

Guidance About Title IX: White House Task Force to Protect Students from Sexual Assault Releases its First Report

April 30, 2014

In a report released Tuesday, the White House task force on sexual assaults outlined five action steps and recommendations for ensuring compliance with Title IX and protecting students on college and university campuses from sexual assault. Schools should consider this new guidance carefully, stay alert for future guidance, and ensure that their policies are in compliance. As the task force warned, the Department of Education's Office for Civil Rights (OCR) is "strengthening its enforcement procedures" and plans on being "more visible on campus during its investigations.

The report contains four primary action items and recommendations:

1. **The Campus Climate Survey:** Each institution should survey the incidence of sexual assault on campus, attitudes towards such assaults, and awareness of sexual assault prevention policies. The report includes a sample survey and states that such surveys may become mandatory by 2016.
2. **Prevention Programing:** The report reiterates that schools need to conduct sexual assault prevention and awareness programs. It includes best practices, strategies for increasing bystander intervention, and outlines a strategy for developing and evaluating new programming.
3. **Ensuring an Effective Response:** The task force outlines a multi-prong procedure for schools to more effectively respond to sexual assault. Included are sample protocols allowing for confidential disclosures, a checklist for developing a comprehensive sexual misconduct policy, and additional information for conducting compliant investigations and adjudications.
4. **Increasing Transparency and Improving Enforcement:** In the final part of the report, the government promises increased transparency and guidance in Title IX compliance. It also states that schools can expect increased enforcement actions by OCR and the Justice Department's Civil Rights Division.

In connection with the last action item, the report details guidance that is scheduled to be released in the coming months. Among other things, schools can expect sample comprehensive policies against sexual misconduct, training programs for investigative and adjudicative personnel, training programs for campus health center staff, sample agreements for partnering with law enforcement, and an assessment of current investigative models.

In addition, OCR released on Tuesday a 52-point guidance document titled "Questions and Answers on Title IX and Sexual Violence". This document clarifies that all students are protected by Title IX, regardless of sexual orientation, gender identity, enrollment status, or other factors. Title IX applies equally to complaints of sexual violence against perpetrators of the same sex as it does to perpetrators of the opposite sex. The document further clarifies the role of the Title IX Coordinator, including whether he or she can have other responsibilities outside of that role, and establishes certain requirements for schools' disciplinary procedures. For example, the guidance strongly discourages allowing parties at a disciplinary hearing to cross-examine each other, prohibits "questioning about the complainant's sexual history with anyone other than the alleged perpetrator," and directs schools that prior consensual dating or sexual relationships do not imply consent at a later time or preclude a finding of sexual assault.

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