

School Districts' Response to Sexual Harassment and Sexual Violence Under Scrutiny – Is Your District In Compliance With Title IX?

The media stories being published across the nation criticizing schools for their failure to respond to sexual harassment and sexual violence against students serve as a warning to other school districts to consider whether they are in compliance with Title IX. School districts are under fire for their response to incidents ranging from the rape of a 14-year old special-needs high school student in a school bathroom, to the egregious acts of sexual “hazing” that has led to the suspension of several high school football players in Sayreville, New Jersey, to allegations of harassment of transgender students by other students and staff. While the federal government and the White House have been paying particular attention to sexual assaults and other forms of sex discrimination on college campuses, the U.S. Department of Education’s Office for Civil Rights (OCR) has begun to shift its focus on enforcement of Title IX to primary and secondary schools. School districts should be aware of two distinct areas that have been the focal point of OCR’s Title IX enforcement efforts: 1) the way in which schools are responding to sexual assaults in schools; and 2) claims of discrimination and harassment against transgender students.

Title IX of the Education Amendments prohibits discrimination against students on the basis of sex in education programs and activities. On April 29, 2014, OCR released a [“Questions and Answers on Title IX and Sexual Violence”](#) in an effort to provide clarification regarding requirements outlined in an [April 2011 Dear Colleague Letter on Sexual Violence](#). The guidance raises many issues for administrators in K-12 school districts and creates requirements that schools might not be aware of. For instance, even a single, isolated incident of sexual violence may create a hostile learning environment that violates Title IX. In addition to reinforcing school districts’ obligations to publish a notice of nondiscrimination and designate a Title IX Coordinator, the April 2014 guidance also provides a litany of procedural requirements schools that should follow in investigating and responding to sexual harassment and sexual violence complaints. That includes, but is not limited to, meeting obligations with respect to confidentiality, implementing interim measures pending completion of an investigation, complying with reporting requirements, considering appropriate remedies for the complainant, respondent, and the school community, and utilizing the appropriate evidentiary standard in disciplinary proceedings in these types of cases. OCR has taken the position that many of these protections must be incorporated into school policies to ensure Title IX compliance. In the event of a compliance review or litigation in response to a student complaint, a school district’s sexual harassment policies will be closely scrutinized. The stakes are high in these cases. School districts across the country, including a school district in Washington that was sued over the sexual assault of a 14-year old special needs student while in the school bathroom, have recently agreed to pay in excess of \$700,000 to settle Title IX complaints involving sexual assaults. School districts would be well-served to review their sexual harassment policies to ensure compliance with Title IX and OCR’s most recent guidance.

OCR’s April 2014 Guidance was also significant in that it made clear, for the first time, that, despite the fact that discrimination based on gender identity is not explicitly covered by Title IX or any federal law, OCR interprets Title IX as extending to claims of discrimination against transgender and gender nonconforming students. On October 14, 2014, OCR [announced](#) that it had entered into a resolution agreement with a school district in a case where a transgender student complained that she had been called homophobic and sexist slurs by other students, was disciplined for wearing makeup when other females were allowed to do so, and was discouraged from talking about her gender identity with other students. The student complained that after she transitioned

to a female during fifth grade, school officials refused to use her female name. Under the OCR [agreement](#), the school district must treat the transgender student like all other female students (including access to the girls' bathroom and locker rooms) and take steps to ensure that all transgender students can participate in school programs in a safe educational environment. To that end, the resolution agreement requires the school district to hire a consultant to address the climate throughout the district, conduct mandatory training for administrators on gender non-conformance and gender-based harassment, and revise its policies to prohibit discrimination based on a student's gender identity or gender expression. While N.Y.'s Dignity for All Students Act (DASA) obligates schools to respond to harassment based on a student's gender identity or expression, this resolution serves as a good reminder to school districts of their obligations under Title IX, particularly in light of the procedural requirements and potential liability under Title IX.

If you have any questions regarding your school district's obligations under Title IX or regarding revisions of policies and procedures in response to OCR's recent guidance, please contact [Christa Cook](#) at (315) 218-8321 or cookc@bsk.com.



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