

Office for Civil Rights (OCR)  
U.S. Department of Education



NW ATIXA Investigators Training  
Whitman College  
April 18, 2016

This presentation provides general information and does not represent a complete recitation of the applicable law and OCR policy in this area. OCR's determinations of compliance depend on specific facts evaluated on a case-by-case basis. The language used in these slides is approved for the purposes of this presentation only and should not be used for other purposes.

### What This Presentation Will Cover

- I. OCR 101 – Complaint and Compliance Review Processing
- II. What Does Title IX Require of Every Recipient Institution?
- III. Three Major Areas Under Title IX:
  - o Different Treatment
  - o Athletics
  - o Sexual Harassment and Sexual Violence

## Part I – OCR 101

### What is OCR?

- Federal civil rights enforcement agency
- Our mission: To ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights

### OCR Across the Country [www.ed.gov/ocr](http://www.ed.gov/ocr)



### What Does OCR Do?

OCR enforces several civil rights laws.

Together, these laws prohibit discrimination on the basis of race, color, national origin, sex, disability, and age, as well as discrimination against certain patriotic youth groups that wish to meet at public schools.



## How OCR Accomplishes Its Mission

- Complaints
- Compliance Reviews
- Technical Assistance

→ D systemwide compliance reviews

## OCR's Jurisdiction

OCR has jurisdiction over programs and activities that receive financial assistance from the Department of Education (recipients). These may include:

- state education agencies
- elementary and secondary school systems
- colleges and universities
- state vocational rehabilitation agencies

## OCR's Jurisdiction

OCR also has jurisdiction over certain public entities under Title II of the Americans with Disabilities Act of 1990, which prohibits disability discrimination by public entities whether or not they receive federal financial assistance.

## Laws that OCR Enforces

- **Title VI of the Civil Rights Act of 1964** - Prohibits discrimination on the basis of Race, Color, or National Origin
- **Title IX of the Education Amendments of 1972** - Prohibits discrimination on the basis of Sex
- **Section 504 of the Rehabilitation Act of 1973 & Title II of the Americans with Disabilities Act of 1990** - Prohibit discrimination on the basis of Disability
- **Age Discrimination Act of 1975**
- **Boy Scouts of America Equal Access Act**

## OCR Enforcement

- An important responsibility of OCR is to investigate and resolve complaints of discrimination promptly and appropriately
- OCR conducts compliance reviews which permit OCR to target resources on class-wide compliance problems that appear particularly acute

## Complaint Resolution Tools

- Early Complaint Resolution (Agreement between the parties)
- Voluntary Resolution before the conclusion of an investigation (302 Agreement)
- Investigations and Investigation Determinations ("no violation" finding vs. settlement agreement)

## Technical Assistance

OCR provides technical assistance to help institutions, parents and students understand their rights and responsibilities.

Types of technical assistance:

- o Presentations
- o Responses to telephone and written inquiries
- o Workshops
- o Consultations

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## OCR's publicly available resolution documents

Navigate your web browser to OCR's Reading Room:

<http://www2.ed.gov/about/offices/list/ocr/frontpage/faq/readingroom.html>

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## OCR's publicly available resolution documents

### Reading Room

Background Information

Documents posted in this reading room were published in the Federal Register or were otherwise made available to the public. Policy and legal interpretations announced in other Federal Register notices have been approved or modified by Federal court decisions or by other interpretations of the legal requirements involved. Placement of the document in the reading room does not subject its recipient to other OCR documents in its field of activity. The list of OCR documents currently available is not all inclusive.

Policy -

Case Resolutions -

Laws and Regulations -

OCR Manuals -

OCR Programs, Publications, Reports -

Religious Exemptions -

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## OCR's publicly available case resolutions

- Click on "Case Resolutions"
- Either click where it says "click here" or enter in your search term and the site takes you to another page where you can search by
  - o Keyword
  - o Name of recipient
  - o Document type
    - Resolution Agreement
    - Resolution Letter
  - o See next slide for screen grab: you can also have the site show you a list of recent resolutions sorted by statute and by state

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Policy -

Case Resolutions -

To access resolution agreements and letters created on or after October 1, 2013 click here or enter criteria in the search box below:

Keyword

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For a list of selected recent resolutions please see below:

- By statute
  - Race and National Origin
  - Sex
  - Disability
- By state
  - Race and National Origin
  - Sex
  - Disability

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## Press releases = another location for publicly available resolutions

Some resolutions are only found in the US Department of Education's Press Releases site:

<http://www.ed.gov/news/press-releases>

- o University of Virginia, September 2015, sexual violence
- o Merrimack College, October 2012, athletics

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## Part II – What does Title IX require every recipient institution to do?

## History of Title IX

- Enacted in 1972
- Development of Regulations – 1972-1975 (HEW)
- Dep't of Education – Primary Oversight 1980
- Policy Interpretations and Guidance
  - 1979 Policy Interpretation – Title IX and Intercollegiate Athletics
  - 1996 – Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test
  - 1997 – Sexual Harassment Guidance
  - 2001 – Revised Sexual Harassment Guidance
  - 2010 – Bullying and Harassment Guidance (includes gender stereotypes)
  - April 4, 2011 DCL on Sexual Harassment and Sexual Violence
  - 2014 – Q&A on Title IX and Sexual Violence
  - 2015 – DCL on Title IX Coordinators: resource guide

## Title IX Protections

- Areas of prohibited discrimination may include:
  - Discrimination on the basis of sex (different treatment) in recipient programs (e.g., academic counseling and advice)
  - Sexual harassment or gender-based harassment/Sexual violence
  - Discrimination on the basis of sex in providing opportunities to participate in interscholastic or intercollegiate athletics

## Three Essential Elements

**The regulations require that each recipient:**

1. Have a Notice of Non-Discrimination; you must adopt and publish a policy against sex discrimination
2. Have at least one employee designated to coordinate and carry out Title IX responsibilities
3. Have grievance procedures providing for prompt and equitable resolution of sex discrimination

## NOTICE OF NONDISCRIMINATION

- Each school district, college, and university must publish a notice of nondiscrimination stating that it does not discriminate on the basis of sex in the education programs and activities that it operates.
- The notice must be widely distributed to students, parents, employees, prospective students and employees, and other relevant individuals.
- See <http://www.ed.gov/ocr/docs/nondisc.pdf>

## DISSEMINATION OF NONDISCRIMINATION NOTICE

- There are many methods by which a school, college or university should disseminate its notice.
- The Dear Colleague letter suggests that the notice be:
  - prominently posted on school websites;
  - posted at various school or campus locations; **and**
  - included in electronic and printed publications that provide information on the school's services and policies, such as employee or student handbooks.

### TITLE IX COORDINATOR

- A school district, college, or university must notify all students and employees of the name or title and contact information of the designated Title IX coordinator.
- The coordinator's responsibilities include oversight of all Title IX complaints and addressing any patterns or systematic problems that arise during the review of such complaints.

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### TITLE IX COORDINATOR, cont'd.

- Title IX coordinators must be trained on what constitutes sexual harassment, including sexual violence, and the school's grievance procedures.
- Title IX coordinators should be available to meet with students as needed.
- Title IX coordinators should not have other job responsibilities that create a conflict of interest.

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### GRIEVANCE PROCEDURES

The elements for determining if grievance procedures are **prompt and equitable** include whether procedures:

- Provide for notice of procedures, including where complaints may be filed, to students and employees
- Apply to sexual harassment, including sexual violence, by employees, students, and third parties
- Provide for adequate, reliable and impartial investigation, including opportunity to present witnesses and evidence

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### GRIEVANCE PROCEDURES, cont'd.

- Have designated and reasonably prompt timeframes for major stages of the grievance process
- Provide for written notice to parties of the outcome
- Provide assurance that school will take steps to prevent further harassment/violence and to correct its effects if appropriate
- Note: this is not a complete list of required elements

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## Part III – Major Title IX Areas

### Three Major Areas Under Title IX

- Discrimination (Different Treatment)
- Athletics
- Sexual Harassment and Sexual Violence

## Different Treatment

- No 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 educational program or activity receiving Federal financial assistance.

## Examples of Different Treatment

- Students received different treatment in admissions, registration, and granting of fellowships and internships.
- Students were suspended, placed on academic probation, forced to withdraw or dismissed.
- Male students held to a higher standard than female students during the physical fitness portion of law enforcement training classes.

## Title IX Athletics

## Title IX Athletics Requirements

- 1975 Title IX Regulations
  - Equal opportunity in intercollegiate, interscholastic, club and intramural athletics (34 C.F.R. 106.41(a))
  - Athletic scholarships (34 C.F.R. 106.37(c)(1))
- 1979 Policy Interpretation: Intercollegiate Athletics
- Guidance based on 1979 Policy Interpretation
- 1996 Clarification: The Three-Part Test
- 1998 Letter on athletic scholarships
- 2003 Further Clarification: The Three-Part Test
- 2010 Dear Colleague letter: The Three-Part Test

## Three Analytical Standards

- Interests and Abilities ("I&A")
  - The three-part test
- Athletic Financial Aid ("AFA")
  - The 1% rule
- Other Program Benefits ("Laundry List")
  - Disparity analysis

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## K-12 Athletics

- Lafayette County School District, Mississippi, OCR 06111239
- Analyzes the accommodation of interests and abilities and 5 "laundry list" areas of athletic benefits and services
- Resolution Agreement (CPM 303 agreement); 19 pages long, September 2014

## Post-secondary institution resolution

- Merrimack College, Massachusetts, OCR 01106001
- Compliance review (proactive enforcement)
- Resolution Agreement (CPM 303 agreement); 17 pages long
- Agreement contains specific timelines for adding 3 new women's sports: Division I ice hockey, D-II swimming & diving, D-II water polo, and provisions re supporting 3 recently added women's sports: track & field, golf, and crew

## Highlights from OCR's April 2015 Questions and Answers on Title IX and Sexual Harassment

## Highlights of This Section

- Students Protected by Title IX
- Notice and a School's Obligations to Respond to Sexual Violence
- Responsible Employees and Reporting
- Requests for Confidentiality
- Investigations
- Interim Measures
- Remedies and Notice of Outcome
- Education, Prevention, and Training

## Who is Protected By Title IX

- Title IX protects all students from sexual violence, including:
  - Students with disabilities;
  - International or undocumented students, including English language learners; and
  - All students regardless of their sexual orientation or gender identity.
- Title IX covers sexual violence between members of the same sex. Both male and female students can be subjected to sexual violence.

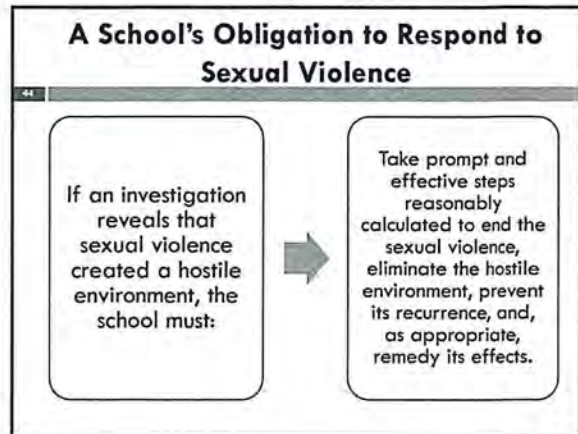
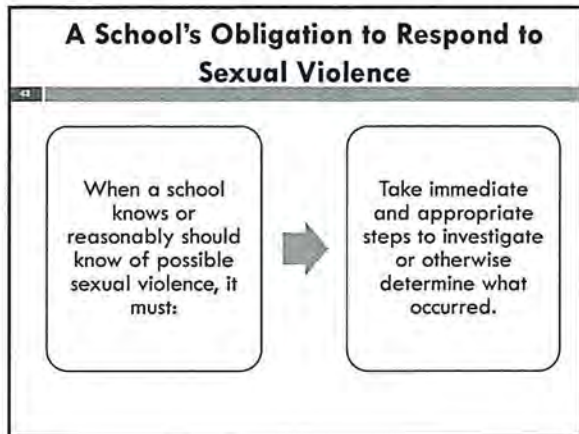
## When is a school on notice of sexual violence?

A school has 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.





- ### Who is a responsible employee?
- has the authority to take action to redress sexual violence;
  - has been given the duty of reporting incidents of sexual violence or other misconduct by students to the Title IX coordinator or other school designee; or
  - a student could reasonably believe has this authority or duty

### Who is a responsible employee, cont'd.

Whether an employee is a responsible employee varies 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 informal and formal school practices and procedures.

- ### Duties of Responsible Employees
- What should a responsible employee do when alleged sexual violence has been disclosed?
    - Report the information to the Title IX coordinator or other school designee.
    - Include 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 resolve the situation.

- ### Exception for Counselors and Advocates
- Although certain 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.
    - Pastoral and professional counselors
    - Non-professional counselors or advocates

### Exception for Counselors and Advocates

- Pastoral and professional 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 alleged incident of sexual violence.

### Exception for Counselors and Advocates

- Non-professional counselors or advocates (on-campus sexual assault centers, victim advocacy offices, women's centers, or health centers) are not required by Title IX to report any identifying information.
- Schools should collect aggregate data about sexual violence incidents from these offices to identify patterns or systemic problems.
  - Only general information such as the nature, date, time, and general location of the incident.
  - No personally identifiable information about a student.

### Requests for Confidentiality

- OCR strongly supports a student's interest in confidentiality in sexual violence cases.
- The situations in which a school must override a student's request for confidentiality in order to meet its Title IX obligations will be limited.
- Information should only be shared with individuals responsible for handling the school's response.

### If a Student Requests Confidentiality

- The school needs to determine whether or not it can honor the request while still providing a safe and nondiscriminatory environment for all students.
- The Title IX coordinator is generally in the best position to evaluate confidentiality requests.

### When a School Determines it Can Respect a Confidentiality Request

- A school should take all reasonable steps to respond to the complaint consistent with the confidentiality request.
- The confidentiality request may limit a school's ability to respond fully, but it can still take steps to limit the effects of the alleged sexual violence and prevent recurrence.

### When a School Determines it Must Override a Confidentiality Request

- A school should inform the student prior to disclosing the student's identity to the alleged perpetrator; and
- It is important for schools to take whatever interim measures are necessary to protect the student and ensure the safety of other students.

## Elements of a Title IX Investigation

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- Must be adequate, reliable, impartial and prompt and include the opportunity for both parties to present witnesses and other evidence.
- May include a hearing, but Title IX does not necessarily require a hearing.
- All persons involved in conducting the investigation must have training in handling sexual violence complaints and the school's grievance procedures.
- A school has flexibility in how it structures the investigative process, but for Title IX purposes a school must give the complainant any rights it gives to the alleged perpetrator.

## Specific Issues Related to Hearings

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- A school is not required to allow a complainant to be present for an entire hearing, but if the school allows one party to be present for the entirety of a hearing, it must do so equally for both parties.
- A school is not required to allow cross-examination of witnesses, including the parties. But if a school allows one party to cross-examine witnesses it must do so equally for both parties.
- Questioning about the complainant's sexual history with anyone other than the alleged perpetrator should not be permitted.

## Parallel Criminal Investigations

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- A school must still conduct its own Title IX investigation and the termination of a criminal investigation without an arrest/conviction does not affect a school's Title IX obligations because the standards are different.
- Criminal investigations may be useful for fact gathering if the criminal investigation occurs within the reasonable timeframe for Title IX investigations.

## Parallel Criminal Investigations

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- A school may temporarily delay the fact-finding of a Title IX investigation while the police are gathering evidence, but must promptly resume when this is complete.
- If a school delays its Title IX investigation while the police are gathering evidence, it must still take interim measures to protect the complainant in the educational setting and should continue to update the parties on the status of the investigation.

## Off-Campus Conduct

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- 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 has continuing effects on campus or in an off-campus education program or activity.

## Overview of Interim Measures

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- 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.
- The school should provide the complainant with periodic updates on the status of the investigation.

## Examples of Interim Measures

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- Instituting a no contact order between the parties;
- Providing support services, including counseling, housing support, academic support; and
- Changing living arrangements, course schedules, assignments, or tests.

## How should a school determine which measures to take?

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- The specific interim measures implemented and process for implementing those measures will vary depending on the facts of each case.
- In general, schools should minimize the burden on the complainant.

## Remedies

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- If an investigation reveals that sexual violence occurred, effective remedial action may include:
  - Disciplinary action taken against the perpetrator (i.e. sanctions) and required counseling for the perpetrator;
  - Remedies for the complainant and others;
  - Changes to the school's overall services or policies.
- These remedies are separate from, and in addition to, any interim measures that may have been provided.

## Notice of the Outcome

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- Title IX requires both parties to be notified, in writing, about the outcome of the complaint and any appeal.
- For Title IX purposes, the notice of the outcome for the complainant must include:
  - Whether or not the school found that the conduct occurred;
  - Any individual remedies offered to the complainant or sanctions imposed on the perpetrator that directly relate to the complainant; and
  - Other steps the school has taken to eliminate the hostile environment and prevent recurrence.

## Notice of the Outcome

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- In addition to the Title IX requirements for notice of the outcome, the Clery Act requires, and FERPA permits, postsecondary institutions to inform the complainant of the final determination and any disciplinary sanctions imposed on the perpetrator, not just those sanctions that directly relate to the complainant.

## Sexual Violence Training for Employees

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- 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;
  - other responsible employees know that they are obligated to report sexual violence to appropriate school officials; and
  - all other employees understand how to respond to reports of sexual violence.



## Sexual Violence Training for Employees

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- Should ensure that pastoral and professional counselors and non-professional counselors and advocates understand the extent to which they can keep a report confidential.
- Should provide training to all employees likely to witness or receive reports of sexual violence, including faculty, campus law enforcement, administrators, counselors, general counsels, athletic coaches, health personnel, and resident advisors.
- No minimum number of hours required for training, but should be provided on a regular basis.

## Training for employees who implement the school's grievance procedures

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- Must have training or experience in handling sexual violence complaints and in the operation of the school's grievance procedures.
  - Title IX Coordinators
  - Others who receive complaints
  - Investigators
  - Adjudicators

## Training for Students

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- Should provide training to students regarding Title IX and sexual violence.
- May want to include training in orientation programs for new students and training for athletes and members of student organizations; and repeating training at regular intervals.
- Should clearly identify the offices or individuals with whom students can speak confidentially, and clearly identify the school's responsible employees and explain what happens if students report incidents to responsible employees.

## Other Considerations

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- First Amendment
- Retaliation
- Clery Act
- FERPA
- VAWA

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RESOLUTIONS

## K-12 recent resolution: sexual violence

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- Opdyke-Belle Rive School District # 5, Illinois, OCR 05141140
- Resolution agreement (CPM 303), 11 pages, March 2015
- District serves students in grades K-8

## Opdyke-Belle Rive (IL)

□ From OCR's letter of findings, p. 15:

any other academic services. Finally, the evidence established that most, if not all, of the XXX students, and some of the XXX students, were affected by the sexually hostile environment at the School, such that the female students believed that sexual harassment was something they had to tolerate at school. Despite the notoriety of Student B's sexual harassment of Student A and other female students, the District did not provide counseling, remedial or academic services to any other students.

## K-12 recent resolution: gender-based harassment

- Jonesboro School District #43, Illinois, OCR 05151033
- Voluntary Resolution Agreement (CPM 302), July 2015

## Jonesboro OCR Agreement, pp. 2-3

4) By September 15, 2015, and by September 15 of each subsequent school year, the District will provide effective age appropriate training for all students that includes the following components:

- e) The District will remind students of its commitment to having a District environment free from all harassment and explain to students what they should do if they believe they or other students have been subjected to sexual harassment.
- f) The programs will include an age appropriate review of the District's sexual harassment policies and procedures, including an explanation of what constitutes sexual harassment, as well as disciplinary sanctions related to findings of violations.

Page 3 - Resolution Agreement 05-15-1033

of the District's harassment policies and procedures and on the District's policy prohibiting retaliation and intimidation.

## Jonesboro OCR Agreement, p. 3

Effective immediately, the District will take any steps necessary to ensure that Student A is not subjected to a hostile environment on the basis of sex on District grounds and in District sponsored activities. These steps will include, but are not limited to, implementing the safety plan the District has developed for Student A, ensuring the specific contact person the District has designated for Student A to report incidents of harassment if they occur remains an approachable and effective resource for Student A, and checking in with Student A on a periodic basis (at least monthly) to ascertain whether any instances of sexual harassment have occurred and taking prompt and appropriate action in accordance with this Agreement if any such harassment has occurred.

## Post-secondary recent resolution: sexual violence

- University of Virginia, OCR 11116001
- Compliance Review
- Resolution agreement (19 pages) with letter of findings (26 pages) (CPM 303), September 2015

## University of Virginia

OCR's letter of findings, p. 3:

OCR further determined that a basis for a hostile environment existed for affected students at the University and that the University failed to eliminate a hostile environment and take steps to prevent its recurrence during academic years 2008-2009 through 2011-2012, as well as concerning a report filed by a student in 2013 and a report filed by a student in 2014. In addition, statements made by a University official that were broadcast on the University's radio station in September 2014 created a basis for a hostile environment for affected students.

During the period from academic years 2008-2009 through 2011-2012, OCR also found that the Title IX Coordinator did not adequately oversee and coordinate all Title IX complaints and found that the University's notice of nondiscrimination was not adequately distributed.

## University of Virginia

OCR's letter of findings, p. 21:

The Chair of the SMPI's statements indicated that the University does not consider expulsion as a possible sanction where a finding of sexual misconduct is based on a preponderance of evidence standard or even when there is no question as to the accused student's culpability because he or she has admitted to the conduct. The statements also indicate that the University process is designed to discourage admission of responsibility and then to reward such an admission, when it is forthcoming, with the absence of enforced or commensurate sanction. That the University publicized these views in a campus radio interview communicates the official position of the University that limited sanctions would be imposed for sexual misconduct brought to the University's attention.

## Sexual Violence Resources

- OCR Seattle general number – 206-607-1600
- To file a complaint with OCR:  
<http://www.ed.gov/ocr/complaintintro.html>
- OCR's Title IX policy guidance:  
<http://www.ed.gov/ocr/publications.html#TitleIX>
- DCL: Harassment and Bullying (10/26/10)  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

## Resources (cont'd)

- Sexual Harassment: It's Not Academic (Revised 9/08),  
<http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>
- 2001 Revised Sexual Harassment Guidance: Harassment of Students by Employees, Other Students, or Third Parties  
<http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

## Resources (cont'd)

- 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.ovv.usdoj.gov/>

## Resources (cont'd)

- April 2011 Dear Colleague letter on Sexual Harassment/Sexual Violence:  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>
- April 2014 Q&A on Title IX and Sexual Violence:  
<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>
- April 2015 Title IX Coordinator DCL and Resource Guide:  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

## Thank you!

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