

April 8, 2011

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**Priority Briefing**

## **OCR ISSUES NEW GUIDANCE ON SEXUAL HARASSMENT**

On April 4, 2011, the U.S. Department of Education, Office for Civil Rights (OCR) issued a Dear Colleague letter concerning sexual harassment in schools. The OCR expands earlier guidance, and describes proactive measures, policies and procedures, and remedies School Districts should implement to protect students from harassment and to comply with Title IX of the Education Amendments of 1972. OCR indicates that schools have a responsibility to take immediate and effective steps to end sexual harassment, including unwelcome sexual advances, requests for sexual favors, verbal, nonverbal or physical conduct of a sexual nature, gender-based harassment, and sexual violence.

Although OCR acknowledged that an actual knowledge and deliberate indifference standard applies in private suits for money damages, the April 4, 2011, Dear Colleague letter indicates that in administrative actions, a district will be responsible to take immediate action if the District knows or reasonably should know about student on student harassment. OCR further indicates that schools may have an obligation to respond to student on student harassment that initially occurs off school grounds, and that the school must investigate a complaint of sexual harassment, regardless of where the conduct occurred.

The Dear Colleague Letter sets forth extensive remedies for harassment, including, but not limited to, providing the complainant an escort between classes, ensuring that the victim and harasser are not in the same classes, moving the victim or harasser to a different school in the district, providing counseling services, providing medical services, providing academic support such as tutoring, arranging for the victim to retake or withdraw from a class without penalty,

and reviewing whether any misconduct on the victim's part had a causal connection to the harassment. OCR also suggests remedies for the entire student body, such as comprehensive counseling services for all students affected by sexual harassment and training of students and employees on recognizing and addressing sexual harassment. OCR warns that if it finds that a School District has not taken prompt and effective steps to respond to sexual harassment, OCR will seek appropriate remedies for both the individual victim and for the broader student population.

A District must act promptly and must conduct an adequate, reliable and impartial investigation of complaints, must provide notice to the parties of the outcome of the complaint, and must take steps to prevent recurrence of any harassment and correct its discriminatory effects on the victim and on others, if appropriate. Additionally, OCR explains that schools should take proactive measures such as implementing preventive education programs and making comprehensive victim services available.

The April 4 Dear Colleague letter also describes OCR's procedural requirements. Districts must widely disseminate a Notice of Nondiscrimination. OCR recommends that the District's nondiscrimination policy indicate that prohibited sex discrimination includes sexual harassment and sexual violence, and that the Notice include examples of prohibited conduct. Districts must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and understand how the District's grievance procedures work.

According to OCR, grievance procedures should be written in language appropriate to the age of the school's students, easily understood, easily located, and widely distributed. For example, a District should include the procedures in its Student Handbook, should post them on its website, distribute them at registration and post the procedures around the school buildings. The complainant must be notified of the right to end an informal grievance procedure at any time and begin the formal stage of the complaint process. OCR will evaluate whether a District's grievance procedures specify time frames for District action, as well as a process for extending the timelines.

Districts should review their Notice of Nondiscrimination and grievance procedures for compliance with OCR requirements. All complaints of sexual harassment must be promptly investigated and action taken if harassment is found.

The April 4, 2011, Dear Colleague letter can be read at [www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html). If you would like assistance with reviewing your District's policies and procedures, or have additional questions about the Dear Colleague letter, please call one of the attorneys at Sraga Hauser, LLC, for more information.