
Recent Federal Guidance on Title IX and Sexual Violence

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Over the last several weeks, colleges and universities have been inundated with new Title IX and sexual violence guidance and enforcement decisions to digest. First, the U.S. Department of Education's Office for Civil Rights ("OCR") found Tufts University to be in violation of Title IX despite the fact that the parties previously had entered into a resolution agreement. On April 29, 2014, the White House Task Force to Protect Students from Sexual Assault ("the Task Force") released Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault ("the Task Force's Report" or "the Report").^[1] On the same day, OCR issued a significant guidance document of Questions and Answers on Title IX and Sexual Violence ("OCR's QandA" or "the QandA").^[2] Then on May 1st, the U.S. Department of Education, for the first time, published a list of 55 colleges and universities under investigation for violating Title IX.

This Advisory provides a comprehensive summary of the Task Force's Report and OCR's QandA. For information on OCR's decision in the Tufts University investigation and the list of colleges and universities under investigation for violating Title IX, please visit Cullen and Dykman's Education Law Blog [here](#).

Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault

On January 22, 2014, President Obama established the Task Force, charging it with strengthening federal enforcement efforts with respect to sexual assault on campus and providing schools with additional tools with which to combat this serious problem. The Task Force then undertook a 90-day information gathering process which resulted in the publication of the Report. The Report contains the Task Force's first set of "action steps and recommendations" aimed at providing support to sexual assault survivors and helping schools meet their legal obligations to protect students from sexual violence. It focuses on four areas through which these goals may be achieved. Each of these four areas is addressed below.

Campus Climate Surveys

The Report emphasizes the importance of identifying the prevalence of sexual assault on campus and measuring students' attitudes and awareness of the issue. To that end, the Report urges colleges and university to conduct campus climate surveys and provides a tool kit with which to conduct such surveys. The Report calls on schools

to voluntarily conduct a climate survey next year. Additionally, the Report notes that the Task Force plans to investigate legislative or administrative options requiring schools to conduct a climate survey in 2016.

Preventing Sexual Assault on Campus

The Report provides schools with additional guidance and tools for combating sexual assault on campus. Among these tools is an advanced summary issued by The Center for Disease Control and Prevention (“the CDC”) of the results of the CDC’s review of prevention strategies for reducing sexual violence. The CDC’s summary discusses both effective and ineffective strategies for sexual violence prevention. In addition, the summary sets forth steps schools can take immediately to prevent sexual assault on campuses, and provides tools for comparing and evaluating prevention programs currently in existence

The Report also emphasizes the value of bystander intervention as a prevention strategy. It provides a basic fact sheet on bystander intervention, which identifies some of the most promising available programs and materials and messages that should be included in ineffective programs.

Lastly, the Report describes future steps the Task Force, the CDC, the Justice Department’s Office on Violence Against Women, and the Department of Education plan to take to develop new prevention strategies.

Responding Effectively When a Student is Sexually Assaulted

Confidentiality

The problem most frequently identified in the Task Force’s listening sessions was confidentiality. The Task Force found that some schools have directed essentially all employees, including those normally providing confidential services, to report allegations of sexual violence. This, the Report explains, may cause many victims to stay silent. As a “key best practice,” the Task Force suggests that schools “identify trained, confidential victim advocates who can provide emergency and ongoing support” — individuals who are well trained in the unique problems presented in sexual assault cases, as well as the traumatic effect the events can have on victims. To guide schools in this effort, the Report includes “a sample reporting and confidentiality protocol” that includes universal principles schools should consider when drafting their own policies.

Sexual Misconduct Policy

The Report also provides schools with “a checklist for a sexual misconduct policy” that identifies, among other things, key provisions a school should consider in creating its policy. Additionally, the Task Force recommends involving in the drafting process all key stakeholders, including law enforcement, resident advisors, student groups, local victim service providers, and on-campus advocates. The Task Force plans to provide sample policy language addressing several key issues by September 2014.

Training

The Task Force recognizes the critical need for specialized training of individuals responsible for responding to and investigating claims of sexual assault. In an effort to assist schools in providing such training, the Report lists various programs that will be implemented over the course of 2014.

Investigative Process

The Task Force explored and continues to explore the various investigative models with which schools are experimenting. The Report examines those models in which an investigation is conducted by a single trained investigator in contrast to those which involve a hearing panel or judicial board. The Report suggests that the “single investigator” models, or models in which judicial boards play a limited role, may be preferred. These models and other promising practices will be further evaluated by the Justice Department’s Office on Violence Against Women and National Institute on Justice later this year. Additionally, the Justice Department’s SMART Office plans to launch a pilot sex offender treatment program targeting college perpetrators in the near future.

Community Collaboration

The Report emphasizes the importance of providing both immediate and long-term support to survivors of sexual assault. Recognizing that some schools may have limited resources that require them to partner with community-based organizations offering “trauma-informed services,” the Report provides “a sample Memorandum of Understanding (MOU)” to aid schools in building such a partnership. By June 2014, the Task Force plans to provide a sample MOU with local law enforcement agencies. Additionally, to promote the expansion and strengthening of on-campus programs, the Report offers a “summary of promising practices in victim services.”

Improving and Making More Transparent the Federal Government’s Enforcement Efforts

At the federal level, the Task Force is focused on strengthening enforcement efforts and increasing “coordination among responsible agencies.” The Report gives an overview of the laws relevant to sexual violence in schools, including Title IX of the Education Amendments of 1972 (“Title IX”), Title IV of the 1964 Civil Rights Act (“Title IV”), and The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“the Clery Act”), and describes various federal agencies’ enforcement rights and responsibilities with regard to such laws.

To increase transparency and promote information sharing with schools and students, the Task Force launched NotAlone.gov. NotAlone.gov publicizes enforcement data, gives students an understandable explanation of their rights under Title IX and Title IV, and provides schools and students with valuable resources, such as guidance on a school’s federal obligations and contact information for mental health services in a student’s geographic area. The website will also become a central repository for OCR resolution letters and agreements and DOJ federal court filings.

OCR’s Questions and Answers on Title IX and Sexual Violence

Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities. The U.S. Department of Education's Office for Civil Rights ("OCR") has released numerous guidance documents that explain the responsibilities of elementary and secondary schools and post-secondary institutions with regard to Title IX and sexual violence. Most recently, on April 4, 2011, OCR issued a Dear Colleague Letter on student-on-student sexual harassment and sexual violence ("the DCL"). The DCL supplemented OCR's 2001 guidance on Title IX, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, and Third Parties ("the 2001 Guidance"). Still, OCR continues to receive many requests for assistance in clarifying schools' obligations under Title IX. The QandA was developed in response to OCR's determination that schools would benefit from additional guidance concerning such obligations. OCR recommends that the QandA be read in conjunction with the DCL and 2001 Guidance, as they remain in full force

The QandA is divided into 14 topics, including:

- a school's obligation to respond to sexual violence;
- students protected by Title IX;
- Title IX procedural requirements;
- responsible employees and reporting;
- confidentiality and a school's obligation to respond to sexual violence;
- investigations and hearings;
- interim measures;
- remedies and notice of outcome;
- appeals;
- Title IX training, education, and prevention;
- retaliation;
- First Amendment;
- The Clery Act and The Violence Against Women Reauthorization Act of 2013; and
- further federal guidance.

Given the breadth of issues addressed under each topic, we urge our clients to review the QandA in its entirety.

Conclusion

In order to maximize your institution's ability to effectively respond to allegations of sexual violence and ensure compliance with Title IX, your organization should evaluate its current policies in the context of the Task Force's Report and OCR's QandA. Currently, the recommendations in the Task Force's Report are advisory only. However, as noted above, related legislative and/or administrative mandates related to the Task Force's Report are most likely forthcoming. OCR's QandA reflects OCR's interpretation of Title IX and its application to colleges and universities. To ensure compliance with Title IX, colleges and universities are therefore expected to accept and incorporate into their policies and procedures the guidance offered by the QandA.

This advisory is intended to provide a comprehensive overview of the White House Task Force's Report and OCR's QandA, but does not address every component of the Report or the QandA, and should not be construed as

specific legal advice. For specific advice, or if you have any questions about the Report or the QandA or their effect on your particular organization, please contact Dina L. Vespia at [212-510-2245](tel:212-510-2245) or dvespia@cullenanddykman.com.

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