UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PRIVACY MATTERS, a voluntary unincorporated association; and **PARENT A**, president of Privacy Matters, Plaintiffs, vs. **UNITED STATES DEPARTMENT OF EDUCATION**; **JOHN B. KING, JR.,** in his official capacity as United States Secretary of Education; **UNITED STATES DEPARTMENT OF JUSTICE**; **LORETTA E. LYNCH**, in her official capacity as United States Attorney General, and **INDEPENDENT SCHOOL DISTRICT NUMBER 706, STATE OF MINNESOTA.** Defendants.	**Case No. _____** **VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** **JURY TRIAL REQUESTED**

VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Privacy Matters and its members (collectively referred to as the "Plaintiffs"), state as follows:

1. This case is about protecting the privacy of every student within Independent School District 706 ("Virginia School District" or "District" or "District Defendant")—privacy that the Defendants violate each school day through their new rules and policies that radically changed the meaning of

"sex" in Title IX. Defendants have unilaterally rejected the Title IX meaning of sex, which for 40 years has meant male and female: two objective, fixed, binary classes which are rooted in our human reproductive nature. In lieu of this unambiguous meaning of sex, Defendants inject a distinct and altogether different concept of gender identity which is subjectively discerned, fluid, and nonbinary. The Department of Education and Department of Justice ("Federal Defendants") acted without regard for statutory authority or required rule-making procedures, and created and promulgated a new *ultra vires* rule ("Federal Rule" or "Rule") through the artifice of issuing "guidelines" ("Federal Guidelines" or "Guidelines") and then enforcing those guidelines against several schools. And those enforcement actions notified all school districts nationwide that they must treat a student's gender identity as their sex for the purpose of Title IX if they wish to retain federal funding. The Federal Rule redefines "sex" in Title IX and requires school districts to regulate access to sex-specific private facilities such as locker rooms, restrooms, shower rooms, and hotel rooms on overnight school-sponsored trips by gender identity rather than by sex. Virginia School District fully adopted and implemented the Federal Defendant's Rule as their own policy ("District Policy" or "Policy"). The consequence of the Federal Rule and District Policy was ineluctable: adolescent girls, in the midst of disrobing within their private locker room, found an adolescent male in their midst.

The risk of such encounters, and the encounters themselves, merit prompt judicial intervention to strike the Defendants' rules and policies and protect Plaintiffs' bodily privacy.

JURISDICTION AND VENUE

2. This action arises under 42 U.S.C. §§ 1983 et seq. (the "Civil Rights Act"), 5 U.S.C. §§ 500 et seq. (the "Administrative Procedure Act" or the "APA"), 20 U.S.C. §§ 1681 et seq. ("Title IX"), the First, Fifth, and Fourteenth Amendments to the United States Constitution, Section 16 of the Minnesota State Constitution, and the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb et seq.

3. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1361, and 1367.

4. The Court has jurisdiction to issue the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57.

5. The Court has jurisdiction to award the requested injunctive relief under 5 U.S.C. §§ 702 and 703, 20 U.S.C. § 1683, 42 U.S.C. § 2000bb-1(c), 28 U.S.C. § 1343(a)(3), and Federal Rule of Civil Procedure 65.

6. The Court has jurisdiction to award nominal and compensatory damages under 28 U.S.C. § 1343(a)(4).

7. The Court has jurisdiction to award reasonable attorneys' fees and costs. 28 U.S.C. § 2412, 42 U.S.C. § 1988.

8. Venue lies in this district pursuant to 28 U.S.C. § 1391(b) and (e), because a substantial part of the events or omissions giving rise to all claims occurred in this district where the District Defendant is located.

PARTIES

Plaintiff Privacy Matters

9. All Plaintiffs are citizens of the United States and residents of St. Louis County, Minnesota.

10. Privacy Matters is a voluntary unincorporated association. Minn. Stat. Ann. § 540.151; *Med. Staff of Avera Marshall Reg'l Med. Ctr. v. Avera Marshall,* 857 N.W.2d 695, 700 (Minn. 2014).

11. Privacy Matters is composed of 10 families of Virginia School District students and parents who are directly impacted by the Federal Defendants' Rule and the District Policy.

12. Parent A is the president of Privacy Matters.

13. Girl Plaintiffs A, B, D, E and F, all minors, are members of Privacy Matters, and are represented in this lawsuit by their parents, and next friends, Parents A, B, D, E and F. [1]

[1] Girl Plaintiff C decided to excuse herself from this case due to perceived risks associated with being a plaintiff in this lawsuit.

14. Parents A, B, D, E and F are also members of Privacy Matters and as parents of Girl Plaintiffs A, B, D, E and F, respectively, are Plaintiffs in their own rights.

15. Girl Plaintiffs A, B, D, E and F all attended VHS in 2015-2016. Because of the Policy, Girl Plaintiff A will not return to VHS for fall 2016. Girl Plaintiff A will likely return to Virginia High School if the Policy is set aside. Girl Plaintiffs B, D, and E will continue at VHS.

16. Girl Plaintiffs A, B, D, E and F and their parents file this lawsuit and seek to proceed under pseudonyms to protect their identities. These Girl Plaintiffs are minors and, while Plaintiffs recognize it is common to use initials to protect a minor's identity, VHS is a small school – 1580 students in the entire District, pre-school to 12th grade – located in a small town – around 8,660 people – so the Girl Plaintiffs' initials or their parents' initials will likely identify the girls. Because the issues raised by this case are hotly contested in Virginia, MN and throughout the country, Girl Plaintiffs fear retaliation from their peers, faculty and administrators within their school, and the greater community, if their true identities are known. Plaintiffs consent to the use of a pseudonym to protect Student X's identity. *See infra* fn. 3.

17. The factual statements and allegations of law in this Verified Complaint may apply to a number of individual members of Privacy Matters.

For clarity, when used in this complaint: **"Plaintiffs"** refers to all members of Privacy Matters; **"Student Plaintiffs"** refers to all students, girls and boys, who are part of Privacy Matters; **"Parent Plaintiffs"** refers to all parents who are part of Privacy Matters; **"Girl Plaintiffs"** refers to all girl students who are part of Privacy Matters; and **"Boy Plaintiffs"** refers to all boy students who are part of Privacy Matters.

Defendant Department of Education

18. Defendant Department of Education ("DOE") is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of Title IX, 20 U.S.C. §§ 1681-1688, and its implementing regulations at 34 C.F.R. Part 106.

Defendant Secretary John B. King, Jr.

19. Defendant John B. King, Jr., is the United States Secretary of Education. In this capacity, he is responsible for the operation and management of the DOE. King is sued in his official capacity only.

Defendant Department of Justice

20. Defendant Department of Justice ("DOJ") is an executive agency of the United States government and is responsible for the enforcement of Title IX, 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106. Pursuant to Executive Order 12250, the DOJ has authority to bring actions to enforce Title IX, and it has brought such actions.

Defendant Attorney General Loretta E. Lynch

21. Defendant Loretta E. Lynch is the United States Attorney General. In this capacity she is responsible for the operation and management of the DOJ. Lynch is sued in her official capacity only.

Defendant Independent School District Number 706, State of Minnesota

22. Independent School District Number 706, State of Minnesota ("Virginia School District" or "District") is organized under the laws of the State of Minnesota and pursuant to those laws it may be sued in all courts including this one. Minn. Stat. Ann. § 123B.25 (2016).

23. The District comprises public educational institutions that provide male and female students a pre-school through 12th-grade education.

24. The District and its schools receive federal funds and so are subject to the requirements of Title IX.

25. District schools include VHS (7th to 12th grade), Roosevelt Elementary School (3rd to 6th grade), which is housed in the same building as VHS, and Parkview Learning Center (pre-school to 2nd grade).

26. District Defendant is responsible for the enforcement of policies through its Superintendent, administrators, teachers, and other employees.

INTRODUCTION

27. No student should be forced to use private facilities at school, like locker rooms and restrooms, with students of the opposite sex. No government agency should hold hostage important education funding to advance an unlawful agenda. And no school district should trade its students' constitutional and statutory rights for dollars and cents, especially when it means abandoning a common sense practice that long protected every student's privacy and access to education. Yet the Defendants have taken precisely these actions in this case.

28. Bypassing congressional intent, judicial rulings, and more than 40 years of Title IX history, the Federal Defendants decreed by unlawful agency fiat a new legislative rule that a school must treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations.[2]

[2] The term "**sex**," as used in both Title IX and this Complaint, is a binary concept that refers to one's biological status as either male or female determined at birth and manifest by biological indicators such as chromosomes, gonads, hormones, and genitalia. *See, e.g.*, Am. Psychological Ass'n, *Answers to Your Questions About Transgender People, Gender Identity and Gender Expression* 1, http://www.apa.org/topics/lgbt/transgender.pdf ("*Sex* is assigned at birth, refers to one's biological status as either male or female, and is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy."); Am. Psychological Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 451 (5th ed. 2013) ("DSM-5") (noting that sex "refer[s] to the biological indicators of male and female (understood in the context of reproductive capacity), such as in sex chromosomes, gonads, sex hormones, and nonambiguous internal and external genitalia."). When "male" and

29. The Federal Defendants created and promulgated this new legislative rule through a series of Federal Guidelines that were sent to school districts between April 2014 and May 2016.

30. Contemporaneously, the Federal Defendants aggressively enforced the policies announced in these Guidelines, publically threatening to remove all federal funding from school districts that did not submit to their Guidelines.

31. This Rule made two radical changes to the law that are directly at issue in this case: It (1) redefined the term "sex" in Title IX to include gender identity, and (2) prohibited school districts from providing sex-specific facilities including locker rooms, shower rooms, restrooms, and hotel rooms on school sponsored trips.

32. Under the Rule, school districts must provide any male student who professes a female gender identity unrestricted use of girls' private

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"female" are used in this Complaint, they are used consistently with this definition. "**Gender identity**" as defined by the Department of Education "refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth." U.S. Department of Justice and U.S. Department of Education, *Dear Colleague Letter: Transgender Students* 1 (May 13, 2016). **Exhibit A**. It is also subjective, fluid, and not rooted in human reproduction or tied to birth sex. Lawrence S. Mayer & Paul R. McHugh, *Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences*, New Atlantis, at 87-93 (2016). When "gender identity" is used in this Complaint, it is used consistently with this definition.

facilities[3] and any female student who professes a male gender identity unrestricted use of boys' private facilities.

33. The Rule is *ultra vires* because it violates both substantive and procedural requirements of the Administrative Procedure Act ("APA").

34. The Rule is unlawful because it mandates a school policy that creates a sexually harassing hostile environment and violates privacy.

35. Responding to the extensive Federal Guidelines and enforcement, in February 2016, the District Defendant stopped its historic and lawful practice of sex-separating locker rooms and restrooms and adopted and implemented the Federal Defendants' Rule as District Policy.

36. The District Policy regulates all District schools, programs, and students pre-school through 12th grade.

37. The Policy was immediately effective and authorized a male high school student who professes a female gender identity, Student X,[4] unrestricted access to enter and use girls' private facilities, which he

[3] The term "private facilities" in this Complaint includes locker rooms, shower rooms, restrooms, and housing on school-sponsored overnight trips.

[4] Plaintiffs wish to respect the anonymity of this student and so shall refer to him as Student X. Both Title IX and legal precedent regarding bodily privacy recognize that distinctions based on sex are necessary to protect privacy and prevent sex discrimination. Therefore, although Plaintiffs are aware that Student X professes a female gender identity, it is his male sex that is relevant to determining whether Plaintiffs' rights have been violated by Defendants' actions. Therefore, to respect the facts that are necessary knowledge for this Court's adjudication of Plaintiffs' claims, Plaintiffs use masculine pronouns to identify this male student throughout this Complaint.

promptly began doing while Girl Plaintiffs were present and using the same private facilities.

38. The Policy has had a severe and negative impact on students, including Girl Plaintiffs.

39. Girl Plaintiffs experience anxiety, stress, humiliation, embarrassment, intimidation, fear, apprehension and distress throughout their day knowing that to obtain an education they must attend to their most personal needs in private facilities unprotected from the entrance, presence, or exposure of a male.

40. Because of the Policy, Girl Plaintiffs do not feel secure in their own locker rooms, restrooms, or school.

41. Accordingly, some of the direct and natural consequences of the Policy have occurred and include:

- After attending Virginia High School ("VHS") last year, Girl Plaintiff A and F will not return to VHS in fall 2016 rather than continue using private facilities with a male student.
- Girl Plaintiffs A, B, and E, missed instructional class time or athletic practice time while trying to find a locker room or restroom where only girls' were likely to be present.

- Girl Plaintiffs A and E stopped using school restrooms for periods of time, holding their urine all day rather than use a restroom that is accessible to a male.
- Parent Plaintiffs A, B, D, E, F, and others observed their daughters' visible distress, including tearfulness, isolating behavior, and anger, over the Policy that forces them to use locker rooms and restrooms accessible to a male and used by him.

42. The anxiety, stress, humiliation, embarrassment, intimidation, fear, apprehension, and distress the Girl Plaintiffs' feel from the Policy is exacerbated by Student X's behavior in girls' private facilities, which includes:

- Student X commented on girls' bodies while in the girls' locker room, including asking Girl Plaintiff F her bra size and asking her to "trade body parts" with him both while he and Girl Plaintiff F were in the girls' locker room and outside the locker room in the gym.
- Student X dances to loud music with sexually explicit lyrics in the locker room while "twerking," "grinding," and lifting up his skirt to reveal his underwear.
- Student X changes his clothing by girls who try to seek additional privacy – both Girl Plaintiff A and Girl Plaintiff D started using a

secondary girls' locker room to seek additional privacy but both Girl Plaintiffs report that Student X came in and used the secondary locker room while they were in their underwear. Girl Plaintiff A also reports that Student X removed his pants near her, while she was changing and in her underwear.

43. The Policy violates Title IX, Girl Plaintiffs' constitutional privacy rights, as well as Plaintiffs' other constitutional and statutory rights.

44. Plaintiffs ask this Court to declare the Federal Rule and District Policy unlawful, set them aside, and order the other relief requested herein.

FACTUAL BACKGROUND

The Federal Defendants' Ultra Vires Rule.

Title IX.

45. Congress passed Title IX of the Education Amendments of the Civil Rights Act in 1972 pursuant to its Spending Clause power.

46. Title IX prohibited invidious sex discrimination.

47. Title IX was designed to "expand basic civil rights and labor laws to prohibit the discrimination against women which has been so thoroughly documented." 118 Cong. Rec. 3806 (1972) (statement of Senator Birch Bayh of Indiana).

48. Title IX states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be

subjected to discrimination under any education program or activity receiving Federal financial assistance…." 20 U.S.C. § 1681.

49. Congress delegated authority to federal agencies to "effectuate the provisions of section 1681 of this title…by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute…" but specified that "no such rule, regulation, or order shall become effective unless and until approved by the President." 20 U.S.C. § 1682.

50. Regulations implementing Title IX in relevant part provide that "no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular…or other education program or activity operated by a recipient which receives Federal financial assistance," and that no funding recipient shall on the basis of sex "treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service; … Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; … Deny any person any such aid, benefit, or service; … Subject any person to separate or different rules of behavior, sanctions, or other treatment; …[or] Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity." 34 C.F.R. § 106.31.

51. Title IX does not authorize the Federal Defendants to regulate the content of speech.

52. Regulation of the content of viewpoint of speech is presumptively unconstitutional under the First Amendment to the United States Constitution.

"Sex" in Title IX does not include gender identity.

53. Title IX and its implementing regulations use the term "sex" to categorize the persons protected from invidious discrimination by the law.

54. The term "sex" in Title IX and its implementing regulations means the immutable, genetic, reproductively-based binary male-female taxonomy. *See supra* fn. 1.

55. The text of Title IX demonstrates this male-female taxonomy by using terminology such as "both sexes," "one sex," and "the other sex."

56. Title IX and its implementing regulations do not use the term "gender identity," or alternate terms referring to the same concept, such as "transgender," or "transsexual."

57. Nothing in the text, structure, or legislative history of Title IX suggests or supports that the term "sex" in Title IX includes "gender identity."

58. Nothing in the text, structure, and drafting history of Title IX's implementing regulations suggests or supports that the term "sex" in these regulations includes "gender identity."

59. Senator Al Franken of Minnesota began in 2011 repeatedly introducing legislation modeled after Title IX to prohibit gender identity discrimination in schools.

60. Congress repeatedly failed to enact the legislation.

Title IX expressly permits sex-specific private facilities.

61. Title IX and its implementing regulations expressly permit sex-specific private facilities.

62. Title IX says "nothing contained herein shall be construed to prohibit any educational institution…from maintaining separate living facilities for the different sexes…." 20 U.S.C. § 1686.

63. The implementing regulations confirm that living facilities include restrooms, locker rooms, and shower rooms – "[school districts] may provide separate toilet, locker room, and shower facilities on the basis of sex, [as long as] such facilities provided for students of one sex [are] comparable to such facilities provided for students of the other sex." 34 C.F.R. § 106.33.

The Federal Defendants' create and promulgate the new Rule.

64. Despite more than 40 years of Title IX history enforcing the unambiguous term "sex" (meaning males and females), the Federal

Defendants recently created and promulgated a new Rule redefining "sex" in Title IX and its implementing regulations to include "gender identity."

65. The Federal Defendants' new Rule is succinctly stated this way: a school must "treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations." *Dear Colleague Letter: Transgender Students,* 2 (**Exhibit A**).

66. This Rule redefines "sex" in Title IX.

67. The Rule also prohibits sex-separated private facilities.

68. The Federal Defendants promulgated the Rule through a series of Federal Guidelines sent to school districts nationwide including:

- U.S. Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence,* 5 (Apr. 2014) (**Exhibit B**);
- U.S. Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities,* 25 (Dec. 2014) (**Exhibit C**);
- U.S. Department of Education, Office for Civil Rights, *Title IX Resource Guide,* 1, 15, 16, 19, 21-22 (Apr. 2015) (**Exhibit D**); and
- *Dear Colleague Letter on Transgender Students* (**Exhibit A**).

69. Compliance with these Guidelines and the Rule they create is "a condition of receiving Federal funds." *Dear Colleague Letter: Transgender Students*, 2 (**Exhibit A**).

70. The Rule did not go through notice-and-comment rulemaking.

71. The Rule was not officially approved by the U.S. President.

72. The Federal Defendants provided no explanation for the Rule, including no basis for the decision to promulgate the Rule, no description of the factors relied upon to formulate the Rule, no recognition of the fundamentally different nature of sex and gender identity, and no recognition or explanation for the reversal of long-standing policy that permitted districts to separate private facilities by sex without regard to a student's professed gender identity.

73. The Federal Defendants also failed to substantively assess how the new Rule would impact privacy rights of all male and female students on a given campus.

The Federal Defendants enforce the new Rule.

74. The Federal Defendants enforced the Rule through public investigations, findings, and threats to revoke millions of dollars in federal funding from several school districts because they provided sex-specific private facilities. U.S. Department of Education, *Resources for Transgender and Gender Nonconforming Students: OCR Resolutions*.

http://www2.ed.gov/about/offices/list/ocr/lgbt.html (last visited August 10, 2016).

75. Township High School District 211 ("District 211") in Palatine, Illinois was one of the districts investigated.

76. The Office of Civil Rights for the DOE ("OCR") issued a Letter of Findings against District 211 in November 2015. Township High School District 211, 05-14-1055 (Office of Civil Rights November 2, 2015) (letter of findings). (**Exhibit E**).

77. That letter stated in relevant part that when OCR investigates Title IX complaints it looks for evidence of "discrimination based on sex, gender identity, or gender nonconformity." *Id.*

78. The Federal Defendants have no statutory authority to investigate a claim based on gender identity or gender nonconformity.

79. The letter also stated that District 211 violated Title IX by discriminating on the basis of gender identity because District 211 did not let a male student who professes a female gender identity use girls' locker rooms.

80. OCR then threatened to revoke $6 million in federal funding from District 211 if it continued to sex-separate private facilities.

81. In December 2015, District 211 signed an Agreement with OCR and granted the male student access to the girls' locker rooms. (**Exhibit F**).

82. Parents and students who suffer privacy and constitutional harm filed a federal lawsuit regarding that Agreement. *Students and Parents for Privacy v. Dep't of Educ.*, et al., No. 1:16-cv-04945 (N.D. Ill. filed May 4, 2016).

83. In May 2016, the DOJ sent letters to the North Carolina Governor and the University of North Carolina system threatening to revoke Title IX funding from North Carolina schools if the state and University System enforced a state law that mandates sex-specific private facilities in government buildings, including schools.

84. When the Governor resisted, the DOJ filed a federal lawsuit against the State.

85. That case is currently pending. *U.S. v. N.C.*, No. 1:16-cv-00425 (M.D. N.C. filed May 9, 2016).

86. These enforcement actions, with the Guidelines, sent a clear message to school districts nationwide, including Virginia School District, that they too could lose millions in federal funding for maintaining sex-specific private facilities, specifically authorized pursuant to Title IX.

Virginia School District's Unconstitutional Policy.

87. The Virginia School District closely monitored OCR's public investigation and findings against District 211.

88. Like District 211, Virginia School District lies within the jurisdiction of Region V of the OCR regional enforcement offices.

89. Like District 211, Virginia School District faced repeated requests from a male student, Student X, to use the girls' private facilities.

90. Also like District 211, Virginia School District maintained sex-specific private facilities, despite Student X's requests.

91. Student X is a male high school student at VHS.

92. Student X professes a female gender identity.

93. Student X will be in 10th grade for the 2016-2017 school year.

94. Starting around 2014, Student X began asking the District for unrestricted access to use the girls' locker rooms and restrooms at school.

95. From approximately 2014 to February 2016, the District provided Student X private accommodations to satisfy his private facility needs, while maintaining sex-specific private facilities to preserve the privacy of all other students.

96. Student X used his accommodations without complaint, stating publically on his YouTube channel that he "cannot complain" about them.

97. Nonetheless, from approximately 2014 to February 2016, Student X continued to ask for unrestricted access to girls' private facilities.

98. During 2014-2015, the District consistently maintained sex-specific private facilities in accord with Title IX while consistently providing private arrangements for Student X.

99. At times during 2014 and 2015, Student X used the girls' locker rooms without District permission.

100. This behavior included changing his clothing in an open locker room while Girl Plaintiff F and other girls were present and changing for PE.

101. Parent F and others timely complained to the District and the District reminded Student X not to use the girls' private facilities.

102. Because of Student X's repeated requests, and aware of the investigation against District 211, the Virginia School District superintendent, Dr. Stender, contacted the District 211 superintendent, Dr. Cates, in February 2016.

103. The two superintendents discussed OCR's investigation and Virginia School District's approach to Student X's request.

104. After their discussion, Dr. Cates sent Dr. Stender several documents: OCR's Letter of Findings against District 211, **Exhibit E**; an OCR letter related to the Agreement signed by District 211 to resolve the investigation, **Exhibit G**; a speech Dr. Cates gave regarding the Agreement, **Exhibit H**; and a related letter to parents and students in the Lake Zurich School District near District 211, **Exhibit I**. (Dr. Cates' email to Dr. Stender

sending these documents is included in **Exhibit I**. Correspondence from Dr. Stender to Dr. Cates is attached as **Exhibit J.**

105. Virginia School District officials reviewed OCR's aggressive enforcement actions against District 211, and they reasonably anticipated similar aggressive enforcement against their district if they did not grant Student X unrestricted access to girls' private facilities.

106. Accordingly, around February 2016, Virginia School District began a new policy and practice to adopt and implement the Federal Defendants' Rule.

107. Under the District Policy, any student in any District school, pre-school through 12th grade, has unrestricted access to private facilities based on the students' professed gender identity.

108. A student need not provide the District any medical or psychological confirmation of a diagnosis of gender dysphoria.

109. This Policy authorizes males to enter female-specific private facilities and vice versa for students aged three to eighteen.

110. The Policy abrogates the District's lawful and historic practice of providing sex-specific private facilities.

111. The Policy was immediately effective and authorized Student X to use girls' private facilities in the District, which he promptly began doing on a regular basis.

112. The District generally notified staff of the new Policy by emailing a letter on February 12, 2016 that stated in relevant part: "the DOE's position on students' access to the bathroom and locker room is very clear and states that a student has the right to use the locker room and bathroom of the students' affirmed gender identity;" that Virginia School District will follow this federal policy; and that OCR's legal findings against District 211 "serve as the baseline" for the District's decision in this matter.

113. The District did not notify parents or students of the new Policy.

114. However, when Parent A later learned of the Policy, she contacted the District and was told "in accordance with the recent U.S. Department of Education and Office of Civil Rights case, transgender students have the right to access the facility of their gender identity." **Exhibit K**.

115. Similarly, when Plaintiffs' counsel contacted the District regarding the Policy, attorneys for the District said the District would continue to give a male full access to the girls' locker rooms and restrooms as "[t]he District's approach to restroom and locker room use … purposefully adheres to the interpretation of sex discrimination law under Title IX adopted by the Department of Education, Office of Civil Rights ("OCR")…" and "OCR[']s interpretation of Title IX…is of great practical importance to the District, as OCR has the authority to investigate the District and such an

investigation would have significant financial consequences for the District…." **Exhibit L**.

The District Defendant's Policy Harms Girl Plaintiffs.

116. Because of the Policy, all girls' private facilities are open to unrestricted use by a male student.[5]

117. All Girl Plaintiffs are aware of the risk of entrance or presence of or exposure to, a male student each time they use a locker room or restroom.

118. Girl Plaintiffs object to this violation of their privacy, but must use the locker rooms and restrooms anyway for required physical education classes, athletics, and normal human needs.

119. Failure to use these facilities could result in disciplinary action, poor grades, or exclusion from athletics.

120. Because of the Policy, Girl Plaintiffs experience anxiety, stress, humiliation, embarrassment, intimidation, fear, apprehension and distress.

121. Girl Plaintiffs feel violated by the invasion of privacy and are insecure at school since it is District Policy that creates the situation.

[5] Plaintiffs are not aware that Student X plans to attend any planned school-sponsored overnight trips. However, the Policy authorizes Student X to room in the girls' hotel rooms, including multi-occupant bedrooms, on any school-sponsored trip he attends. Various athletic and extracurricular teams travel, and some Girl Plaintiffs participate in such activities. This Complaint may be amended should additional claims arise in this context.

122. These daily persistent feelings of anxiety, stress, humiliation, embarrassment, intimidation, fear, apprehension, distress, violation of privacy and insecurity at school stay with Girl Plaintiffs and impact them throughout the day, distracting them from instructional time and discouraging their involvement in athletics and other activities.

123. The District authorized Student X to participate in girls' athletics, and he has participated in girls' basketball, girls' track, and Rifle Corps, changing in girls' locker rooms many times with Girl Plaintiffs per the Policy.

124. Plaintiffs understand that for the 2016-2017 school-year Student X is on the Rifle Corps, which started practicing and performing with the marching band over the summer.

125. Student X also joined the girls' volleyball team for fall 2016-2017, which has already begun to practice together.

126. Plaintiffs understand that Student X also intends to join girls' basketball in the winter, and girls' track in the spring, both of which are "no cut" sports, meaning anyone who signs up will participate.

127. Athletic team participation is a crucial part of Girl Plaintiffs' high school educational experience.

128. However, all Girl Plaintiffs now know that participation in athletics means sharing changing facilities with Student X.

129. Girl Plaintiffs did not know this when the District first granted Student X access to the girls' locker room in the middle of basketball season.

Girl Plaintiff B.

130. Girl Plaintiff B played on the girls' basketball team during winter 2016.

131. In late February 2016, Girl Plaintiff B was in the locker room preparing to change for practice when Student X walked into the locker room.

132. Girl Plaintiff B was shocked and embarrassed.

133. She had no idea that Student X could enter the girls' locker room.

134. Some girls in the locker room were undressed.

135. Girl Plaintiff B did not want to undress in front of a male student and she did not want to see him undress as she believed he entered the locker room to change for basketball practice.

136. Girl Plaintiff B quickly gathered her belongings and ran out of the locker room.

137. She alerted some other girls to Student X's presence, and the other girls ran out of the locker room with her.

138. The group of girls sought privacy in a restroom down the hall where they changed before and after practice that day.

139. Later that week in response to girls' concerns, the basketball coach told the team that girls could change in the main girls' locker room

near the gymnasium or a secondary locker room in the basement of the elementary school.

140. The elementary school locker room is located on the opposite side of the building shared by the high school and elementary school.

141. To use this locker room before basketball practice, a girl must retrieve her clothing from her locker, walk to the opposite side of the building, go down the stairs to the basement of the elementary school, change in the basement locker room, go back up the stairs, back across the school, stow her belongings, and then go to the gymnasium for practice.

142. After basketball practice, a girl must repeat the process, retrieving her clothing, walking across the school, down to the basement, change, and then walk back across the school to leave.

143. Despite the burdens associated with the elementary school locker room, Girl Plaintiff B and nearly half the girls' junior varsity basketball team changed in the secondary locker room in hope that their privacy would not be violated.

144. Student X changed in the main girls' locker room throughout the basketball season.

145. However, the Policy authorized his unrestricted use of either locker room and Girl Plaintiff B was aware of that whenever she used the elementary school locker room.

146. Although Girl Plaintiff B finished the few games left in the basketball season, she does not intend to return to basketball next year.

Girl Plaintiff A.

147. In Spring 2016, Student X joined the girls' track team.

148. Girl Plaintiff A was also on the team.

149. Girl Plaintiff A does not want to undress in front of a male student and she does not want to be present when a male student undresses, but she found herself in that situation because of the Policy.

150. For much of the season, the main girls' locker room was the only locker room open to Girl Plaintiff A and other girls.

151. Therefore, Girl Plaintiff A had to use the main locker room to change for track practice.

152. Student X also used the main girls' locker room.

153. Early in the season, Student X changed fully or partially in a restroom stall, but then after changing he would sit on a bench in the locker room while Girl Plaintiff A and other girls changed their clothes.

154. Later in the season, Student X changed in the open locker room and in front of Girl Plaintiff A and other girls, removing his clothing down to tight women's boyshort-style underwear.

155. To preserve her privacy, Girl Plaintiff A tried going to the locker room early to change in a restroom stall, but the stalls were often full.

156. She then tried to go early to change before Student X arrived, but often he would come in while she was still changing.

157. She also tried changing on the opposite side of the room, but Student X started moving throughout the locker room to change, dance, or sit, and he would make loud rude comments to other girls about Girl Plaintiff A and other girls who did not want to change near him.

158. Student X began dancing in the locker room while Girl Plaintiff A and others prepared for track practice.

159. Student X would dance in a sexually explicit manner – "twerking," "grinding" or dancing like he was on a "stripper pole" to songs with explicit lyrics, including "Milkshake" by Kelis.

160. On at least one occasion, Girl Plaintiff A saw Student X lift his dress to reveal his underwear while "grinding" to the music.

161. This behavior made Girl Plaintiff A uncomfortable, exacerbating the distress she already felt using a locker room open to and used by a male.

162. Parent A notified the District that she did not want her daughter using a locker room a male student had permission to enter and use.

163. She also told the District about Student X's lewd dancing and rude comments to her daughter.

164. The District did not discipline Student X for his comments or lewd behavior.

165. Instead, the District told Parent A that students, including Student X, are permitted to play music and dance in the locker room.

166. However, shortly after that incident, the District told Girl Plaintiff A and other girls they could change for track in either the main girls' locker room or a secondary locker room – the boys' basketball locker room – down the hall.

167. This boys' basketball locker room is not used by boys' teams during girls' track practice.

168. Like with the elementary school locker room, the Policy authorized Student X to use both locker rooms. This time he did.

169. Because Girl Plaintiff A wanted privacy and because she thought Student X would use the main girls' locker room, she began using the boys' basketball locker room to change for track practice.

170. Shortly after Girl Plaintiff A resorted to changing in the boys' basketball locker room, Student X started entering the boys' basketball locker room, periodically using it to get ready for practice.

171. On one such occasion, Student X walked into the boys' basketball locker room while Girl Plaintiff A was in her underwear and removed his pants while he was near her and other girls who were also changing.

172. This incident deeply upset Girl Plaintiff A. It signaled to her that there was no place in the school where she could preserve her privacy under the new Policy.

173. Girl Plaintiff A had historically enjoyed school and excelled at it, but as the track season wore on, Parent A heard Girl Plaintiff A talk of disliking school and she noticed her daughter increasingly withdrawing to personal space and isolating in her room after school, particularly on days when she encountered Student X in the locker room.

174. Girl Plaintiff A also avoided using restrooms when Student X was present. She did not want to attend to personal activities in a restroom where a male student could walk in.

175. Shortly after the District authorized the Policy, Student X walked into a girls' restroom while Girl Plaintiff A was using it.

176. At the time, she was surprised and embarrassed because she did not know the District authorized him to enter and use girls' restrooms.

177. Afterwards, Girl Plaintiff A stopped using school restrooms for approximately ten days, holding her urine all day.

178. Girl Plaintiff A subsequently learned that students could use the staff restrooms, and she tried to use those to attend to her personal needs.

179. However, there are only three staff restrooms – one on the first floor, one on the third floor, and one on the fourth floor – and they are located

at the far corners of the four-story school building, a long distance from the main student traffic areas.

180. Staff members continue to use the staff restrooms.

181. Students have four minutes between classes.

182. One of the first times Girl Plaintiff A used a staff restroom, it was in use when she arrived and she was late to class, missing instructional time. Her classroom teacher questioned her about being late.

183. For weeks after that incident, Girl Plaintiff A did not use any school restrooms, holding her urine all day.

184. Girl Plaintiff A continued to avoid using school restrooms if at all possible through the end of the school year.

185. When she could not avoid it, she used staff restrooms, but again she found them occupied at times.

186. On some such occasions, Girl Plaintiff A used the girls' restrooms open to Student X, despite her deep discomfort, to avoid tardiness and questioning from her teachers.

187. The Policy has caused Girl Plaintiff A so much stress that her parents have decided she cannot return to VHS for the 2016-2017 school year.

188. Girl Plaintiff A attended VHS last year and has many friends there, as well as an older brother attending there.

189. Girl Plaintiff A would like to continue going to school with her brother and her friends and if it were not for the Policy, she would continue attending high school at VHS.

190. If it were not for the Policy, one of her younger brothers would also be starting school at Parkview Elementary for the 2016-2017 school year.

191. Girl Plaintiff A's parents believe that, except for the Policy, the Virginia School District is a good district, with good schools, excellent teachers, and programs that would significantly benefit their children. They would like to be able to send their children to Virginia School District schools.

192. However, because of the Policy including the stress it causes Girl Plaintiff A and their concerns about their children's privacy rights, Girl Plaintiff A's parents have decided they must remove Girl Plaintiff A and her younger brother from the Virginia School District.

193. As of the week before school starts, Girl Plaintiff A's parents are not sure where they are going to send their children to school. Parent A home-schools some of her younger children.

194. Girl Plaintiff A's parents are seriously considering private school for their children, but the nearest private high school is 30 miles away in Hibbing, MN.

195. Due to the cost of tuition and the distance of the school, to place their children in private school, Parent A will have to abandon home-

schooling their other children and enroll them in the same private school, so Parent A can obtain a job in Hibbing to cover the added costs of tuition, travel, and related costs.

196. Parent A wants to continue schooling their younger children at home, but Parent A concluded that because of the Policy and the distress it causes Girl Plaintiff A because of the loss of their privacy, Girl Plaintiff A cannot continue in the District.

197. Girl Plaintiff A, and her younger brother, will likely return to Virginia High School if the Policy is set aside. If she does return because private facilities are sex-specific, she would use the girls' locker rooms and restrooms.

Girl Plaintiff D.

198. Girl Plaintiff D participated in track and field in Spring 2016 with Girl Plaintiff A and Student X.

199. Girl Plaintiff D did not know that the District authorized a male student to use the girls' locker room until Student X walked into the girls' locker room while she and other girls were changing.

200. When Parent D picked Girl Plaintiff D up from practice that day, he noticed she was teary-eyed and visibly shaken. She told him there was a boy in the locker room changing with her.

201. At first, Girl Plaintiff D tried to preserve her privacy by going to the locker room late and waiting, if necessary, for Student X to finish and leave before she disrobed.

202. Also, other girls started questioning her and bullying her about waiting until Student X left to undress.

203. In mid-season, when the District told girls they could also use the boys' basketball locker room, Girl Plaintiff D sought to find privacy there.

204. However, as happened to Girl Plaintiff A, Student X walked in to the boys' basketball locker room while Girl Plaintiff D was in her underwear.

205. Girl Plaintiff D was very upset by this incident, and when she reported the incident to her dad that night, she was again teary, emotionally distraught, and visibly shaken.

206. Parent D told the District that Student X walked into the boys' basketball locker room while his daughter was changing.

207. He told the District that he did not want a male student in his daughter's locker room.

208. Although the District told Parent D that District personnel would talk with Student X, the District admitted later that they had not spoken with Student X.

209. The District continued to authorize Student X to use both the main girls' locker room and the boys' basketball locker room throughout the season.

210. For fall 2016, Girl Plaintiff D joined the girls' volleyball team, which she currently plays on.

211. Student X also plays on the volleyball team.

212. Per the Policy, Student X has been using the girls' locker room for volleyball practice.

213. Because, volleyball season begins a few weeks before school starts, Girl Plaintiff D has been changing her clothes at home before going to practice so she will not have to use the girls' locker room with a male student.

214. That will not be an option for Girl Plaintiff D once school starts on September 6, 2016. Girl Plaintiff D knows she will have to use school locker rooms, which is already causing her stress and anxiety.

Girl Plaintiff E.

215. Girl Plaintiff E was emotionally distraught when she heard about the Policy.

216. She was not in PE or athletics with Student X at the time, but she did use school restrooms and did not want to use a restroom with a male.

217. Parent E promptly contacted the District. The District told Parent E that Girl Plaintiff E could use the three staff restrooms.

218. However, when Girl Plaintiff E went to use one of the staff restrooms, it was occupied and she was late to class.

219. The teacher and her peers questioned her about being late.

220. After that experience, Girl Plaintiff E stopped using the school restrooms, sometimes holding her urine all day, and sometimes using the locker room restroom during her PE class while Student X was in another class.

221. Girl Plaintiff E will use the girls' restrooms at school if the Policy is set aside.

Girl Plaintiff F.

222. Girl Plaintiff F was assigned to the same PE class as Student X, when the two were in eighth grade, during the 2014-2015 school year.

223. This class assignment occurred before the District Policy, but during the time that Student X repeatedly used the girls' locker room without District permission.

224. Both when inside the locker room and while outside in the gym, Student X asked Girl Plaintiff F and other girls' about their bra sizes.

225. Student X also repeatedly asked Girl Plaintiff F to "trade body parts" with him.

226. These questions and comments made Girl Plaintiff F very uncomfortable because of the close attention Student X paid to the private areas of her body.

227. This discomfort was exacerbated when Student X entered the locker room, because Girl Plaintiff F did not want to undress in front of him.

228. Parent F notified the District of Student X's comments to her daughter, but to her knowledge he was not disciplined associated with his comments.

229. Although the District did not authorize Student X to enter the girls' locker room in 2014-2015, the Policy now authorizes his entrance and use of the girls' locker room, and Girl Plaintiff F still does not want to undress in front of him or use the restroom with him.

230. Because of the Policy and bullying at school, Girl Plaintiff F has decided not to return to VHS and will take online courses instead, starting fall 2016.

The District Defendant's Policy Harms Student Plaintiffs.

231. Because of the Policy, all Student Plaintiffs experience anxiety and stress.

232. While the Girl Plaintiffs face the daily reality of a male student in their private facilities, Boy Plaintiffs know the Policy authorizes the same

situation for them – a female who professes a male gender identity could at any time use the boys' private facilities without notice to students or parents.

233. This risk makes Boy Plaintiffs anxious, stressed, embarrassed, intimidated, apprehensive and distressed.

234. All Student Plaintiffs have sincere religious or moral beliefs that they must practice modesty.

235. These beliefs include the moral standard that they not disrobe or attend to personal activities in a locker room or restroom in the presence of the opposite sex.

236. These beliefs also include the moral standard that they not be present when a member of the opposite sex disrobes or attends to personal activities in a locker room or restroom.

237. These beliefs are in conflict with the demands of the Policy.

The District Defendant's Policy Harms Parent Plaintiffs.

238. All Parent Plaintiffs object to their children using private facilities with students of the opposite sex.

239. All Parent Plaintiffs have sincere religious or moral beliefs about bodily privacy and sexual modesty that informs how they raise their children and the values they instill in their children.

240. All Parent Plaintiffs want to protect the privacy of their children and do not want their children to disrobe or attend to other personal activities in a private facility with the opposite sex.

241. All Parent Plaintiffs want to instill a sense of modesty in their children and do not want their children exposed to a person of the opposite sex while that person is disrobed or attending to personal activities in a private facility.

242. Parents A, B, D, E, and F all notified the District of their own objections to the Policy and of the distress suffered by each of their children over sharing private facilities with a male student.

243. The District continued imposing the Policy and offered no sex-separated private facilities to preserve Girl Plaintiffs' privacy.

244. Instead, shortly after the District imposed the Policy, the District held a school-wide, "anti-bullying" assembly that promoted the new Policy, focused heavily on the lesbian, gay, bisexual, transgender ("LGBT") community, and conveyed the message to Student Plaintiffs, including Girl Plaintiffs A and B, that the District views the Policy as part of its anti-bullying efforts such that any student who objects to the Policy will be viewed as a bully.

245. The District also sponsored a community education meeting for parents which some Student and Parent Plaintiffs attended, including Parent A and Girl Plaintiff A.

246. Again, the focus was on the LGBT community, promotion of the Policy, and the message that any objection to the Policy is intolerant, bigoted, and bullying against students who profess a gender identity incongruent with their sex.

247. The assembly and community meeting upset Girl Plaintiff A because she understood the message to be that the District will not protect her privacy and, instead, will continue to disregard the anxiety, embarrassment, and stress she feels as a direct result of the Policy.

248. This feeling is consistently expressed among the Student and Parent Plaintiffs in this lawsuit.

249. Plaintiffs are suffering and continue to suffer irreparable harm because of the Defendants' actions, including promulgating and enforcing the Federal Defendants' Rule and the District Defendant's Policy.

250. Plaintiffs have no adequate remedy at law.

ALLEGATIONS OF LAW

FIRST CAUSE OF ACTION AGAINST FEDERAL DEFENDANTS: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

251. Plaintiffs reallege all matters set forth in paragraphs 1 through

250 and incorporate them herein.

252. The Federal Defendants are agencies under the APA. 5 U.S.C. § 706(2)(D).

253. The Federal Defendants' Rule is a "rule" under the APA. 5 U.S.C. § 551(4).

254. The Rule is a final agency action, reviewable by statute, and Plaintiffs have no other adequate remedy at law. 5 U.S.C. § 704; 5 U.S.C. § 551(13); 20 U.S.C. § 1638.

255. Per the APA, a reviewing Court must "hold unlawful and set aside agency action" in four instances applicable to this case:

- One: if the agency action is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C);
- Two: if the agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A);
- Three: if the agency action is "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B); and
- Four: if the agency action is "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

256. The Rule violates each of these four standards.

The Federal Rule Exceeds Statutory Authority.

257. An agency rule exceeds statutory authority if it alters an

unambiguous statutory provision.

258. The Federal Defendants' Rule – that a school must treat a student's gender identity as their sex for the purposes of Title IX and its implementing regulations – changes two clear and unambiguous provisions – (1) the Rule adds "gender identity" to the clear and unambiguous term "sex" in Title IX, and (2) the Rule prohibits sex-separating private facilities despite a clear and unambiguous provision in Title IX that expressly grants permission to maintain sex-specific private facilities.

The Rule adds "gender identity" to the clear and unambiguous term "sex" in Title IX.

259. The term "sex" as used in Title IX and its implementing regulations clearly and unambiguously means male and female, under the traditional binary, reproductively-based taxonomy consistent with one's birth sex.

260. Sex may be normatively discerned at birth, and even in the womb.

261. Sex does not include the non-binary concept of "gender identity."

262. Title IX and its implementing regulations use the term "sex" to categorize the persons protected from invidious discrimination by law.

263. The term "gender identity," and alternate terms referring to the same concept, such as "transgender" or "transsexual," do not appear in Title

IX or its implementing regulations.

264. The text, structure, and legislative history of Title IX do not suggest or support that the term "sex" in Title IX includes "gender identity."

265. Similarly, the text, structure, and drafting history of Title IX's implementing regulations do not suggest or support that the term "sex" in Title IX's implementing regulations includes "gender identity."

266. Instead, Title IX uses terminology such as "both sexes," "one sex," and "the other sex," indicating that "sex" in Title IX is binary and does not include the non-binary concept of "gender identity."

267. Additionally, Congress recognizes that "sex" in Title IX does not include "gender identity" by repeatedly considering legislation that would add Title IX-style protections for gender identity discrimination. Congress has repeatedly and overwhelmingly failed to enact this legislation.

The Rule prohibits sex-specific private facilities despite a clear and unambiguous provision expressly granting permission to sex-separate private facilities.

268. Title IX clearly, unambiguously and expressly allows sex-specific private facilities.

269. Title IX provides that "…nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes." 20 U.S.C. § 1686.

270. Title IX's implementing regulations interpret "living facilities" to include restrooms, locker rooms, and shower rooms, clearly and unambiguously stating that schools receiving federal funding "may provide separate toilet, locker room, and shower facilities on the basis of sex, [as long as] such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex." 34 C.F.R. § 106.33.

271. Despite the clarity of Title IX, the Federal Defendants' Rule prohibits this sex-separation in its recent Guidelines, stating, for example, in the most recent "Dear Colleague Letter" that "when a school provides sex-separated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity." *Dear Colleague Letter: Transgender Students*, 2 (**Exhibit A**).

272. The Federal Defendants also enforced their prohibition against District 211 in Palatine, Illinois, and the State of North Carolina, among others, threatening the loss of federal funds if these educational institutions continue to maintain separate locker rooms and restrooms based on sex.

The Rule should be set aside because it is in excess of statutory authority.

273. Because the Federal Rule changes a clear and unambiguous term and a clear and unambiguous provision in Title IX, and is contrary to the

plain language of Title IX, the Federal Defendants have exceeded their statutory authority, and the Rule should be held unlawful and set aside pursuant to 5 U.S.C. § 706(2)(C).

The Federal Rule is Arbitrary, Capricious, An Abuse of Discretion, and Not in Accordance With Law.

274. The APA also requires a Court to set aside an agency rule if the rule is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *See* 5 U.S.C. § 706(2)(A).

275. An agency rule is "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

276. An agency also acts arbitrarily and capriciously when it changes the longstanding understanding of federal law, without at the very least "display[ing] awareness that it is changing position" and showing "good reasons for the new policy." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, No. 15-415, 2016 WL 3369424 at *7 (June 20, 2016), *quoting FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

277. Such a change requires "a reasoned explanation…for disregarding facts and circumstances that underlay or were engendered by the prior policy" and "cognizan[ce] that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" *Id.*

278. The Federal Defendants' Rule fails all of these standards.

279. The Federal Defendants relied on a concept – "gender identity" – that Congress did not intend them to consider.

280. The Federal Defendants failed to consider important aspects of the problem, including the text, structure, and legislative and congressional history of Title IX (which all define "sex" according to the binary, reproductively-based taxonomy), the practical and constitutional harms created by mixing boys and girls in intimate settings, the fundamentally different nature of sex and gender identity, and the contradictions between the Rule and the objectives of the Title IX statute.

281. The Federal Defendants' Rule also changed two longstanding aspects of federal law – the meaning of "sex" in Title IX, and the permissibility of sex-specific private facilities – without any explanation or recognition of the change.

282. The Federal Defendants provided no explanation for the Rule when promulgated in the Guidelines.

283. Since then, the Federal Defendants have provided no explanation

that recognizes the changes to federal law, describes good reasons for the new Rule, explains the basis for disregarding the facts and circumstances that supported the prior policy, or addresses reliance interests in the prior policy.

284. The Rule is, therefore, arbitrary and capricious.

285. The Rule further violates 5 U.S.C. § 706(2)(A) because it is contrary to law or regulation. *See infra Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action.*

286. For the above reasons, the Rule should be held unlawful and set aside pursuant to 5 U.S.C. § 706(2)(A).

The Rule is Unconstitutional.

287. The APA further instructs courts to set aside agency rules that are "contrary to constitutional right, power, privilege, or immunity." *See* 5 U.S.C. § 706(2)(B).

288. The Federal Defendants' Rule violates Girl Plaintiffs' constitutional privacy rights. *See infra Third Cause of Action.*

289. The Federal Defendants' Rule violates Parent Plaintiffs' constitutional and fundamental liberty interest in controlling their children's upbringing and education. *See infra Fourth Cause of Action.*

290. The Federal Defendants' Rule violates Plaintiffs' constitutional and statutory rights to freely live out their religious and moral beliefs. *See infra Fifth, Sixth, and Seventh Causes of Action.*

291. The Federal Defendants' Rule also violates the Spending Clause of the United States Constitution, under which Title IX was enacted, because it fails to unambiguously state the conditions of funding so that recipients can voluntarily and knowingly decide whether to accept funding.

292. The Rule violates the Spending Clause because the threat to withdraw federal funds coerces compliance.

293. The Rule also violates the Spending Clause because it conditions the receipt of federal funds on violating constitutional rights of persons entitled to enjoy the benefits provided by the funding.

294. Based on these violations of the Spending Clause or any of the above violations of Plaintiffs' constitutional or statutory rights, the Rule should be declared unlawful and set aside per 5 U.S.C. § 706(2)(B).

The Rule Fails Procedural Requirements.

295. The APA requires Courts to declare unlawful and set aside any rule promulgated "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

296. This procedure includes notice-and-comment rulemaking for legislative or substantive (as opposed to interpretive) rules. 5 U.S.C. § 553(b)

297. It also requires the U.S. President to approve final Title IX rules, regulations, and orders of general applicability. 20 U.S.C. § 1682.

298. Notice-and-comment rulemaking requires an agency to: (1) issue

a general notice to the public of the proposed rule-making, typically by publishing notice in the Federal Register; (2) give interested parties an opportunity to submit written data, views, or arguments on the proposed rule, and for the agency to consider all relevant comments and respond to significant comments received; and (3) include in the promulgation of the final rule a concise general statement of the rule's basis and purpose.

299. Legislative rules establish new policy positions that the agency treats as binding, impose new rights or duties, create a new legal norm based on the agency's own authority, or expand the footprint of a regulation by imposing new requirements, rather than simply interpreting the legal norms Congress or the agency itself has previously created.

300. The Rule creates a new policy – that "sex" in Title IX includes gender identity.

301. The Rule imposes new rights for students who can now access opposite-sex private facilities based on their professed gender identity, and the Rule creates new duties for schools that must grant the above access or sacrifice federal funds.

302. The Rule creates a new legal norm and expands the footprint of Title IX by adding "gender identity" to Title IX, which for 40-plus years protected only sex (according to the proper, binary meaning of that term that refers to one's biological status as either male or female that is determined at

birth and manifested by certain biological indicators).

303. The Rule is therefore legislative.

304. The Federal Defendants promulgated the Rule through Guidelines and enforcement actions.

305. The Rule did not go through notice-and-comment rulemaking.

306. The Rule was not approved by the U.S. President.

307. Accordingly, the Rule should be declared unlawful and set aside pursuant to 5 U.S.C. § 706(2)(D).

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

SECOND CAUSE OF ACTION AGAINST DISTRICT DEFENDANT: VIOLATION OF TITLE IX

308. Plaintiffs reallege all matters set forth in paragraphs 1 through 307 and incorporate them herein.

309. The Virginia School District is a federal funding recipient for purposes of Title IX.

310. Student Plaintiffs are beneficiaries of and protected by Title IX.

311. There is an implied private right of action under Title IX that allows a student to bring suit for violations of the statute.

312. There is no requirement that a claimant exhaust administrative remedies before bringing a Title IX cause of action.

313. The Virginia School District's Policy adopts and implements the Federal Defendants' Rule.

314. The Policy denies Girl Plaintiffs access to educational programs – including classes, athletics, private locker rooms and private restrooms – which, in turn, excludes Girl Plaintiffs from educational programs and activities in violation of Title IX.

315. The Policy also places Girl Plaintiffs in a sexually harassing hostile environment that violates Title IX.

The Policy Excludes Girl Plaintiffs from Educational Programs.

316. Educational programs covered by Title IX include instructional classes, athletic teams, locker rooms and restrooms.

317. Girl Plaintiff A is not returning to Virginia High School for the 2016-2017 school year because of the Policy.

318. Girl Plaintiffs A, B, and E missed instructional time or athletic practice time because of the Policy.

319. Girl Plaintiffs A and E stopped using school restrooms for periods of time because of the Policy.

320. Each of these Girl Plaintiffs was excluded from an educational program because of the Policy, in violation of Title IX.

321. These Girl Plaintiffs, and likely others, will continue to suffer exclusion from educational programs in violation of Title IX as long as the Policy is in effect.

The Policy Creates a Sexually Harassing Hostile Environment.

322. Sexual harassment constitutes discrimination under Title IX when it is so severe, pervasive and objectively offensive that it deprives a plaintiff of access to the educational opportunities and benefits provided by his or her school.

323. Typically, a school district is liable for its indifference to known harassment that occurs under its control.

324. Moreover, when a district policy creates the sexual harassment, the school district is directly liable for intentional misconduct.

325. The Policy violates Title IX because it mandates an environment in which, every time a Girl Plaintiff uses private facilities — be it to change for mandatory PE class, prepare for extracurricular athletics, or attend to human personal needs in a restroom – she must use private facilities that are open to and used by a male student under the District's authorization.

326. This situation on its face creates a sexually harassing hostile environment that violates Title IX.

327. The Policy as applied to Girl Plaintiffs meets every element for a Title IX hostile environment claim.

328. District officials via their Policy harass Girl Plaintiffs by creating the risk and reality of a male entering and using their sex-specific private facilities, resulting in anxiety, embarrassment, intimidation, fear, apprehension, and stress.

329. The harassment is on the basis of sex because Girl Plaintiffs' female sex is the reason the District authorized a male to access their private facilities, and it is because of their female sex that Student X uses their private facilities.

330. The harassment is severe and pervasive because it impacts Girl Plaintiffs throughout their day, and certainly every time they use a locker room or restroom in the school.

331. The harassment is severe and pervasive because some Girl Plaintiffs have manifested severe emotional distress off-campus and at home because of the Policy.

332. Adolescents are particularly vulnerable and sensitive to the effects of the unwanted presence of the opposite sex in sex-specific private facilities.

333. It is objectively offensive to put a teenage girl in a situation in which she must sacrifice her modesty and privacy to pursue an education or participate in athletics.

334. The harassment deprives Girl Plaintiffs of access to educational

opportunities and benefits. Among other things, as a direct result of the Policy: Girl Plaintiff A will not return to the District, Girl Plaintiffs A, B, and E missed instructional time or athletic practice time, and Girl Plaintiffs A and E stopped using school restrooms for at least periods of time.

335. The harassment causes all of the Girl Plaintiffs anxiety, stress, humiliation, embarrassment, intimidation, fear, apprehension and distress that impacts them throughout their day.

336. The District knows of the harassment because it adopted and implemented the Policy and because Parent Plaintiffs notified District personnel of the Policy's impact on their daughters.

337. The District has authority to change its own Policy.

338. Instead, the District Defendants acted with deliberate indifference by maintaining the Policy and continuing to authorize Student X's unrestricted access to and use of girls' private facilities.

339. The District is, therefore, liable under Title IX for creating a hostile environment of pervasive sexual harassment for Girl Plaintiffs.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

THIRD CAUSE OF ACTION AGAINST FEDERAL DEFENDANTS AND THE DISTRICT DEFENDANT: VIOLATION OF THE FUNDAMENTAL RIGHT TO PRIVACY

340. Plaintiffs reallege all matters set forth in paragraphs 1 through

339 and incorporate them herein.

341. The Fifth Amendment protects citizens against violation of fundamental rights by federal actors. The Fourteenth Amendment protects citizens against violation of fundamental rights by state actors.

342. Fundamental rights are liberty interests deeply rooted in the Nation's history and tradition and implicit in the concept of ordered liberty.

343. Each Girl Plaintiff has a fundamental right to bodily privacy that, at a minimum, includes protection from intimate exposure, or risk of intimate exposure, of her body and intimate activities to a male. It also includes the corollary protection from intimate exposure, or the risk of intimate exposure, to a male's body or intimate activities.

344. The fundamental right to bodily privacy is deeply rooted in the Nation's history and tradition and has long been recognized in the United States Constitution and federal and state statutory and common law.

345. The fundamental right to bodily privacy is also implicit in the concept of ordered liberty because a government that compels its citizens to disrobe or attend to intimate activities in the presence of the opposite sex violates the core of personal liberty.

346. Such an abridgement of fundamental rights is presumptively unconstitutional and can only be justified if it survives strict scrutiny under which the law must serve a compelling state interest by the most narrowly

tailored means.

347. The Rule violates each Girl Plaintiff's fundamental right to privacy because it requires each Girl Plaintiff to use private facilities open to, and used by, the opposite sex.

348. The Policy adopts and implements the Rule, and so violates each Girl Plaintiff's fundamental right to bodily privacy.

349. The Federal Defendants and the District Defendants have no compelling interest to justify this violation.

350. Nor has any Defendant used the least restrictive means of serving any interest that they may later articulate.

351. Accordingly, the Rule and the Policy fail strict scrutiny review and are unconstitutional.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

FOURTH CAUSE OF ACTION AGAINST THE FEDERAL DEFENDANTS AND DISTRICT DEFENDANT: VIOLATION OF PARENTS' FUNDAMENTAL RIGHT TO DIRECT THE UPBRINGING OF THEIR CHILDREN

352. Plaintiffs reallege all matters set forth in paragraphs 1 through 351 and incorporate them herein.

353. The Fifth Amendment protects citizens against violation of fundamental rights by federal actors. The Fourteenth Amendment protects

citizens against violation of fundamental rights by state actors.

354. Parent Plaintiffs have a fundamental right to make decisions concerning the care, custody, and control of their children and to direct the education and upbringing of their children.

355. This includes Parent Plaintiffs' right to instill moral and religious values in their children regarding bodily privacy and sexual modesty.

356. It also includes Parent Plaintiffs' right to protect their children from violation of their right to bodily privacy.

357. Government infringement of this fundamental right is presumptively unconstitutional.

358. The Rule prohibits schools from sex-separating private facilities.

359. The Policy adopts and implements the Rule, granting all students use of all opposite-sex private facilities based on professed gender identity.

360. Under the Policy, a male student, Student X, uses girls' locker rooms and restrooms with Girl Plaintiffs.

361. Parent Plaintiffs object to the Rule and Policy because they want to instill moral and religious values of bodily privacy and sexual modesty in their children and they want to protect their children from using locker rooms and restrooms with the opposite sex.

362. The Rule and Policy infringe Parent Plaintiffs' fundamental rights regarding their children.

363. The Rule and Policy are presumptively unconstitutional. *See supra Third Cause of Action.*

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

FIFTH CAUSE OF ACTION AGAINST FEDERAL DEFENDANTS AND THE DISTRICT DEFENDANTS:
VIOLATION OF THE FIRST AMENDMENT'S GUARANTEE OF FREE EXERCISE OF RELIGION

364. Plaintiffs reallege all matters set forth in paragraphs 1 through 363 and incorporate them herein.

365. The First Amendment provides that Congress shall make no law prohibiting the free exercise of religion.

366. Laws that burden free exercise, but are not neutral or generally applicable, are presumptively unconstitutional.

367. Laws that burden free exercise and another constitutional right are presumptively unconstitutional.

368. Some Student Plaintiffs have a sincere religious belief that they must practice modesty, which includes a requirement that they not undress or use the restroom with the opposite sex.

369. Some Parent Plaintiffs have a sincere religious belief that they must teach their children to practice modesty and protect the modesty of their children. This includes a requirement that their children not undress or

use the restroom with the opposite sex.

370. The Federal Rule burdens these Student and Parent Plaintiffs' religious beliefs.

371. The Federal Rule is not neutral and generally applicable.

372. The Rule also burdens free exercise and Plaintiffs' other constitutional rights. *See supra Third and Fourth Cause of Action.*

373. Accordingly, the Rule is presumptively unconstitutional. *See supra Third Cause of Action.*

374. Because the Policy adopts and implements the Rule, the Policy also violates the First Amendment.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

SIXTH CAUSE OF ACTION AGAINST DISTRICT DEFENDANT:
VIOLATION OF THE MINNESOTA CONSTITUTION
Minn. Const. art. 1, §16

375. Plaintiffs reallege all matters set forth in paragraphs 1 through 374 and incorporate them herein.

376. The Minnesota Constitution provides that "[t]he right of every man to worship God according to the dictates of his conscience shall never be infringed," "nor shall any control of, or interference with the rights of conscience be permitted…" Minn. Const. art. I, § 16.

377. This state freedom of conscience clause provides broader

protection than the Federal Constitution.

378. Under this provision, any state regulation that burdens the exercise of sincere religious beliefs is presumptively unconstitutional.

379. The Policy burdens the exercise of Plaintiffs' sincerely held religious beliefs and their rights of conscience. *See supra Fifth Cause of Action.*

380. The Policy is therefore presumptively unconstitutional. *See supra Third Cause of Action.*

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

SEVENTH CAUSE OF ACTION AGAINST THE FEDERAL DEFENDANTS:
VIOLATION OF THE RELIGIOUS FREEDOM RESTORATION ACT, 42 U.S.C. § 2000bb

381. Plaintiffs reallege all matters set forth in paragraphs 1 through 380 and incorporate them herein.

382. A governmental entity violates the Religious Freedom Restoration Act ("RFRA") if it substantially burdens a plaintiff's religious exercise without a compelling reason.

383. Some Plaintiffs have sincerely held religious beliefs that are substantially burdened by the Rule. *See supra Fifth Cause of Action.*

384. The Federal Defendants have no compelling interest that would

justify violating Plaintiffs' religious exercise.

385. Additionally, the Federal Defendants have not used the least restrictive means to achieve any purported interest in burdening the Plaintiffs' exercise of religion in this manner.

386. The Rule violates RFRA.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and/or severally, as follows:

A. A declaration that the Federal Defendant's Rule is substantively unlawful under the APA as "in excess of statutory authority, or limitations, or short of statutory right."

B. A declaration that the Rule is "arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law" under the APA.

C. A declaration that the Rule is "contrary to constitutional right, power, privilege, or immunity" under the APA.

D. A declaration that the Rule is unlawful and must be set aside as created "without observance of procedure required by law" under the APA.

E. A declaration that the District Defendant's Policy impermissibly burdens Girl Plaintiffs' rights under Title IX to be free from discrimination on

the basis of sex by excluding Girl Plaintiffs from educational programs.

F. A declaration that the Policy impermissibly burdens Girl Plaintiffs' rights under Title IX to be free from discrimination on the basis of sex by creating a sexually harassing hostile environment.

G. A declaration that the Federal Defendants' Rule and the District Defendant's Policy impermissibly burdens Girl Plaintiffs' constitutional right to privacy.

H. A declaration that the Rule and the Policy impermissibly burdens some Student Plaintiffs' and Parent Plaintiffs' constitutionally guaranteed right to free exercise of religion under the Free Exercise Clause of the First Amendment.

I. A declaration that the Policy impermissibly burdens some Student Plaintiffs' and Parent Plaintiffs' rights to free exercise of religion under the Minnesota Constitution.

J. A declaration that the Rule impermissibly burdens some Student Plaintiffs' and Parent Plaintiffs' rights to free exercise of religion under federal Religious Freedom Restoration Act.

K. A preliminary and permanent injunction enjoining the Federal Defendants' Rule from having any legal effect.

L. A vacatur, as a consequence of each or any of the declarations aforesaid, as to the Defendants' promulgation, implementation, and

determination of applicability of the Rule and Guidelines – including U.S. Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence,* 5 (Apr. 2014); U.S. Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities,* 25 (Dec. 2014); U.S. Department of Education, Office for Civil Rights, *Title IX Resource Guide,* 1, 15, 16, 19, 22-23 (Apr. 2015), and U.S. Department of Education and U.S. Department of Justice, *Dear Colleague Letter: Transgender Students* (May 2016) – and its terms and conditions, along with all related rules, regulations, guidance and interpretations, as issued and applied to the Virginia School District and similarly situated parties throughout the United States, within the jurisdiction of this Court.

M. A preliminary and permanent injunction enjoining the District Defendants' Policy and ordering the District Defendants to permit only females to enter and use the Districts' girls private facilities, including locker rooms and restrooms, and only males to enter and use the boys' private facilities, including locker rooms and restrooms.

N. An award of nominal damages in the amount of one (1) dollar, and compensatory damages, to each individual and associational plaintiff for the violation of Plaintiffs' constitutional and statutory rights, except those claimed under the APA;

O. An order that this Court retain jurisdiction of this matter for the purpose of enforcing any Orders;

P. An award of Plaintiffs' costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 28 U.S.C. § 2412, 42 U.S.C § 1988;

Q. An order that the requested injunctive relief be without a condition of bond or other security being required of Plaintiffs; and

R. All other relief to which the Plaintiffs may show themselves to be entitled, including attorneys' fees and costs of courts.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all counts and issues so triable.

Respectfully submitted this 7th day of September, 2016.

By: /s/ Renee K. Carlson

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**Pro Hac Vice Applications*
Forthcoming

Attorneys for Plaintiffs

THIS DOCUMENT HAS BEEN ELECTRONICALLY FILED

DECLARATION UNDER PENALTY OF PERJURY

I, Parent A, a citizen of the United States and a resident of the State of Minnesota, as President of Privacy Matters, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 30 day of August, 2016, at Eveleth, Minnesota.

Parent A

Parent A, President
PRIVACY MATTERS

DECLARATION UNDER PENALTY OF PERJURY

We, Parent A and Girl Plaintiff A, citizens of the United States and residents of the State of Minnesota, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of our knowledge.

Executed this 30 day of August, 2016, at Eveleth, Minnesota.

Parent A

Parent A

Girl Plaintiff A

Girl Plaintiff A

DECLARATION UNDER PENALTY OF PERJURY

We, Parent B and Girl Plaintiff B, citizens of the United States and residents of the State of Minnesota, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of our knowledge.

Executed this 24TH day of August, 2016, at VIRGINIA, Minnesota.

Parent B

Parent B

Girl Plaintiff B

Girl Plaintiff B

DECLARATION UNDER PENALTY OF PERJURY

We, Parent D and Girl Plaintiff D, citizens of the United States and residents of the State of Minnesota, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of our knowledge.

Executed this 2nd day of ~~August~~ September, 2016, at 9:09 pm, Virginia Minnesota.

Parent D

Parent D

Girl Plaintiff D

Girl Plaintiff D

DECLARATION UNDER PENALTY OF PERJURY

We, Parent E and Girl Plaintiff E, citizens of the United States and residents of the State of Minnesota, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of our knowledge.

Executed this 25th day of August, 2016, at Virginia, Minnesota.

Parent E

Parent E

Girl Plaintiff E

Girl Plaintiff E

DECLARATION UNDER PENALTY OF PERJURY

We, Parent F and Girl Plaintiff F, citizens of the United States and residents of the State of Minnesota, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of our knowledge.

Executed this 30th day of August, 2016, at Angora, Minnesota.

Parent F.
Parent F

Girl Plaintiff F
Girl Plaintiff F

EXHIBIT A

U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights

Dear Colleague Letter on Transgender Students
Notice of Language Assistance

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

給英語能力有限人士的通知: 如果您不懂英語，或者使用英语有困难，您可以要求獲得向大眾提供的語言協助服務，幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊，請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線：1-800-877-8339),或電郵: Ed.Language.Assistance@ed.gov。

Thông báo dành cho những người có khả năng Anh ngữ hạn chế: Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: Ed.Language.Assistance@ed.gov.

영어 미숙자를 위한 공고: 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일주소 Ed.Language.Assistance@ed.gov 으로 연락하시기 바랍니다.

Paunawa sa mga Taong Limitado ang Kaalaman sa English: Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na impormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: Ed.Language.Assistance@ed.gov.

Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.

U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights

May 13, 2016

Dear Colleague:

Schools across the country strive to create and sustain inclusive, supportive, safe, and nondiscriminatory communities for all students. In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance.[1] This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. This letter summarizes a school's Title IX obligations regarding transgender students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluate a school's compliance with these obligations.

ED and DOJ (the Departments) have determined that this letter is *significant guidance*.[2] This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact ED at ocr@ed.gov or 800-421-3481 (TDD 800-877-8339); or DOJ at education@usdoj.gov or 877-292-3804 (TTY: 800-514-0383).

Accompanying this letter is a separate document from ED's Office of Elementary and Secondary Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students*. The examples in that document are taken from policies that school districts, state education agencies, and high school athletics associations around the country have adopted to help ensure that transgender students enjoy a supportive and nondiscriminatory school environment. Schools are encouraged to consult that document for practical ways to meet Title IX's requirements.[3]

Terminology

- *Gender identity* refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.

- *Sex assigned at birth* refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.

- *Transgender* describes those individuals whose gender identity is different from the sex they were assigned at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth; a *transgender female* is someone who identifies as female but was assigned the sex of male at birth.

- *Gender transition* refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

Compliance with Title IX

As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.[4] The Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity. The Departments' interpretation is consistent with courts' and other agencies' interpretations of Federal laws prohibiting sex discrimination.[5]

The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.[6] Because transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to restrictions imposed by state or local law in their place of birth or residence),[7] requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity.

A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students.[8]

1. Safe and Nondiscriminatory Environment

Schools have a responsibility to provide a safe and nondiscriminatory environment for all students, including transgender students. Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex, and the Departments enforce Title IX accordingly.[9] If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment in violation of Title IX. For a more detailed discussion of Title IX

requirements related to sex-based harassment, see guidance documents from ED's Office for Civil Rights (OCR) that are specific to this topic.[10]

2. Identification Documents, Names, and Pronouns

Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.[11]

3. Sex-Segregated Activities and Facilities

Title IX's implementing regulations permit a school to provide sex-segregated restrooms, locker rooms, shower facilities, housing, and athletic teams, as well as single-sex classes under certain circumstances.[12] When a school provides sex-segregated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.[13]

- **Restrooms and Locker Rooms**. A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity.[14] A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.[15]

- **Athletics.** Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport.[16] A school may not, however, adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (*i.e.*, the same gender identity) or others' discomfort with transgender students.[17] Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or physical safety of the sport.[18]

- **Single-Sex Classes**. Although separating students by sex in classes and activities is generally prohibited, nonvocational elementary and secondary schools may offer nonvocational single-sex classes and extracurricular activities under certain circumstances.[19] When offering such classes and activities, a school must allow transgender students to participate consistent with their gender identity.

- **Single-Sex Schools**. Title IX does not apply to the admissions policies of certain educational institutions, including nonvocational elementary and secondary schools, and private undergraduate colleges.[20] Those schools are therefore permitted under Title IX to set their own

sex-based admissions policies. Nothing in Title IX prohibits a private undergraduate women's college from admitting transgender women if it so chooses.

- **Social Fraternities and Sororities**. Title IX does not apply to the membership practices of social fraternities and sororities.[21] Those organizations are therefore permitted under Title IX to set their own policies regarding the sex, including gender identity, of their members. Nothing in Title IX prohibits a fraternity from admitting transgender men or a sorority from admitting transgender women if it so chooses.

- **Housing and Overnight Accommodations**. Title IX allows a school to provide separate housing on the basis of sex.[22] But a school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students. Nothing in Title IX prohibits a school from honoring a student's voluntary request for single-occupancy accommodations if it so chooses.[23]

- **Other Sex-Specific Activities and Rules**. Unless expressly authorized by Title IX or its implementing regulations, a school may not segregate or otherwise distinguish students on the basis of their sex, including gender identity, in any school activities or the application of any school rule. Likewise, a school may not discipline students or exclude them from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity or femininity (*e.g.*, in yearbook photographs, at school dances, or at graduation ceremonies).[24]

4. Privacy and Education Records

Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity. The Departments may find a Title IX violation when a school limits students' educational rights or opportunities by failing to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth.[25] Nonconsensual disclosure of personally identifiable information (PII), such as a student's birth name or sex assigned at birth, could be harmful to or invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA).[26] A school may maintain records with this information, but such records should be kept confidential.

- **Disclosure of Personally Identifiable Information from Education Records**. FERPA generally prevents the nonconsensual disclosure of PII from a student's education records; one exception is that records may be disclosed to individual school personnel who have been determined to have a legitimate educational interest in the information.[27] Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this FERPA exception to disclose PII from education records to other school personnel who do not have a legitimate educational interest in the information. Inappropriately disclosing (or requiring students or their parents to disclose) PII from education records to the school community may

violate FERPA and interfere with transgender students' right under Title IX to be treated consistent with their gender identity.

- **Disclosure of Directory Information**. Under FERPA's implementing regulations, a school may disclose appropriately designated directory information from a student's education record if disclosure would not generally be considered harmful or an invasion of privacy.[28] Directory information may include a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.[29] School officials may not designate students' sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy.[30] A school also must allow eligible students (*i.e.*, students who have reached 18 years of age or are attending a postsecondary institution) or parents, as appropriate, a reasonable amount of time to request that the school not disclose a student's directory information.[31]

- **Amendment or Correction of Education Records**. A school may receive requests to correct a student's education records to make them consistent with the student's gender identity. Updating a transgender student's education records to reflect the student's gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.

  - Under FERPA, a school must consider the request of an eligible student or parent to amend information in the student's education records that is inaccurate, misleading, or in violation of the student's privacy rights.[32] If the school does not amend the record, it must inform the requestor of its decision and of the right to a hearing. If, after the hearing, the school does not amend the record, it must inform the requestor of the right to insert a statement in the record with the requestor's comments on the contested information, a statement that the requestor disagrees with the hearing decision, or both. That statement must be disclosed whenever the record to which the statement relates is disclosed.[33]
  - Under Title IX, a school must respond to a request to amend information related to a student's transgender status consistent with its general practices for amending other students' records.[34] If a student or parent complains about the school's handling of such a request, the school must promptly and equitably resolve the complaint under the school's Title IX grievance procedures.[35]

* * *

We appreciate the work that many schools, state agencies, and other organizations have undertaken to make educational programs and activities welcoming, safe, and inclusive for all students.

Sincerely,

/s/	/s/
Catherine E. Lhamon	Vanita Gupta
Assistant Secretary for Civil Rights	Principal Deputy Assistant Attorney General for Civil Rights
U.S. Department of Education	U.S. Department of Justice

[1] 20 U.S.C. §§ 1681–1688; 34 C.F.R. Pt. 106; 28 C.F.R. Pt. 54. In this letter, the term *schools* refers to recipients of Federal financial assistance at all educational levels, including school districts, colleges, and universities. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a).

[2] Office of Management and Budget, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf.

[3] ED, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 13, 2016), www.ed.gov/oese/oshs/emergingpractices.pdf. OCR also posts many of its resolution agreements in cases involving transgender students online at www.ed.gov/ocr/lgbt.html. While these agreements address fact-specific cases, and therefore do not state general policy, they identify examples of ways OCR and recipients have resolved some issues addressed in this guidance.

[4] 34 C.F.R. §§ 106.4, 106.31(a). For simplicity, this letter cites only to ED's Title IX regulations. DOJ has also promulgated Title IX regulations. *See* 28 C.F.R. Pt. 54. For purposes of how the Title IX regulations at issue in this guidance apply to transgender individuals, DOJ interprets its regulations similarly to ED. State and local rules cannot limit or override the requirements of Federal laws. *See* 34 C.F.R. § 106.6(b).

[5] *See, e.g., Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U.S. 75, 79 (1998); *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467, at *8 (4th Cir. Apr. 19, 2016); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215–16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1201–02 (9th Cir. 2000); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-08 (D.D.C. 2008); *Macy v. Dep't of Justice*, Appeal No. 012012082 (U.S. Equal Emp't Opportunity Comm'n Apr. 20, 2012). *See also* U.S. Dep't of Labor (USDOL), Training and Employment Guidance Letter No. 37-14, *Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System* (2015), wdr.doleta.gov/directives/attach/TEGL/TEGL_37-14.pdf; USDOL, Job Corps, Directive: Job Corps Program Instruction Notice No. 14-31, *Ensuring Equal Access for Transgender Applicants and Students to the Job Corps Program* (May 1, 2015), https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf; DOJ, Memorandum from the Attorney General, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (2014), www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf; USDOL, Office of Federal Contract Compliance Programs, Directive 2014-02, *Gender Identity and Sex Discrimination* (2014), www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html.

[6] *See Lusardi v. Dep't of the Army*, Appeal No. 0120133395 at 9 (U.S. Equal Emp't Opportunity Comm'n Apr. 1, 2015) ("An agency may not condition access to facilities—or to other terms, conditions, or privileges of employment—on the completion of certain medical steps that the agency itself has unilaterally determined will somehow prove the bona fides of the individual's gender identity.").

[7] *See G.G.*, 2016 WL 1567467, at *1 n.1 (noting that medical authorities "do not permit sex reassignment surgery for persons who are under the legal age of majority").

[8] 34 C.F.R. § 106.31(b)(4); *see G.G.*, 2016 WL 1567467, at *8 & n.10 (affirming that individuals have legitimate and important privacy interests and noting that these interests do not inherently conflict with nondiscrimination principles); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (rejecting claim that allowing a transgender woman "merely [to be] present in the women's faculty restroom" created a hostile environment); *Glenn*, 663 F.3d at 1321 (defendant's proffered justification that "other women might object to [the plaintiff]'s restroom use" was "wholly irrelevant"). *See also Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) ("Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect."); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (recognizing that "mere negative attitudes, or fear . . . are not permissible bases for" government action).

[9] *See, e.g.,* Resolution Agreement, *In re Downey Unified Sch. Dist., CA*, OCR Case No. 09-12-1095, (Oct. 8, 2014), www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf (agreement to address harassment of transgender student, including allegations that peers continued to call her by her former name, shared pictures of her prior to her transition, and frequently asked questions about her anatomy and sexuality); Consent Decree, *Doe v. Anoka-Hennepin Sch. Dist. No. 11, MN* (D. Minn. Mar. 1, 2012), www.ed.gov/ocr/docs/investigations/05115901-d.pdf (consent decree to address sex-based harassment, including based on nonconformity with gender stereotypes); Resolution Agreement, *In re Tehachapi Unified Sch. Dist*., *CA*, OCR Case No. 09-11-1031 (June 30, 2011), www.ed.gov/ocr/docs/investigations/09111031-b.pdf (agreement to address sexual and gender-based harassment, including harassment based on nonconformity with gender stereotypes). *See also Lusardi,* Appeal No. 0120133395, at *15 ("Persistent failure to use the employee's correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is either severe or pervasive enough to create a hostile work environment").

[10] *See, e.g.*, OCR, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (2001), www.ed.gov/ocr/docs/shguide.pdf; OCR, *Dear Colleague Letter: Harassment and Bullying* (Oct. 26, 2010), www.ed.gov/ocr/letters/colleague-201010.pdf; OCR, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011), www.ed.gov/ocr/letters/colleague-201104.pdf; OCR, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), www.ed.gov/ocr/docs/qa-201404-title-ix.pdf.

[11] *See, e.g.*, Resolution Agreement, *In re Cent. Piedmont Cmty. Coll., NC,* OCR Case No. 11-14-2265 (Aug. 13, 2015), www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf (agreement to use a transgender student's preferred name and gender and change the student's official record to reflect a name change).

[12] 34 C.F.R. §§ 106.32, 106.33, 106.34, 106.41(b).

[13] *See* 34 C.F.R. § 106.31.

[14] 34 C.F.R. § 106.33.

[15] *See, e.g.*, Resolution Agreement, *In re Township High Sch. Dist. 211, IL*, OCR Case No. 05-14-1055 (Dec. 2, 2015), www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf (agreement to provide any student who requests additional privacy "access to a reasonable alternative, such as assignment of a student locker in near proximity to the office of a teacher or coach; use of another private area (such as a restroom stall) within the public area; use of a nearby private area (such as a single-use facility); or a separate schedule of use.").

[16] 34 C.F.R. § 106.41(b). Nothing in Title IX prohibits schools from offering coeducational athletic opportunities.

[17] 34 C.F.R. § 106.6(b), (c). An interscholastic athletic association is subject to Title IX if (1) the association receives Federal financial assistance or (2) its members are recipients of Federal financial assistance and have ceded controlling authority over portions of their athletic program to the association. Where an athletic association is covered by Title IX, a school's obligations regarding transgender athletes apply with equal force to the association.

[18] The National Collegiate Athletic Association (NCAA), for example, reported that in developing its policy for participation by transgender students in college athletics, it consulted with medical experts, athletics officials, affected students, and a consensus report entitled *On the Team: Equal Opportunity for Transgender Student Athletes* (2010) by Dr. Pat Griffin & Helen J. Carroll (*On the Team*), https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B(2).pdf. *See* NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes* 2, 30-31 (2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (citing *On the Team*). The *On the Team* report noted that policies that may be appropriate at the college level may "be unfair and too complicated for [the high school] level of competition." *On the Team* at 26. After engaging in similar processes, some state interscholastic athletics associations have adopted policies for participation by transgender students in high school athletics that they determined were age-appropriate.

[19] 34 C.F.R. § 106.34(a), (b). Schools may also separate students by sex in physical education classes during participation in contact sports. *Id*. § 106.34(a)(1).

[20] 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15(d); 34 C.F.R. § 106.34(c) (a recipient may offer a single-sex public nonvocational elementary and secondary school so long as it provides students of the excluded sex a "substantially

equal single-sex school or coeducational school").

[21] 20 U.S.C. § 1681(a)(6)(A); 34 C.F.R. § 106.14(a).

[22] 20 U.S.C. § 1686; 34 C.F.R. § 106.32.

[23] *See, e.g.*, Resolution Agreement, *In re Arcadia Unified. Sch. Dist., CA*, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70, (July 24, 2013), www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf (agreement to provide access to single-sex overnight events consistent with students' gender identity, but allowing students to request access to private facilities).

[24] *See* 34 C.F.R. §§ 106.31(a), 106.31(b)(4). *See also*, *In re Downey Unified Sch. Dist., CA*, *supra* n. 9; *In re Cent. Piedmont Cmty. Coll., NC, supra* n. 11.

[25] 34 C.F.R. § 106.31(b)(7).

[26] 20 U.S.C. § 1232g; 34 C.F.R. Part 99. FERPA is administered by ED's Family Policy Compliance Office (FPCO). Additional information about FERPA and FPCO is available at www.ed.gov/fpco.

[27] 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. § 99.31(a)(1).

[28] 34 C.F.R. §§ 99.3, 99.31(a)(11), 99.37.

[29] 20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3.

[30] Letter from FPCO to Institutions of Postsecondary Education 3 (Sept. 2009), www.ed.gov/policy/gen/guid/fpco/doc/censuslettertohighered091609.pdf.

[31] 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. §§ 99.3. 99.37(a)(3).

[32] 34 C.F.R. § 99.20.

[33] 34 C.F.R. §§ 99.20-99.22.

[34] *See* 34 C.F.R. § 106.31(b)(4).

[35] 34 C.F.R. § 106.8(b).

EXHIBIT B

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Questions and Answers on Title IX and Sexual Violence[1]

Title IX of the Education Amendments of 1972 ("Title IX")[2] is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities receiving any federal financial assistance (hereinafter "schools", "recipients", or "recipient institutions") must comply with Title IX.[3]

On April 4, 2011, the Office for Civil Rights (OCR) in the U.S. Department of Education issued a Dear Colleague Letter on student-on-student sexual harassment and sexual violence ("DCL").[4] The DCL explains a school's responsibility to respond promptly and effectively to sexual violence against students in accordance with the requirements of Title IX.[5] Specifically, the DCL:

- Provides guidance on the unique concerns that arise in sexual violence cases, such as a school's independent responsibility under Title IX to investigate (apart from any separate criminal investigation by local police) and address sexual violence.

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[1] The Department has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), *available at* www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf. The Office for Civil Rights (OCR) issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

[2] 20 U.S.C. § 1681 *et seq*.

[3] Throughout this document the term "schools" refers to recipients of federal financial assistance that operate educational programs or activities. For Title IX purposes, at the elementary and secondary school level, the recipient generally is the school district; and at the postsecondary level, the recipient is the individual institution of higher education. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that the law's requirements conflict with the organization's religious tenets. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office.

[4] Available at http://www.ed.gov/ocr/letters/colleague-201104.html.

[5] Although this document and the DCL focus on sexual violence, the legal principles generally also apply to other forms of sexual harassment.

- Provides guidance and examples about key Title IX requirements and how they relate to sexual violence, such as the requirements to publish a policy against sex discrimination, designate a Title IX coordinator, and adopt and publish grievance procedures.

- Discusses proactive efforts schools can take to prevent sexual violence.

- Discusses the interplay between Title IX, the Family Educational Rights and Privacy Act ("FERPA"),[6] and the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act ("Clery Act")[7] as it relates to a complainant's right to know the outcome of his or her complaint, including relevant sanctions imposed on the perpetrator.

- Provides examples of remedies and enforcement strategies that schools and OCR may use to respond to sexual violence.

The DCL supplements OCR's *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, issued in 2001 (*2001 Guidance*).[8] The *2001 Guidance* discusses in detail the Title IX requirements related to sexual harassment of students by school employees, other students, or third parties. The DCL and the *2001 Guidance* remain in full force and we recommend reading these Questions and Answers in conjunction with these documents.

In responding to requests for technical assistance, OCR has determined that elementary and secondary schools and postsecondary institutions would benefit from additional guidance concerning their obligations under Title IX to address sexual violence as a form of sexual harassment. The following questions and answers further clarify the legal requirements and guidance articulated in the DCL and the *2001 Guidance* and include examples of proactive efforts schools can take to prevent sexual violence and remedies schools may use to end such conduct, prevent its recurrence, and address its effects. In order to gain a complete understanding of these legal requirements and recommendations, this document should be read in full.

Authorized by

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

April 29, 2014

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[6] 20 U.S.C. §1232g; 34 C.F.R. Part 99.
[7] 20 U.S.C. §1092(f).
[8] Available at http://www.ed.gov/ocr/docs/shguide.html.

Notice of Language Assistance
Questions and Answers on Title IX and Sexual Violence

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TABLE OF CONTENTS

A. A School's Obligation to Respond to Sexual Violence

A-1. What is sexual violence?

Answer: Sexual violence, as that term is used in this document and prior OCR guidance, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

A-2. How does Title IX apply to student-on-student sexual violence?

Answer: Under Title IX, federally funded schools must ensure that students of all ages are not denied or limited in their ability to participate in or benefit from the school's educational programs or activities on the basis of sex. A school violates a student's rights under Title IX regarding student-on-student sexual violence when the following conditions are met: (1) the alleged conduct is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program, *i.e.* creates a hostile environment; and (2) the school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.[9]

A-3. How does OCR determine if a hostile environment has been created?

Answer: As discussed more fully in OCR's *2001 Guidance*, OCR considers a variety of related factors to determine if a hostile environment has been created; and also considers the conduct in question from both a subjective and an objective perspective. Specifically, OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.

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[9] This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. *See 2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. *See Davis v. Monroe Cnty Bd. of Educ.*, 526 U.S. 629, 643 (1999).

A-4. When does OCR consider a school to have notice of student-on-student sexual violence?

Answer: OCR deems a school to have notice of student-on-student sexual violence if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual violence. See question D-2 regarding who is a responsible employee.

A school can receive notice of sexual violence in many different ways. Some examples of notice include: a student may have filed a grievance with or otherwise informed the school's Title IX coordinator; a student, parent, friend, or other individual may have reported an incident to a teacher, principal, campus law enforcement, staff in the office of student affairs, or other responsible employee; or a teacher or dean may have witnessed the sexual violence.

The school may also receive notice about sexual violence in an indirect manner, from sources such as a member of the local community, social networking sites, or the media. In some situations, if the school knows of incidents of sexual violence, the exercise of reasonable care should trigger an investigation that would lead to the discovery of additional incidents. For example, if school officials receive a credible report that a student has perpetrated several acts of sexual violence against different students, that pattern of conduct should trigger an inquiry as to whether other students have been subjected to sexual violence by that student. In other cases, the pervasiveness of the sexual violence may be widespread, openly practiced, or well-known among students or employees. In those cases, OCR may conclude that the school should have known of the hostile environment. In other words, if the school would have found out about the sexual violence had it made a proper inquiry, knowledge of the sexual violence will be imputed to the school even if the school failed to make an inquiry. A school's failure to take prompt and effective corrective action in such cases (as described in questions G-1 to G-3 and H-1 to H-3) would violate Title IX even if the student did not use the school's grievance procedures or otherwise inform the school of the sexual violence.

A-5. What are a school's basic responsibilities to address student-on-student sexual violence?

Answer: When a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E). If an investigation reveals that sexual violence created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its

effects. But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

Title IX requires a school to protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of any investigation.[10] The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. If the school determines that the sexual violence occurred, the school must continue to take these steps to protect the complainant and ensure his or her safety, as necessary. The school should also ensure that the complainant is aware of any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. For additional information on interim measures, see questions G-1 to G-3.

If a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to a hostile environment. If it does, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately. For example, if a school's ignoring of a student's complaints of sexual assault by a fellow student results in the complaining student having to remain in classes with the other student for several weeks and the complaining student's grades suffer because he or she was unable to concentrate in these classes, the school may need to permit the complaining student to retake the classes without an academic or financial penalty (in addition to any other remedies) in order to address the effects of the sexual violence.

A-6. Does Title IX cover employee-on-student sexual violence, such as sexual abuse of children?

Answer: Yes. Although this document and the DCL focus on student-on-student sexual violence, Title IX also protects students from other forms of sexual harassment (including sexual violence and sexual abuse), such as sexual harassment carried out by school employees. Sexual harassment by school employees can include unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, including but not limited to sexual activity. Title IX's prohibition against

[10] Throughout this document, unless otherwise noted, the term "complainant" refers to the student who allegedly experienced the sexual violence.

sexual harassment generally does not extend to legitimate nonsexual touching or other nonsexual conduct. But in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment. Early signs of inappropriate behavior with a child can be the key to identifying and preventing sexual abuse by school personnel.

A school's Title IX obligations regarding sexual harassment by employees can, in some instances, be greater than those described in this document and the DCL. Recipients should refer to OCR's *2001 Guidance* for further information about Title IX obligations regarding harassment of students by school employees. In addition, many state and local laws have mandatory reporting requirements for schools working with minors. Recipients should be careful to satisfy their state and local legal obligations in addition to their Title IX obligations, including training to ensure that school employees are aware of their obligations under such state and local laws and the consequences for failing to satisfy those obligations.

With respect to sexual activity in particular, OCR will always view as unwelcome and nonconsensual sexual activity between an adult school employee and an elementary school student or any student below the legal age of consent in his or her state. In cases involving a student who meets the legal age of consent in his or her state, there will still be a strong presumption that sexual activity between an adult school employee and a student is unwelcome and nonconsensual. When a school is on notice that a school employee has sexually harassed a student, it is responsible for taking prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects. Indeed, even if a school was not on notice, the school is nonetheless responsible for remedying any effects of the sexual harassment on the student, as well as for ending the sexual harassment and preventing its recurrence, when the employee engaged in the sexual activity in the context of the employee's provision of aid, benefits, or services to students (*e.g.*, teaching, counseling, supervising, advising, or transporting students).

A school should take steps to protect its students from sexual abuse by its employees. It is therefore imperative for a school to develop policies prohibiting inappropriate conduct by school personnel and procedures for identifying and responding to such conduct. For example, this could include implementing codes of conduct, which might address what is commonly known as grooming – a desensitization strategy common in adult educator sexual misconduct. Such policies and procedures can ensure that students, parents, and

school personnel have clear guidelines on what are appropriate and inappropriate interactions between adults and students in a school setting or in school-sponsored activities. Additionally, a school should provide training for administrators, teachers, staff, parents, and age-appropriate classroom information for students to ensure that everyone understands what types of conduct are prohibited and knows how to respond when problems arise.[11]

B. Students Protected by Title IX

B-1. Does Title IX protect all students from sexual violence?

Answer: Yes. Title IX protects all students at recipient institutions from sex discrimination, including sexual violence. Any student can experience sexual violence: from elementary to professional school students; male and female students; straight, gay, lesbian, bisexual and transgender students; part-time and full-time students; students with and without disabilities; and students of different races and national origins.

B-2. How should a school handle sexual violence complaints in which the complainant and the alleged perpetrator are members of the same sex?

Answer: A school's obligation to respond appropriately to sexual violence complaints is the same irrespective of the sex or sexes of the parties involved. Title IX protects all students from sexual violence, regardless of the sex of the alleged perpetrator or complainant, including when they are members of the same sex. A school must investigate and resolve allegations of sexual violence involving parties of the same sex using the same procedures and standards that it uses in all complaints involving sexual violence.

Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations. Indeed, lesbian, gay, bisexual, and transgender (LGBT) youth report high rates of sexual harassment and sexual violence. A school should investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards that it

[11] For additional informational on training please see the Department of Education's Resource and Emergency Management for Schools Technical Assistance Center – Adult Sexual Misconduct in Schools: Prevention and Management Training, available at http://rems.ed.gov/Docs/ASM_Marketing_Flyer.pdf.

uses in all complaints involving sexual violence. The fact that incidents of sexual violence may be accompanied by anti-gay comments or be partly based on a student's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy those instances of sexual violence.

If a school's policies related to sexual violence include examples of particular types of conduct that violate the school's prohibition on sexual violence, the school should consider including examples of same-sex conduct. In addition, a school should ensure that staff are capable of providing culturally competent counseling to all complainants. Thus, a school should ensure that its counselors and other staff who are responsible for receiving and responding to complaints of sexual violence, including investigators and hearing board members, receive appropriate training about working with LGBT and gender-nonconforming students and same-sex sexual violence. See questions J-1 to J-4 for additional information regarding training.

Gay-straight alliances and similar student-initiated groups can also play an important role in creating safer school environments for LGBT students. On June 14, 2011, the Department issued guidance about the rights of student-initiated groups in public secondary schools under the Equal Access Act. That guidance is available at http://www2.ed.gov/policy/elsec/guid/secletter/110607.html.

B-3. What issues may arise with respect to students with disabilities who experience sexual violence?

Answer: When students with disabilities experience sexual violence, federal civil rights laws other than Title IX may also be relevant to a school's responsibility to investigate and address such incidents.[12] Certain students require additional assistance and support. For example, students with intellectual disabilities may need additional help in learning about sexual violence, including a school's sexual violence education and prevention programs, what constitutes sexual violence and how students can report incidents of sexual

[12] OCR enforces two civil rights laws that prohibit disability discrimination. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits disability discrimination by public or private entities that receive federal financial assistance, and Title II of the American with Disabilities Act of 1990 (Title II) prohibits disability discrimination by all state and local public entities, regardless of whether they receive federal funding. *See* 29 U.S.C. § 794 and 34 C.F.R. part 104; 42 U.S.C. § 12131 *et seq.* and 28 C.F.R. part 35. OCR and the U.S. Department of Justice (DOJ) share the responsibility of enforcing Title II in the educational context. The Department of Education's Office of Special Education Programs in the Office of Special Education and Rehabilitative Services administers Part B of the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. 1400 *et seq*. and 34 C.F.R. part 300. IDEA provides financial assistance to states, and through them to local educational agencies, to assist in providing special education and related services to eligible children with disabilities ages three through twenty-one, inclusive.

violence. In addition, students with disabilities who experience sexual violence may require additional services and supports, including psychological services and counseling services. Postsecondary students who need these additional services and supports can seek assistance from the institution's disability resource office.

A student who has not been previously determined to have a disability may, as a result of experiencing sexual violence, develop a mental health-related disability that could cause the student to need special education and related services. At the elementary and secondary education level, this may trigger a school's child find obligations under IDEA and the evaluation and placement requirements under Section 504, which together require a school to evaluate a student suspected of having a disability to determine if he or she has a disability that requires special education or related aids and services.[13]

A school must also ensure that any school reporting forms, information, or training about sexual violence be provided in a manner that is accessible to students and employees with disabilities, for example, by providing electronically-accessible versions of paper forms to individuals with print disabilities, or by providing a sign language interpreter to a deaf individual attending a training. See question J-4 for more detailed information on student training.

B-4. What issues arise with respect to international students and undocumented students who experience sexual violence?

Answer: Title IX protects all students at recipient institutions in the United States regardless of national origin, immigration status, or citizenship status.[14] A school should ensure that all students regardless of their immigration status, including undocumented students and international students, are aware of their rights under Title IX. A school must also ensure that any school reporting forms, information, or training about sexual violence be provided in a manner accessible to students who are English language learners. OCR recommends that a school coordinate with its international office and its undocumented student program coordinator, if applicable, to help communicate information about Title IX in languages that are accessible to these groups of students. OCR also encourages schools to provide foreign national complainants with information about the U nonimmigrant status and the T nonimmigrant status. The U nonimmigrant status is set

[13] *See* 34 C.F.R. §§ 300.8; 300.111; 300.201; 300.300-300.311 (IDEA); 34 C.F.R. §§ 104.3(j) and 104.35 (Section 504). Schools must comply with applicable consent requirements with respect to evaluations. *See* 34 C.F.R. § 300.300.
[14] OCR enforces Title VI of the Civil Rights Act of 1964, which prohibits discrimination by recipients of federal financial assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d.

aside for victims of certain crimes who have suffered substantial mental or physical abuse as a result of the crime and are helpful to law enforcement agency in the investigation or prosecution of the qualifying criminal activity.[15] The T nonimmigrant status is available for victims of severe forms of human trafficking who generally comply with a law enforcement agency in the investigation or prosecution of the human trafficking and who would suffer extreme hardship involving unusual and severe harm if they were removed from the United States.[16]

A school should be mindful that unique issues may arise when a foreign student on a student visa experiences sexual violence. For example, certain student visas require the student to maintain a full-time course load (generally at least 12 academic credit hours per term), but a student may need to take a reduced course load while recovering from the immediate effects of the sexual violence. OCR recommends that a school take steps to ensure that international students on student visas understand that they must typically seek prior approval of the designated school official (DSO) for student visas to drop below a full-time course load. A school may also want to encourage its employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence to approach the DSO on the student's behalf if the student wishes to drop below a full-time course load. OCR recommends that a school take steps to ensure that its employees who work with international students, including the school's DSO, are trained on the school's sexual violence policies and that employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence are aware of the special issues that international students may encounter. See questions J-1 to J-4 for additional information regarding training.

A school should also be aware that threatening students with deportation or invoking a student's immigration status in an attempt to intimidate or deter a student from filing a Title IX complaint would violate Title IX's protections against retaliation. For more information on retaliation see question K-1.

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[15] For more information on the U nonimmigrant status, see http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/questions-answers-victims-criminal-activity-u-nonimmigrant-status.

[16] For more information on the T nonimmigrant status, see http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status.

B-5. How should a school respond to sexual violence when the alleged perpetrator is not affiliated with the school?

Answer: The appropriate response will differ depending on the level of control the school has over the alleged perpetrator. For example, if an athlete or band member from a visiting school sexually assaults a student at the home school, the home school may not be able to discipline or take other direct action against the visiting athlete or band member. However (and subject to the confidentiality provisions discussed in Section E), it should conduct an inquiry into what occurred and should report the incident to the visiting school and encourage the visiting school to take appropriate action to prevent further sexual violence. The home school should also notify the student of any right to file a complaint with the alleged perpetrator's school or local law enforcement. The home school may also decide not to invite the visiting school back to its campus.

Even though a school's ability to take direct action against a particular perpetrator may be limited, the school must still take steps to provide appropriate remedies for the complainant and, where appropriate, the broader school population. This may include providing support services for the complainant, and issuing new policy statements making it clear that the school does not tolerate sexual violence and will respond to any reports about such incidents. For additional information on interim measures see questions G-1 to G-3.

C. Title IX Procedural Requirements

Overview

C-1. What procedures must a school have in place to prevent sexual violence and resolve complaints?

Answer: The Title IX regulations outline three key procedural requirements. Each school must:

(1) disseminate a notice of nondiscrimination (see question C-2);[17]

(2) designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (see questions C-3 to C-4);[18] and

[17] 34 C.F.R. § 106.9.
[18] *Id.* § 106.8(a).

(3) adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee sex discrimination complaints (see questions C-5 to C-6).[19]

These requirements apply to all forms of sex discrimination and are particularly important for preventing and effectively responding to sexual violence.

Procedural requirements under other federal laws may also apply to complaints of sexual violence, including the requirements of the Clery Act.[20] For additional information about the procedural requirements in the Clery Act, please see http://www2.ed.gov/admins/lead/safety/campus.html.

Notice of Nondiscrimination

C-2. What information must be included in a school's notice of nondiscrimination?

Answer: The notice of nondiscrimination must state that the school does not discriminate on the basis of sex in its education programs and activities, and that it is required by Title IX not to discriminate in such a manner. The notice must state that questions regarding Title IX may be referred to the school's Title IX coordinator or to OCR. The school must notify all of its students and employees of the name or title, office address, telephone number, and email address of the school's designated Title IX coordinator.[21]

Title IX Coordinator

C-3. What are a Title IX coordinator's responsibilities?

Answer: A Title IX coordinator's core responsibilities include overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. This means that the Title IX coordinator must have knowledge of the requirements of Title IX, of the school's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the school. To accomplish this, subject to the exemption for school counseling employees discussed in question E-3, the Title IX coordinator must be informed of all

[19] *Id.* § 106.8(b).
[20] All postsecondary institutions participating in the Higher Education Act's Title IV student financial assistance programs must comply with the Clery Act.
[21] For more information on notices of nondiscrimination, please see OCR's Notice of Nondiscrimination (August 2010), available at http://www.ed.gov/ocr/docs/nondisc.pdf.

reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office. The school should ensure that the Title IX coordinator is given the training, authority, and visibility necessary to fulfill these responsibilities.

Because the Title IX coordinator must have knowledge of all Title IX reports and complaints at the school, this individual (when properly trained) is generally in the best position to evaluate a student's request for confidentiality in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students. A school may determine, however, that another individual should perform this role. For additional information on confidentiality requests, see questions E-1 to E-4. If a school relies in part on its disciplinary procedures to meet its Title IX obligations, the Title IX coordinator should review the disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX as discussed in question C-5.

In addition to these core responsibilities, a school may decide to give its Title IX coordinator additional responsibilities, such as: providing training to students, faculty, and staff on Title IX issues; conducting Title IX investigations, including investigating facts relevant to a complaint, and determining appropriate sanctions against the perpetrator and remedies for the complainant; determining appropriate interim measures for a complainant upon learning of a report or complaint of sexual violence; and ensuring that appropriate policies and procedures are in place for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers, including rape crisis centers. A school must ensure that its Title IX coordinator is appropriately trained in all areas over which he or she has responsibility. The Title IX coordinator or designee should also be available to meet with students as needed.

If a school designates more than one Title IX coordinator, the school's notice of nondiscrimination and Title IX grievance procedures should describe each coordinator's responsibilities, and one coordinator should be designated as having ultimate oversight responsibility.

C-4. Are there any employees who should not serve as the Title IX coordinator?

Answer: Title IX does not categorically preclude particular employees from serving as Title IX coordinators. However, Title IX coordinators should not have other job responsibilities that may create a conflict of interest. Because some complaints may raise issues as to whether or how well the school has met its Title IX obligations, designating

the same employee to serve both as the Title IX coordinator and the general counsel (which could include representing the school in legal claims alleging Title IX violations) poses a serious risk of a conflict of interest. Other employees whose job responsibilities may conflict with a Title IX coordinator's responsibilities include Directors of Athletics, Deans of Students, and any employee who serves on the judicial/hearing board or to whom an appeal might be made. Designating a full-time Title IX coordinator will minimize the risk of a conflict of interest.

Grievance Procedures

C-5. Under Title IX, what elements should be included in a school's procedures for responding to complaints of sexual violence?

Answer: Title IX requires that a school adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints of sex discrimination, including sexual violence. In evaluating whether a school's grievance procedures satisfy this requirement, OCR will review all aspects of a school's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

(1) notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;

(2) application of the grievance procedures to complaints filed by students or on their behalf alleging sexual violence carried out by employees, other students, or third parties;

(3) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;

(4) designated and reasonably prompt time frames for the major stages of the complaint process (see question F-8);

(5) written notice to the complainant and alleged perpetrator of the outcome of the complaint (see question H-3); and

(6) assurance that the school will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the school processes complaints, a school's Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX:

(1) a statement of the school's jurisdiction over Title IX complaints;

(2) adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;

(3) reporting policies and protocols, including provisions for confidential reporting;

(4) identification of the employee or employees responsible for evaluating requests for confidentiality;

(5) notice that Title IX prohibits retaliation;

(6) notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;

(7) notice of available interim measures that may be taken to protect the student in the educational setting;

(8) the evidentiary standard that must be used (preponderance of the evidence) (*i.e.*, more likely than not that sexual violence occurred) in resolving a complaint;

(9) notice of potential remedies for students;

(10) notice of potential sanctions against perpetrators; and

(11) sources of counseling, advocacy, and support.

For more information on interim measures, see questions G-1 to G-3.

The rights established under Title IX must be interpreted consistently with any federally guaranteed due process rights. Procedures that ensure the Title IX rights of the complainant, while at the same time according any federally guaranteed due process to both parties involved, will lead to sound and supportable decisions. Of course, a school should ensure that steps to accord any due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.

A school's procedures and practices will vary in detail, specificity, and components, reflecting differences in the age of its students, school size and administrative structure, state or local legal requirements (*e.g.*, mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

C-6. Is a school required to use separate grievance procedures for sexual violence complaints?

Answer: No. Under Title IX, a school may use student disciplinary procedures, general Title IX grievance procedures, sexual harassment procedures, or separate procedures to resolve sexual violence complaints. However, any procedures used for sexual violence complaints, including disciplinary procedures, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution (as discussed in question C-5), including applying the preponderance of the evidence standard of review. As discussed in question C-3, the Title IX coordinator should review any process used to resolve complaints of sexual violence to ensure it complies with requirements for prompt and equitable resolution of these complaints. When using disciplinary procedures, which are often focused on the alleged perpetrator and can take considerable time, a school should be mindful of its obligation to provide interim measures to protect the complainant in the educational setting. For more information on timeframes and interim measures, see questions F-8 and G-1 to G-3.

D. Responsible Employees and Reporting[22]

D-1. Which school employees are obligated to report incidents of possible sexual violence to school officials?

Answer: Under Title IX, whether an individual is obligated to report incidents of alleged sexual violence generally depends on whether the individual is a responsible employee of the school. A responsible employee must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee, subject to the exemption for school counseling employees discussed in question E-3. This is because, as discussed in question A-4, a school is obligated to address sexual violence about which a responsible employee knew or should have known. As explained in question C-3, the Title IX coordinator must be informed of all reports and complaints raising Title IX issues, even if the report or

[22] This document addresses only Title IX's reporting requirements. It does not address requirements under the Clery Act or other federal, state, or local laws, or an individual school's code of conduct.

complaint was initially filed with another individual or office, subject to the exemption for school counseling employees discussed in question E-3.

D-2. Who is a "responsible employee"?

Answer: According to OCR's *2001 Guidance*, a responsible employee includes any employee: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.[23]

A school must make clear to all of its employees and students which staff members are responsible employees so that students can make informed decisions about whether to disclose information to those employees. A school must also inform all employees of their own reporting responsibilities and the importance of informing complainants of: the reporting obligations of responsible employees; complainants' option to request confidentiality and available confidential advocacy, counseling, or other support services; and complainants' right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement.

Whether an employee is a responsible employee will vary depending on factors such as the age and education level of the student, the type of position held by the employee, and consideration of both formal and informal school practices and procedures. For example, while it may be reasonable for an elementary school student to believe that a custodial staff member or cafeteria worker has the authority or responsibility to address student misconduct, it is less reasonable for a college student to believe that a custodial staff member or dining hall employee has this same authority.

As noted in response to question A-4, when a responsible employee knows or reasonably should know of possible sexual violence, OCR deems a school to have notice of the sexual violence. The school must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E), and, if the school determines that sexual violence created a hostile environment, the school must then take appropriate steps to address the situation. The

[23] The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. *Gebser v. Lago Vista Ind. Sch. Dist*., 524 U.S. 274, 290 (1998), and *Davis*, 524 U.S. at 642. The concept of a "responsible employee" under OCR's guidance for administrative enforcement of Title IX is broader.

school has this obligation regardless of whether the student, student's parent, or a third party files a formal complaint. For additional information on a school's responsibilities to address student-on-student sexual violence, see question A-5. For additional information on training for school employees, see questions J-1 to J-3.

D-3. What information is a responsible employee obligated to report about an incident of possible student-on-student sexual violence?

Answer: Subject to the exemption for school counseling employees discussed in question E-3, a responsible employee must report to the school's Title IX coordinator, or other appropriate school designee, all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location. A school must make clear to its responsible employees to whom they should report an incident of alleged sexual violence.

To ensure compliance with these reporting obligations, it is important for a school to train its responsible employees on Title IX and the school's sexual violence policies and procedures. For more information on appropriate training for school employees, see question J-1 to J-3.

D-4. What should a responsible employee tell a student who discloses an incident of sexual violence?

Answer: Before a student reveals information that he or she may wish to keep confidential, a responsible employee should make every effort to ensure that the student understands: (i) the employee's obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator or other appropriate school officials, (ii) the student's option to request that the school maintain his or her confidentiality, which the school (*e.g.*, Title IX coordinator) will consider, and (iii) the student's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (*e.g.*, sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers). As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request

and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

D-5. If a student informs a resident assistant/advisor (RA) that he or she was subjected to sexual violence by a fellow student, is the RA obligated under Title IX to report the incident to school officials?

Answer: As discussed in questions D-1 and D-2, for Title IX purposes, whether an individual is obligated under Title IX to report alleged sexual violence to the school's Title IX coordinator or other appropriate school designee generally depends on whether the individual is a responsible employee.

The duties and responsibilities of RAs vary among schools, and, therefore, a school should consider its own policies and procedures to determine whether its RAs are responsible employees who must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee.[24] When making this determination, a school should consider if its RAs have the general authority to take action to redress misconduct or the duty to report misconduct to appropriate school officials, as well as whether students could reasonably believe that RAs have this authority or duty. A school should also consider whether it has determined and clearly informed students that RAs are generally available for confidential discussions and do not have the authority or responsibility to take action to redress any misconduct or to report any misconduct to the Title IX coordinator or other appropriate school officials. A school should pay particular attention to its RAs' obligations to report other student violations of school policy (*e.g.*, drug and alcohol violations or physical assault). If an RA is required to report other misconduct that violates school policy, then the RA would be considered a responsible employee obligated to report incidents of sexual violence that violate school policy.

If an RA is a responsible employee, the RA should make every effort to ensure that *before* the student reveals information that he or she may wish to keep confidential, the student understands the RA's reporting obligation and the student's option to request that the school maintain confidentiality. It is therefore important that schools widely disseminate policies and provide regular training clearly identifying the places where students can seek confidential support services so that students are aware of this information. The RA

[24] Postsecondary institutions should be aware that, regardless of whether an RA is a responsible employee under Title IX, RAs are considered "campus security authorities" under the Clery Act. A school's responsibilities in regard to crimes reported to campus security authorities are discussed in the Department's regulations on the Clery Act at 34 C.F.R. § 668.46.

should also explain to the student (again, before the student reveals information that he or she may wish to keep confidential) that, although the RA must report the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location to the Title IX coordinator or other appropriate school designee, the school will protect the student's confidentiality to the greatest extent possible. Prior to providing information about the incident to the Title IX coordinator or other appropriate school designee, the RA should consult with the student about how to protect his or her safety and the details of what will be shared with the Title IX coordinator. The RA should explain to the student that reporting this information to the Title IX coordinator or other appropriate school designee does not necessarily mean that a formal complaint or investigation under the school's Title IX grievance procedure must be initiated if the student requests confidentiality. As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

Regardless of whether a reporting obligation exists, all RAs should inform students of their right to file a Title IX complaint with the school and report a crime to campus or local law enforcement. If a student discloses sexual violence to an RA who is a responsible employee, the school will be deemed to have notice of the sexual violence even if the student does not file a Title IX complaint. Additionally, all RAs should provide students with information regarding on-campus resources, including victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. RAs should also be familiar with local rape crisis centers or other off-campus resources and provide this information to students.

E. Confidentiality and a School's Obligation to Respond to Sexual Violence

E-1. How should a school respond to a student's request that his or her name not be disclosed to the alleged perpetrator or that no investigation or disciplinary action be pursued to address the alleged sexual violence?

Answer: Students, or parents of minor students, reporting incidents of sexual violence sometimes ask that the students' names not be disclosed to the alleged perpetrators or that no investigation or disciplinary action be pursued to address the alleged sexual violence. OCR strongly supports a student's interest in confidentiality in cases involving sexual violence. There are situations in which a school must override a student's request

for confidentiality in order to meet its Title IX obligations; however, these instances will be limited and the information should only be shared with individuals who are responsible for handling the school's response to incidents of sexual violence. Given the sensitive nature of reports of sexual violence, a school should ensure that the information is maintained in a secure manner. A school should be aware that disregarding requests for confidentiality can have a chilling effect and discourage other students from reporting sexual violence. In the case of minors, state mandatory reporting laws may require disclosure, but can generally be followed without disclosing information to school personnel who are not responsible for handling the school's response to incidents of sexual violence.[25]

Even if a student does not specifically ask for confidentiality, to the extent possible, a school should only disclose information regarding alleged incidents of sexual violence to individuals who are responsible for handling the school's response. To improve trust in the process for investigating sexual violence complaints, a school should notify students of the information that will be disclosed, to whom it will be disclosed, and why. Regardless of whether a student complainant requests confidentiality, a school must take steps to protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. For additional information on interim measures see questions G-1 to G-3.

For Title IX purposes, if a student requests that his or her name not be revealed to the alleged perpetrator or asks that the school not investigate or seek action against the alleged perpetrator, the school should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. The school should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate

[25] The school should be aware of the alleged student perpetrator's right under the Family Educational Rights and Privacy Act ("FERPA") torequest to inspect and review information about the allegations if the information directly relates to the alleged student perpetrator and the information is maintained by the school as an education record. In such a case, the school must either redact the complainant's name and all identifying information before allowing the alleged perpetrator to inspect and review the sections of the complaint that relate to him or her, or must inform the alleged perpetrator of the specific information in the complaint that are about the alleged perpetrator. *See* 34 C.F.R. § 99.12(a) The school should also make complainants aware of this right and explain how it might affect the school's ability to maintain complete confidentiality.

and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary. See question K-1 regarding retaliation.

If the student still requests that his or her name not be disclosed to the alleged perpetrator or that the school not investigate or seek action against the alleged perpetrator, the school will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. As discussed in question C-3, the Title IX coordinator is generally in the best position to evaluate confidentiality requests. Because schools vary widely in size and administrative structure, OCR recognizes that a school may reasonably determine that an employee other than the Title IX coordinator, such as a sexual assault response coordinator, dean, or other school official, is better suited to evaluate such requests. Addressing the needs of a student reporting sexual violence while determining an appropriate institutional response requires expertise and attention, and a school should ensure that it assigns these responsibilities to employees with the capability and training to fulfill them. For example, if a school has a sexual assault response coordinator, that person should be consulted in evaluating requests for confidentiality. The school should identify in its Title IX policies and procedures the employee or employees responsible for making such determinations.

If the school determines that it can respect the student's request not to disclose his or her identity to the alleged perpetrator, it should take all reasonable steps to respond to the complaint consistent with the request. Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual allegation of sexual violence, other means may be available to address the sexual violence. There are steps a school can take to limit the effects of the alleged sexual violence and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; changing and publicizing the school's policies on sexual violence; and conducting climate surveys regarding sexual violence. In instances affecting many students, an alleged perpetrator can be put on notice of allegations of harassing behavior and be counseled appropriately without revealing, even indirectly, the identity of the student complainant. A school must also take immediate action as necessary to protect the student while keeping the identity of the student confidential. These actions may include providing support services to the student and changing living arrangements or course schedules, assignments, or tests.

E-2. What factors should a school consider in weighing a student's request for confidentiality?

Answer: When weighing a student's request for confidentiality that could preclude a meaningful investigation or potential discipline of the alleged perpetrator, a school should consider a range of factors.

These factors include circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual violence or other violence (e.g., whether there have been other sexual violence complaints about the same alleged perpetrator, whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence, whether the alleged perpetrator threatened further sexual violence or other violence against the student or others, and whether the sexual violence was committed by multiple perpetrators). These factors also include circumstances that suggest there is an increased risk of future acts of sexual violence under similar circumstances (e.g., whether the student's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group). Other factors that should be considered in assessing a student's request for confidentiality include whether the sexual violence was perpetrated with a weapon; the age of the student subjected to the sexual violence; and whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

A school should take requests for confidentiality seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. For example, if the school has credible information that the alleged perpetrator has committed one or more prior rapes, the balance of factors would compel the school to investigate the allegation of sexual violence, and if appropriate, pursue disciplinary action in a manner that may require disclosure of the student's identity to the alleged perpetrator. If the school determines that it must disclose a student's identity to an alleged perpetrator, it should inform the student prior to making this disclosure. In these cases, it is also especially important for schools to take whatever interim measures are necessary to protect the student and ensure the safety of other students. If a school has a sexual assault response coordinator, that person should be consulted in identifying safety risks and interim measures that are necessary to protect the student. In the event the student requests that the school inform the perpetrator that the student asked the school not to investigate or seek discipline, the school should honor this request and inform the alleged perpetrator that the school made the decision to go forward. For additional information on interim measures see questions G-1 to G-3. Any school officials responsible for

discussing safety and confidentiality with students should be trained on the effects of trauma and the appropriate methods to communicate with students subjected to sexual violence. See questions J-1 to J-3.

On the other hand, if, for example, the school has no credible information about prior sexual violence committed by the alleged perpetrator and the alleged sexual violence was not perpetrated with a weapon or accompanied by threats to repeat the sexual violence against the complainant or others or part of a larger pattern at a given location or by a particular group, the balance of factors would likely compel the school to respect the student's request for confidentiality. In this case the school should still take all reasonable steps to respond to the complaint consistent with the student's confidentiality request and determine whether interim measures are appropriate or necessary. Schools should be mindful that traumatic events such as sexual violence can result in delayed decisionmaking by a student who has experienced sexual violence. Hence, a student who initially requests confidentiality might later request that a full investigation be conducted.

E-3. What are the reporting responsibilities of school employees who provide or support the provision of counseling, advocacy, health, mental health, or sexual assault-related services to students who have experienced sexual violence?

Answer: OCR does not require campus mental-health counselors, pastoral counselors, social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality, or who is supervised by such a person, to report, without the student's consent, incidents of sexual violence to the school in a way that identifies the student. Although these employees may have responsibilities that would otherwise make them responsible employees for Title IX purposes, OCR recognizes the importance of protecting the counselor-client relationship, which often requires confidentiality to ensure that students will seek the help they need.

Professional counselors and pastoral counselors whose official responsibilities include providing mental-health counseling to members of the school community are not required by Title IX to report *any* information regarding an incident of alleged sexual violence to the Title IX coordinator or other appropriate school designee.[26]

[26] The exemption from reporting obligations for pastoral and professional counselors under Title IX is consistent with the Clery Act. For additional information on reporting obligations under the Clery Act, see Office of Postsecondary Education, *Handbook for Campus Safety and Security Reporting* (2011), available at http://www2.ed.gov/admins/lead/safety/handbook.pdf. Similar to the Clery Act, for Title IX purposes, a pastoral counselor is a person who is associated with a religious order or denomination, is recognized by that religious

OCR recognizes that some people who provide assistance to students who experience sexual violence are not professional or pastoral counselors. They include all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers, or health centers ("non-professional counselors or advocates"), including front desk staff and students. OCR wants students to feel free to seek their assistance and therefore interprets Title IX to give schools the latitude not to require these individuals to report incidents of sexual violence in a way that identifies the student without the student's consent.[27] These non-professional counselors or advocates are valuable sources of support for students, and OCR strongly encourages schools to designate these individuals as confidential sources.

Pastoral and professional counselors and non-professional counselors or advocates should be instructed to inform students of their right to file a Title IX complaint with the school and a separate complaint with campus or local law enforcement. In addition to informing students about campus resources for counseling, medical, and academic support, these persons should also indicate that they are available to assist students in filing such complaints. They should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary.

In order to identify patterns or systemic problems related to sexual violence, a school should collect aggregate data about sexual violence incidents from non-professional counselors or advocates in their on-campus sexual assault centers, women's centers, or

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order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. A professional counselor is a person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification. This definition applies even to professional counselors who are not employees of the school, but are under contract to provide counseling at the school. This includes individuals who are not yet licensed or certified as a counselor, but are acting in that role under the supervision of an individual who is licensed or certified. An example is a Ph.D. counselor-trainee acting under the supervision of a professional counselor at the school.

[27] Postsecondary institutions should be aware that an individual who is counseling students, but who does not meet the Clery Act definition of a pastoral or professional counselor, is not exempt from being a campus security authority if he or she otherwise has significant responsibility for student and campus activities. See fn. 24.

health centers. Such individuals should report only general information about incidents of sexual violence such as the nature, date, time, and general location of the incident and should take care to avoid reporting personally identifiable information about a student. Non-professional counselors and advocates should consult with students regarding what information needs to be withheld to protect their identity.

E-4. Is a school required to investigate information regarding sexual violence incidents shared by survivors during public awareness events, such as "Take Back the Night"?

Answer: No. OCR wants students to feel free to participate in preventive education programs and access resources for survivors. Therefore, public awareness events such as "Take Back the Night" or other forums at which students disclose experiences with sexual violence are not considered notice to the school for the purpose of triggering an individual investigation unless the survivor initiates a complaint. The school should instead respond to these disclosures by reviewing sexual assault policies, creating campus-wide educational programs, and conducting climate surveys to learn more about the prevalence of sexual violence at the school. Although Title IX does not require the school to investigate particular incidents discussed at such events, the school should ensure that survivors are aware of any available resources, including counseling, health, and mental health services. To ensure that the entire school community understands their Title IX rights related to sexual violence, the school should also provide information at these events on Title IX and how to file a Title IX complaint with the school, as well as options for reporting an incident of sexual violence to campus or local law enforcement.

F. Investigations and Hearings

Overview

F-1. What elements should a school's Title IX investigation include?

Answer: The specific steps in a school's Title IX investigation will vary depending on the nature of the allegation, the age of the student or students involved, the size and administrative structure of the school, state or local legal requirements (including mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

For the purposes of this document the term "investigation" refers to the process the school uses to resolve sexual violence complaints. This includes the fact-finding investigation and any hearing and decision-making process the school uses to determine: (1) whether or not the conduct occurred; and, (2) if the conduct occurred, what actions

the school will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, which may include imposing sanctions on the perpetrator and providing remedies for the complainant and broader student population.

In all cases, a school's Title IX investigation must be adequate, reliable, impartial, and prompt and include the opportunity for both parties to present witnesses and other evidence. The investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing.[28] Furthermore, neither Title IX nor the DCL specifies who should conduct the investigation. It could be the Title IX coordinator, provided there are no conflicts of interest, but it does not have to be. All persons involved in conducting a school's Title IX investigations must have training or experience in handling complaints of sexual violence and in the school's grievance procedures. For additional information on training, see question J-3.

When investigating an incident of alleged sexual violence for Title IX purposes, to the extent possible, a school should coordinate with any other ongoing school or criminal investigations of the incident and establish appropriate fact-finding roles for each investigator. A school should also consider whether information can be shared among the investigators so that complainants are not unnecessarily required to give multiple statements about a traumatic event. If the investigation includes forensic evidence, it may be helpful for a school to consult with local or campus law enforcement or a forensic expert to ensure that the evidence is correctly interpreted by school officials. For additional information on working with campus or local law enforcement see question F-3.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without additional remedies, likely will not be sufficient to eliminate the hostile environment and prevent recurrence as required by Title IX. If a school typically processes complaints of sexual violence through its disciplinary process and that process, including any investigation and hearing, meets the Title IX requirements discussed above and enables the school to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, then the school may use that process to satisfy its Title IX obligations and does not need to conduct a separate Title IX investigation. As discussed in question C-3, the Title IX coordinator should review the disciplinary process

[28] This answer addresses only Title IX's requirements for investigations. It does not address legal rights or requirements under the U.S. Constitution, the Clery Act, or other federal, state, or local laws.

to ensure that it: (1) complies with the prompt and equitable requirements of Title IX; (2) allows for appropriate interim measures to be taken to protect the complainant during the process; and (3) provides for remedies to the complainant and school community where appropriate. For more information about interim measures, see questions G-1 to G-3, and about remedies, see questions H-1 and H-2.

The investigation may include, but is not limited to, conducting interviews of the complainant, the alleged perpetrator, and any witnesses; reviewing law enforcement investigation documents, if applicable; reviewing student and personnel files; and gathering and examining other relevant documents or evidence. While a school has flexibility in how it structures the investigative process, for Title IX purposes, a school must give the complainant any rights that it gives to the alleged perpetrator. A balanced and fair process that provides the same opportunities to both parties will lead to sound and supportable decisions.[29] Specifically:

- Throughout the investigation, the parties must have an equal opportunity to present relevant witnesses and other evidence.
- The school must use a preponderance-of-the-evidence (*i.e.*, more likely than not) standard in any Title IX proceedings, including any fact-finding and hearings.
- If the school permits one party to have lawyers or other advisors at any stage of the proceedings, it must do so equally for both parties. Any school-imposed restrictions on the ability of lawyers or other advisors to speak or otherwise participate in the proceedings must also apply equally.
- If the school permits one party to submit third-party expert testimony, it must do so equally for both parties.
- If the school provides for an appeal, it must do so equally for both parties.
- Both parties must be notified, in writing, of the outcome of both the complaint and any appeal (see question H-3).

[29] As explained in question C-5, the parties may have certain due process rights under the U.S. Constitution.

Intersection with Criminal Investigations

F-2. What are the key differences between a school's Title IX investigation into allegations of sexual violence and a criminal investigation?

Answer: A criminal investigation is intended to determine whether an individual violated criminal law; and, if at the conclusion of the investigation, the individual is tried and found guilty, the individual may be imprisoned or subject to criminal penalties. The U.S. Constitution affords criminal defendants who face the risk of incarceration numerous protections, including, but not limited to, the right to counsel, the right to a speedy trial, the right to a jury trial, the right against self-incrimination, and the right to confrontation. In addition, government officials responsible for criminal investigations (including police and prosecutors) normally have discretion as to which complaints from the public they will investigate.

By contrast, a Title IX investigation will never result in incarceration of an individual and, therefore, the same procedural protections and legal standards are not required. Further, while a criminal investigation is initiated at the discretion of law enforcement authorities, a Title IX investigation is not discretionary; a school has a duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for all students, free from sexual harassment and sexual violence. Because the standards for pursuing and completing criminal investigations are different from those used for Title IX investigations, the termination of a criminal investigation without an arrest or conviction does not affect the school's Title IX obligations.

Of course, criminal investigations conducted by local or campus law enforcement may be useful for fact gathering if the criminal investigation occurs within the recommended timeframe for Title IX investigations; but, even if a criminal investigation is ongoing, a school must still conduct its own Title IX investigation.

A school should notify complainants of the right to file a criminal complaint and should not dissuade a complainant from doing so either during or after the school's internal Title IX investigation. Title IX does not require a school to report alleged incidents of sexual violence to law enforcement, but a school may have reporting obligations under state, local, or other federal laws.

F-3. How should a school proceed when campus or local law enforcement agencies are conducting a criminal investigation while the school is conducting a parallel Title IX investigation?

Answer: A school should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, it is important for a school to understand that during this brief delay in the Title IX investigation, it must take interim measures to protect the complainant in the educational setting. The school should also continue to update the parties on the status of the investigation and inform the parties when the school resumes its Title IX investigation. For additional information on interim measures see questions G-1 to G-3.

If a school delays the fact-finding portion of a Title IX investigation, the school must promptly resume and complete its fact-finding for the Title IX investigation once it learns that the police department has completed its evidence gathering stage of the criminal investigation. The school should not delay its investigation until the ultimate outcome of the criminal investigation or the filing of any charges. OCR recommends that a school work with its campus police, local law enforcement, and local prosecutor's office to learn when the evidence gathering stage of the criminal investigation is complete. A school may also want to enter into a memorandum of understanding (MOU) or other agreement with these agencies regarding the protocols and procedures for referring allegations of sexual violence, sharing information, and conducting contemporaneous investigations. Any MOU or other agreement must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably, and must comply with the Family Educational Rights and Privacy Act ("FERPA") and other applicable privacy laws.

The DCL states that in one instance a prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances. OCR understands that this example may not be representative and that the law enforcement agency's process often takes more than ten days. OCR recognizes that the length of time for evidence gathering by criminal investigators will vary depending on the specific circumstances of each case.

Off-Campus Conduct

F-4. Is a school required to process complaints of alleged sexual violence that occurred off campus?

Answer: Yes. Under Title IX, a school must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

A school must determine whether the alleged off-campus sexual violence occurred in the context of an education program or activity of the school; if so, the school must treat the complaint in the same manner that it treats complaints regarding on-campus conduct. In other words, if a school determines that the alleged misconduct took place in the context of an education program or activity of the school, the fact that the alleged misconduct took place off campus does not relieve the school of its obligation to investigate the complaint as it would investigate a complaint of sexual violence that occurred on campus.

Whether the alleged misconduct occurred in this context may not always be apparent from the complaint, so a school may need to gather additional information in order to make such a determination. Off-campus education programs and activities are clearly covered and include, but are not limited to: activities that take place at houses of fraternities or sororities recognized by the school; school-sponsored field trips, including athletic team travel; and events for school clubs that occur off campus (*e.g.*, a debate team trip to another school or to a weekend competition).

Even if the misconduct did not occur in the context of an education program or activity, a school must consider the effects of the off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus sexual violence while at school or in an off-campus education program or activity. The school cannot address the continuing effects of the off-campus sexual violence at school or in an off-campus education program or activity unless it processes the complaint and gathers appropriate additional information in accordance with its established procedures.

Once a school is on notice of off-campus sexual violence against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment and, if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct. The mere presence on campus or in an

off-campus education program or activity of the alleged perpetrator of off-campus sexual violence can have continuing effects that create a hostile environment. A school should also take steps to protect a student who alleges off-campus sexual violence from further harassment by the alleged perpetrator or his or her friends, and a school may have to take steps to protect other students from possible assault by the alleged perpetrator. In other words, the school should protect the school community in the same way it would had the sexual violence occurred on campus. Even if there are no continuing effects of the off-campus sexual violence experienced by the student on campus or in an off-campus education program or activity, the school still should handle these incidents as it would handle other off-campus incidents of misconduct or violence and consistent with any other applicable laws. For example, if a school, under its code of conduct, exercises jurisdiction over physical altercations between students that occur off campus outside of an education program or activity, it should also exercise jurisdiction over incidents of student-on-student sexual violence that occur off campus outside of an education program or activity.

Hearings[30]

F-5. Must a school allow or require the parties to be present during an entire hearing?

Answer: If a school uses a hearing process to determine responsibility for acts of sexual violence, OCR does not require that the school allow a complainant to be present for the entire hearing; it is up to each school to make this determination. But if the school allows one party to be present for the entirety of a hearing, it must do so equally for both parties. At the same time, when requested, a school should make arrangements so that the complainant and the alleged perpetrator do not have to be present in the same room at the same time. These two objectives may be achieved by using closed circuit television or other means. Because a school has a Title IX obligation to investigate possible sexual violence, if a hearing is part of the school's Title IX investigation process, the school must not require a complainant to be present at the hearing as a prerequisite to proceed with the hearing.

[30] As noted in question F-1, the investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing. Although Title IX does not dictate the membership of a hearing board, OCR discourages schools from allowing students to serve on hearing boards in cases involving allegations of sexual violence.

F-6. May every witness at the hearing, including the parties, be cross-examined?

Answer: OCR does not require that a school allow cross-examination of witnesses, including the parties, if they testify at the hearing. But if the school allows one party to cross-examine witnesses, it must do so equally for both parties.

OCR strongly discourages a school from allowing the parties to personally question or cross-examine each other during a hearing on alleged sexual violence. Allowing an alleged perpetrator to question a complainant directly may be traumatic or intimidating, and may perpetuate a hostile environment. A school may choose, instead, to allow the parties to submit questions to a trained third party (*e.g.*, the hearing panel) to ask the questions on their behalf. OCR recommends that the third party screen the questions submitted by the parties and only ask those it deems appropriate and relevant to the case.

F-7. May the complainant's sexual history be introduced at hearings?

Answer: Questioning about the complainant's sexual history with anyone other than the alleged perpetrator should not be permitted. Further, a school should recognize that the mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence. The school should also ensure that hearings are conducted in a manner that does not inflict additional trauma on the complainant.

Timeframes

F-8. What stages of the investigation are included in the 60-day timeframe referenced in the DCL as the length for a typical investigation?

Answer: As noted in the DCL, the 60-calendar day timeframe for investigations is based on OCR's experience in typical cases. The 60-calendar day timeframe refers to the entire investigation process, which includes conducting the fact-finding investigation, holding a hearing or engaging in another decision-making process to determine whether the alleged sexual violence occurred and created a hostile environment, and determining what actions the school will take to eliminate the hostile environment and prevent its recurrence, including imposing sanctions against the perpetrator and providing remedies for the complainant and school community, as appropriate. Although this timeframe does not include appeals, a school should be aware that an unduly long appeals process may impact whether the school's response was prompt and equitable as required by Title IX.

OCR does not require a school to complete investigations within 60 days; rather OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks. A school may need to stop an investigation during school breaks or between school years, although a school should make every effort to try to conduct an investigation during these breaks unless so doing would sacrifice witness availability or otherwise compromise the process.

Because timeframes for investigations vary and a school may need to depart from the timeframes designated in its grievance procedures, both parties should be given periodic status updates throughout the process.

G. Interim Measures

G-1. Is a school required to take any interim measures before the completion of its investigation?

Answer: Title IX requires a school to take steps to ensure equal access to its education programs and activities and protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation as appropriate. The school should also ensure that the complainant is aware of his or her Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. If a school does not offer these services on campus, it should enter into an MOU with a local victim services provider if possible.

Even when a school has determined that it can respect a complainant's request for confidentiality and therefore may not be able to respond fully to an allegation of sexual violence and initiate formal action against an alleged perpetrator, the school must take immediate action to protect the complainant while keeping the identity of the complainant confidential. These actions may include: providing support services to the

complainant; changing living arrangements or course schedules, assignments, or tests; and providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred.

G-2. How should a school determine what interim measures to take?

Answer: The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. A school should consider a number of factors in determining what interim measures to take, including, for example, the specific need expressed by the complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged perpetrator share the same residence hall, dining hall, class, transportation, or job location; and whether other judicial measures have been taken to protect the complainant (*e.g.*, civil protection orders).

In general, when taking interim measures, schools should minimize the burden on the complainant. For example, if the complainant and alleged perpetrator share the same class or residence hall, the school should not, as a matter of course, remove the complainant from the class or housing while allowing the alleged perpetrator to remain without carefully considering the facts of the case.

G-3. If a school provides all students with access to counseling on a fee basis, does that suffice for providing counseling as an interim measure?

Answer: No. Interim measures are determined by a school on a case-by-case basis. If a school determines that it needs to offer counseling to the complainant as part of its Title IX obligation to take steps to protect the complainant while the investigation is ongoing, it must not require the complainant to pay for this service.

H. Remedies and Notice of Outcome[31]

H-1. What remedies should a school consider in a case of student-on-student sexual violence?

Answer: Effective remedial action may include disciplinary action against the perpetrator, providing counseling for the perpetrator, remedies for the complainant and others, as well as changes to the school's overall services or policies. All services needed to remedy the hostile environment should be offered to the complainant. These remedies are separate from, and in addition to, any interim measure that may have been provided prior to the conclusion of the school's investigation. In any instance in which the complainant did not take advantage of a specific service (*e.g.*, counseling) when offered as an interim measure, the complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the complainant declined as an interim measure. A refusal at the interim stage does not mean the refused service or set of services should not be offered as a remedy.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without more, likely will not be sufficient to satisfy its Title IX obligation to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. Additional remedies for the complainant and the school community may be necessary. If the school's student disciplinary procedure does not include a process for determining and implementing these remedies for the complainant and school community, the school will need to use another process for this purpose.

Depending on the specific nature of the problem, remedies for the complainant may include, but are not limited to:

- Providing an effective escort to ensure that the complainant can move safely between classes and activities;

[31] As explained in question A-5, if a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to be subjected to a hostile environment. In this case, in addition to the remedies discussed in this section, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately.

- Ensuring the complainant and perpetrator do not share classes or extracurricular activities;

- Moving the perpetrator or complainant (if the complainant requests to be moved) to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;

- Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;

- Arranging for the complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty; and

- Reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the sexual violence and the misconduct that may have resulted in the complainant being disciplined.[32]

Remedies for the broader student population may include, but are not limited to:

- Designating an individual from the school's counseling center who is specifically trained in providing trauma-informed comprehensive services to victims of sexual violence to be on call to assist students whenever needed;

- Training or retraining school employees on the school's responsibilities to address allegations of sexual violence and how to conduct Title IX investigations;

- Developing materials on sexual violence, which should be distributed to all students;

- Conducting bystander intervention and sexual violence prevention programs with students;

- Issuing policy statements or taking other steps that clearly communicate that the school does not tolerate sexual violence and will respond to any incidents and to any student who reports such incidents;

[32] For example, if the complainant was disciplined for skipping a class in which the perpetrator was enrolled, the school should review the incident to determine if the complainant skipped class to avoid contact with the perpetrator.

- Conducting, in conjunction with student leaders, a campus climate check to assess the effectiveness of efforts to ensure that the school is free from sexual violence, and using that information to inform future proactive steps that the school will take;

- Targeted training for a group of students if, for example, the sexual violence created a hostile environment in a residence hall, fraternity or sorority, or on an athletic team; and

- Developing a protocol for working with local law enforcement as discussed in question F-3.

When a school is unable to conduct a full investigation into a particular incident (*i.e.*, when it received a general report of sexual violence without any personally identifying information), it should consider remedies for the broader student population in response.

H-2. If, after an investigation, a school finds the alleged perpetrator responsible and determines that, as part of the remedies for the complainant, it must separate the complainant and perpetrator, how should the school accomplish this if both students share the same major and there are limited course options?

Answer: If there are limited sections of required courses offered at a school and both the complainant and perpetrator are required to take those classes, the school may need to make alternate arrangements in a manner that minimizes the burden on the complainant. For example, the school may allow the complainant to take the regular sections of the courses while arranging for the perpetrator to take the same courses online or through independent study.

H-3. What information must be provided to the complainant in the notice of the outcome?

Answer: Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal. OCR recommends that a school provide written notice of the outcome to the complainant and the alleged perpetrator concurrently.

For Title IX purposes, a school must inform the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence. The perpetrator should not be notified of the individual remedies offered or provided to the complainant.

Sanctions that directly relate to the complainant (but that may also relate to eliminating the hostile environment and preventing recurrence) include, but are not limited to, requiring that the perpetrator stay away from the complainant until both parties graduate, prohibiting the perpetrator from attending school for a period of time, or transferring the perpetrator to another residence hall, other classes, or another school. Additional steps the school has taken to eliminate the hostile environment may include counseling and academic support services for the complainant and other affected students. Additional steps the school has taken to prevent recurrence may include sexual violence training for faculty and staff, revisions to the school's policies on sexual violence, and campus climate surveys. Further discussion of appropriate remedies is included in question H-1.

In addition to the Title IX requirements described above, the Clery Act requires, and FERPA permits, postsecondary institutions to inform the complainant of the institution's final determination and any disciplinary sanctions imposed on the perpetrator in sexual violence cases (as opposed to all harassment and misconduct covered by Title IX) not just those sanctions that directly relate to the complainant.[33]

I. Appeals

I-1. What are the requirements for an appeals process?

Answer: While Title IX does not require that a school provide an appeals process, OCR does recommend that the school do so where procedural error or previously unavailable relevant evidence could significantly impact the outcome of a case or where a sanction is substantially disproportionate to the findings. If a school chooses to provide for an appeal of the findings or remedy or both, it must do so equally for both parties. The specific design of the appeals process is up to the school, as long as the entire grievance process, including any appeals, provides prompt and equitable resolutions of sexual violence complaints, and the school takes steps to protect the complainant in the educational setting during the process. Any individual or body handling appeals should be trained in the dynamics of and trauma associated with sexual violence.

If a school chooses to offer an appeals process it has flexibility to determine the type of review it will apply to appeals, but the type of review the school applies must be the same regardless of which party files the appeal.

[33] 20 U.S.C. § 1092(f) and 20 U.S.C. § 1232g(b)(6)(A).

I-2. Must an appeal be available to a complainant who receives a favorable finding but does not believe a sanction that directly relates to him or her was sufficient?

Answer: The appeals process must be equal for both parties. For example, if a school allows a perpetrator to appeal a suspension on the grounds that it is too severe, the school must also allow a complainant to appeal a suspension on the grounds that it was not severe enough. See question H-3 for more information on what must be provided to the complainant in the notice of the outcome.

J. Title IX Training, Education and Prevention[34]

J-1. What type of training on Title IX and sexual violence should a school provide to its employees?

Answer: A school needs to ensure that responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence, that other responsible employees know that they are obligated to report sexual violence to appropriate school officials, and that all other employees understand how to respond to reports of sexual violence. A school should ensure that professional counselors, pastoral counselors, and non-professional counselors or advocates also understand the extent to which they may keep a report confidential. A school should provide training to all employees likely to witness or receive reports of sexual violence, including teachers, professors, school law enforcement unit employees, school administrators, school counselors, general counsels, athletic coaches, health personnel, and resident advisors. Training for employees should include practical information about how to prevent and identify sexual violence, including same-sex sexual violence; the behaviors that may lead to and result in sexual violence; the attitudes of bystanders that may allow conduct to continue; the potential for revictimization by responders and its effect on students; appropriate methods for responding to a student who may have experienced sexual violence, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The training should also explain responsible employees' reporting obligation, including what should be included in a report and any consequences for the failure to report and the procedure for responding to students' requests for confidentiality, as well as provide the contact

[34] As explained earlier, although this document focuses on sexual violence, the legal principles apply to other forms of sexual harassment. Schools should ensure that any training they provide on Title IX and sexual violence also covers other forms of sexual harassment. Postsecondary institutions should also be aware of training requirements imposed under the Clery Act.

information for the school's Title IX coordinator. A school also should train responsible employees to inform students of: the reporting obligations of responsible employees; students' option to request confidentiality and available confidential advocacy, counseling, or other support services; and their right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement. For additional information on the reporting obligations of responsible employees and others see questions D-1 to D-5.

There is no minimum number of hours required for Title IX and sexual violence training at every school, but this training should be provided on a regular basis. Each school should determine based on its particular circumstances how such training should be conducted, who has the relevant expertise required to conduct the training, and who should receive the training to ensure that the training adequately prepares employees, particularly responsible employees, to fulfill their duties under Title IX. A school should also have methods for verifying that the training was effective.

J-2. How should a school train responsible employees to report incidents of possible sexual harassment or sexual violence?

Answer: Title IX requires a school to take prompt and effective steps reasonably calculated to end sexual harassment and sexual violence that creates a hostile environment (*i.e.*, conduct that is sufficiently serious as to limit or deny a student's ability to participate in or benefit from the school's educational program and activity). But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

OCR therefore recommends that a school train responsible employees to report to the Title IX coordinator or other appropriate school official any incidents of sexual harassment or sexual violence that may violate the school's code of conduct or may create or contribute to the creation of a hostile environment. The school can then take steps to investigate and prevent any harassment or violence from recurring or escalating, as appropriate. For example, the school may separate the complainant and alleged perpetrator or conduct sexual harassment and sexual violence training for the school's students and employees. Responsible employees should understand that they do not need to determine whether the alleged sexual harassment or sexual violence actually occurred or that a hostile environment has been created before reporting an incident to the school's Title IX coordinator. Because the Title IX coordinator should have in-depth knowledge of Title IX and Title IX complaints at the school, he or she is likely to be in a better position than are other employees to evaluate whether an incident of sexual

harassment or sexual violence creates a hostile environment and how the school should respond. There may also be situations in which individual incidents of sexual harassment do not, by themselves, create a hostile environment; however when considered together, those incidents may create a hostile environment.

J-3. What type of training should a school provide to employees who are involved in implementing the school's grievance procedures?

Answer: All persons involved in implementing a school's grievance procedures (*e.g.*, Title IX coordinators, others who receive complaints, investigators, and adjudicators) must have training or experience in handling sexual violence complaints, and in the operation of the school's grievance procedures. The training should include information on working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including same-sex sexual violence; the proper standard of review for sexual violence complaints (preponderance of the evidence); information on consent and the role drugs or alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual violence; the need for remedial actions for the perpetrator, complainant, and school community; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to conduct investigations; confidentiality; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.

In rare circumstances, employees involved in implementing a school's grievance procedures may be able to demonstrate that prior training and experience has provided them with competency in the areas covered in the school's training. For example, the combination of effective prior training and experience investigating complaints of sexual violence, together with training on the school's current grievance procedures may be sufficient preparation for an employee to resolve Title IX complaints consistent with the school's grievance procedures. In-depth knowledge regarding Title IX and sexual violence is particularly helpful. Because laws and school policies and procedures may change, the only way to ensure that all employees involved in implementing the school's grievance procedures have the requisite training or experience is for the school to provide regular training to all individuals involved in implementing the school's Title IX grievance procedures even if such individuals also have prior relevant experience.

J-4. What type of training on sexual violence should a school provide to its students?

Answer: To ensure that students understand their rights under Title IX, a school should provide age-appropriate training to its students regarding Title IX and sexual violence. At the elementary and secondary school level, schools should consider whether sexual violence training should also be offered to parents, particularly training on the school's process for handling complaints of sexual violence. Training may be provided separately or as part of the school's broader training on sex discrimination and sexual harassment. However, sexual violence is a unique topic that should not be assumed to be covered adequately in other educational programming or training provided to students. The school may want to include this training in its orientation programs for new students; training for student athletes and members of student organizations; and back-to-school nights. A school should consider educational methods that are most likely to help students retain information when designing its training, including repeating the training at regular intervals. OCR recommends that, at a minimum, the following topics (as appropriate) be covered in this training:

- Title IX and what constitutes sexual violence, including same-sex sexual violence, under the school's policies;
- the school's definition of consent applicable to sexual conduct, including examples;
- how the school analyzes whether conduct was unwelcome under Title IX;
- how the school analyzes whether unwelcome sexual conduct creates a hostile environment;
- reporting options, including formal reporting and confidential disclosure options and any timeframes set by the school for reporting;
- the school's grievance procedures used to process sexual violence complaints;
- disciplinary code provisions relating to sexual violence and the consequences of violating those provisions;
- effects of trauma, including neurobiological changes;
- the role alcohol and drugs often play in sexual violence incidents, including the deliberate use of alcohol and/or other drugs to perpetrate sexual violence;
- strategies and skills for bystanders to intervene to prevent possible sexual violence;
- how to report sexual violence to campus or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance; and
- Title IX's protections against retaliation.

The training should also encourage students to report incidents of sexual violence. The training should explain that students (and their parents or friends) do not need to determine whether incidents of sexual violence or other sexual harassment created a

hostile environment before reporting the incident. A school also should be aware that persons may be deterred from reporting incidents if, for example, violations of school or campus rules regarding alcohol or drugs were involved. As a result, a school should review its disciplinary policy to ensure it does not have a chilling effect on students' reporting of sexual violence offenses or participating as witnesses. OCR recommends that a school inform students that the school's primary concern is student safety, and that use of alcohol or drugs never makes the survivor at fault for sexual violence.

It is also important for a school to educate students about the persons on campus to whom they can confidentially report incidents of sexual violence. A school's sexual violence education and prevention program should clearly identify the offices or individuals with whom students can speak confidentially and the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. It should also identify the school's responsible employees and explain that if students report incidents to responsible employees (except as noted in question E-3) these employees are required to report the incident to the Title IX coordinator or other appropriate official. This reporting includes the names of the alleged perpetrator and student involved in the sexual violence, as well as relevant facts including the date, time, and location, although efforts should be made to comply with requests for confidentiality from the complainant. For more detailed information regarding reporting and responsible employees and confidentiality, see questions D-1 to D-5 and E-1 to E-4.

K. Retaliation

K-1. Does Title IX protect against retaliation?

Answer: Yes. The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual violence or filing a sexual violence complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an OCR or school's investigation or proceeding. Therefore, if a student, parent, teacher, coach, or other individual complains formally or informally about sexual violence or participates in an OCR or school's investigation or proceedings related to sexual violence, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way

discriminating against the individual) because of the individual's complaint or participation.

A school should take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses.

Schools should be aware that complaints of sexual violence may be followed by retaliation against the complainant or witnesses by the alleged perpetrator or his or her associates. When a school knows or reasonably should know of possible retaliation by other students or third parties, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and witnesses and ensure their safety as necessary. At a minimum, this includes making sure that the complainant and his or her parents, if the complainant is in elementary or secondary school, and witnesses know how to report retaliation by school officials, other students, or third parties by making follow-up inquiries to see if there have been any new incidents or acts of retaliation, and by responding promptly and appropriately to address continuing or new problems. A school should also tell complainants and witnesses that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation, but will also take strong responsive action if it occurs.

L. First Amendment

L-1. How should a school handle its obligation to respond to sexual harassment and sexual violence while still respecting free-speech rights guaranteed by the Constitution?

Answer: The DCL on sexual violence did not expressly address First Amendment issues because it focuses on unlawful physical sexual violence, which is not speech or expression protected by the First Amendment.

However, OCR's previous guidance on the First Amendment, including the 2001 Guidance, OCR's July 28, 2003, Dear Colleague Letter on the First Amendment,[35] and OCR's October 26, 2010, Dear Colleague Letter on harassment and bullying,[36] remain fully in effect. OCR has made it clear that the laws and regulations it enforces protect students from prohibited discrimination and do not restrict the exercise of any expressive activities or speech protected under the U.S. Constitution. Therefore, when a school works to prevent

[35] Available at http://www.ed.gov/ocr/firstamend.html.
[36] Available at http://www.ed.gov/ocr/letters/colleague-201010.html.

and redress discrimination, it must respect the free-speech rights of students, faculty, and other speakers.

Title IX protects students from sex discrimination; it does not regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a hostile environment under Title IX. Title IX also does not require, prohibit, or abridge the use of particular textbooks or curricular materials.[37]

M. The Clery Act and the Violence Against Women Reauthorization Act of 2013

M-1. How does the Clery Act affect the Title IX obligations of institutions of higher education that participate in the federal student financial aid programs?

Answer: Institutions of higher education that participate in the federal student financial aid programs are subject to the requirements of the Clery Act as well as Title IX. The Clery Act requires institutions of higher education to provide current and prospective students and employees, the public, and the Department with crime statistics and information about campus crime prevention programs and policies. The Clery Act requirements apply to many crimes other than those addressed by Title IX. For those areas in which the Clery Act and Title IX both apply, the institution must comply with both laws. For additional information about the Clery Act and its regulations, please see http://www2.ed.gov/admins/lead/safety/campus.html.

M-2. Were a school's obligations under Title IX and the DCL altered in any way by the Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, including Section 304 of that Act, which amends the Clery Act?

Answer: No. The Violence Against Women Reauthorization Act has no effect on a school's obligations under Title IX or the DCL. The Violence Against Women Reauthorization Act amended the Violence Against Women Act and the Clery Act, which are separate statutes. Nothing in Section 304 or any other part of the Violence Against Women Reauthorization Act relieves a school of its obligation to comply with the requirements of Title IX, including those set forth in these Questions and Answers, the 2011 DCL, and the *2001 Guidance*. For additional information about the Department's negotiated rulemaking related to the Violence Against Women Reauthorization Act please see http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa.html.

[37] 34 C.F.R. § 106.42.

N. Further Federal Guidance

N-1. Whom should I contact if I have additional questions about the DCL or OCR's other Title IX guidance?

Answer: Anyone who has questions regarding this guidance, or Title IX should contact the OCR regional office that serves his or her state. Contact information for OCR regional offices can be found on OCR's webpage at https://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm. If you wish to file a complaint of discrimination with OCR, you may use the online complaint form available at http://www.ed.gov/ocr/complaintintro.html or send a letter to the OCR enforcement office responsible for the state in which the school is located. You may also email general questions to OCR at ocr@ed.gov.

N-2. Are there other resources available to assist a school in complying with Title IX and preventing and responding to sexual violence?

Answer: Yes. OCR's policy guidance on Title IX is available on OCR's webpage at http://www.ed.gov/ocr/publications.html#TitleIX. In addition to the April 4, 2011, Dear Colleague Letter, OCR has issued the following resources that further discuss a school's obligation to respond to allegations of sexual harassment and sexual violence:

- Dear Colleague Letter: Harassment and Bullying (October 26, 2010), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf
- *Sexual Harassment: It's Not Academic* (Revised September 2008), http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf
- *Revised Sexual Harassment Guidance: Harassment of Students by Employees, Other Students, or Third Parties* (January 19, 2001), http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf

In addition to guidance from OCR, a school may also find resources from the Departments of Education and Justice helpful in preventing and responding to sexual violence:

- Department of Education's Letter to Chief State School Officers on Teen Dating Violence Awareness and Prevention (February 28, 2013) https://www2.ed.gov/policy/gen/guid/secletter/130228.html
- Department of Education's National Center on Safe Supportive Learning Environments http://safesupportivelearning.ed.gov/
- Department of Justice, Office on Violence Against Women http://www.ovw.usdoj.gov/

EXHIBIT C

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities*

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) has received a number of questions about the legality, under the Department's regulations implementing Title IX of the Education Amendments of 1972 (Title IX), of single-sex elementary and secondary classes and extracurricular activities offered by recipients of funding from the Department.[1]

Although Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, regulations issued by the Department authorize schools to offer single-sex classes or extracurricular activities under certain circumstances.[2] In order to ensure that schools subject to Title IX comply with the Department's requirements if they choose to offer single-sex classes and extracurricular activities, OCR provides the following responses to questions that schools should consider when assessing their compliance with Title IX. Although this document focuses on single-sex classes, some of the legal principles will also apply to single-sex schools. In order to gain a complete understanding of these legal requirements and recommendations, this document should be read in full.

Authorized by

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

December 1, 2014

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* The Department has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), *available at* www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf. OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that it enforces. OCR's legal authority is based on those laws and regulations. This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

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Overview of Title IX's Application to Single-Sex Classes and Extracurricular Activities*

1. What types of schools are covered by the Department's Title IX regulations on single-sex classes?

Answer: Coeducational elementary and secondary schools and school districts that receive Federal financial assistance from the Department must comply with the Department's Title IX regulations in 34 C.F.R. § 106.34(b) on single-sex classes if they intend to offer such classes. (OCR often refers to these schools and school districts as "recipients.") In practice, the regulations regarding single-sex classes apply to every public school (including traditional, charter, and magnet schools) because every public school is part of a local education agency that receives financial assistance from the Department. The regulations also apply to the few private coeducational schools that receive Federal financial assistance from the Department[3] and wish to offer single-sex classes.[†]

2. Are there other legal considerations beyond the Title IX regulations discussed in this guidance document that apply to single-sex classes?

Answer: Yes. While this document only addresses the requirements of the Department's Title IX regulations, public school districts and schools that are currently offering or are interested in offering single-sex classes must comply with the Constitution of the United States and other applicable Federal laws. The Equal Protection Clause of the Fourteenth Amendment prohibits discrimination on the basis of sex by public schools.[4] In addition, Title IV of the Civil Rights Act of 1964 (Title IV) prohibits public school boards from denying students the equal protection of the laws based on sex,[5] and the Equal Educational Opportunities Act (EEOA) prohibits some forms of student assignment to schools if the assignment results in sex segregation.[6]

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[*] The Department's regulations clarified in this document apply to all single-sex classes and extracurricular activities covered by 34 C.F.R. § 106.34(b). For simplicity, OCR generally uses the term "classes" or "classes and activities" to refer to "classes and extracurricular activities."

[†] A private school that is controlled by a religious organization is exempt from Title IX even when it receives Federal financial assistance to the extent that the law's requirements conflict with the organization's religious tenets. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office. (See the response to Question 33 to determine which regional office serves your location.)

All of these legal requirements are enforced in different ways. OCR has authority to investigate a potential Title IX violation in response to a complaint or proactively through a compliance review and may refer a matter to the Department of Justice (DOJ) if voluntary compliance cannot be achieved.[7] DOJ also has independent authority to enforce the Equal Protection Clause, Title IV, and the EEOA. Additionally, an individual may bring a private lawsuit against a school district or school for alleged violations of Title IX, the Equal Protection Clause, or the EEOA, and DOJ may seek to intervene in such a suit.

Therefore, when public school districts and schools offer single-sex classes, they must ensure that they comply with the Constitution and all applicable Federal laws, not just Title IX. State and local rules cannot limit or override the requirements of Federal laws, including Title IX and its regulations, but States and localities may have constitutions, laws, or regulations that impose additional limitations regarding the offering of single-sex classes.[8]

OCR recommends that a school district or school consult with legal counsel prior to offering single-sex classes.

3. Does this document address single-sex schools?

Answer: This document focuses on the Department's Title IX regulations pertaining to single-sex classes in public elementary and secondary schools. There are separate Title IX regulations in 34 C.F.R. § 106.34(c) that govern public, nonvocational single-sex schools. Generally, a school district may offer a single-sex nonvocational elementary or secondary school under Title IX only if it offers a substantially equal single-sex or coeducational school to students of the excluded sex.[9] However, single-sex nonvocational private schools are not governed by the Department's Title IX regulation requiring a substantially equal single-sex or coeducational school. By contrast, vocational schools that receive Federal financial assistance may never be limited to one sex.[10] There are also Department Title IX regulations that apply to admissions to single-sex nonvocational public and private colleges and universities.[11]

As noted in the response to Question 2, public single-sex schools are subject to the Equal Protection Clause of the Fourteenth Amendment and other Federal statutes as well as Title IX. The Department requires grant applicants that seek funds or other forms of Federal financial assistance for the establishment or operation of a public single-sex school to demonstrate the school's compliance with Title IX, the Equal Protection Clause of the Fourteenth Amendment, and all other applicable laws and regulations. Failure to demonstrate compliance with these requirements may lead to a rejection of the grant application or disqualification from receipt of continuation funds or other financial assistance.

4. May schools offer single-sex classes and extracurricular activities under the Department's Title IX regulations?

Answer: Yes. The Department's Title IX regulations permit offering single-sex classes under certain circumstances. The general rule under Title IX is that a recipient may not exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex in its education programs or activities—including classes and extracurricular activities—unless expressly authorized to do so under Title IX or the Department's implementing regulations.[12] The Department's Title IX regulations identify the following categories for which a recipient may intentionally separate students by sex: [13]

- Contact sports in physical education classes;[14]
- Classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality;[15] and
- Nonvocational classes and extracurricular activities within a coeducational, nonvocational elementary or secondary school if certain criteria are met.[16]

5. What kinds of classes and activities does this document address?

Answer: This document focuses on the last exception noted in the response to Question 4—nonvocational classes and extracurricular activities in a coeducational, nonvocational elementary or secondary school receiving Federal financial assistance. These include any single-sex curricular activity (such as a class or a field trip) and any single-sex extracurricular activity (such as a before-school or after-school activity, lunch, or recess). The requirements regarding this exception apply to single-sex classes and activities whether they are provided directly by a school district or school or through another entity.[17]

Vocational classes are not discussed further in this document because they may never be offered on a single-sex basis.[18] For purposes of this document, vocational classes are those classes that have as their primary purpose the preparation of students to pursue a technical, skilled, or semi-skilled occupation or trade; or to pursue study in a technical field, consistent with the definition of "institution of vocational education" in 34 C.F.R. § 106.2(o).[19]

OCR does not address interscholastic, club, or intramural athletics in this document because extracurricular athletics are governed by separate Title IX regulations.[20]

6. Is a class that is open to all students but in which only members of one sex enroll covered by the Title IX regulations described in this document?

Answer: No. The regulations described in this document apply to a class that excludes students of one sex from enrolling or otherwise participating in that class.

By contrast, a class is not subject to the regulations described in this document if it is open to members of both sexes, even if students of only one sex, or a substantially disproportionate number of students of one sex, enroll. If such disproportion exists in a coeducational class, however, it may be an indication of inappropriate steering or other discrimination in counseling or guidance. Title IX requires that, if such disproportion exists, the school ensure that the disproportionate enrollment is not the result of discrimination on the basis of sex, including in counseling or guidance of students or applicants for admission.[21]

7. What criteria must be met to offer single-sex classes under the Department's Title IX regulations?

Answer: The Department's Title IX regulations permit a nonvocational elementary or secondary school to offer a nonvocational single-sex class if it has a two-part justification for doing so that demonstrates that:

- each single-sex class is based on the recipient's "important objective" either to
    - improve its students' educational achievement through its overall established policies to provide diverse educational opportunities (the diversity objective), or
    - to meet the particular, identified educational needs of its students (the needs objective); and
- the single-sex nature of the class is "substantially related" to achieving that important objective.[22]

In addition to establishing a justification for offering a single-sex class, in order to comply with the Department's Title IX regulations, the recipient must:

- implement its objective in an evenhanded manner;
- ensure that student enrollment in the single-sex class is completely voluntary;
- provide a substantially equal coeducational class in the same subject; and

- conduct periodic evaluations to determine whether the class complies with Title IX, and if not, modify or discontinue the class to ensure compliance with Title IX.

Each of these elements is discussed below.

Justification for Offering a Single-Sex Class

8. Does a recipient need a justification for each single-sex class or activity it offers?

Answer: Yes. A specific, individual justification (demonstrating the recipient's objective and the substantial relationship between the objective and the single-sex nature of the class or activity) is necessary for each single-sex class or activity. A recipient may not offer single-sex classes in multiple grades or subjects without separately justifying each class. At the elementary school level, where a class typically covers many subjects, the recipient must separately justify the use of single-sex classes for each subject. This requirement applies to each single-sex curricular activity and each single-sex extracurricular activity offered by the school.

9. When must a recipient establish its justification for a single-sex class?

Answer: A recipient must establish its justification prior to offering the single-sex class.[23]

Although OCR does not pre-approve class offerings or offer legal advisory opinions, OCR will request documentation of the justification during a complaint investigation or compliance review. OCR will review the justification to ensure that it was the actual reason that motivated the offering of that single-sex class, rather than an after-the-fact explanation prepared in response to the complaint or investigation.[24] A recipient is not required to prepare a written justification, but in the absence of a written justification, OCR will assume that the recipient did not establish its justification prior to offering the single-sex class and that any justification was established after the initiation of the complaint investigation or compliance review, unless the recipient can prove otherwise. Therefore, it is strongly recommended that the recipient articulate its justification in writing prior to offering the single-sex class and preserve that documentation for at least as long as the recipient offers the single-sex class in question and for a reasonable time after the class ends. This documentation may also assist the recipient as it periodically evaluates its single-sex offerings, as discussed in more detail in response to Questions 23 through 28.

10. In what ways can a school identify an important objective for offering a single-sex class?

Answer: To offer a single-sex class, a school district or school must first identify an important objective that the particular single-sex class is intended to address. The Title IX

regulations on single-sex classes describe the following two important objectives, one of which must be the basis for offering a single-sex class.

- Diversity Objective: "To improve educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective."[25]

  To meet this objective, a recipient must first identify the educational achievement it seeks to improve through the diverse educational opportunities it offers and the proposed single-sex class.[26] Recipients may not rely on the diversity objective if the only type of nontraditional class offered is a single-sex class.[27] Rather, the recipient must offer a range of diverse educational opportunities beyond single-sex and coeducational classes. Diverse offerings in a school might include, for example, a variety of electives, a variety of curricula (such as a science, technology, engineering, math (STEM) focus or International Baccalaureate classes), co-op or internship opportunities, or the option to take classes at other schools.

  - *Example A*[*]: The students at Options High School earn high grades and above-average scores on State exams, but their enrollment in Advanced Placement (AP) classes is low. Options High School would like to increase enrollment in AP classes in an effort to improve its students' college preparedness. As part of its college-preparedness effort, Options High School offers diverse educational opportunities, including AP classes, a variety of electives, a STEM-focused curriculum option, and a visual and performing arts-focused curriculum option. Many students who are not enrolled in AP classes have expressed interest in taking AP classes in a single-sex setting. The high school would like to add single-sex AP classes to its class offerings in order to increase enrollment in AP classes and thus improve college preparedness. Under these circumstances, attempting to improve its students' college preparedness through single-sex AP classes is an appropriate use of the diversity objective.

[*] This document provides guidance on a number of Title IX requirements applicable to single-sex classes, including justification/important objective; substantial relationship; evenhandedness; voluntariness; a substantially equal coeducational class; and periodic evaluations. Each example in this document is intended to illustrate the principles discussed in the response in which the example appears. Each example also presumes compliance with all the Title IX requirements discussed elsewhere in the document and should be read with that understanding.

- Needs Objective: "To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective."[28]

  Unlike the diversity objective, to meet the needs objective, the recipient must identify a particular educational need in its student body, evidenced by limited or deficient educational achievement, which is not being met by coeducational classes.[29]

  - *Example B*: Underperforming Elementary School wants to address the fact that its male third-grade students routinely score "not proficient" on the State reading exam. Attempting to increase male students' performance to proficient on a State exam through the offering of a single-sex third-grade reading class is an appropriate use of the needs objective.

  The needs objective also encompasses certain social needs that students may have. The Department recognizes that a school's educational mission may extend beyond strictly academic objectives, and that classes and activities may provide social benefits that can have a positive effect on students' educational outcomes.[30]

  - *Example C*: A high school's Title IX coordinator has received a number of reports of dating violence among the school's students. All of the reports came from female complainants and were about male aggressors. Many of the female complainants have expressed a fear of interacting with male students. To address the issue, the school offers an after-school, extracurricular program to provide all students with information about dating violence, the cycle of abuse, anger management, and effective methods for ending a violent relationship. The school offers the program to students on a single-sex basis, with boys meeting on one night and girls meeting a different night, as well as a coeducational option.

    Given the circumstances at this school, attempting to decrease the prevalence of dating violence among students by offering a single-sex extracurricular activity is an appropriate use of the needs objective.

Regardless of which objective it chooses, the recipient must meet the other Title IX requirements discussed in this document, including showing that the single-sex nature of the class is substantially related (*see* the responses to Questions 11 and 12) to meeting the identified objective.

Administrative convenience will never justify the offering of single-sex classes.[31]

- *Example D*: Shortcut Elementary School's fourth-grade class is half female and half male. The fourth-grade students have lunch and recess from 10:30 a.m. to 11:30 a.m., with half an hour allotted for lunch and half an hour for recess. Half of the students have lunch first, followed by recess. The other half of the students go to recess first, followed by lunch. To make it easier for teachers to know whether students are attending their assigned lunch/recess block, Shortcut Elementary has divided the students by sex, with all fourth-grade girls in the first group and all fourth-grade boys in the second group. This is not an appropriate justification for operating single-sex lunch and recess.

11. What kind of evidence may a recipient use to show that the single-sex nature of a class is substantially related to achieving an important objective?

Answer: The substantial relationship between the single-sex nature of the class and the school's important objective must be directly supported by evidence (as described below) gathered and evaluated prior to offering the single-sex class. Below are examples of types of evidence that a recipient may use to demonstrate the required substantial relationship. A recipient may use more than one type of evidence to determine whether a substantial relationship exists. Regardless of the evidence used, the justification may "not rely on overbroad generalizations about the different talents, capacities, or preferences of" either sex, so, likewise, the evidence cited in the justification may not rely on these overly broad generalizations.[32]

Comparator schools: The recipient may obtain data demonstrating a substantial relationship through the use of comparator schools. To do this, the recipient must: (1) identify comparator schools with a student population and school and class setting (*e.g.*, grades served, curricular offerings, geographic location, admissions requirements, educational benefits, etc.) that are similar to the population and setting of the recipient's school; and (2) obtain data showing that the comparator schools achieved the recipient's important objective in the relevant subject or with respect to the relevant educational or social need through the use of single-sex classes. When identifying comparator schools, the recipient should consider factors that may distinguish two schools, such as socioeconomic differences among the student population, differences in admissions policies and criteria, or resources available through private funding.

If the recipient can identify appropriate comparator schools that have offered single-sex classes in the same subjects and grades, the recipient should ensure that the comparator school's success in each class is substantially related to the single-sex nature of the class rather than other simultaneously used strategies (*e.g.*, tutoring, extended class sessions, weekend academic programming, etc.). If the comparator school used other strategies in

its single-sex class, the recipient will need to take further steps in order to show a substantial relationship between its important objective and the single-sex nature of the class because it would be very difficult to determine whether any success in the comparator school was due to the single-sex nature of the class or the other strategies that were used. One way for the recipient school to demonstrate that the single-sex nature of the class contributed to the students' success is to try the other strategies used by the comparator school in a coeducational setting at the recipient's school prior to offering a single-sex class and to compare the results relative to the important objective that the recipient seeks to achieve.

- *Example E*: A majority of seventh-grade boys at Evidentiary Middle School have scored "not proficient" on the State science exam for the past three years. The school has identified a public school in a neighboring district, Comparator Middle School, which has dramatically increased its seventh-grade boys' scores on the State science exam over the past five years. Comparator Middle School is roughly the same size as Evidentiary Middle School, and both schools serve students at the same grade level and of similar socioeconomic status. Evidentiary Middle School would like to implement Comparator Middle School's science program in hopes that Evidentiary's seventh-grade boys will achieve similar success.

  In achieving its gains, Comparator Middle School offered a single-sex science class for seventh-grade boys. The State science exam scores of male students in that class increased significantly. The all-boys science class used a newly developed curriculum and textbook, implemented a double-period science class, offered after-school tutoring to all students in the class, and implemented a mandatory robotics-themed Saturday school for the seventh-grade students in those classes.

  Evidentiary Middle School implemented these same sex-neutral strategies in its coeducational seventh-grade science classes: it adopted the curriculum and textbook used by Comparator, increased class time to make science a double-period class, offered after-school tutoring, and implemented the same mandatory robotics-themed Saturday school. It offered these classes on a coeducational basis for three years, but the science scores of its seventh-grade boys remained stagnant. At that point, consistent with the needs objective, Evidentiary decided to offer an all-boys seventh-grade science class in conjunction with the sex-neutral strategies listed above.

Given these facts, OCR would find that Evidentiary Middle School had shown a substantial relationship between its objective of increasing its seventh-grade male students' proficiency on the State science exam and the single-sex nature of the boys science class it decided to offer.

- *Example F*: Most girls at Scientific High School do not enroll in AP Chemistry, though their grades and scores on State science exams suggest that they would be good candidates for the class. Boys at Scientific High School do enroll in AP Chemistry and all students otherwise take advantage of the school's widely diverse class offerings. Consistent with the diversity objective, Scientific High School would like to improve the educational achievement of its students by increasing female enrollment in AP Chemistry by further expanding its class offerings to include an all-girls AP Chemistry class.

  Scientific High School has identified two schools in nearby districts that have implemented an all-girls AP Chemistry class. These schools are approximately the same size as Scientific High School, and all three schools serve students at the same grade level and of similar socioeconomic status. All three are neighborhood schools with no specific admissions requirements, and all students receive transportation to and from school through the applicable district.

  Over the last three years, since the implementation of those classes, the enrollment rate of female students in AP Chemistry has steadily increased at both of the two comparator schools. Female enrollment in those schools' coeducational AP Chemistry classes has stayed roughly the same. The schools did not change any other aspect of their AP Chemistry programs; the single-sex classes are identical to their coeducational counterparts.

  Given these facts, OCR would find that, through its overall policy to provide diverse educational opportunities, Scientific High School had shown a substantial relationship between the single-sex nature of the girls science class and its important objective of improving the educational achievement of its students by increasing female enrollment in AP Chemistry.

Research Evidence: Research evidence demonstrating the effectiveness of single-sex classes in circumstances sufficiently similar to the school's circumstances may also satisfy the substantial relationship requirement. A 2005 Department-commissioned survey found the results of available research on the general use of single-sex education were equivocal.[33] Nonetheless, to satisfy the substantial relationship requirement, OCR will accept a research study that: 1) employs a rigorous research design for causal inference; 2) demonstrates the

effectiveness of the single-sex nature of the class with respect to the specific important objective at issue (*e.g.*, improving achievement in Algebra or reducing infractions requiring discipline); and 3) includes a sample that overlaps with the proposed populations or settings (*e.g.*, ninth-grade girls in low-income communities) that the recipient is targeting. The standards set forth in the Department's *What Works Clearinghouse Procedures and Standards Handbook*[34] provide an appropriate guide for assessing the strength of a study of the effectiveness of the intervention (*e.g.*, limiting a class to a single sex) in addressing the school's important objective.

- *Example G:* Town Elementary School would like to offer an all-boys fourth-grade class to reduce the discipline problems of the boys in that grade. Before it offers this class, Town Elementary School finds a research study that meets the What Works Clearinghouse Procedures and Standards and concludes that boys ages five through ten in all-boys classrooms committed fewer infractions leading to discipline than boys in coeducational "control" classes with identical rules and procedures for discipline, curricula, educational strategies, teacher-student ratio, and student population (e.g., eligibility for free and reduced-price lunch).[35] The population and settings of the single-sex and coeducational classes examined in the study are almost identical to those of Town Elementary School's fourth-grade classes. Absent facts distinguishing the research classes from Town Elementary School's classes, OCR would find this study is sufficient to show a substantial relationship between the school's objective of reducing discipline and the single-sex nature of the class.

12. May a recipient demonstrate a substantial relationship using a claim that a certain strategy, other than single-sex, is more effective for most members of one sex?

Answer: Claims that a certain strategy (such as a teaching method or a specific learning environment) is more effective for most members of one sex will not be sufficient, standing alone, to show a substantial relationship between the single-sex nature of a class and the important objective. This is because such a strategy may be equally effective regardless of whether it is implemented in a single-sex or a coeducational setting. If the recipient wants to use that strategy in a single-sex setting, the recipient still needs to show that students will benefit from the fact that the class is single-sex. Therefore, even assuming a recipient had evidence showing that a certain strategy was particularly effective for one sex, the recipient would need further evidence showing that the exclusion of the other sex was necessary to make the strategy effective or, at the least, substantially more effective. (This showing could be made through the use of comparator schools or research evidence, described in the response to Question 11.)

- *Example H:* A majority of third-grade girls at Cold Elementary School are underperforming on State science tests. Cold Elementary School would like to implement an all-girls third-grade class that keeps the classroom temperature ten degrees higher than the school's other classrooms, because the school's principal has read an article suggesting that girls learn better in warmer temperatures and boys learn better in colder temperatures. The article did not cite to any studies comparing students in coeducational warm or cold classes with students in single-sex warm or cold classes, but rather simply concluded that all girls will learn better in a warm environment and that all boys will learn better in a cold environment. Even if this research were reliable, it would not prove that boys would learn better in a cold environment with no girls, or that girls would learn better in a warm environment with no boys.

  Thus, the school cannot show a substantial relationship between the single-sex nature of the class and the anticipated increase in girls' State science test scores. If the school believes temperature affects educational outcomes, it can offer a coeducational "warm" and a coeducational "cool" classroom and use criteria, other than the student's sex, to decide which students would attend each of those coeducational classrooms, such as allowing students and parents to choose the learning environment they believe best suits each student.

Evenhanded Offerings

13. What is the evenhandedness requirement?

Answer: A recipient must treat male and female students evenhandedly in implementing its important objective.[36] The evenhandedness requirement means that a recipient offering single-sex classes must provide equal educational opportunities to students regardless of their sex, with the end result that both sexes receive substantially equal classes.[37]

14. How does the evenhandedness analysis apply if a recipient is asserting the diversity objective?

Answer: If the recipient asserts the diversity objective, and it has identified single-sex classes for which it can demonstrate a substantial relationship to its important objective, it must still ensure that the choice of diverse educational opportunities, including single-sex or coeducational classes, is offered evenhandedly to male and female students. To do this, it must conduct a thorough and impartial assessment of what single-sex classes to offer to each sex, and then offer those classes evenhandedly to its students.[38] Thus, under the diversity objective, if a recipient is able to justify single-sex classes for both sexes, offering single-sex classes for only one sex will likely violate the evenhandedness requirement,

unless the recipient can show that it evenhandedly gauged the interest of both sexes and the excluded sex was not interested in having the option to enroll in single-sex classes. Likewise, if one sex is offered single-sex classes in the school's core subjects, while the other sex is only offered single-sex classes in the school's non-core subjects, OCR would not find that the recipient is offering classes in an evenhanded manner.

- *Example I*: Advanced High School would like to use single-sex classes to increase enrollment of both male and female students in its AP Physics, English, or American History classes. Advanced High School has already determined that it can meet the requisite regulatory requirements of the Department's Title IX regulations for all of these classes, but because of staffing concerns, the school can only offer single-sex classes in one subject. Advanced High School conducted a survey to determine which subject male students would prefer; the male students chose AP Physics. Because it could only devote one teacher to single-sex classes, Advanced High School did not survey its female students, but decided instead to offer the female students a single-sex AP Physics class, as well.

  This would violate the evenhandedness requirement. Even though all students are being offered identical single-sex classes, taught by the same teacher, the assessment of which class to offer favored the male students.

This does not mean, however, that male and female students must always be offered single-sex classes in the same subjects. To ensure evenhandedness, once it has completed its justification for each single-sex class, a recipient may wish to collect pre-enrollment information from parents[*] and students or survey parents and students about interest in enrolling in single-sex classes in each subject. If students of one sex lack interest in a single-sex class in a certain subject, the recipient would not be required to provide them a single-sex class in that subject.

- *Example J:* Nearby Middle School is considering adding single-sex classes to the diverse array of other classes it offers. Having documented its justification for the addition of single-sex classes in Pre-Algebra, American History, English, and Geometry, the school surveys all parents and students to determine whether students would be interested in taking any of these classes on a single-sex basis. Forty eighth-grade boys express interest in all-male Pre-Algebra and American

[*] When this document refers to "parents," the term encompasses both parents and legal guardians.

History classes, while only two girls request these classes on a single-sex basis. Thirty-five eighth-grade girls request all-female English and Geometry classes, while no boys request these classes on a single-sex basis. In this scenario, Nearby Middle School may offer the all-male Pre-Algebra and American History classes and all-female English and Geometry classes to its eighth-grade students without violating the evenhandedness requirement.

15. How does the evenhandedness analysis apply if a recipient is asserting the needs objective?

Answer: If the recipient asserts the needs objective, the evenhandedness analysis is different from the analysis used under the diversity objective. Under the needs objective, the recipient must first conduct an assessment to identify the educational needs of its students, and then determine how to meet those needs on an evenhanded basis.[39] If a recipient has evidence demonstrating that a single-sex class in a particular subject would meet the particular, identified educational needs of students of both sexes and that the single-sex nature of the classes is substantially related to meeting the needs for both sexes, then if the recipient offers a single-sex class in that subject, it must do so for both sexes. On the other hand, if the evidence shows that the single-sex class in that subject would meet the particular, identified needs of only one sex or that the single-sex nature of the class would be substantially related to meeting the needs of only one sex, a recipient may not offer the single-sex class to students of the other sex. That recipient would instead have to determine, based on its assessment of the educational needs of both sexes, whether a single-sex class in another subject should be offered to the excluded sex, in order to meet the evenhandedness requirement.[40]

- *Example K:* Faraway High School intends to offer an all-boys AP English class because the percentage of its male students passing the AP English exam is far below the district average. The school's female students pass the AP English exam at a rate higher than the district average. The reverse is true with respect to AP Physics: the percentage of girls passing the AP Physics exam is far below the district average, while the boys' scores suggest no deficiency.

  Under these circumstances, Faraway High School may provide an all-boys AP English class without offering an all-girls AP English class because there is no particular identified need for such an all-girls class. To meet the evenhandedness requirement, however, in light of data showing its female students' deficiency on the AP Physics exam, the school must first research whether an all-girls AP Physics class would be substantially related to increasing

female students' proficiency on that exam. If so, then the school must offer the female-only AP Physics class as well.

Voluntariness

16. Who decides whether a student enrolls in a single-sex class?

Answer: The Department's Title IX regulations require that student "enrollment in a single-sex class or extracurricular activity" be "completely voluntary."[41] To meet this requirement, OCR strongly encourages recipients to obtain the affirmative consent from the parents to enroll a student in a single-sex class.[42] Nevertheless, OCR will defer to State law to determine whether a student or the student's parents will have ultimate decision-making authority regarding whether a student will be enrolled in a single-sex class. If State law is silent, a recipient may use its educational judgment, based on the age and circumstances of its students and its normal class assignment procedures. The affirmative consent of the designated decision-maker, whether the parent or the student, must be received before assigning a student to a single-sex class.

17. May a recipient assign students to a single-sex class as long as it permits students to opt out of the class?

Answer: No. Regardless of whether the authority rests with the student or the parent, the decision-maker must affirmatively opt into a single-sex class; the student may not simply be assigned to a single-sex class by the school and then be permitted to opt out.[43] If no affirmative consent is received, the student must be enrolled in a coeducational class.[44] OCR recommends that such affirmative consent come in the form of a written, signed document.[45]

18. May a recipient make it easier to enroll in a single-sex class than it is to enroll in a coeducational class?

Answer: No. A school cannot use a less stringent class enrollment procedure for its single-sex classes than it does for its coeducational classes. In order for the choice to be completely voluntary, a school may not influence the choice to enroll in one class over the other. In assessing whether a decision to enroll in a single-sex class was voluntary, OCR will consider, among other things, whether the choice was influenced by extraneous factors. For example, any authorization (*e.g.*, a permission slip) or procedure (*e.g.*, a pre-enrollment meeting with a guidance counselor) that is required for enrolling in a coeducational class, but not for enrolling in the single-sex counterpart would render involuntary the choice to enroll in the single-sex class.

19. How does the breadth of class offerings affect voluntariness?

Answer: For the single-sex class to be voluntary, a recipient must offer a substantially equal coeducational class in the same subject.[46] (Factors for determining substantial equality are discussed in the response to Question 22.) If a student is forced to choose between taking a single-sex class in a particular subject and not taking a class in that subject, the choice to take the single-sex class is not voluntary. Likewise, if the only honors class in a given subject is a single-sex class, a student's selection of that single-sex class will not be considered voluntary. And if a student must take a single-sex class in order to avoid a coeducational option that is set at a remedial level, the single-sex class will also not be considered voluntary. (Classes with such differences may also violate the requirement of offering a substantially equal coeducational class, discussed in the responses to Questions 21 and 22.)

20. What additional steps should a recipient take to ensure that participation in a single-sex class is completely voluntary?

Answer: Because an uninformed decision may, in many circumstances, not be completely voluntary, OCR recommends that recipients provide pre-enrollment information about each class to students and parents in sufficient time and in a manner that is accessible to those with disabilities and with limited English proficiency so that the decision-maker can make an informed choice.[47]

This pre-enrollment information should explain that the decision-maker has the option of choosing between the coeducational and single-sex class;[48] describe the similarities and differences between the coeducational and single-sex classes; and provide a summary of the recipient's justification for offering the single-sex option. OCR recommends that pre-enrollment disclosures specify that parents and students have the option of reviewing the recipient's full justification (and any periodic evaluations, described in the responses to Questions 23 through 28) upon request. In providing this pre-enrollment information, recipients must ensure that the information is conveyed in a way that does not pressure parents to enroll students in a single-sex class.

- *Example L*: Steering Elementary School is planning to implement single-sex fifth-grade reading and math classes for both boys and girls. To comply with the Title IX regulatory requirements for establishing new single-sex classes, over the summer, the school sends an information packet to every parent of an incoming fifth-grade student that includes: the school's justification for its single-sex classes; the data upon which the school relied in developing its justification; a statement that substantially equal coeducational reading and math classes are available; and a description of the differences between the single-sex and

coeducational classes. In each packet are two consent forms—one for the reading class and one for the math class—allowing parents to opt in to each single-sex class. The form states that if a parent does not return the form for a given class, his or her child will be placed in a substantially equal coeducational class.

A week before school starts, the principal of Steering Elementary School calls all of the parents who have not returned the consent forms to remind them of the option to enroll their children in single-sex classes. He encourages them to take advantage of the single-sex classes, and explains that if there is not enough interest to sustain them, the school will not be able to provide the classes to anyone. He explains that many people are interested in the single-sex classes, and warns parents against being the individuals who "hold up" implementation of the "unique and beneficial opportunity."

Although the elementary school's practice of sending an impartial information packet home to parents, along with an appropriate opt-in form, is a good one, OCR would consider the principal's later behavior to be inappropriate pressure to enroll in a single-sex class. His warning inappropriately suggested that a parent should consider factors outside of his or her child's educational well-being (including ensuring that other students have access to single-sex classes). Any consent forms received after the principal's phone calls would not be valid.

Substantially Equal Coeducational Option

21. Must a recipient offer a substantially equal coeducational option for every single-sex class offered?

Answer: Yes. A recipient that offers a single-sex class must provide all other students, including students of the excluded sex, with a substantially equal coeducational class in the same subject.[49] At least one substantially equal coeducational section must be offered in each subject for which there is a single-sex class, and more than one section may be needed because every student who requests a coeducational option must be enrolled in one. Once the preferences of students seeking a coeducational class are met, a school may offer more than one single-sex section in a given subject if enrollment in that subject warrants it.

- *Example M*: If a school offers each of its 50 eighth-grade boys the choice between single-sex or coeducational Algebra classes, and 40 choose a single-sex class and 10 choose a coeducational class, the school may offer two single-sex sections and only one coeducational section of Algebra. This is permissible, so long as every student who sought the coeducational option was enrolled in a

substantially equal coeducational class. (Additionally, the school may also be required to provide a substantially equal single-sex class for its eighth-grade girls, consistent with the evenhandedness requirement discussed in the responses to Questions 13 through 15.)[50]

A school is not obligated to provide a single-sex class to any individual student, even if that student opted into the single-sex class. The school must consider the number of students interested in the option and the school's need to provide a substantially equal coeducational class for all other students, including students of the excluded sex. Thus, in the example above, if all of the eighth-grade boys opted into the single-sex Algebra class, resulting in the substantially equal coeducational class enrolling only girls, the school could not honor all of the requests for the single-sex boys class, because doing so would deny the girls a substantially equal coeducational class.

22. What factors will OCR consider in determining whether a coeducational class is substantially equal to the single-sex class?

Answer: OCR will consider all relevant factors, both individually and in the aggregate, in determining whether a coeducational class is substantially equal to the single-sex class.[51] Although the single-sex and coeducational classes do not need to be identical with respect to each factor, they need to be substantially equal. This means that if one class is significantly superior with respect to one factor, or slightly superior with respect to many factors, the classes are likely not substantially equal.[52] The Department's Title IX regulations include a non-exhaustive list of factors, each of which is addressed individually below, that OCR will consider while conducting a complaint investigation or compliance review. OCR will consider all relevant factors in determining whether a coeducational class and a single-sex class are substantially equal.[53] Whether information is relevant will depend on the specific facts and circumstances of each case, because each single-sex class seeks to achieve a different objective and may be offered in a different way.

- The admissions criteria and policies;
    - *Example N*: College-Bound High School offers single-sex and coeducational classes in AP Spanish. Both the coeducational and single-sex AP Spanish classes were open only to students with a grade point average of 3.5 or higher and who participate in a summer language program. On these facts, OCR would consider the admissions criteria and policies to be substantially equal.

- The educational benefits provided, including the quality, range, and content of curriculum and other services, and the quality and availability of books, instructional materials, and technology;

    - *Example O:* Tech-Savvy Middle School offers single-sex and coeducational biology classes. The coeducational classes follow a curriculum that uses textbooks with corresponding videos, which the students watch on a DVD player in the classroom, to teach lessons. The single-sex classes incorporate individually issued laptops, which allow for interactive, technology-based lessons, into the curriculum. On these facts, OCR would not consider the educational benefits provided to be substantially equal.

- The qualifications of faculty and staff;

    - *Example P:* Tenured Middle School ensures that an equal proportion of first- and second-year teachers as compared to more experienced teachers are assigned to its single-sex and coeducational Pre-Algebra classes. All of the Pre-Algebra teachers have a background in mathematics and receive training on teaching the school's Pre-Algebra curriculum. Prior to teaching the class, each teacher must demonstrate content knowledge and competencies in the relevant teaching methods. On these facts, OCR would consider the qualifications of the faculty of the classes to be substantially equal.

- Geographic accessibility;[54]

    - *Example Q:* Centrally Located High School offers one all-male and one all-female chemistry class onsite. For students wishing to take this class on a coeducational basis, Centrally Located High School has entered into an agreement with Distant High School, 15 miles away, which will accept Centrally Located High School's students. Because of traffic in the district, it would take students approximately 30 minutes each way to travel to the class at Distant High School, resulting in an hour of lost instruction time. On these facts, OCR would not consider the geographic accessibility of the classes to be substantially equal.

- The quality, accessibility, and availability of facilities and resources provided to the class;

    - *Example R:* Updated High School offers both coeducational and single-sex Chemistry classes. The coeducational Chemistry class is held in a chemistry lab that was original to the building, constructed in 1970. Updated High School added a new wing in 2010, which includes a new chemistry lab that offers state-of-the-art equipment and incorporates interactive technology. The single-sex

Chemistry classes are held in the new lab. On these facts, OCR would not consider the facilities and resources of the classes to be substantially equal.

- Intangible features, such as the reputation of faculty.
    - *Example S:* Connected High School offers two single-sex journalism classes: one for boys and one for girls. A journalist for a local newspaper teaches both of these classes. The journalist is well connected in the local media community, and in the past, she has assisted students with obtaining internships at local media outlets. The school also offers a coeducational journalism class that is taught by an individual with a degree in English, but who has never worked in the field or been involved in a school journalism program. On these facts, OCR would not consider the reputation of the faculty (an intangible feature) of the two classes to be substantially equal.

Periodic Evaluations

23. How often must a recipient conduct an evaluation of its single-sex programs?

Answer: The recipient must evaluate each of its single-sex classes, and the original justification behind each single-sex class, at least every two years.[55] A recipient may decide to conduct evaluations more frequently (because its own findings have identified concerns or for other reasons). If OCR investigates a recipient and identifies compliance problems, OCR may require the recipient to conduct more frequent evaluations.[56]

24. What is the purpose of these evaluations?

Answer: The recipient must use these periodic evaluations to ensure that each single-sex class it offers is based upon genuine justifications, does not rely on overly broad generalizations about either sex, and continues to be substantially related to the achievement of the important objective (*see* the responses to Questions 7 through 12).[57] The periodic evaluations should also confirm that substantially equal single-sex classes are offered if necessary to comply with the evenhandedness requirement (*see* the responses to Questions 13 through 15), and that a substantially equal coeducational alternative to each single-sex class is available (*see* the responses to Questions 21 and 22). The periodic evaluations must assess evidence and data related to the recipient's single-sex classes, rather than relying on the comparator school or research evidence used at the justification stage (*see* the response to Question 27).

25. Must the periodic evaluation address the way a single-sex class is taught?

Answer: Yes. Because of the risk that single-sex classes may lead to the adoption of classroom methods or strategies that revert to sex stereotypes, the Department's Title IX regulations require that the recipient ensure that each single-sex class is operated in a manner that does not "rely on overly broad generalizations about the different talents, capacities, or preferences of either sex."[58] Thus, classroom methods or strategies should be chosen on the basis of their effectiveness in teaching the individual students in the class, without regard to the sex of those students. Of course, it may be difficult to ascertain why certain methods or strategies were chosen, so the following information is intended to help schools understand how OCR will conduct its analysis during a complaint investigation or compliance review.

If identical classroom methods and strategies—including choices about classroom activities and environment—are used in single-sex classes for boys and in single-sex classes for girls (or in a single-sex class and a coeducational class), the evaluation of the way the classes are taught is complete. This is because the use of the same methods and strategies for classes for boys and classes for girls offers no reason to believe the decision to use those methods and strategies was based on overly broad generalizations about either sex.

But if different classroom methods or strategies are used in single-sex classes for boys than are used in single-sex classes for girls (or in a single-sex class in comparison with its coeducational counterpart), then the recipient must evaluate whether the decision to adopt these different methods or strategies was made in reliance on overly broad generalizations. In some cases, the different methods or strategies used in single-sex classes may simply be the result of the professional choices of an individual teacher without regard to the sex of his or her students. If the recipient can show that the teacher would have selected identical methods and strategies even if he or she were teaching a single-sex class of the opposite sex or a coeducational class, OCR will likely conclude that the school did not use overly broad generalizations about either sex. In determining whether the recipient has made this showing, OCR will consider such factors as the methods and strategies historically used by the teacher, and the timing of any changes in the teacher's methods and strategies.

If, however, the methods or strategies were selected because of the sex of the students in the class, the risk of sex stereotypes is at its greatest because methods and strategies that are based on sex ignore the differences among students of the same sex. When a teaching method or strategy is, in fact, selected on the basis of the sex of the students, its use must be directly supported by evidence demonstrating that the particular method or strategy is more effective for one sex than the other or is more effective when used in a single-sex setting. (The response to Question 12 addresses the appropriate way to assess whether

strategies that are purported to be more effective for one sex may be used in a single-sex setting.) It would not be enough to show that there is evidence about differences between boys and girls that does not directly involve that particular teaching method or strategy. For example, while there is, of course, evidence that biological differences between males and females exist,[59] evidence of general biological differences is not sufficient to allow teachers to select different teaching methods or strategies for boys and girls.[60]

- *Example T:* Quiet Elementary School created single-sex fourth-grade classes for both boys and girls. During the school year, the teachers of the single-sex classes became aware of studies that show that girls are born with a significantly more sensitive sense of hearing than boys, and that the differences grow larger as the children grow older. Relying on those studies, the school decided that the boys class would incorporate speaking in a loud tone, while the girls class would not.

  A periodic evaluation of the boys class would indicate reliance on overly broad generalizations about the sexes with respect to teaching methods. Use of the specific teaching method (loud talking) would not comply with Title IX because the teachers did not rely on evidence that directly linked that particular teaching method or strategy to improved educational achievement for boys. Instead, they relied on a purported biological difference (that there are, on average, biological differences in the hearing sensitivity of the sexes) to conclude that the particular teaching method or strategy was appropriate. This general difference between the sexes, even if true, does not by itself provide evidence that loud talking will be more effective in teaching for one sex than the other or more effective in a single-sex setting. The leap from the biological differences to the use of a particular teaching method or strategy for students of one sex, without the support of evidence regarding the educational effectiveness of the method or strategy for one sex over the other, resulted in an overly broad generalization (that loud talking would improve boys' ability to learn). Because of the overly broad generalization, the school would have to discontinue its use of this teaching method for the all-boys class.

  The teaching method itself is permissible. A recipient is still free to incorporate loud talking in a coeducational class or in single-sex classes for both boys and girls. But a recipient may not limit that method of instruction only to the single-sex class for boys on the basis of the overly broad generalization described above.

26. How should the evaluations be made available to the public?

Answer: OCR recommends wide distribution of the evaluations, through the recipient's website and otherwise. Like the initial justification, these evaluations could be useful to parents who are deciding whether to enroll their children in single-sex classes and would help ensure the choice is completely voluntary.

27. How will OCR determine whether a periodic evaluation demonstrates that a single-sex class is still substantially related to the recipient's important objective?

Answer: OCR will consider all relevant sources of evidence in determining whether the single-sex nature of the class remains substantially related to the recipient's important objective. Whether evidence is relevant will depend on the specific facts and circumstances of each case, because each single-sex class seeks to achieve a different objective and may be offered in a different way. The evidence presented in a recipient's periodic evaluation must be related to the recipient's single-sex classes, rather than the evidence relied upon in the justification stage. Possible sources of evidence include, but are not limited to: students' grades; students' scores on standardized statewide or districtwide exams; discipline rates; attendance data; enrollment data; and educators' observation and evaluation of the effectiveness of each class.

Because the biennial evaluations must show that the single-sex nature of the class results in achievement of, or progress toward, the recipient's important objective, a comparison between the students in the single-sex class and the substantially equal coeducational class is appropriate.[61] To best assess the effectiveness of each class, OCR recommends that schools monitor the progress of the individual students in each class from year to year. This will help ensure that any comparison between a single-sex class and a substantially equal coeducational class controls for variations among students. Positive or negative changes related to the recipient's objective for all students in the single-sex class should be averaged together; the same should be done for students in the coeducational class. The school can then compare these averages to see how students in the single-sex class fared in comparison to their peers in the substantially equal coeducational class. The same procedure should be used to assess the single-sex class the following year. If, based on these averages, a coeducational class outperforms a substantially equal single-sex class, it is likely that OCR would find that the single-sex class is not substantially related to the recipient's objective. Of course, the evidence will vary based on the school's objective. For example, if the school implemented a single-sex class in an attempt to lower discipline rates, discipline statistics should be analyzed.

- *Example U*: A middle school offers three substantially equal sections of tenth-grade American Literature: an all-girls class, an all-boys class, and a coeducational class. The school's objective is to increase proficiency on the State English exam. At the end of the first school year, to gather information for the periodic evaluation required at the end of the second school year, each student's score on the state English exam is compared to his or her score on the previous year's exam. The school averages the change in scores of students in the all-girls class, the all-boys class, and the coeducational class, respectively. The proficiency rate of students in the coeducational class increased slightly. By contrast, the proficiency rates of the students in the all-boys and all-girls classes both increased significantly. The difference in average increases between the single-sex classes and the coeducational class is statistically significant. The averages are similar the following year. Under these circumstances, the evidence in this periodic evaluation would suffice to show a continuing substantial relationship between the single-sex nature of the classes and the objective to increase student's proficiency on the State English exam. Note, however, that the school must continue to conduct biennial evaluations to show that a substantial relationship between the single-sex nature of the classes and the school's objective persists.

Every recipient's ability to continue each single-sex class will depend on the recipient's circumstances, the particular objective articulated in the recipient's justification, and whether the comparative class data over time demonstrate a substantial relationship between that objective and the single-sex nature of the class. A recipient's evaluation should analyze and explain all factors that influenced the achievement of, or failure to achieve, the recipient's objective.

28. What is the role of the recipient's Title IX coordinator in conducting these evaluations?

Answer: Every recipient must designate an employee to coordinate its efforts to comply with Title IX.[62] The Title IX coordinator is responsible for overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. This means that the Title IX coordinator must have knowledge of the requirements of Title IX, of the school's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the school. The Title IX coordinator must also track and review complaints to identify and correct any systemic compliance issues. This would include any complaints that single-sex classes are being offered in violation of Title IX. Because of these responsibilities, OCR recommends that the Title IX coordinator be involved in assessing the compliance of the

recipient's single-sex classes, both when determining whether and how single-sex classes can be offered and during the recipient's periodic review of single-sex offerings.

Employment

29. May a recipient assign teachers to single-sex classes based on the sex of the teacher?

Answer: No. A recipient must not assign teachers to single-sex classes on the basis that boys should be taught by men and girls should be taught by women or vice versa.[63] Title IX prohibits recipients from discriminating on the basis of sex in: employment; recruitment; compensation and benefits; job assignment, classification, and structure; and consideration and selection of individuals for jobs in any education program or activity operated by a recipient.[64] Although Title IX allows employment decisions based on sex "provided it is shown that sex is a bona-fide occupational qualification for that action,"[65] a school may not, for example, assign a male teacher, on the basis of his sex, to teach an all-boys class because the school thinks male students will prefer, respond better to, or learn more effectively from, a man.[66]

Other Federal Protections for Students in Single-Sex Classes

30. May a recipient exclude students with disabilities or English language learners from a single-sex class so long as it permits them to participate in the substantially equal coeducational class?

Answer: No. Students with disabilities or English language learners may not be excluded from single-sex classes because of their need for special education or related aids and services or English language services.[67] Schools must ensure that students with disabilities participating in single-sex classes receive needed special education and related services in accordance with their individualized education programs, developed under Part B of the Individuals with Disabilities Education Act[68] (including, if applicable, the Part B educational placement provisions), or their plans developed under Section 504 of the Rehabilitation Act of 1973. Likewise, the school must provide the same English language services in single-sex classes as in coeducational classes.

31. How do the Title IX requirements on single-sex classes apply to transgender students?

Answer: All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX. Under Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes.

Additional Topics

32. Which set of regulations governs a school within a school—the regulations governing single-sex schools or the regulations governing single-sex classes?

Answer: If a recipient operates a single-sex school within another school or two single-sex academies, OCR will consider these to be single-sex classes within a coeducational school unless the two entities are administratively separate from each other.[69] This is a fact-specific inquiry and will depend on the specific organization of the school within a school.

- *Example V:* A district operates dual single-sex academies that are housed in the same facility and share the same principal and certain support staff. The district claims that it need not comply with the Department's Title IX regulations on single-sex classes because each academy is a single-sex school. Because the two academies are not administratively separate, OCR would instead view the academies as one coeducational school offering single-sex classes in every subject.

33. How can I contact OCR to get additional information or to file a complaint?

Answer: A recipient, parent, student, or other member of the public who has a question or concern about a particular single-sex offering may contact the appropriate OCR regional enforcement office. To determine which OCR regional enforcement office handles inquiries and complaints in your State, please call 1-800-421-3481 or 1-800-877-8339 (TDD) or check OCR's website at http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm.

OTHER FEDERAL LEGAL RESOURCES RELATED TO SINGLE-SEX EDUCATION:

Department of Education Title IX regulations: 34 C.F.R. part 106, available at http://www2.ed.gov/policy/rights/reg/ocr/34cfr106.pdf

OCR Dear Colleague Letter on Single-Sex Title IX Regulations, dated January 31, 2007, available at http://www.ed.gov/ocr/letters/single-sex-20070131.pdf

Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 71 Fed. Reg. 62,530 (October 25, 2006), available at http://www2.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf

Brief for the United States as *Amicus Curiae*, *Doe v. Vermilion Parish Sch. Bd.*, No. 10-30378 (5th Cir.) (filed June 4, 2010), available at http://www.justice.gov/crt/about/app/briefs/vermillion_brief.pdf

[1] 20 U.S.C. §§ 1681-1688.

[2] *Id.*; *see also* 34 C.F.R. § 106.34.

[3] Private elementary and secondary schools are subject to the Department's regulatory requirements for single-sex classes if they receive Federal financial assistance directly from the Department or indirectly through an intermediary. Private elementary and secondary schools are not considered recipients of Federal financial assistance if the only form of assistance that they receive is through their students' participation in programs conducted by public school districts that are funded under Federal programs such as Title I of the Elementary and Secondary Education Act of 1965 or the Individuals with Disabilities Education Act. These private schools are not subject to these regulations, but public school districts must ensure that their programs, including services to private school students, are consistent with Title IX. *See* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Final Regulations, 71 Fed. Reg. 62,530, 62,530 n.7 (Oct. 25, 2006).

[4] U.S. CONST. amend. XIV, § 1; *see also United States v. Virginia*, 518 U.S. 515, 531, 533 (1996) (holding, in a challenge to an all-male public postsecondary institution, that a party "seek[ing] to defend gender-based government action" under the Equal Protection Clause "must demonstrate an exceedingly persuasive justification for that action," which means the government "must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives" (citations, brackets, and internal quotation marks omitted)).

[5] 42 U.S.C. §§ 2000c to c-9.

[6] 20 U.S.C. §§ 1703(c), 1705, 1720(c); *see also* 71 Fed. Reg. at 62,533 n.18 (referencing same).

[7] 34 C.F.R. § 106.71 (incorporating by reference 34 C.F.R. §§ 100.6-100.11 and 34 C.F.R. part 101).

[8] 34 C.F.R. § 106.6(b); *see also* 71 Fed. Reg. at 62,533 n.18 ("Public school and private school recipients also may be subject to State or local laws prohibiting single-sex classes or schools.").

[9] 34 C.F.R. § 106.34(c).

[10] 34 C.F.R. § 106.35; 34 C.F.R. § 106.2(o) (defining "institution of vocational education").

[11] 34 C.F.R. § 106.15(c)–(e).

[12] 20 U.S.C. §§ 1681-1688; 34 C.F.R. § 106.34(a).

[13] In addition to these exceptions, the Department's Title IX regulations do not prohibit schools from employing the following facially neutral tests or criteria even if they have a disproportionate effect on persons on the basis of sex: the grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex; and the use of requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex. 34 C.F.R. § 106.34(a)(2) and (4).

[14] 34 C.F.R. § 106.34(a)(1).

[15] 34 C.F.R. § 106.34(a)(3).

[16] 34 C.F.R. § 106.34(b).

[17] 34 C.F.R. § 106.34(b)(5).

[18] 34 C.F.R. § 106.35; 34 C.F.R. Appendix A to Part 106; *see also* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Notice of Proposed Rulemaking, 69 Fed. Reg. 11,276, 11,278 (Mar. 9, 2004) ("Even in these elementary and secondary schools that are not vocational schools, the proposed amendments do not change the applicability of the current general regulatory prohibition against single-sex vocational education classes.").

[19] This document refers to vocational classes because the Department's Title IX regulations refer to "nonvocational" classes. The Department currently prefers the term "career and technical" courses.

[20] The Department's Title IX regulations governing athletics appear at 34 C.F.R. §§ 106.41 and 106.37(c).

[21] 34 C.F.R. § 106.36(c).

[22] 34 C.F.R. § 106.34(b)(1)(i).

[23] 71 Fed. Reg. at 62,533 (citing *Virginia*, 518 U.S. at 533) ("The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation.").

[24] *Id.*

[25] 34. C.F.R. § 106.34(b)(1)(i)(A).

[26] "For example, a recipient may seek to achieve an educational benefit for its students such as improvement in class work." 71 Fed. Reg. at 62,534 n.26.

[27] 71 Fed. Reg. at 62,535.

[28] 34 C.F.R. § 106.34(b)(1)(i)(B).

[29] 71 Fed. Reg. at 62,535 & n.30.

[30] 71 Fed. Reg. at 62,536.

[31] 71 Fed. Reg. at 62,535 (citing *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 151-52 (1980) and *Frontiero v. Richardson*, 411 U.S. 677, 689-90 (1973)).

[32] 71 Fed. Reg. at 62,533 (citing *Virginia*, 518 U.S. at 533).

[33] The 2005 Department-commissioned survey of research on single-sex schooling found that for "many outcomes, there is no evidence of either benefit or harm." OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT, U.S. DEPARTMENT OF EDUCATION, SINGLE-SEX VERSUS COEDUCATIONAL SCHOOLING: A SYSTEMATIC REVIEW x (2005), *available at* http://www2.ed.gov/rschstat/eval/other/single-sex/single-sex.pdf.

[34] The WWC Procedures and Standards Handbook is available at http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v3_0_standards_handbook.pdf.

[35] This example, like all the examples provided in this document, is based on hypothetical facts to help readers understand how OCR would evaluate a recipient's single-sex class for compliance with the Department's Title IX regulations. A recipient cannot rely on the hypothetical research described in this example to show a substantial relationship between its important objective and the single-sex nature of the class.

[36] 34 C.F.R. § 106.34(b)(1)(ii).

[37] 71 Fed. Reg. at 62,536 (citing *Virginia*, 518 U.S. at 554).

[38] 71 Fed. Reg. at 62,536.

[39] *Id*.

[40] *Id.* at 62,536-37 ("[A]lthough a single-sex class would not be required in that subject, evenhanded implementation of the recipient's objective does require the recipient to determine, based on its assessment of educational needs of students, whether a class in another subject should be offered on a single-sex basis to meet the particular, identified needs of the students of the excluded sex.").

[41] 34 C.F.R. § 106.34(b)(1)(iii).

[42] 71 Fed. Reg. at 62,537.

[43] *Id.*; *Doe v. Wood Cnty. Bd. of Educ*., 888 F. Supp. 2d 771, 776 (S.D. W. Va. 2012) ("An opt-out provision is insufficient to meet the requirement that single-sex classes be 'completely voluntary.'").

[44] 71 Fed. Reg. at 62,537; *Doe*, 888 F. Supp. 2d at 776 ("[T]he Department of Education regulations require an affirmative assent by parents or guardians before placing children in single-sex classrooms.").

[45] 71 Fed. Reg. at 62,537; *Doe*, 888 F. Supp. 2d at 776 ("Such affirmative assent would preferably come in the form of a written, signed agreement by the parent explicitly opting *into* a single-sex program.").

[46] 71 Fed. Reg. at 62,537.

[47] *Doe*, 888 F. Supp. 2d at 777 ("The close proximity of the notices to the beginning of the school year, after students have already enrolled, suggest[s] that their choice was not fully voluntary.").

[48] 71 Fed. Reg. at 62,537.

[49] 34 C.F.R. § 106.34(b)(1)(iv).

[50] 34 C.F.R. § 106.34(b)(2).

[51] 34 C.F.R. § 106.34(b)(3); 71 Fed. Reg. at 62,538.

[52] 71 Fed. Reg. at 62,538.

[53] 34 C.F.R. § 106.34(b)(3); *see also* 71 Fed. Reg. at 62,538.

[54] 71 Fed. Reg. at 62,538 ("[There are] situations in which geographic accessibility will be relevant for classes. For example, if a recipient operates a consortium of schools whereby students at three neighboring high schools [take classes at all three schools, the] location, *i.e.*, geographic accessibility, of the classes in the same subject, would be relevant to the issue of substantial equality.").

[55] 34 C.F.R. § 106.34(b)(4).

[56] 71 Fed. Reg. at 62,539.

[57] 34 C.F.R. § 106.34(b)(4)(i).

[58] *Id.*

[59] *United States v. Virginia*, 518 U.S. 515, 533 (1996) ("Physical differences between men and women, however, are enduring . . . .").

[60] *See J.E. B. v. Alabama*, 511 U.S. 127, 139 n.11 (1994) ("We have made abundantly clear in past cases that gender classifications that rest on impermissible stereotypes violate the Equal Protection Clause, even when some statistical support can be conjured up for the generalization.").

[61] 71 Fed. Reg. at 62,539 ("Part of the periodic evaluation requirement involves an assessment of the degree to which the recipient's important objective has been achieved and an assessment of whether the single-sex nature of the class is substantially related to achievement of the recipient's objective.").

[62] 34 C.F.R. § 106.8(a).

[63] 71 Fed. Reg. at 62,534 ("Among other things, the Title IX regulations prohibit recipients from making job assignments on the basis of sex, § 106.51(b)(4), and from classifying jobs as being for males or females, § 106.55(a). Both of these provisions would prohibit schools from assigning teachers to single-sex classes based on their sex.").

[64] 34 C.F.R. part 106, subpart E.

[65] 34 C.F.R. § 106.61.

[66] *Id.* ("A recipient shall not take action pursuant to this section [regarding bona-fide occupational qualifications] which is based upon . . . preference based on sex of the recipient, employees, students, or other persons.").

[67] 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973) and 34 C.F.R. part 104; 42 U.S.C. §§ 12131-12165 (Title II of the Americans with Disabilities Act of 1990) and 28 C.F.R. part 35; 42 U.S.C. §§ 2000d to d-7 (Title VI of the Civil Rights Act of 1964) and 34 C.F.R. part 100. OCR enforces Section 504 as it applies to recipients of Federal financial assistance from the Department and shares enforcement responsibility with the U.S. Department of Justice for Title II in the education context. Title II prohibits discrimination on the basis of disability by public entities, including public school districts, in their services, programs, and activities, regardless of receipt of Federal funds.

[68] 20 U.S.C. §§ 1411-1414; 34 C.F.R. part 300.

[69] 34 C.F.R. § 106.34(c)(4).

EXHIBIT D

TITLE IX RESOURCE GUIDE

U.S. Department of Education

Office for Civil Rights

April 2015

U.S. Department of Education
Office for Civil Rights

Catherine E. Lhamon
Assistant Secretary

April 2015

This guide is also available on the Office for Civil Rights' website at http://www.ed.gov/ocr. Any updates to this guide will be available at this website.

If you need technical assistance, please contact the OCR regional office serving your State or territory by:

- visiting http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm, or
- calling OCR's Customer Service Team at 1 800-421-3481; TDD 1-800-877-8339; or
- emailing OCR at ocr@ed.gov.

Notice of Language Assistance
Title IX Resource Guide

Notice of Language Assistance: If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

給英語能力有限人士的通知: 如果您不懂英語，
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A. Scope of Title IX

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination based on sex in education programs and activities in federally funded schools at all levels.[1] If any part of a school district or college receives any Federal funds for any purpose, all of the operations of the district or college are covered by Title IX.[2]

Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. All students (as well as other persons) at recipient institutions are protected by Title IX—regardless of their sex, sexual orientation, gender identity, part- or full-time status, disability, race, or national origin—in all aspects of a recipient's educational programs and activities.

As part of their obligations under Title IX, all recipients of Federal financial assistance must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX and must notify all students and employees of that employee's contact information.[3] This employee is generally referred to as the Title IX coordinator.

The essence of Title IX is that an institution may not exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex unless expressly authorized to do so under Title IX or the Department's implementing regulations.[4] When a recipient is considering relying on one of the exceptions to this general rule (several of which are discussed below), Title IX coordinators should be involved at every stage and work with school officials and legal counsel to help determine whether the exception is applicable and, if so, properly executed.

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[1] 20 U.S.C. §§ 1681–1688. The Department of Justice shares enforcement authority over Title IX with OCR. The Department of Education's Title IX regulations, 34 C.F.R. Part 106, are available at http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html. Although Title IX and the Department's implementing regulations apply to any recipient institution that offers education programs or activities, this resource guide focuses on Title IX coordinators designated by local educational agencies, schools, colleges, and universities.

[2] An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office.

[3] 34 C.F.R. § 106.8(a).

[4] 20 U.S.C. § 1681(a); 34 C.F.R. § 106.31.

B. Responsibilities and Authority of a Title IX Coordinator

Although the recipient is ultimately responsible for ensuring that it complies with Title IX and other laws, the Title IX coordinator is an integral part of a recipient's systematic approach to ensuring nondiscrimination, including a nondiscriminatory environment. Title IX coordinators can be effective agents for ensuring gender equity within their institutions only when they are provided with the appropriate authority and support necessary to coordinate their institution's Title IX compliance, including access to all of their institution's relevant information and resources.

One of the most important facets of the Title IX coordinator's responsibility is helping to ensure the recipient's compliance with Title IX's administrative requirements. The Title IX coordinator must have knowledge of the recipient's policies and procedures on sex discrimination and should be involved in the drafting and revision of such policies and procedures to help to ensure that they comply with the requirements of Title IX.

The coordinator may help the recipient by coordinating the implementation and administration of the recipient's procedures for resolving Title IX complaints, including educating the school community on how to file a complaint alleging a violation of Title IX, investigating complaints, working with law enforcement when necessary, and ensuring that complaints are resolved promptly and appropriately. The coordinator should also coordinate the recipient's response to all complaints involving possible sex discrimination to monitor outcomes, identify patterns, and assess effects on the campus climate. Such coordination can help an institution avoid Title IX violations, particularly violations involving sexual harassment and violence, by preventing incidents from recurring or becoming systemic problems. Title IX does not specify who should determine the outcome of Title IX complaints or the actions the school will take in response to such complaints. The Title IX coordinator could play this role, provided there are no conflicts of interest, but does not have to.

The Title IX coordinator should also assist the institution in developing a method to survey the school climate and coordinate the collection and analysis of information from that survey. Further, the coordinator should monitor students' participation in athletics and across academic fields to identify programs with disproportionate enrollment based on sex and ensure that sex discrimination is not causing any disproportionality or otherwise negatively affecting a student's access to equal educational opportunities.

The Title IX coordinator should provide training and technical assistance on school policies related to sex discrimination and develop programs, such as assemblies or college trainings, on issues related to Title IX to assist the recipient in making sure that all members of the school community, including students and staff, are aware of their rights and obligations under Title IX. To perform

this responsibility effectively, the coordinator should regularly assess the adequacy of current training opportunities and programs and propose improvements as appropriate.

A recipient can designate more than one Title IX coordinator, which may be particularly helpful in larger school districts, colleges, and universities. It may also be helpful to designate specific employees to coordinate certain Title IX compliance issues (*e.g.*, gender equity in academic programs or athletics, harassment, or complaints from employees). If a recipient has multiple Title IX coordinators, then it should designate one lead Title IX coordinator who has ultimate oversight responsibility.

Because Title IX prohibits discrimination in all aspects of a recipient's education programs and activities, the Title IX coordinator should work closely with many different members of the school community, such as administrators, counselors, athletic directors, non-professional counselors or advocates, and legal counsel. Although these employees may not be formally designated as Title IX coordinators, the Title IX coordinator may need to work with them because their job responsibilities relate to the recipient's obligations under Title IX. The recipient should ensure that all employees whose work relates to Title IX communicate with one another and that these employees have the support they need to ensure consistent practices and enforcement of the recipient's policies and compliance with Title IX. The coordinator should also be available to meet with the school community, including other employees, students, and parents or guardians, as needed to discuss any issues related to Title IX.

For more information about the role of the Title IX coordinator, please review:

- 34 C.F.R. § 106.8(a);
- Dear Colleague Letter: Title IX Coordinators (April 24, 2015), *available at* http://www.ed.gov/ocr/letters/colleague-201504-title-ix-coordinators.pdf; and
- Letter to Title IX Coordinators (April 24, 2015), *available at* http://www.ed.gov/ocr/docs/dcl-title-ix-coordinators-letter-201504.pdf.

C. Title IX's Administrative Requirements

The administrative requirements in the Department's Title IX regulations are the underpinning of both the Title IX coordinator's job and a recipient's compliance with Title IX; their purpose is to ensure that a recipient maintains an environment for students and employees that is free from unlawful sex discrimination in all aspects of the educational experience, including academics, extracurricular activities, and athletics. These requirements provide that a recipient must establish a system for the prompt and equitable resolution of complaints. This allows an institution to resolve complaints of discrimination without the need for involvement by outside entities, such as the Federal government. They also provide that a recipient must ensure that members of the school community are aware of their rights under Title IX, have the contact information for the Title IX coordinator, and know how to file a complaint alleging a violation of Title IX.

1. Grievance Procedures

The Department's Title IX regulations require a recipient to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints under Title IX. These procedures provide an institution with a mechanism for discovering incidents of discrimination or harassment as early as possible and for effectively correcting individual and systemic problems. The procedures that each school uses to resolve Title IX complaints may vary depending on the nature of the allegation, the age of the student or students involved, the size and administrative structure of the school, state or local legal requirements, and what it has learned from past experiences.

There are several ways in which a Title IX coordinator can coordinate the recipient's compliance with the Title IX regulatory requirement regarding grievance procedures.

- First, the Title IX coordinator should work with the recipient to help make sure that the grievance procedures are written in language appropriate for the age of the audience (such as elementary, middle school, high school, or postsecondary students), and that they are easily understood and widely disseminated.

- Second, the Title IX coordinator should review the grievance procedures to help determine whether they incorporate all of the elements required for the prompt and equitable resolution of student and employee complaints under Title IX, consistent with the Title IX regulatory requirement and OCR guidance.

- Third, the Title IX coordinator should communicate with students, parents or guardians, and school employees to help them understand the recipient's grievance procedures; train employees and students about how Title IX protects against sex discrimination; and provide consultation and information regarding Title IX requirements to potential complainants.

- Fourth, the Title IX coordinator is responsible for coordinating the grievance process and making certain that individual complaints are handled properly. This coordination responsibility may include informing all parties regarding the process, notifying all parties regarding grievance decisions and of the right to and procedures for appeal, if any; monitoring compliance with all of the requirements and timelines specified in the grievance procedures; and maintaining grievance and compliance records and files.

- Finally, the Title IX coordinator should work with the recipient to help ensure that its grievance procedures are accessible to English language learners[5] and students with disabilities.[6]

For more information about grievance procedures, please review:

- 34 C.F.R. § 106.8(b);

- Questions and Answers on Title IX and Sexual Violence (April 29, 2014), *available at* http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf;

- Dear Colleague Letter: Sexual Violence (April 4, 2011), *available at* http://www.ed.gov/ocr/letters/colleague-201104.pdf;

- Dear Colleague Letter: Title IX Grievance Procedures, Postsecondary Education (August 4, 2004), *available at* http://www.ed.gov/ocr/responsibilities_ix_ps.html;

- Dear Colleague Letter: Title IX Grievance Procedures, Elementary and Secondary Education (April 26, 2004), *available at* http://www.ed.gov/ocr/responsibilities_ix.html; and

- Revised Sexual Harassment Guidance (January 19, 2001), *available at* http://www.ed.gov/ocr/docs/shguide.pdf.

[5] Public schools and State educational agencies must take affirmative steps to ensure that students with limited English proficiency can meaningfully participate in their educational programs and services under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to d-7, and the Equal Educational Opportunities Act, 20 U.S.C. § 1703(f) (1974).

[6] *See* 28 C.F.R. § 35.130(a) and (b); 34 C.F.R. § 104.4.

2. Notice of Nondiscrimination and Contact Information for the Title IX Coordinator

The Department's Title IX regulations require a recipient to publish a statement that it does not discriminate on the basis of sex in the education programs or activities it operates and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

The notice must be widely distributed to all applicants for admission and employment, students and parents or guardians of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient. The notice should be prominently posted on the recipient's website, at various locations on campus, and in electronic and printed publications for general distribution. In addition, the notice must be included in any bulletins, announcements, publications, catalogs, application forms, or recruitment materials.

A recipient must notify all students and employees of the name or title, office address, telephone number, and email address of the Title IX coordinator, including in its notice of nondiscrimination. The notice should also state any other job title that the Title IX coordinator might have. Recipients must notify students and employees of the Title IX coordinator's contact information in its notice of nondiscrimination. Recipients with more than one Title IX coordinator must notify the school community of the lead Title IX coordinator's contact information in its notice of nondiscrimination, and should also make available the contact information for its other Title IX coordinators as well to ensure consistent practices and standards in handling complaints. In doing so, recipients should include any additional information that would help students and employees identify which Title IX coordinator to contact, such as each Title IX coordinator's specific geographic region (*e.g.*, a particular elementary school or part of a college campus) or area of specialization within Title IX (*e.g.*, gender equity in academic programs or athletics, harassment, or complaints from employees). Because social media are now widespread means for students and other members of the school community to communicate, a recipient should also make the Title IX coordinator's contact information available on social media to the extent that they are supported or used by the recipient.

The content of the notice must be complete and include current information. The Title IX coordinator should work with the recipient to make sure the text of the notice complies with all applicable requirements, that the notice is published and properly displayed, and the content of the notice remains accurate. One potentially low-cost way to help ensure that a recipient's notice is properly disseminated and current on the recipient's website is to create a page on the website that includes the name and contact information of the recipient's Title IX coordinator(s), relevant Title IX policies and grievance procedures, and other resources related to Title IX compliance and gender equity. A link to this page should be prominently displayed on the recipient's homepage.

For more information on notices of nondiscrimination, please review:

- 34 C.F.R. §§ 106.8(a), 106.9;
- Notice of Nondiscrimination (August 2010), *available at* http://www.ed.gov/ocr/docs/nondisc.pdf;
- Dear Colleague Letter: Title IX Grievance Procedures, Postsecondary Education (August 4, 2004), *available at* http://www.ed.gov/ocr/responsibilities_ix_ps.html; and
- Dear Colleague Letter: Title IX Grievance Procedures, Elementary and Secondary Education (April 26, 2004), *available at* http://www.ed.gov/ocr/responsibilities_ix.html.

D. Application of Title IX to Various Issues

Below is a summary of some of the key issues covered by Title IX, as well as some general information on the legal requirements applicable to each issue area, including citations to the relevant Departmental regulatory provisions and references to OCR's guidance that address the issue. The discussion of each Title IX issue includes recommended best practices to help a recipient meet its obligations under Title IX.

1. Recruitment, Admissions, and Counseling

Title IX prohibits recipient institutions of vocational education, professional education, graduate higher education, and public colleges and universities from discriminating on the basis of sex in the recruitment or admission of students.[7] The Title IX coordinator at these recipient institutions should help the recipient to ensure that it does not discriminate on the basis of sex in recruitment and admissions by reviewing the recipient's recruitment materials, admission forms, and policies and practices in these areas.

The Department's Title IX regulations also prohibit all recipients from discriminating on the basis of sex in counseling or guiding students or applicants for admission. The Title IX coordinator should review any materials used for counseling students in terms of class or career selection, or for counseling applicants for admission, to ensure that the recipient does not use different materials for students based on sex or use materials that permit or require different treatment of students based on sex.

At all types of recipient institutions covered by Title IX, the Title IX coordinator should also work with school officials to help remind the school community that all students must have equal access to all programs. Many fields of study continue to be affected by sex-based disparities in enrollment; these are typically called nontraditional fields. For example, some fields of study in science, technology, engineering, and mathematics or career and technical education are often affected by disproportionate enrollment of students based on sex, which triggers a duty of inquiry on the part of the recipient. Title IX coordinators can help ensure that such disparities are not the result of discrimination on the basis of sex by reviewing enrollment data and working with other employees of the recipient to review counseling practices and counseling or appraisal materials. Under certain circumstances, recipients might encourage students to explore nontraditional fields to address underrepresentation of students of that sex in those fields.

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[7] 20 U.S.C. §1681(a)(1). The Department's Title IX regulations regarding admissions do not apply to private institutions of undergraduate higher education or to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex. 34 C.F.R. § 106.15.

For more information about sex discrimination in recruiting, admissions, and counseling, please review:

- 34 C.F.R. §§ 106.3(b), 106.15, 106.36, and 34 C.F.R. Part 106, Subpart C; and
- Title IX and Access to Courses and Programs in Science, Technology, Engineering and Math (October 2012), *available at* http://www.ed.gov/ocr/presentations/stem-t9-powerpoint.pdf.

2. Financial Assistance

Generally, a recipient may not: (a) provide different amounts or types of financial assistance, limit eligibility for such assistance, apply different criteria or otherwise discriminate on the basis of sex in administering such assistance; or (b) assist any agency, organization, or person which offers sex-restricted student aid.

The Department's Title IX regulations provide three exceptions to these general prohibitions. Recipients are permitted to administer or assist in the administration of scholarships, fellowships, or other awards that are restricted to members of one sex if the award is: (a) created by certain legal instruments, including wills or trusts, or by acts of a foreign government, provided the overall effect is nondiscriminatory; (b) for study at foreign institutions if the recipient provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex; or (c) athletic financial assistance. The Department's Title IX regulatory requirements regarding athletic financial assistance are discussed in the Athletics section, below.

To help the recipient ensure its compliance with these requirements, the Title IX coordinator should help the recipient develop, and subsequently monitor, the procedures and practices for awarding financial assistance and for administering or aiding any foundation, trust, agency, organization, person, or foreign government in awarding financial assistance to its students.

For more information about sex discrimination in financial assistance, please review:

- 34 C.F.R. §§ 106.31(c) and 106.37.

3. Athletics

The Department's Title IX regulations prohibit sex discrimination in interscholastic, intercollegiate, club, or intramural athletics offered by a recipient institution, including with respect to (a) student interests and abilities; (b) athletic benefits and opportunities; and (c) athletic financial assistance.

(a) Student Interests and Abilities

Under the Department's Title IX regulations, an institution must provide equal athletic opportunities for members of both sexes and effectively accommodate students' athletic interests and abilities. OCR uses a three-part test to determine whether an institution is providing nondiscriminatory athletic participation opportunities in compliance with the Title IX regulation. The test provides the following three compliance options:

1. Whether participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

2. Where the members of one sex have been and are underrepresented among athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or

3. Where the members of one sex are underrepresented among athletes, and the institution cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

The three-part test is intended to allow institutions to maintain flexibility and control over their athletic programs consistent with Title IX's nondiscrimination requirements. The three-part test furnishes an institution with three individual avenues to choose from when determining how it will provide individuals of each sex with nondiscriminatory opportunities to participate in athletics. If an institution has met any part of the three-part test, OCR will determine that the institution is meeting this requirement.

To coordinate the institution's compliance with this requirement, the Title IX coordinator should compare its enrollment data to the number of athletic participation opportunities it offers; review the institution's history of expanding participation opportunities for students of the underrepresented sex; and evaluate whether there is unmet interest in a particular sport, whether there is sufficient ability to sustain a team in the sport, and whether there is a reasonable expectation of competition for the team.

For more information about the obligation to provide equal athletic opportunities and to effectively accommodate students' athletic interests and abilities, please review:

- 34 C.F.R. § 106.41(c)(1);
- Dear Colleague Letter: Part Three of the Three-Part Test (April 20, 2010), *available at* http://www.ed.gov/ocr/letters/colleague-20100420.html;
- Dear Colleague Letter: Athletic Activities Counted for Title IX Purposes (September 17, 2008), *available at* http://www.ed.gov/ocr/letters/colleague-20080917.pdf;
- Dear Colleague Letter: Title IX Athletics Three-Part Test (March 27, 2008), *available at* http://www.ed.gov/ocr/letters/title-ix-2008-0327.pdf;
- Dear Colleague Letter: Further Clarification of Intercollegiate Athletics Policy Guidance (July 11, 2003), *available at* http://www.ed.gov/ocr/title9guidanceFinal.html;
- Dear Colleague Letter: Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (January 16, 1996), *available at* http://www.ed.gov/ocr/docs/clarific.html; and
- Title IX Policy Interpretation: Intercollegiate Athletics (December 11, 1979), *available at* http://www.ed.gov/ocr/docs/t9interp.html.

(b) Athletic Benefits and Opportunities

The Department's Title IX regulations and OCR guidance require that recipients that operate or sponsor interscholastic, intercollegiate, club or intramural athletics provide equal athletic opportunities for members of both sexes. In determining whether an institution is providing equal opportunity in athletics, the regulations require the Department to consider, among others, the following factors: (1) the provision of equipment and supplies; (2) scheduling of games and practice time; (3) travel and per diem allowances; (4) opportunity for coaching and academic tutoring; (5) assignment and compensation of coaches and tutors; (6) provision of locker rooms, and practice and competitive facilities; (7) provision of medical and training facilities and services; (8) housing and dining services; (9) publicity; (10) recruitment; and (11) support services. These factors are sometimes referred to as the laundry list.

As part of the recipient's obligation to provide equal athletic opportunity to its students, OCR encourages Title IX coordinators to work with the recipient to periodically review and compare the distribution of athletic benefits and opportunities by sex in each of these areas, including financial expenditures on male and female athletic teams.

For more information about each of these areas, please review:

- 34 C.F.R. § 106.41(c)(2)–(10); and
- Title IX Policy Interpretation: Intercollegiate Athletics (December 11, 1979), *available at* http://www.ed.gov/ocr/docs/t9interp.html.

(c) Athletic Financial Assistance

The Department's Title IX regulations specify that if a recipient awards athletic financial assistance, including athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in substantial proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics. Separate athletic financial assistance for members of each sex may be provided as part of separate athletic teams for members of each sex.

The Title IX coordinator should help coordinate the recipient's efforts to ensure that the athletic financial assistance awarded by the recipient complies with these provisions by working with the institution and its athletics department.

For more information about a recipient's obligations regarding awards of athletic financial assistance, please review:

- 34 C.F.R. § 106.37(c);
- Title IX Policy Interpretation: Intercollegiate Athletics (December 11, 1979), *available at* http://www.ed.gov/ocr/docs/t9interp.html; and
- Dear Colleague Letter: Bowling Green State University (July 23, 1998), *available at* http://www.ed.gov/ocr/docs/bowlgrn.html.

4. Sex-Based Harassment

In order to best perform academically and to have equal access to all aspects of a recipient's educational programs and activities, students must not be subjected to unlawful harassment, either in the classroom or while participating in other education programs or activities.[8]

Title IX prohibits sex-based harassment by peers, employees, or third parties that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the recipient's education programs and activities (*i.e.*, creates a hostile environment). When a recipient knows or reasonably should know of possible sex-based harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that the harassment created a hostile environment, the recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects.

Title IX prohibits several types of sex-based harassment. Sexual harassment is unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment and refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Gender-based harassment is another form of sex-based harassment and refers to unwelcome conduct based on an individual's actual or perceived sex, including harassment based on gender identity or nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature. All of these types of sex-based harassment are forms of sex discrimination prohibited by Title IX.

Harassing conduct may take many forms, including verbal acts and name-calling, as well as non-verbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.

Title IX protects all students from sex-based harassment, regardless of the sex of the alleged perpetrator or complainant, including when they are members of the same sex. Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to

[8] A Title IX coordinator may receive reports of sex-based harassment of any member of the school community. It is the Title IX coordinator's responsibility to help make sure that such complaints are processed appropriately.

conform to stereotypical notions of masculinity or femininity, and a recipient must accept and appropriately respond to all complaints of sex discrimination. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a recipient's obligations. A recipient should investigate and resolve allegations of sexual or gender-based harassment of lesbian, gay, bisexual, and transgender students using the same procedures and standards that it uses in all complaints involving sex-based harassment. The fact that an incident of sex-based harassment may be accompanied by anti-gay comments or be partly based on a student's actual or perceived sexual orientation does not relieve a recipient of its obligation under Title IX to investigate and remedy such an incident.

The Title IX coordinator must coordinate the recipient's efforts to accept and appropriately respond to all complaints of sex discrimination and should work with the recipient to prevent sexual and gender-based harassment.

- First, the Title IX coordinator should assist in any training the recipient provides to the school community, including all employees, as to what conduct constitutes sexual and gender-based harassment and how to respond appropriately when it occurs.

- Second, the Title IX coordinator should help the recipient develop a method appropriate to their institution to survey the campus climate, evaluate whether any discriminatory attitudes pervade the school culture, and determine whether any harassment or other problematic behaviors are occurring, where they happen, which students are responsible, which students are targeted, and how those conditions may be best remedied.

- Third, because the Title IX coordinator must have knowledge of all Title IX reports and complaints at the recipient institution, the Title IX coordinator is generally in the best position to evaluate confidentiality requests from complainants in the context of providing a safe, nondiscriminatory environment for all students.

- Fourth, the Title IX coordinator should coordinate recordkeeping (for instance, in a confidential log maintained by the Title IX coordinator), monitor incidents to help identify students or employees who have multiple complaints filed against them or who have been repeated targets, and address any patterns or systemic problems that arise, including making school officials aware of these patterns or systemic problems as appropriate.

- Fifth, the Title IX coordinator should recommend, as necessary, that the recipient increase safety measures, such as monitoring, supervision, or security at locations or activities where harassment has occurred.

- Finally, the Title IX coordinator should regularly review the effectiveness of the recipient's efforts to ensure that the recipient institution is free from sexual and gender-based harassment, and use that information to recommend future proactive steps that the recipient can take to comply with Title IX and protect the school community.

For more information about a recipient's obligation to address sexual and gender-based harassment, please review:

- Questions and Answers on Title IX and Sexual Violence (April 29, 2014), *available at* http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf;
- Dear Colleague Letter: Sexual Violence (April 4, 2011), *available at* http://www.ed.gov/ocr/letters/colleague-201104.pdf;
- Dear Colleague Letter: Harassment and Bullying (October 26, 2010), *available at* http://www.ed.gov/ocr/letters/colleague-201010.pdf;
- Sexual Harassment: It's Not Academic (September 2008), *available at* http://www.ed.gov/ocr/docs/ocrshpam.pdf;
- Dear Colleague Letter: Sexual Harassment Issues (January 25, 2006), *available at* http://www.ed.gov/ocr/letters/sexhar-2006.pdf;
- Dear Colleague Letter: First Amendment (July 28, 2003), *available at* http://www.ed.gov/ocr/firstamend.html;
- Revised Sexual Harassment Guidance (January 19, 2001), *available at* http://www.ed.gov/ocr/docs/shguide.pdf; and
- Not Alone: Together Against Sexual Assault, *available at* http://www.notalone.gov.

5. Pregnant and Parenting Students

Under the Department's Title IX regulations, recipients are prohibited from: (a) applying any rule concerning parental, family, or marital status that treats persons differently on the basis of sex; or (b) discriminating against or excluding any student from its education program or activity, including any class or extracurricular activity on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom. Institutions of vocational education, professional education, graduate higher education, and public colleges and universities are prohibited from making pre-admission inquiries as to the marital status of an applicant for admission.

The Title IX coordinator should work with the recipient on its obligation not to discriminate against students based on their parental, family, or marital status, or exclude pregnant or parenting students from participating in any educational program, including extracurricular activities. The Title IX coordinator is responsible for coordinating the recipient's response to complaints of discrimination against pregnant and parenting students. In addition, the Title IX coordinator should provide training to students so they know that Title IX prohibits discrimination against pregnant and parenting students, provide workshops to administrators, teachers, and other staff on the Department's Title IX regulations and OCR guidance related to pregnant and parenting students, and assist the recipient in helping to meet the unique educational, child care, and health care needs of pregnant and parenting students.

For more information about a recipient's obligations regarding pregnant and parenting students, please review:

- 34 C.F.R. §§ 106.21(c), 106.31, 106.40;
- Supporting the Academic Success of Pregnant and Parenting Students (June 2013), *available at* http://www.ed.gov/ocr/docs/pregnancy.pdf;
- Dear Colleague Letter: Pregnant and Parenting Students (June 25, 2013), *available at* http://www2.ed.gov/ocr/letters/colleague-201306-title-ix.pdf; and
- Dear Colleague Letter: Nondiscriminatory Treatment of Pregnant Student Athletes (June 25, 2007), *available at* http://www.ed.gov/ocr/letters/colleague-20070625.pdf.

6. Discipline

The Department's Title IX regulations prohibit a recipient from subjecting any person to separate or different rules of behavior, sanctions, or other treatment, such as discriminatory discipline, based on sex.

The Title IX coordinator should review the recipient's discipline policies to help make sure they are not discriminatory. In addition, the Title IX coordinator should work with other coordinators or school employees to help the recipient keep and maintain accurate and complete records regarding its disciplinary incidents and monitor the recipient's administration of its discipline policies to ensure that they are not administered in a discriminatory manner. For example, the Title IX coordinator should review the recipient's disciplinary records and data to ensure that similarly situated students are not being disciplined differently based on sex for the same offense and that the recipient's discipline policies do not have an unlawful disparate impact on students based on sex. The Title IX coordinator should also help the recipient to ensure that students are not disciplined based on their gender identity or for failing to conform to stereotypical notions of masculinity or femininity in their behavior or appearance.

For more information about a recipient's obligations regarding nondiscriminatory administration of discipline, please review:

- 34 C.F.R. § 106.31(b)(4); and
- Dear Colleague Letter: Nondiscriminatory Administration of Discipline (January 8, 2014), *available at* http://www.ed.gov/ocr/letters/colleague-201401-title-vi.pdf.

7. Single-Sex Education

A recipient is generally prohibited from providing any of its education programs or activities separately on the basis of sex, or requiring or refusing participation by students on the basis of sex unless expressly authorized to do so under Title IX or the Department's implementing regulations. There are some limited exceptions, the most significant of which are outlined below.

(a) Schools

A recipient generally may offer a single-sex nonvocational elementary or secondary school under Title IX only if it offers a substantially equal school to students of the other sex.[9] The substantially equal school may be either single-sex or coeducational. The Department's Title IX regulations include a non-exhaustive list of factors that are relevant to determining whether a school is substantially equal to a single-sex school. The factors include the admission criteria and policies; the educational benefits provided, including the quality, range, and content of curriculum and other services, and the quality and availability of books, instructional materials, and technology; the qualifications of faculty and staff; geographic accessibility; the quality and range of extracurricular offerings; the quality, accessibility, and availability of facilities and resources provided; and intangible features, such as reputation of faculty. Although the schools do not need to be identical with respect to each factor, they need to be substantially equal. This means that if one school is significantly superior with respect to one factor, or slightly superior with respect to many factors, the schools are likely not substantially equal.

If the recipient offers a single-sex school, then the district's Title IX coordinator should be involved in assessing the recipient's compliance with Title IX by helping to ensure that the recipient offers a substantially equal single-sex school or coeducational school.

[9] Title IX does not prohibit the operation of a single-sex nonvocational private elementary or secondary school or a single-sex nonvocational private institution of undergraduate higher education. 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15(d). Title IX permits the operation of a nonvocational public charter school that is a single-school local educational agency under State law without requiring the operation of a substantially equal school for the excluded sex.

(b) Classes and Extracurricular Activities

The Department's Title IX regulations do not prohibit recipients from grouping students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex or using requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

The Department's Title IX regulations identify the following categories for which a recipient may intentionally separate students by sex: (a) contact sports in physical education classes; (b) classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality; and (c) nonvocational classes and extracurricular activities within a coeducational, nonvocational elementary or secondary school if certain criteria are met.

With respect to the third category, a recipient may offer a single-sex nonvocational class or extracurricular activity in a coeducational, nonvocational elementary or secondary school if the class is based on one of two important objectives: to improve its students' educational achievement through its overall established policy to provide diverse educational opportunities or to meet the particular, identified educational needs of its students. The single-sex nature of each class must be substantially related to achievement of the important objective and the recipient must implement its important objective in an evenhanded manner. In addition, enrollment in a single-sex class must be completely voluntary and the recipient must provide a substantially equal coeducational class in the same subject to all students, and may be required to provide a substantially equal single-sex class for students of the excluded sex. The factors that are relevant to determining whether a single-sex class and a coeducational class are substantially equal are similar to those used to determine whether schools are substantially equal. If a recipient provides a single-sex class under this regulatory exception, it is also required to conduct a periodic evaluation of the class and the original justification behind the class at least every two years. The periodic evaluation must ensure that each single-sex class is based upon a genuine justification and does not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex, and that each single-sex class or extracurricular activity is substantially related to the achievement of the important objective for the class.

If the recipient offers a single-sex class, then the Title IX coordinator should be involved in assessing the recipient's compliance with Title IX, both when determining whether and how single-sex classes can be offered and during the recipient's periodic review of single-sex offerings. The Title IX coordinator's role may include assisting with the preparation and review of the required periodic evaluations, tracking and reviewing complaints involving single-sex classes, confirming that student enrollment in any single-sex class is completely voluntary, and helping to ensure that the recipient offers a substantially equal coeducational class and, as appropriate, substantially equal single-sex class, for each single-sex class offered. The Title IX coordinator should also help ensure that

transgender students are treated consistent with their gender identity in the context of single-sex classes.

For more information about single-sex schools, classes, and extracurricular activities, please review:

- 34 C.F.R. § 106.34;
- Questions and Answers Regarding Single-Sex Elementary and Secondary Classes and Extracurricular Activities (December, 2014), *available at* http://www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf;
- Dear Colleague Letter: Single-Sex Education (January 31, 2007), *available at* http://www.ed.gov/ocr/letters/single-sex-20070131.html; and
- Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 71 Fed. Reg. 62,530 (October 25, 2006), *available at* http://www2.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf.

8. Employment

Under the Department's Title IX regulations, a recipient is generally prohibited from discriminating on the basis of sex in any employment or recruitment, consideration or selection for employment, whether full-time or part-time.[10] This includes employment actions such as recruitment, hiring, promotion, compensation, grants of leave, and benefits. A recipient must make employment decisions in a nondiscriminatory manner, and may not enter into contracts, including those with employment agencies or unions, that have the direct or indirect effect of subjecting employees or students to discrimination based on sex. Additionally, Title IX's employment provisions protect against discrimination based on an applicant's or employee's pregnancy or marital or parental status. Finally, a recipient may not employ students in a way that discriminates against one sex, or provide services to any other organization that does so.

The Title IX coordinator should help the recipient in making sure school employees are aware that the Title IX coordinator is available to help employees as well as students. The Title IX coordinator should be familiar with the recipient's employment policies and procedures, and train the appropriate human resource employees regarding the recipient's obligations under Title IX.

For more information about employment discrimination, please review:

- 34 C.F.R. Part 106, Subpart E; 34 C.F.R. § 106.38.

[10] Employees are also protected from discrimination on the basis of sex, including sexual harassment, by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e. OCR does not enforce Title VII. For information about Title VII, see the Equal Employment Opportunity Commission's website at http://www.eeoc.gov.

9. Retaliation

A recipient cannot retaliate against an individual, including a Title IX coordinator, for the purpose of interfering with any right or privilege secured by Title IX. Retaliation against an individual because the individual filed a complaint alleging a violation of Title IX; participated in a Title IX investigation, hearing, or proceeding; or advocated for others' Title IX rights is also prohibited. The recipient should ensure that individuals are not intimidated, threatened, coerced, or discriminated against for engaging in such activity.

For more information about the prohibition against retaliation, please review:

- 34 C.F.R. § 106.71 (incorporating by reference 34 C.F.R. § 100.7(e)); and
- Dear Colleague Letter: Retaliation (April 2013), *available at* http://www.ed.gov/ocr/letters/colleague-201304.pdf.

E. Information Collection and Reporting

The Department requires recipients to report information about Title IX and other civil rights issues that may be useful to the work of Title IX coordinators. In addition, Title IX coordinators can play a helpful role in helping to ensure that their institutions' information is accurate, comprehensive, and effectively used to cure civil rights violations or prevent them from occurring.

OCR administers the Civil Rights Data Collection (CRDC), which collects information on key education and civil rights issues from public local educational agencies (LEAs) and schools, including juvenile justice facilities, charter schools, alternative schools, and schools serving students with disabilities. The information is used by OCR in its enforcement efforts, by other Department offices and Federal agencies, and by the public, including policymakers and researchers.

The CRDC collects information on several key issue areas under Title IX that might help inform the Title IX coordinator's work, including harassment or bullying,[11] discipline, and participation in various academic classes and programs, single-sex classes and activities, and interscholastic athletics. In addition, the CRDC asks LEAs to report whether they have civil rights coordinators, including Title IX coordinators and to provide each coordinator's contact information. For Title IX coordinators at elementary and secondary schools, the CRDC may be a useful tool to monitor trends within their districts and schools to determine whether there are patterns or systemic problems under Title IX. Additionally, the CRDC and other information collections at the State and local levels can help recipients and their Title IX coordinators identify patterns of disproportionality that may be rooted in sex discrimination. For example, the CRDC's information about student enrollment in particular courses of study (*e.g.*, science, technology, engineering, and mathematics courses) may help a Title IX coordinator determine whether a particular sex is underrepresented in such courses. If so, the coordinator should investigate the possible causes of the disproportionality and then recommend measures for reaching greater proportionality, as appropriate.

[11] The CRDC collects information on allegations of harassment or bullying, students reported as harassed or bullied, and students disciplined for harassment or bullying, based on sex, race/color/national origin, and disability. For allegations of harassment or bullying, data are also collected based on religion and sexual orientation. As a best practice, OCR recommends that Title IX coordinators assist the recipient in training relevant staff about how information on sex-based harassment should be reported under the CRDC. For example, relevant staff should be knowledgeable about the ways in which harassment based on sex and sexual orientation overlap, and informed that if an incident has multiple bases (*e.g.*, an incident in which a student was harassed both based on gender nonconformity (sex) and sexual orientation), the LEA should report all relevant bases under the CRDC. In addition, the recipient should remind staff who collect, maintain, and report information to the Department of these requirements and of the district's obligations, including keeping personally identifiable information private.

The Department's Office of Postsecondary Education also collects information about Title IX coordinators from postsecondary institutions in reports required under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and the Higher Education Opportunity Act.[12] Title IX coordinators in postsecondary settings should assist the institution's officials in accurately reporting the required information.

For more information about data collection and reporting, please review:

- CRDC webpage, *available at* http://www.ed.gov/ocr/data.html; and
- Campus Security webpage (for postsecondary institutions), *available at* http://www.ed.gov/admins/lead/safety/campus.html.

[12] 20 U.S.C. § 1092(f). The Department will begin collecting this information in 2015.

EXHIBIT E

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

REGION V
ILLINOIS
INDIANA
IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN

November 2, 2015

Dr. Daniel E. Cates
Superintendent
Township High School District 211
1750 South Roselle Road
Palatine, Illinois 60067

OCR Case No. 05-14-1055

Dear Dr. Cates:

The U.S. Department of Education's Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint, filed in December 2013, against Township High School District 211 (District). The District is composed of five high schools. The complaint alleged that the District discriminated against Student A, a transgender high school student, on the basis of sex. Specifically, the complaint alleged that the District denied Student A access to the girls' locker rooms because of her gender identity and gender nonconformity.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681–1688, and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX. Therefore, OCR has jurisdiction over this complaint.

During its investigation, OCR interviewed Student A and her mother, toured her high school (School), interviewed District administrators and staff members, and reviewed documents provided on behalf of Student A and by the District. For the reasons set out below, OCR finds by a preponderance of the evidence that the District is in violation of Title IX for excluding Student A from participation in and denying her the benefits of its education program, providing services to her in a different manner, subjecting her to different rules of behavior, and subjecting her to different treatment on the basis of sex.

District Policies

The District maintains an annual notice of nondiscrimination that prohibits discrimination, including discrimination on the basis of gender, and posts the notice prominently on its website.[1] The District also maintains a Board Policy that prohibits discrimination, including discrimination on the basis of gender and sexual orientation.[2] The name and contact information for the District's Title IX Coordinator are available on the District's website,[3] as are the District's Title IX grievance procedures.[4]

Statement of Facts

Student A was born male and from a young age has identified as female. During her middle school years, Student A transitioned to living full-time as a young woman. Since then, she has presented a female appearance, completed a legal name change, obtained a passport reflecting a gender change, received a diagnosis of and treatment for gender dysphoria, and taken an ongoing course of hormone therapy.

Student A's parents contacted the School during her eighth-grade year to begin planning her transition to high school. The family and the School communicated extensively about issues such as Student A's name change, registration as a female, access to girls' restrooms and locker rooms, and eligibility for girls' athletics. The family also informed the School that Student A had been subjected to harassing comments in middle school when she used the boys' locker rooms.

The District has honored Student A's request to be treated as female in all respects except her request to be provided access to the girls' locker rooms at the School. The District identifies Student A by her female name and uses female pronouns. Its computer system designates Student A as female. The District has given Student A unlimited access to all girls' restrooms in the School, and, after obtaining permission from the Illinois High School Association, allows her to participate in girls' athletics. Student A informed OCR that many students are aware of her transgender status, and that several students and staff members at the School have been particularly supportive and encouraging towards her.

Locker Room Access

Student A, her family, and/or their counsel have held a series of meetings with District and School administrators, including the Principal and the former Superintendent, to discuss the issue of locker room access for Student A.[5] Student A requested an opportunity to change clothes privately within the girls' locker rooms, in an area such as a restroom stall. After touring the

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[1] http://adc.d211.org/information/annual-notice-of-nondiscrimination/.
[2] Board Policy JCFM/GBCBA, "Non-discrimination of Students and Staff," located at http://www.boarddocs.com/il/thsd211/Board.nsf/Public#.
[3] http://adc.d211.org/administration/augustino-fontanetta/.
[4] Board Policy JA/KAA/GAC, "Uniform Grievance Policy," located at http://www.boarddocs.com/il/thsd211/Board.nsf/Public.
[5] The former Superintendent retired after the 2013-2014 school year.

School facilities, the Superintendent verbally informed Student A that the District would not allow her to access the girls' locker rooms at the School. The District said it would not be practicable to grant her request to change privately in the locker rooms because there were too few stalls and too many students.

The District outlined Student A's alternative options for changing for physical education (PE) class and athletics. The former Superintendent stated to OCR that she based her decision not only on Student A's rights and needs, but on the privacy concerns of all students. The Superintendent told OCR that Student A explained that she wanted equal access to the girls' locker rooms because "she wanted to be a girl like every other girl." The Principal's notes from the meeting indicate that Student A said she was "crushed" by the District's decision, which she said indicated that the School did not accept her as female.

Student A told OCR during an interview in February 2014 that she has her own sense of privacy, and, if granted access to the girls' locker rooms, would seek out an unobserved area for changing, such as a restroom stall, which she said is a common practice among some girls. In September and October 2015, Student A informed OCR that she would use privacy curtains in the girls' locker rooms if the School made them available.

The District's decision denied Student A's access to the three girls' locker rooms: the regular PE locker room (PE locker room); the locker room near the pool, used for the swimming unit of PE (swimming locker room); and a locker room used for the girls' athletics teams (athletics locker room). Each is discussed in detail below.

PE Class

Students at the School are required to take mandatory PE each year. It is a daily course that is required for graduation. The District requires completion of a certain number of credits in traditional PE, with units on tennis, volleyball, basketball, swimming, and other sports. Thereafter, students may satisfy the PE requirement with various electives. PE students wear a required uniform, issued by the School, of shorts and a t-shirt. If a student forgets his or her uniform on a given day, he or she may obtain a rental uniform, which is available in the boys' and girls' locker rooms. In addition, rental uniforms are available in the PE teacher's office.

The required PE class consists of 35 minutes of instruction. Students have approximately five minutes to change before class, and five minutes to change after class, in addition to five-minute passing periods. Students assemble in the gymnasium at the beginning of class for attendance.

OCR toured the girls' PE locker room, which is accessed through a door in the main gymnasium. The door leads to an entryway and stairwell that is accessible to boys and girls. The girls' PE locker room contains lockers on the periphery walls as well as several banks of lockers in center aisles approximately seven feet high. There is a sizable open shower area. The girls' restroom facilities for PE are located in Restroom A, which contains two doors: one to the entryway and stairwell mentioned above, and one to the locker room. Thus, it is possible to enter and exit Restroom A without entering the PE girls' locker room. Restroom A contains five private toilet

stalls. The District informed OCR that the PE girls' locker room and Restroom A are both busy and crowded on school days, as multiple gym classes, with about 130 students, meet at the same time.

In its response to this complaint, the District told OCR that, while female students change for PE class in a "modest" manner, students do expose their bodies while changing in the locker room. The PE Teacher told OCR that girls change bras (from a traditional bra to a sports bra) for the PE classes and, for the swimming unit, change into their swimming suits. She stated that students do not shower after PE class, with the exception of the swimming unit, which is discussed below.

The District offered Student A changing facilities in a private restroom (Restroom C) down a hallway from the gymnasium. Restroom C is approximately 75 feet from the gymnasium entrance. Between the gymnasium and the restroom are the wrestling room on one side, and the weight room and fitness room on the other side. During an OCR visit, many male students were in the hallway and in the weight room. Student A must travel through this hallway in order to get from Restroom C to the gymnasium.

Restroom C is a single occupancy facility that is kept locked during the school day. The Principal explained that Student A does not have a key to the restroom and that a staff member who monitors the hallways carries the key and must unlock the door for her. The Principal said the staff member opens Restroom C several minutes before Student A requires access, leaves it unlocked during Student A's PE class, and then locks it several minutes after Student A leaves it following PE class. The restroom contains a single stall and toilet, a mirror and sink, and a tall locker that the School installed for Student A.

Student A expressed dissatisfaction with Restroom C, and the District offered an alternative location to her for changing before and after PE. It offered to let her change in Restroom A—the restroom that is adjacent to the girls' PE locker room but separated from it by a door. This would have allowed her to change near to the gym, like other girls. The District offered to install—and in fact did install—a bank of lockers there, and to let Student A choose several female friends who would be comfortable changing alongside her. However, Student A told OCR that she felt this arrangement would "ostracize" her even more than Restroom C. She said it would draw attention to the fact that she must change separately: other girls using the restroom would see the lockers and know that she changed there, whereas some girls did not presently know that she had a separate changing arrangement. Student A also noted that she spoke with several friends from PE class, who expressed reluctance to move to lockers in Restroom A. The District told OCR that their lockers could easily be reassigned, but Student A suggested to OCR that her friends did not seem to want to move.[6]

Student A therefore continued to change for PE class in Restroom C. She told OCR that she does not take the most direct route from Restroom C to the gymnasium "because it's embarrassing. Everyone would see me." Instead of entering the gymnasium near the door to the girls' locker

[6] On an as-needed basis throughout her high school career, Student A also used a restroom inside the nurse's office. Nurse A provided this access to Student A, and also offered her support and encouragement.

room—where female students would see her entering separately—Student A walks through several hallways and around to the other side of the gymnasium, where she enters. OCR observed during an onsite visit that the gymnasium was large and crowded with students; if the gymnasium was similarly crowded when Student A entered on the far side, her entrance might go unnoticed. The PE Teacher told OCR that she did not think students pay attention to who enters and from where. Student A said that she takes a circuitous route to avoid standing out.

The PE Teacher told OCR that Student A was frequently late to class during one of the school years in question. Student A gave various reasons for this. She contends that, on several occasions, Restroom C was locked and no one was available to open it for her; that she had trouble opening the locker the School installed for her in Restroom C; that she must take a longer route to class to go unnoticed; and that, on at least one occasion, she had to obtain a uniform rental. The District told OCR that it was unable to verify Student A's problems accessing her locker, and that in any event, it replaced the lock on the locker and resolved that problem. It also disputed that a staff member was unavailable to unlock Restroom C, except on one occasion. The District does not dispute that Student A takes a circuitous route to gym class, or that she has had to obtain rental uniforms and cannot do so in the PE girls' locker room like other students.

As noted, students requiring a rental uniform may request one in the locker room, or from the PE Teacher in her office. The PE Teacher told OCR that most students who require a rental obtain one in the locker room itself. The District concedes that, on one occasion, Student A needed a rental but could not find the PE Teacher to obtain one. Student A eventually found another teacher to provide a rental uniform. Student A told OCR that she was once reprimanded for entering the girls' PE locker room to obtain a rental uniform even though it was the middle of the period and the locker room was empty.

The District disputes that Student A has been late to PE class because she was unable to find an adult to unlock Restroom C. After Student A made this claim on several occasions, the District reviewed the previous two weeks of video records from a hallway camera that shows the door to Restroom C. The District said the video showed Student A arriving late to Restroom C on several occasions, and only once showed her unable to enter the restroom because it was locked. On that occasion, a substitute hall monitor reached the restroom shortly after Student A and unlocked it for her. The District contends that Student A's tardiness was a broader problem that was not limited to PE class, and said it addressed this with her by adjusting her class schedule. OCR's investigation confirmed that the class tardiness issue was addressed by altering Student A's classroom schedule, and that her tardiness has since decreased.

Student A also told OCR that one day, the PE Teacher told her classmates in the locker room they did not need to dress for class that day, but that since she had to change elsewhere, she did not receive the message. Student A told OCR that she was embarrassed when she showed up dressed in her gym uniform, while the other students were wearing street clothes. Student A returned to Restroom C and changed back into her street clothes.

PE Class – Swim Unit

The swim unit is required for the School's mandatory PE class. Student A told OCR that she has completed her required PE credits that include a swim unit. Student A has informed OCR that she is not planning to take any more PE credits that include swimming.

The girls' swimming locker room is immediately adjacent to the swimming pool; the locker room door leads onto the pool area.[7] When entering the locker room, students pass through a hallway that ends in a "T." To the left is a small, door-less restroom where Student A changed for swimming (Restroom G). To the right is a short hallway that leads around a corner and into to the girls' swimming locker room. There are no doors separating Restroom G from the locker room; however, it is not possible to see around the corner into the locker room from Restroom G, or vice versa.

The girls' swimming locker room contains an open shower area. Beyond the showers is unused space that contains neither showerheads nor lockers. Beyond that area are banks of lockers. There are mirrors at eye level, and between the mirrors are hair dryers placed at eye level, as well as electrical outlets. The locker room also contains restroom stalls, sinks, and a coach's office.

The PE Teacher told OCR that most students shower in their suits after swimming in order to rinse off the chlorine from the pool. She said she has not seen students shower fully naked, but that some do pull the top half of their bathing suits down, and are nude to the waist.[8] The PE Teacher said that students changing after PE class during the swim unit cannot practicably change in the bathroom stalls, because there is so little time. Students have devised various methods of changing out of their swimsuits modestly. Some students use a "buddy system," by having a friend hold up a towel to shield them while they change. Other students hold a towel in their mouths, which drapes over their fronts. "They're naked, but to varying degrees," said the PE Teacher.

Student A took PE courses that contained swimming units during two school years. Each swimming unit lasted approximately four weeks. She changed clothes for swimming in Restroom G. It is approximately 5' by 7', and contains restroom stalls, a sink, a mirror, and a locker for Student A, but does not contain a shower, electrical outlets or a hair dryer. Around the corner from Restroom G, in the hallway that students use to access the swimming locker room from the pool, is a showerhead. The floor contains a drain. The District described this to OCR as a "rinse" shower that is available for Student A's use. Student A did not have to pass through the girls' swimming locker room in order to access Restroom G or the rinse shower. Student A told OCR that using the Restroom G "sets me apart" from the other students. She noted that the School had to install a mirror for her, and that she is not able to dry her hair.

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[7] During an onsite visit to the School on October 28, 2015, OCR observed that the swimming pool and swimming locker room facilities described above were under renovation and not in use.

[8] In an April 2014 letter to OCR, the District stated that some students shower fully naked after swimming. This assertion is not consistent with OCR's interview of the PE Teacher.

The District offered Student A two other options to change for the swimming unit—Restroom E and Restroom H—which she declined. Restroom E is down a short (20') hallway from the pool. It is not connected to the girls' swimming locker room. It is a locked women's restroom that must be unlocked by a staff member. It contains restroom stalls, sinks, and mirrors, but does not contain a shower, locker or hair dryer. Although the restroom contains an electrical outlet, it is far from the main restroom area, and would not be practical to use with a personal hair dryer.

The third option is Restroom H, the private restroom of the pool teaching assistant (TA). The Principal explained that the pool TA uses it to shower and change. It is accessible through the TA's office, which is immediately off the pool area and adjacent to the girls locker room. The office is kept locked and would need to be opened by a key. The restroom contains a shower, a single restroom stall, a sink, mirror, and electrical outlet. During OCR's visit, Restroom H contained the pool TA's personal hair and beauty products in the shower and on a shelf below the mirror.

The PE Teacher described an incident in which she observed Student A using the girls' locker room during the swim unit. She told Student A that she was not supposed to be there. Student A replied, "I know, but I asked if anyone was in there," and that everybody called back to say they were dressed. Student A wanted to use the mirrors and do her hair, which she was unable to do in Restroom G. The PE Teacher said she told Student A that this was not part of the arrangement, and that she needed to stay in her changing area.

Athletics

Student A is a member of one of the School's girls' athletics teams. The team has approximately 30 members and its head coach is Coach A. The team uses the athletics locker room, which contains banks of lockers approximately eight feet high, partitioned restroom stalls, sinks with mirrors, an open shower area, and multiple hair dryers. There are no electrical outlets near the mirrors. Coach A told OCR that she does not spend time in the locker room and thus has not observed team members' changing habits. However, she told OCR that team members do not shower after practices or competitions. Student A told OCR that it is her understanding that some team members change in restroom stalls in the locker room for privacy. Coach A said that students use the locker room only to change *into* their uniforms; she has observed that, after practices or competitions, students customarily depart in their uniforms.

Student A changed for practices and competitions in a female restroom or used Restroom C—the same restroom she uses to change for PE. Student A told OCR that this arrangement separated her from her teammates. Student A said that team members informally "huddle" in the locker room before matches (without the coach) to do their hair, and that she missed these opportunities for bonding with her teammates. Coach A responded that team members also do their hair in the hallway, which is available to Student A. Coach A said, "[Student A] feels that locker room talk is where she feels she can be most a part of the team." But Coach A believes Student A is mistaken, saying, "There's really no girl talk going on in there."

Coach A said that Student A entered the girls' athletics locker room four times during one season. Four girls and one parent complained to Coach A about this. The students noted that Student A wanted to chat with her teammates as they prepared for practice or matches. On one occasion, she wanted to have a place to store her bag. On another occasion, an assistant coach (Coach B) told OCR, Student A actually changed clothes in the locker room, although it is unclear whether other students were present. Coach A reported that students told her that they felt uncomfortable undressing in front of Student A. Coach A and an assistant coach reprimanded Student A for her use of the locker room. Coach A indicated that, after one such reprimand, Student A was visibly upset and had what Coach A described as a tearful "breakdown."

Coach A and Nurse A told OCR that on two separate occasions, Student A spoke privately with each of them and asked for their opinion as to whether she presented a female appearance in her sports uniform. Nurse A stated that she made positive and encouraging statements to Student A in response to her inquiries.

Student A said that, as a result of being denied access to the locker room, she has felt excluded from the team. She described to OCR two incidents in which her teammates excluded her from team activities. One of these activities was social in nature and occurred outside of school hours; the other resulted in disparaging treatment by members of her athletic team that appeared on social media. Student A's mother informed OCR that Student A was very upset about the exclusion involved in the second incident, and opined that the District's continued denial of access to the locker rooms for Student A from the locker room encouraged this type of behavior from students. The District responded to one of the incidents by speaking in general terms to the other athletes about the importance of inclusivity.[9]

During OCR's investigation, after Student A requested a private area to change in the girls' locker rooms, the District considered installing privacy curtains in unused space in its locker rooms for use by any student, including Student A. During the week of October 26, 2015, the District installed five privacy curtains in the girls' PE locker room. The District has not installed privacy curtains in the girls' athletics locker room or girls' swimming locker room. (The swimming locker room is being renovated and not currently in use.) To date, the District has not provided access to Student A to any of the girls' locker rooms at the School. The District has

[9] Student A does not allege, and OCR's investigation did not reveal, that she has been subjected to a hostile environment on the basis of sex, or discriminated against on the basis of sex in any other manner other than the District's denial of access to the girls' locker rooms at the School. The above-two incidents were the only two such incidents of harassment by peers that Student A reported to OCR. OCR considered whether the two incidents of peer harassment, as well as other instances of possible harassment of Student A reported by the District in its April 2014 letter, created a hostile environment prohibited by Title IX. OCR's investigation also revealed that six female students have complained to the District that they are uncomfortable having Student A in the girls' locker room; the complaints were not made directly to Student A or in her presence. She has also received online social media comments about her transgender status and attempts to gain access to the girls' locker rooms as well. The information obtained by OCR indicates that the District did not take any steps in response to the online comments, but OCR's investigation did not reveal any information that the online comments were made by other students. Based on the totality of the circumstances, OCR concluded that the harassment was not sufficiently serious to create a hostile environment based on sex for Student A.

maintained that it will not provide access to Student A unless she is required to change clothes behind a privacy curtain.[10]

OCR returned to the School on October 28, 2015, to inspect the new privacy curtains in the girls' PE locker room and to offer the District an opportunity to provide any additional information relevant to the investigation. The District did not provide any additional information at that time.

OCR observed that, in the girls' PE locker room, the District installed four privacy curtains in unused areas of the locker room, and one privacy curtain around a shower. The privacy stalls were in a central area of the locker room, and any student accessing them would necessarily have to travel into the locker room itself. OCR also observed two additional shower stalls, over which the District stated it could hang privacy curtains to create additional private changing stations. The District has not installed privacy curtains in its girls' athletics or swimming locker rooms, although it stated that it may be willing to if directed to do so by OCR. Thus, as of the date of this letter, a total of ten private changing areas are available in the girls' PE locker room, including the five shower areas with the new privacy curtains and the five restroom stalls, and the District indicated a willingness to install privacy curtains on two presently unused shower stalls to create a total of twelve private changing areas.

Applicable Legal Standards

Under Title IX, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides, in relevant part, that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, or other education program or activity operated by a recipient which receives Federal financial assistance. The regulation implementing Title IX, at 34 C.F.R. § 106.31(b), further provides that a recipient may not, on the basis of sex, deny any person such aid, benefit or services; treat an individual differently from another in determining whether the individual satisfies any requirement or condition for the provision of such aid, benefit, or service; provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; subject any person to separate or different rules of behavior; or otherwise limit any person in the enjoyment of any right, privilege or opportunity. The regulation implementing Title IX, at 34 C.F.R. § 106.33, provides that a recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex. All students, including transgender students, are protected from sex-based discrimination under Title IX.

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[10] The District Superintendent stated in a recent interview, "When it comes to locker rooms, District 211's position is that students should be able to use the locker rooms of the gender they identify with - but that once inside those locker rooms they would have to use private shower stalls and changing areas to avoid being naked in the company of the other students." http://www.dailyherald.com/article/20151015/news/151019300/.

In determining whether a recipient has subjected an individual to discrimination, OCR examines whether there were any apparent differences in the treatment of similarly situated individuals. If different treatment is established, OCR then considers whether the recipient had a legitimate, non-discriminatory reason for the apparent difference in treatment, and whether the reason provided by the recipient was a pretext for discrimination. Additionally, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and procedures, and whether there is any other evidence of discrimination based on sex, gender identity, or gender nonconformity.

Analysis

OCR's investigation revealed that, except with respect to locker room access, the District has treated Student A consistent with her gender identity as a girl. This includes identifying Student A by her female name and with female pronouns, providing her with full access to all girls' restrooms, and allowing her to participate in girls' interscholastic athletics. However, although Student A must change clothes for mandatory PE class and for her team's practices and competitions, the District has denied Student A access to its girls' locker rooms. Instead, the District has required Student A to use separate restroom facilities, including facilities that are not comparable to those provided other students; Student A has also used the nurse's office to change clothing. Student A has been observed entering or exiting girls' locker rooms several times, both for PE and athletics, in order to store her clothes, obtain a rental uniform, and change her clothes. The District reprimanded Student A on multiple occasions for this. The District has recently installed privacy curtains in the PE girls' locker room, but it has not installed privacy curtains in the two other girls' locker rooms or granted Student A access to the PE girls' locker room or any of the other girls' locker rooms.

With respect to the girls' locker rooms, the District has publicly stated that students should be able to use the locker rooms consistent with their gender identity, and Student A has stated her intention to use the private locker room areas when changing her clothes. Still, the District refuses to provide access to Student A to any part of the girls' locker rooms, unless it requires her to use the private changing areas. The evidence shows that, as a result of the District's denial of access to the girls' locker rooms, Student A has not only received an unequal opportunity to benefit from the District's educational program, but has also experienced an ongoing sense of isolation and ostracism throughout her high school enrollment at the School. In the context of athletics, the denial of access to the girls' locker room resulted in Student A missing opportunities to participate fully in the education experience afforded her teammates. The denial of access has also meant that, in order to satisfy her graduation requirements and receive a high school diploma, Student A has had no other option but to accept being treated differently than other students by the District. Student A changed separately from other students in a restroom down a 75-foot hallway and, in order to avoid drawing increased attention to her separate arrangement, Student A took a long and circuitous route daily in an attempt to enter the gymnasium unnoticed. On two different occasions, Student A was unable to access the restroom or her locker in the restroom. On another occasion, Student A did not receive information that students allowed in the locker room did receive, that students would not have to dress for gym

class, and was embarrassed when she arrived in her gym uniform while others wore their street clothes.

Student A has completed her required summing units for PE class and does not plan to take additional, elective swimming units; swimming therefore is no longer in active dispute for Student A. Nevertheless, OCR's investigation revealed that in the PE class's swim unit, the District's separate changing arrangements (Restroom G) also singled out Student A for different treatment from that of her peers. Unlike the other female students, who had standard showering facilities and amenities within a locker room, Student A had access to a "rinse" shower and limited amenities. The rinse shower was located in a narrow hallway through which all students had to pass to enter or exit the girls' swimming locker room.

The District does not dispute that it has denied access to Student A to use the girls' locker rooms. The District proffered as its legitimate, nondiscriminatory justification that it "based its decision on the needs of all students," balancing Student A's rights and interests with the privacy concerns of other female students. The District raised two specific constitutional privacy concerns. First, the District contends that "permitting Student A to be present in the locker room would expose female students to being observed in a state of undress by a biologically male individual." The District's second stated privacy concern is that it would be inappropriate for young female students to view a naked male in the locker room in a state of undress. The District stated that "[g]ranting Student A the option to change her clothes in the girls' locker room would expose female students as young as fifteen years of age to a biologically male body."[11] OCR finds the concerns unavailing in this case.

The District also points out that it offered various alternative changing options for Student A. However, each of the alternatives provided or proposed for Student A continued or would continue to exclude Student A from the girls' locker rooms and set her apart from her female classmates and teammates. Some proposed alternative facilities were not comparable to those provided for other girls, such as the proposed Restroom E for the swimming unit. In addition, the alternative options used by Student A have further subjected her to stigma and different treatment because, on at least some occasions, she has been late to class because she has had to seek out school staff members to provide her access to the alternative facilities, and, on another occasion, showed up to class dressed for gym because she alone was not told to remain in street clothes.

In late October 2015, the District installed five curtains in the girls' PE locker room. However, the District continues to deny Student A access to the girls' locker room and has maintained that it will continue to deny access unless Student A—and only Student A—is required to change

[11] As putative support for this privacy concern relating to Student A's peer interactions in the locker rooms, the District cited Student A's private conversations, on two occasions, with Coach A and Nurse A as to whether she presented a female appearance in her uniform. A student's question to a medical professional and a coach about whether the student presents as a girl in clothes bears no relationship to student privacy concerns regarding nudity; OCR therefore takes this claim as pretext. Nonetheless, OCR analyzes the relevance of the asserted privacy concern for purposes of complete review.

behind a privacy curtain. As noted above, Student A requested an opportunity to change clothes in private in the locker rooms, and has stated that she would use privacy curtains if available.

Conclusion

The evidence establishes that, for more than two school years, the District has denied Student A access to the girls' locker rooms at the School, and offered only separate facilities to change clothes for her PE classes and athletics activities.

The District has asserted its interests in balancing the rights of all students, including the constitutional privacy interests of high school students. OCR recognizes that, in preventing and redressing discrimination, schools must formulate, interpret, and apply their rules in a manner that respects the legal rights of students, including constitutional rights relating to privacy. The civil rights laws that OCR enforces, including Title IX, must be interpreted in ways that are consistent with constitutionally protected rights.

Consistent with the Title IX regulations described above permitting school districts to have separate locker room facilities, the School's locker rooms are separated by sex, with restricted access to only members of the same sex. Thus, the School's students have a reasonable expectation of privacy in a locker room setting. Students engage in private activities in the locker rooms, such are changing clothes, using the bathroom, and showering.

To date, the District's position has been that it must deny Student A access to the girls' locker rooms in order to protect the privacy interests of all of its students. In fact, however, the District could satisfy its Title IX obligations as well as protect potential or actual student privacy interests. The District's installation and maintenance of privacy curtains in one locker room go a long distance toward achieving such a nondiscriminatory alternative because providing sufficient privacy curtain access to accommodate any students who wish to be assured of privacy while changing would allow for protection of all students' rights in this context. Those female students wishing to protect their own private bodies from exposure to being observed in a state of undress by other girls in the locker rooms, including transgender girls, could change behind a privacy curtain. Student A has consistently made clear that she would use the privacy curtains to change if allowed access to the girls' locker rooms. This addresses the privacy interest in not exposing young female students in the girls' locker rooms to the intimate body parts of Student A – a transitioning transgender girl – in a state of undress. The privacy curtains the District already has installed in one locker room could well be sufficient to protect all its students' rights, with respect to access to that locker room, if the District rescinded its discriminatory denial of access to the locker rooms for Student A. To date, the District has not taken any steps to provide any private changing areas in its athletics locker room or swimming locker room (although Student A no longer needs to use the swimming locker room). The District has indicated that it might be willing to install privacy curtains in its other girls' locker rooms, but it has not done so.

Thus, the evidence establishes that, given Student A's stated intention to change privately, the District could afford equal access to its locker rooms for all its students if it installed and maintained privacy curtains in its locker rooms in sufficient number to be reasonably available

for any student who wants privacy. Here the totality of the circumstances weighs in favor of the District granting Student A equal access to the girls' locker rooms, while protecting the privacy of its students.

Based on the specific facts and circumstances in this case, OCR concludes that the District, on the basis of sex, excluded Student A from participation in and denied her the benefits of its education program, provided her different benefits or benefits in a different manner, subjected her to different rules of behavior, and subjected her to different treatment in violation of the Title IX regulation, at 34 C.F.R. § 106.31.

Procedural Posture

OCR has engaged in extensive negotiations with the District to resolve the Title IX violation in this case. OCR notified the District of its Title IX determination on July 13, 2015, and has actively negotiated with the District from that date through the date of this letter. OCR discussed a proposed agreement with the District on July 13, July 16, July 20, August 1, August 13, August 19, September 16, September 25, and October 8, 2015. On October 12, 2015, the District informed OCR that it would not resolve the Title IX violation voluntarily. On October 13, 2015, OCR issued a letter declaring an impasse in the negotiations. OCR informed the District of its continued willingness to negotiate an agreement, including holding an in-person meeting with the District's Superintendent on October 21. During the meeting of October 21, 2015, the District presented OCR diagrams and blueprints of its locker room facilities that were consistent with what OCR had observed during its onsite. The District also gave OCR a photograph of a mock-up shower curtain as a representation of what it would use for privacy curtains within the PE girls' locker room.

On October 28, 2015, OCR conducted an onsite visit at the School to view the privacy curtains that District installed on October 27, 2015, and had further negotiations with counsel for the District. To date, OCR's efforts to resolve this complaint voluntarily with the District have not been successful. OCR continues to be willing to negotiate an agreement with the District. If an agreement is not reached within 30 calendar days of the date of this Letter of Findings OCR must follow the procedures in its *Case Processing Manual*, at Section 305 for the issuance of a Letter of Impending Enforcement Action.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she had filed a complaint or participated in the complaint resolution process. If this happens the complainant may file another complaint alleging such treatment. Under the Freedom of Information Act, it may be necessary to release this document and related

correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you or your staff members have any questions about this matter, please do not hesitate to contact Melissa Howard, Attorney Advisor, at 312-730-1527.

Sincerely,

Adele Rapport
Regional Director

cc: Jennifer Smith, Esq.

EXHIBIT F

AGREEMENT TO RESOLVE
Between Township High School District 211 and
the U.S. Department of Education, Office for Civil Rights
OCR Case # 05-14-1055

In order to resolve the issues in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), under Title IX of the Education Amendments of 1972 (Title IX), Township High School District 211 (District), without admitting any violation of federal law or regulations, agrees to take the actions outlined in this Resolution Agreement.

TERMS OF THE AGREEMENT

I. EXPERT CONSULTANT

A. No later than thirty (30) calendar days after execution of this Agreement, the District will engage one or more third-party consultants with expertise in child and adolescent gender identity, including transgender and gender nonconforming youth, to support and assist the District in implementing this Agreement. The District may propose as its consultant a current employee of the District, if it currently employs an individual with the required expertise and experience.

B. The consultant(s) will be agreed upon by both the District and OCR.

Reporting Requirement: Within 30 calendar days of the execution of this Agreement, the District will provide OCR with a written summary of the expert consultant it proposes to engage, including that individual's application and resume and/or documentation concerning the individual's previous position(s), employer(s) or professional affiliation(s).

Within 30 calendar days of OCR's approval of the nominee, the District will provide OCR with written documentation that it has engaged the expert consultant.

C. The District will promptly notify OCR if it intends to retain additional or alternative consultants during the term of this Agreement for purposes of implementing this Agreement.

D. The District will be responsible for all costs, if any, associated with the retention of expert consultants.

Reporting Requirement: Within 30 days of any determination to retain additional or alternative consultants, the District will provide OCR with a written summary of the expert consultant it proposes to engage, including that individual's application and resume and/or documentation concerning the individual's previous position(s), employer(s) or professional affiliation(s).

Within 30 calendar days of OCR's approval of the nominee, the District will provide OCR with written documentation that it has engaged the expert consultant, the contact information of each

additional consultant retained by the District in connection with this Agreement, as well as the start and end dates of each individual's services.

II. INDIVIDUAL MEASURES

A. For the duration of Student A's enrollment in the District:

1. based on Student A's representation that she will change in private changing stations in the girls' locker rooms, the District agrees to provide Student A access to locker room facilities designated for female students at school and to take steps to protect the privacy of its students by installing and maintaining sufficient privacy curtains (private changing stations) within the girls' locker rooms to accommodate Student A and any students who wish to be assured of privacy while changing;

2. the District will coordinate with hosts of off-campus, District-sponsored activities to arrange that Student A is provided access to facilities designated for female students in a manner consistent with item II.A.1. The District will work with Student A to honor her requests for facility accommodations in the least disruptive manner possible for Student A; and

3. the District will continue to ensure that any school records containing Student A's birth name or reflecting Student A's assigned sex, if any, are treated as confidential, personally identifiable information; are maintained separately from Student A's records; and are not disclosed to any District employees, students, or others except as allowed by state and federal laws governing the release of student record information.

Reporting Requirement: By January 15, 2016, the District will provide OCR with written documentation of its compliance with item II.A, including but not limited to, any and all documentation relating to Student A's access to girls' locker rooms and a copy of Student A's registration and enrollment materials confirming her name and preferred gender identity. The District will provide OCR with a monitoring report describing its ongoing compliance with item II.A on October 1 and February 1 of each year that this Agreement is in force.

B. If any student requests additional privacy in the use of sex-specific facilities designed for female students beyond the private changing stations described in item II.A.1, the District will provide that student with access to a reasonable alternative, such as assignment of a student locker in near proximity to the office of a teacher or coach; use of another private area (such as a restroom stall) within the public area; use of a nearby private area (such as a single-use facility); or a separate schedule of use.

Reporting Requirement: By January 15, 2016, the District will provide OCR with written documentation of any request made pursuant to Item II.B. and a description of the steps taken by the District to accommodate that request.

C. No later than thirty (30) calendar days after execution of this Agreement, the District will notify Student A and her parents that they may, at any point during Student A's enrollment in the District, request the District to establish a support team to ensure Student A has access and opportunity to participate in all programs and activities, and is otherwise protected from gender-based discrimination at school. If the District receives such a request, it will form a support team that will:

1. include, at a minimum, Student A, her parents, an advocate or representative of the parents' choice (if any), a medical professional of the parents' choice (if any), and relevant District personnel familiar with Student A;

2. develop a student-specific support plan to provide Student A with access to all school and District facilities and activities, addressing any particular issues raised by Student A or her parents;

3. document its meetings, recommendations, and decisions, including, but not limited to, the date and location of each meeting, the names and positions of all participants, the basis for its recommendations and decisions, and supporting third-party opinions and information considered and/or relied upon in the meeting; and

4. at least once each school year and at any time upon the request of Student A or her parents, review Student A's circumstances to determine whether existing arrangements related to Student A's gender identity, gender transition, or transgender status are meeting her educational needs and ensuring that Student A has access and opportunity to participate in the District's education programs and activities. Once constituted, the support team will be in place for the remainder of Student A's enrollment in the District or until her parents request in writing that it be terminated.

Reporting Requirement: Within 30 calendar days of the execution of this Agreement, the District will provide OCR with written documentation of its compliance with item II.C, including but not limited to, documentation of the request for the formation of the team, the names and positions of the team members, date(s) the team met, and any documentation of its meetings, recommendations, and decisions. The District will provide OCR with a monitoring report describing its ongoing compliance with item II.C on October 1 and February 1 of each year that this Agreement is in force.

III. NON-DISCRIMINATION NOTICE

A. By January 15, 2016, the District will draft and submit to OCR for review and approval a revised notice of nondiscrimination on the basis of sex that meets the requirements of the Title IX regulation, at 34 C.F.R. § 106.9, including, but not limited to, stating that the District does not discriminate on the basis of sex in its educational program or activities, stating that inquiries about sex discrimination may be referred to the Title IX Coordinator or OCR, and including the name or title and contact information (address, email address, and telephone number) for the District's Title IX Coordinator, as required by the Title IX regulation, at 34 C.F.R. § 106.8. The following statement will satisfy this requirement and be approved by OCR:

Township High School District 211 does not discriminate on the basis of sex in its educational programs or activities, and is required by Title IX not to discriminate in such a manner. This prohibition extends to employment and admission. The following employee(s) have been designated to address questions or complaints about discrimination: Title IX Coordinator, [Name or Title], [Address], [Email Address], [Phone Number]. Inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or to OCR.

B. Within 30 days of OCR's approval, the District will publish the revised notice of nondiscrimination on its website and as otherwise required by the Title IX regulation, at 34 C.F.R. § 106.9.

Reporting Requirement: By January 15, 2016, the District will provide OCR with draft revised notice of nondiscrimination for OCR's approval pursuant to item III.A. Within 60 days of OCR's approval, the District will publish the revised notice of nondiscrimination on its website, as well as in each announcement, bulletin, catalog, or application form which it makes available, as required by the Title IX regulation, at 34 C.F.R. § 106.9.

IV. MONITORING AND REPORTING

A. The District will provide documentation of its compliance with this Agreement through written compliance reports, which will be produced to OCR, as described above. In addition, to demonstrate its compliance with this Agreement, Title IX and its implementing regulation, by June 1, 2016, the District will provide the following documentation:

1. a copy or detailed description of all gender-based discrimination or harassment complaints or incidents that occurred during the reporting period, including documentation or a detailed written description of the District's response to each incident;

B. The District will provide all reports, documents, and information required to be produced to OCR pursuant to this Agreement in electronic form, usable by OCR,

or in written form if the data in electronic form would not be usable, in accordance with the timelines set herein.

Based on the terms and reporting requirements of this Agreement, OCR anticipates closing its monitoring of this Agreement by June 30, 2017.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title IX, 34 C.F.R. §§ 106.9 and 106.31, which were at issue in this case.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title IX, 34 C.F.R. §§ 106.9 and 106.31, which were at issue in this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings, including to enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

Signed: **Date:**

Township School District 211 12/2/15

EXHIBIT G

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

December 7, 2015

Jennifer A. Smith
Franczek Radelet P.C.
300 South Wacker Drive
Suite 3400
Chicago, IL 60606

Dear Jennifer:

When we spoke this morning, and in your December 4, 2015 email to Debbie Osgood, you asked for clarification of the resolution agreement the district executed, dated December 2, 2015. The full terms of the resolution of this investigation are set forth in the resolution agreement. As to the specific questions raised in your email, the agreement provisions specific to locker room access apply only to Student A and the District's agreement to provide Student A access to locker rooms is based on the student's representation that she will change in private changing stations. The agreement is explicit in recognizing that the District does not admit any violation of federal law or regulations.

Sincerely,

Catherine E. Lhamon
Assistant Secretary for Civil Rights

EXHIBIT H

Good evening. Welcome to all of you.

Through various forms of media, you've seen accounts about this important matter facing District 211 and many other public school districts. We thought we had resolved it with a very thoughtful and reasonable compromise – far removed from the original mandate from the Office for Civil Rights for unfettered locker room access, but also more inclusive for the student, while protecting the privacy rights of all of our students.

Through hundreds of messages and conversations, we repeatedly hear common themes, such as agenda, rights, discrimination, privacy and government. But one principle unites all of us in this room: our teenage students and their experiences. This must be at the center of our mind, so that all exchanges tonight will be respectful and productive.

This matter can simultaneously be ideological, political, religious and financial. But above all, this matter is human, and impacts real people--young people, and their families.

Regardless of your perspective, your children – our students – and their experiences in this District have been--and will always be--- at the center of our priorities, decisions and actions as a Board of Education and as leaders of District 211. This has been true throughout the entirety of this particular matter – and, in fact, all matters at the District. So, when people reference an agenda, I want to be clear that the well-being of ALL our students has been, and remains our ONLY agenda.

Tonight, the Board of Education will consider whether to rescind and nullify a negotiated plan that we hoped would resolve a set of findings issued by the Office for Civil Rights alleging that the District's practices are discriminatory toward a transgender student.

Their finding stated that we had discriminated against a transgender student by not providing equal—unfettered and unrestricted —access to the locker room designated for students born of the opposite sex. Under OCR's findings, their directive was full, unrestricted access to the locker room of opposite sex, where we have open changing and shower facilities. Regardless of a student's gender identity, locker rooms are based on anatomy. The District has refused from the beginning to allow open access to students of the opposite anatomy. To us, this is simply a matter of common sense, especially when our students are teenagers.

Throughout this matter, the District and the Board of Education have held that access to the locker room of their identity by transgender students would only be considered on the condition of ensuring privacy for ALL students.

I want to clarify what it actually means and looks like to safeguard and ensure privacy for ALL students, as delineated in our proposed resolution with OCR. The non-negotiable elements of ensuring privacy include two aspects. First, the use of privacy changing areas by this transgender student would ensure no locker room exposure to a student with anatomy of a different sex; and second, ANY student in a locker room could utilize a privacy changing area WHENEVER changing clothes.

A privacy area can be located mere steps from PE lockers. During the two to three minutes that a student would be changing in a privacy changing area, other students would also be changing. Because any student may use a privacy area, the anatomy of all students would be protected from exposure.

We have long recognized and supported transgender students and transgender identity. Our attempted resolution with OCR was negotiated to provide an individual transgender student with access to the locker room by employing the privacy measures just described – privacy which is understandably and consistently preferred in a locker room by all students.

Recent comments in the media from an OCR official are not consistent with the resolution that was negotiated. Rather, the OCR official's reported comments suggest that OCR interprets the agreement as requiring totally unrestricted access to the locker room by transgender students – meaning no requirement that transgender students change in private. At first, it seemed clear that OCRs comments were not made in error. In an official letter to the District dated December 3, 2015, they disavowed the understanding that access to the locker room would be specifically conditioned on the student changing in private. Because the OCR had publicly and officially changed its position from that articulated by them in our negotiations, and which was central to the agreement we reached, we called an emergency Board meeting for tonight, feeling compelled to determine the course of action we will pursue moving forward.

However, earlier today, our lawyers received a letter dated December 7, 2015 from OCR's public spokesperson Catherine Lhamon, Assistant Secretary for Civil Rights, in which OCR has issued an official clarification – stating "…the agreement provisions specific to locker room access apply only to Student A and the District's agreement to provide Student A access to locker rooms is based on the student's representation that

(the student) will change in private changing stations." The letter goes on to state that the agreement explicitly recognizes that the District does not admit any violation of federal law or regulation.

We are disappointed that the OCR has made an already very difficult, passionate and emotional issue very confusing with their apparent misstatements and lack of clarity in describing the agreement. We are gratified, however, to receive the letter today that provides official clarity and removes any confusion surrounding the plan our Board approved early on December 3.

As a result of all the confusion, we are reopening discussion on this issue and will determine tonight our position relative to the agreement we believed we had entered into, in good faith, with the OCR.

With the eyes of many upon us tonight, we will listen to your voices and your perspective. We have heard from hundreds about this matter, and your thoughts tonight are just one aspect of the many factors and considerations that go in to our decision-making.

Independent of the decision and direction tonight, we will be providing transgender information and awareness sessions throughout our schools and to our communities, as this is obviously an important topic.

We must not let this matter divide us. We must work beyond existing preconceptions and use both understanding and sensitivity as we work with all of our young people going forward.

As superintendent, I call upon all of us to heed the importance of this moment by making a commitment to acknowledge all perspectives--and to work together to identify solutions that accomplish our shared mission of genuine care and support for ALL students and their experiences in Township High School District 211. We can and we must accomplish this respectfully if we want to set the right example for our young people.

EXHIBIT I

Attachments: OCR Letter of Findings.11-1-15.pdf
Clarification Letter from C Lhamon OCR.12-7-15.pdf
Cates Comments Post OCR Ltr Spec Bd Mtg 12-7-15. 210 pm.docx

---------- Forwarded message ----------
From: **Daniel Cates** <dcates@d211.org>
Date: Thu, Feb 11, 2016 at 2:07 PM
Subject: Materials
To: "dstender@vmps.org" <dstender@vmps.org>

Deron,

Thank you for the call and the opportunity to be of some service. I extend my best support and assistance in any way I can help.

I have attached several documents that may be of interest or of use to you.

While I have many documents that occurred early in the sequence, I think the ones I have provided help you most where you are at this point.

The first is the letter of findings issued against us.

The second is the clarification from the OCR chief in Washington DC after we tangled in the media.

The third is a statement that I made in a large public meeting, but I think it provides a helpful framework for you.

The message below is one being sent by other local districts that may be helpful.

If I can help, please let me know.

Dan Cates

February 8, 2016

Dear Lake Zurich High School Families and Students,

Over the last few years, District 95 (like all school districts across our nation) has closely monitored the national conversation about the transgender community and how to accommodate transgendered students in our schools. As stated in our Board

policies and student handbooks, the District is committed to providing an educational environment which promotes tolerance and respect for all of its students, regardless of gender or gender identity. In our schools, faculty and staff work daily to preserve the dignity and safety of all our students. The purpose of this letter is to briefly inform you how the District is addressing transgender questions as they arise.

Accommodation requests for transgender students commonly include use of the name and pronouns for the student's "affirmed" gender identity, changing name and gender information in student records, and use of the bathroom and locker room. The use of bathrooms and locker rooms is one of the most challenging issues facing transgender students and school districts. The U.S. Department of Education's Office of Civil Rights' position on students' access to the bathroom and locker room is very clear and states that a student has the right to use the locker room and bathroom of the student's affirmed gender identity. The definition of "affirmed gender identity" has not been clearly defined by state or federal law, and therefore, consistent with our policy, the District will handle any such requests on a case by case basis.

As a District, we are working to protect the rights and privacy of *all* our students. Recently, high school locker rooms were equipped with a limited number of individual changing locations for any student who wishes additional privacy in the locker room, for any reason. No one will be required to use a changing facility, but any of our physical education students and student-athletes may use a private, individual changing location in our locker rooms.

Please be assured the District is committed to protecting the rights and privacy of all our students while also providing a safe educational environment built on tolerance and respect. Please contact me with any questions or concerns at kent.nightlinger@lz95.org.

Sincerely,

Mr. Kent A. Nightlinger
Principal, LZHS

--

Deron Stender, Superintendent
Virginia Public Schools
411 5th Avenue South
Virginia, MN 55792
218-749-5437

EXHIBIT J

---------- Forwarded message ----------
From: **Deron Stender** <dstender@vmps.org>
Date: Tue, Dec 15, 2015 at 7:40 AM
Subject: Thank you
To: dcates@d211.org

Dr. Cates,

Thank you for giving me the opportunity to discuss with you the thoughts and ideas on how to address our student situation. You helped me establish a framework based on privacy for all and that will help guide us as we move forward. I welcome any letter, materials, special forms of communication, and further advice in this regard.

Again, thank you for your time and assistance.

Sincerely,
Deron Stender

--

Deron Stender, Superintendent
Virginia Public Schools
411 5th Avenue South
Virginia, MN 55792
218-749-5437

--

Deron Stender, Superintendent
Virginia Public Schools
411 5th Avenue South
Virginia, MN 55792
218-749-5437

EXHIBIT K

---------- Forwarded message ----------
From: **Deron Stender** <dstender@vmps.org>
Date: Wed, Feb 17, 2016 at 10:05 AM
Subject: Re: Policy

Good morning. Thank you for contacting me. If you feel it would be beneficial for us to meet and discuss your concerns, please let me know and I will make myself available. I believe I have answered your questions in a previous email. In accordance with the recent U.S. Department of Education and Office of Civil Rights case, transgender students have the right to access the facility of their gender identity. As a school, our task is to offer all individuals privacy. At this time, we are able to offer alternative spaces to change and get ready. We are currently looking at gender neutral facilities to provide greater privacy in contained spaces. We are doing our best to be respectful of all individuals.

Yes, we have great staff at Virginia who work hard to connect with our students and to provide them with opportunities. Your comments are appreciated.

As always, please contact me with any questions.

Thank you,
Deron Stender

On Wed, Feb 17, 2016 at 9:28 AM, wrote:

> Mr. Stender,
>
> I need to know whether or not there is a possibility that any biological male student at VHS could have access to female-only facilities at VHS. Is it possible that transgender students who "identify as female" or "identify as male" might use facilities specified for their opposite biological gender? As I have stated to other people, my issue is not with any specific person or even the idea of being transgender, nor is my issue with VIRG school district. My issue is with TG use of restroom & locker room facilities. Thank you again for your time. I appreciate the professional & dedicated teaching staff at VHS & Parkview, where I have children. I am especially thankful for kindergarten teacher, Emily Zeidler. She is a gift to the school & her students.
>
> Respectfully,

Sent from my iPhone 6s

EXHIBIT L

Kevin J. Rupp
Scott T. Anderson
Jay T. Squires*†
Michael J. Waldspurger*
Amy E. Mace
Trevor S. Helmers*
Tessa S. Wagner
John P. Edison
Liz J. Vieira
Kristin C. Nierengarten
Kelly J. Burns
Rachel A. Centinario*
Alice D. Kirkland
Zachary J. Cronen
Colleen A. Bharadwaj

*Also Admitted in Wisconsin

†Real Property Specialist Certified by the MN State Bar Association

RUPP, ANDERSON, SQUIRES & WALDSPURGER, P. A.

March 30, 2016

Alliance Defending Freedom
Attn: Jeremy Tedesco, Joseph E. La Rue,
and Ken Connelly
15100 N. 90th Street
Scottsdale, AZ 85260

RE: Independent School District No. 706, Virginia, Minnesota
Our File No. 0706-0001

Dear Mr. Tedesco, Mr. La Rue, and Mr. Connelly:

Our firm represents Independent School District No. 706, Virginia, Minnesota (the "District"). The District received your letter, dated March 14, 2016, regarding the use of restroom and locker room facilities by transgender students and we are responding on its behalf. If you wish to communicate with the District or any of its representatives in the future, please direct your communications to our office.

The District's approach to restroom and locker room use is constitutional and purposefully adheres to the interpretation of sex discrimination law under Title IX adopted by the Department of Education, Office of Civil Rights ("OCR"). The District has no intention of violating the rights of transgender students by adopting the policy you suggest.

However, the District seeks a positive education environment for all its students and, in light of your clients' complaints, is willing to consider potential accommodations and alternatives to allow those students the additional privacy they seek.

Constitutional Claims

Your letter attempts to cast the District's actions as a violation of the constitutional rights of transgender students and their parents and, in order to do so, it relies upon questionable precedent and language taken out of context.

No court has held that a "fundamental, constitutional right to bodily integrity [] is violated" when students are "forced into situations where the opposite sex may view their partially or fully unclothed bodies." *Michenfelder v. Sumner*, 860 F.2d 328 (9th Cir. 1988), the case that you cite as authority for this proposition, does not, in fact, make such a sweeping finding about the right to privacy. Additionally, it is twenty-eight years old at this point, and, given the evolution of the law on gender and sex discrimination during the years since it was issued, it no longer accurately represents the state of the law in this area. The same is true of *Sommer v. Budget Mktg., Inc.*, 667 F.2d 748 (8th Cir. 1982), which you cited to support the proposition that allowing a biologically male individual to use the women's restroom is a violation of the rights of female individuals. The court's decision in *Sommer* is based on the idea that Title VII's protection for sex discrimination does not include protection for gender expression in any form. However, this basic premise was rejected by the Supreme Court twenty-seven years ago, in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). Therefore, for a public entity to rely on *Sommers* to justify actions such as those you suggest would be improper.

The District's approach does not implicate the rights of students or their parents to engage in the free exercise of religion, nor does it endorse religion, or the lack thereof, in violation of the establishment clause. In fact, the District's current policy is entirely neutral with respect to religion. Any perceived interaction between the policy and students' religious beliefs is incidental and does not create a burden on the free exercise of religion sufficient to implicate either the First Amendment or the Minnesota Constitution.

Finally, a parent's right to control their children's upbringing has never been interpreted to allow private citizens to change the policies of public educational institutions. All the cases that you cite in support of this claim are easily distinguishable from the current situation.

Pending Federal Cases and Federal Agency Interpretation

As you rightly note, at this point Title IX has not been interpreted to prevent a school district from instituting a restrictive policy, such as the one you propose, by any authority binding upon a Minnesota school district. However, the only two federal cases

which have examined the issue directly are currently on appeal and the affirmance of the district court decisions is far from certain.

Additionally, while you dismiss the importance of OCR"s interpretation of Title IX, this is of great practical importance to the District, as OCR has the authority to investigate the District and such an investigation would have significant financial consequences for the District, regardless of the outcome.

Potential Accommodations

The District does not intend to institute a policy requiring students to use facilities according to their biological gender, as you demand. However, the District does not wish to see any of its students upset or afraid to use the restroom and locker room facilities. Therefore, the District is willing to discuss possible accommodations for those students who are uncomfortable using communal bathroom and locker room facilities. Please contact us if that is of interest to clients.

Very Truly Yours,

Kevin J. Rupp
Alice D. Kirkland

cc: Deron Stender, Superintendent

Kevin J. Rupp
Scott T. Anderson
Jay T. Squires*†
Michael J. Waldspurger*
Amy E. Mace
Trevor S. Helmers*
Tessa S. Wagner
John P. Edison
Liz J. Vieira
Kristin C. Nierengarten
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Alice D. Kirkland
Zachary J. Cronen
Colleen A. Bharadwaj

*Also Admitted in Wisconsin

†Real Property Specialist Certified by the MN State Bar Association

RUPP, ANDERSON, SQUIRES & WALDSPURGER, P. A.

March 31, 2016

Alliance Defending Freedom
Attn: Jeremy Tedesco, Joseph E. La Rue, and Ken Connelly
15100 N. 90th Street
Scottsdale, AZ 85260

RE: Independent School District No. 706, Virginia, Minnesota
Our File No. 0706-0001

Dear Mr. Tedesco, Mr. La Rue, and Mr. Connelly:

We are writing to correct an error in our letter to you dated March 30, 2016. The first sentence under the "Constitutional Claims" section of the letter should have read: "Your letter attempts to cast the District's actions as a violation of the constitutional rights of students who are not transgender and their parents and, in order to do so, it relies upon questionable precedent and language taken out of context."

We apologize for the inconvenience.

Very Truly Yours,

Kevin J. Rupp
Alice D. Kirkland

cc: Deron Stender, Superintendent

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Privacy Matters, a voluntary unincorporated association; and Parent A, president of Privacy Matters

(b) County of Residence of First Listed Plaintiff St. Louis
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
See Attached

DEFENDANTS

US Dept. of Education; John B. King, Jr., as US Secretary of Education; US Dept. of Justice; Loretta E. Lynch, as US Attorney General; Independent School District No. 706.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
42 U.S.C. 1983, Civil Rights - First & Fourteenth Amendments

Brief description of cause:
Civil Rights action to protect the privacy of every student within Independent School District 706

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
09/07/2016

SIGNATURE OF ATTORNEY OF RECORD
/s/ Renee Carlson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ATTORNEYS OF RECORD FOR PLAINTIFF

PRIVACY MATTERS

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**Pro Hac Vice Applications Forthcoming*