. college catalog, Title IX web site, student handbook) as well as a copy of at least one publication disseminated to students and/or employees containing the required notification, or printouts or a link to an on-line publication containing the required notification. Inserts may be used pending reprinting of these publications.

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

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3RSVPTZN]!3Re0ZPRURNT!! By March , , SUNY will provide to OCR a certification from each Title IX Coordinator that the campus has revised and published its notice of nondiscrimination. This certification will include a list of the titles of the publications in which the information appears (e.g. college catalog, Title IX web site, student handbook) and a copy of at least one publication disseminated to the campus community, or printouts or a link to an on-line publication containing the notice. Additionally, SUNY will provide copies of applications for employment for SUNY System Administration and each SUNY campus containing the appropriate notice. Inserts may be used pending reprinting of these publications.

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SUNY has revised its SUNY System grievance

a statement that responsible employees are expected to promptly report sexual harassment that they observe or learn about;

provisions for the prompt, adequate, reliable, and impartial investigation of all complaints, including the opportunity for the parties to present witnesses and other evidence;

provisions for the investigation of complaints when the complainant does not choose to proceed with an informal or formal resolution or a hearing;

provisions to indicate that SUNY has an obligation to make reasonable efforts to investigate and address instances of sex discrimination when it knows or should have known about such instances, regardless of complainant cooperation and involvement;

provisions ensuring that the parties are afforded similar and timely access to any information used at the hearing;

clarification that any informal resolution mechanism set forth in the procedures will only be used if the parties voluntarily agree to do so, that the complainant should not be required to resolve the problem directly with the respondent and that there will be instances when the informal resolution mechanism may be inappropriate (e.g., mediation is prohibited in cases of sexual assault, and those involving a student complaining of sexual harassment against an employee in a position of authority over the student); and that the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process;

a statement that the preponderance of the evidence standard will be used for investigating alleged sex discrimination and sexual harassment;

designated and reasonably prompt timeframes for the major stages of the grievance process that apply equally to the parties of the complaint, including the investigation, complaint resolution, and appeal processes, if any;

an assurance that victims will be made aware of their Title IX rights and available resources, such as counseling, the local rape crisis center, and their right to file a complaint with a local law enforcement agency;

a provision indicating that SUNY will comply with law enforcement requests for cooperation and such cooperation may require SUNY to temporarily suspend the fact-finding aspect of a Title IX investigation while the law enforcement agency is in the process of gathering evidence, and that SUNY will promptly resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process;

a provision indicating that SUNY will implement appropriate interim steps during the law enforcement agency's investigation period to provide for the safety of the victim(s) and the campus community and the avoidance of retaliation;

provisions indicating the availability of interim measures during the University's investigation of possible sexual harassment (such as how to obtain counseling and academic assistance in the event of a sexual assault, and what interim measures can be taken if the alleged perpetrator lives on campus and/or attends classes with the victim), and that such interim measures will not disproportionately impact the complainant;

an assurance that the complaint and investigation will be kept confidential to the extent possible;

written notice to both parties of the outcome;

notice of the opportunity of both parties to appeal the findings, if the procedures allow appeals;

an assurance that any appeal will be conducted in an

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

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

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

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

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

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

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

the name and sex of the alleged victim, and if different, the name and sex of the person reporting the allegation;

a statement of the allegation, a description of the incident(s), and the date(s) and time(s) (if known) of the alleged incident(s);

the date that the complaint or other report was made;

the date the accused was interviewed;

September , _____
Date

_____/s/_____
William F. Howard
Senior Vice Chancellor, General Counsel and Secretary
of the University

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