

TOPIC:

OCR'S "DEAR COLLEAGUE" LETTER ON TITLE IX AND SEXUAL VIOLENCE - TRAINING OBLIGATIONS

INTRODUCTION:

This NACUANOTE is the second in a two-part series related to the April 4, 2011 "Dear Colleague" Letter ("DCL") from the U.S. Department of Education's Office for Civil Rights ("OCR"). The DCL provides guidance on Title IX [\[1\]](#) compliance, particularly with respect to sexual harassment, including sexual violence.

The first Note in this series focused on "first steps for compliance" with the DCL, including identification of a Title IX Coordinator and his or her duties, and updating institutional grievance procedures to comply with Title IX and the DCL. This Note will focus on the training suggestions and obligations contained in the DCL. Although OCR makes some particular suggestions, it is largely silent with respect to exactly how and when institutions should train the campus community. This NACUANOTE is an effort to assist in that training process by identifying key training obligations, and suggesting that a broad training approach will increase awareness, encourage reporting, and notify employees of their obligation under Title IX to report sexual harassment.

DISCUSSION:

Are These Training Requirements New?

The Department of Education has stated that the DCL is guidance, not new law or regulation. It contains clarifications and is described as a supplement to previous OCR guidance. [\[2\]](#) However, when compared to OCR's Revised Sexual Harassment Guidance of 2001, [\[3\]](#) the DCL clearly broadens the scope of people who must and should receive Title IX training. The 2001 Guidance requires training for employees designated to handle Title IX and for students as a tool to repair a hostile environment. [\[4\]](#) In that Guidance, OCR states, "[T]he school must make sure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates." [\[5\]](#) The corresponding footnote references a case where the college was found to be in violation of the federal law because of the Title IX Coordinator's lack of training. [\[6\]](#) By contrast, the DCL mandates or suggests training for a wide variety of people, and advises that those provided training should learn what type of conduct constitutes sexual harassment and how to identify warning signals. [\[7\]](#)

In broadening these training recommendations, OCR is recognizing that complainants may report to a variety of different people on campus. Instead of sending complainants from office to office to recount their (often traumatic) experiences, trained campus community members will have the tools to provide complainants with the information and resources they need, or to direct them to someone

with Title IX responsibilities, such as a Title IX Coordinator or Deputy Coordinator. This process will help the institution streamline its response to promptly address complaints and limit the effects of the alleged harassment. OCR first described broadened institutional training obligations in a related October 2010 “Dear Colleague” Letter on harassment and bullying, which stated that “the school may need to provide training or other interventions not only for perpetrators, but also for the larger school community, to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond.” [8]

Who Needs Training?

For a sexual harassment grievance procedure to be truly effective, the campus community must know how to identify and report discrimination, the person receiving the report must know what next steps to take, and the investigators and fact-finders must know how to investigate and adjudicate these complaints appropriately. This all requires training, and indeed, OCR recommends that institutions provide training to “any employees likely to witness or receive reports of sexual harassment and violence,” [9] as well as students, law enforcement personnel, athletes, coaches, and others. This recommendation can seem overwhelming, so campus officials would be well served by prioritizing what groups they train first.

The Title IX Coordinator

As the employee designated to ensure Title IX compliance for the entire campus, the Title IX Coordinator is the first person an institution should ensure is trained appropriately. This is also important because the Title IX Coordinator will likely be heavily involved in training other employees, departments and students.

The Coordinator must understand the institution’s obligation to address allegations of sexual harassment, including sexual violence. [10] Additionally, the Coordinator must have adequate training on what constitutes sexual harassment and violence, must be familiar with the institution’s grievance procedures, and must know how to conduct an investigation and maintain a documentation system that complies with those procedures. [11]

Investigators and Adjudicators

Investigators and adjudicators, as well as any other persons that will be implementing the institution’s grievance procedures, also require immediate training. These individuals must know how to identify sex discrimination and how to implement the institution’s grievance procedures. To promote an impartial investigation and hearing process, investigator and adjudicator training should include information on confidentiality as well as conflicts of interest. Real or perceived conflicts of interest should be disclosed by investigators and adjudicators. [12] Adjudicators must receive training on notice and hearing requirements as well as information about the “preponderance of the evidence” standard which OCR requires in sexual harassment (including assault) cases.

Campus Law Enforcement

The likely next step is to train campus police because many complainants will first report sexual violence to that department. [13] As part of training law enforcement personnel, the institution should:

- Provide law enforcement officials with copies of the institution’s Title IX policies and grievance procedures; [14]
- Instruct law enforcement personnel to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint;

- Instruct law enforcement personnel to report incidents of sexual violence to the Title IX coordinator if the complainant consents; and
- Inform law enforcement personnel that the Title IX coordinator is available to them as a resource in cases of sexual violence and harassment.

While all officers should receive Title IX training, it is imperative that at least one point person within the campus police department is fluent in the details of the college grievance procedures and acts as a liaison between the police and the Title IX Coordinator. All officers should be able to recognize when a red flag for Title IX comes up, including when they receive reports concerning sexual harassment or sexual violence. At that time, the officer receiving the report should consult the officer that has been specifically designated to handle sexual assault matters, or work directly with the Title IX Coordinator to make sure that the complainant has received all of the pertinent information, including resources on campus and off (health center, counseling center, academic tutoring, rape crisis center), options for adjudication (criminal, student conduct, Title IX complaint), and information on the grievance procedures on campus, including the Title IX Coordinator's contact information.

Title IX Coordinators and campus police should meet to discuss the institution's grievance procedures and plan their coordination efforts. They should work proactively to establish a standard for their collaboration on Title IX-related matters, which could avoid confusion and conflict when faced with an active case. For example, some campus police may not want to share original investigative notes with the Coordinator. Others might not want to share a complainant's name because the victim requested confidentiality. The Title IX Coordinator should provide adequate training and consider solutions to law enforcement concerns, if possible.

The Rest of the Campus Community

While chief priorities should be training the Title IX Coordinator, investigators and adjudicators, and campus police, it is important to provide training to students, faculty, staff, and the rest of the campus community as soon as possible. The campus community must have the information to know what can and should be reported. To start, they should be able to identify sex discrimination, including sexual harassment and sexual violence. They also must be told how to report sex discrimination they have experienced or identified, and what resources and remedies are available to them from the institution and the local community. Without an informed community, the Title IX Coordinator and law enforcement will not be able to serve their intended purpose under the grievance procedures. The DCL is consistent on the idea of widespread training; it states that colleges and universities should train anyone likely to witness or receive reports of sexual harassment or sexual violence. [15] Beyond those mentioned above, these people may include: health center staff, faculty, student mentors, student leaders (such as student organization presidents and student government members), resident assistants, hall directors, counseling center staff, coaches, athletes, and other people with whom students may have "first-line" access. For example, reception desk staff in main campus buildings may be the first people complainants see and speak to when looking for the appropriate place to report a complaint. Additionally, managers of student centers (usually students) are often the point of contact for student organizations that meet in the building at all hours of the day.

Institutions may also want to selectively target training toward particular groups where a pattern or risk of sexual harassment has been identified. For example, the institution may want to provide educational programs to athletes, Greek organizations, or a certain department if a pattern of complaints from that sub-group is identified. Although it uses the phrase "preventive education programs," OCR implies that this is also "training" for students (including athletes), faculty, staff (including coaches), and employees, and calls these efforts "proactive measures to prevent sexual harassment and violence." [16]

How and When Should an Institution Deliver This Training?

The task of training all of these people on campus can seem overwhelming, but many groups already meet and go through a training program or orientation. For students, institutions should integrate Title IX training into the existing programs, including new student orientation and programs for RAs, mentors, and other student leaders. Update written resource materials for these groups to include Title IX information and name the Title IX Coordinator. For example, if the institution gives a resource guide to resident advisors with pertinent campus information, there could be a section that advises what to do when the RA receives a report of sexual harassment or sexual violence.

New employees should receive Title IX training as part of their existing orientation. Many institutions already require sexual harassment training of some sort. For example, a new employee may participate in an online training that identifies and defines sexual harassment, then quizzes the participant on the information. If the quiz results are favorable, the new employee can print a completion certificate to file with Human Resources.

Where and when to train current employees and faculty will vary based on the size and culture of the institution, but could include:

- Training at a regular, mandatory department meeting, such as the initial meeting before the new academic year.
- Web-based training similar to that for new hires, but intended to provide reminders and updates for existing campus community members.
- An in-person annual sexual harassment training open to all faculty and staff. You may want to offer multiple session options to accommodate different schedules, and if you are in a university system you may want to offer different geographic locations or a webinar option.
- Incorporation of Title IX training information into a regular quarterly town hall meeting.

What Kind of Information Should Be Included in Training?

Training should include how to *identify* and *report* sexual harassment and sexual violence. [\[17\]](#) Some ideas for conveying that information include:

- Share the definitions that the institution uses in its code of conduct and employee handbook for sexual harassment, sexual violence, including sexual assault and rape, consent, and retaliation.
- Provide examples or short case studies that will give context to these definitions. A complex, fact-intensive situation may not have the Title IX issue in the forefront, so working through a report aloud in a group setting may help trainees recognize the relevant issues.
- Name the Title IX Coordinator, introduce him or her if available, and put up a slide of his or her picture. Campuses can get creative here. Some have made Title IX cards that state the institution's obligation to take immediate action to end sexual harassment and prevent its recurrence and list the contact information for the Title IX Coordinator(s). Another made identifying the Coordinator into a game during an orientation assembly, putting up the Coordinator's picture with lights and arrows around it, and quizzing the attendees to shout out his name at various points in the presentation.
- Create specific sexual violence materials as a resource to the campus community. Include sexual misconduct policies, the grievance procedures, and contact information for the Title IX Coordinator, police, the health center, counseling center, and the local rape crisis center. Institutions might want to create a Title IX web page as a central resource for all relevant

links and information. Work with IT to ensure that keyword searches from the college web site for terms like “sexual harassment,” “sexual assault,” and “Title IX” lead to your Title IX page as the first result.

CONCLUSION:

OCR’s Dear Colleague Letter mandates that an institution provide training to a wide variety of constituents, and OCR expects swift compliance. Quickly adopting the necessary changes can strengthen an institution’s position in the event of a review by OCR, whether based on an investigation or a compliance review. While some steps toward compliance are easy, [\[18\]](#) designing widespread training programs can seem overwhelming. The Title IX Coordinator should work proactively with campus community members to ensure that they understand what constitutes sexual harassment and assault and that those likely to witness or receive reports of sexual harassment or violence are prepared to assist complainants with understanding their rights and the resources available to them at the institution. Updating existing written materials and training programs to include Title IX information is a first step toward compliance with Title IX, and a prudent preventative measure to help address sexual harassment and violence on campus.

FOOTNOTES:

FN1.

Title IX of the Education Amendments of 1972, 20 USC sec. 1681 *et seq.* and its implementing regulations, 34 CFR Part 106.

FN2.

As stated in *Cohen v. Brown University*, 991 F.2d 888 (1st Cir. 1993), courts give significant deference to the rulings and interpretations of the federal agencies tasked with enforcing the regulations.

FN3.

See U.S. Department of Education, [Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX](#) (January 2001) (hereinafter “2001 Guidance”).

FN4.

2001 Guidance, p. 16.

FN5.

2001 Guidance, p. 21.

FN6.

2001 Guidance, p. 37, footnote 108, referencing Cape Cod Community College, OCR Case No. 01-93-2047.

FN7.

DCL, p. 6.

FN8.

October 26, 2010 on the subject of Harassment and Bullying.

FN9.

DCL, p. 4, and between pages 7 and 14 OCR discusses training.

FN10.

DCL, p. 17.

FN11.

DCL, p. 7.

FN12.

DCL, p. 12.

FN13.

DCL, p. 7.

FN14.

DCL, p. 7.

FN15.

DCL, pp. 4 and 14.

FN16.

DCL, p. 15.

FN17.

DCL, p. 4.

FN18.

Examples of changes that can be made quickly include targeting your keyword search results to your Title IX page, designating your Title IX Coordinator and publicizing his or her contact information, and publicizing your non-discrimination notice online and in print.

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RESOURCES:

NACUA Resources:

- [NACUA April 4, 2011 Dear Colleague Letter Resource Page](#)
- [It's Beyond Athletics: New Efforts to Push the Frontiers of Title IX Liability for Sexual Misconduct](#), Amy Foerster & Gloria Hage (NACUA 2011 Annual Conference)
- [Title IX: Responding to OCR's New "Dear Colleague" Letter on Sexual Violence](#), Amy Foerster & Gloria Hage (NACUA Virtual Seminar May 5, 2011)

Additional Resources:

- [April 4, 2011 Dear Colleague Letter](#)
- [2001 Revised Guidance on Sexual Harassment](#)
- [October 26, 2010 Dear Colleague Letter:](#)
- [American College Health Association Toolkit: Primary Prevention of Sexual Violence](#)
- [Complying with the OCR's New Dear Colleague Letter on Sexual Violence](#), Scott Goings, Minnesota State Colleges and Universities (May 12, 2011)
- [Got It? Consent](#), Eastern Michigan University (2011)
- [Template Training Outline for Student Conduct Officers, Investigators, Hearing Officers and Hearing Boards](#), University of California, Davis (2011)
- [Sexual Harassment Resources](#), OCR

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