UNITED STATES DEPARTMANT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

May 5, 2014

Ms. Kimberly A. Green
Executive Director
National Association of State Directors of Career Technical Education Consortium
8484 Georgia Ave., Suite 320
Silver Spring, MD 20910

Dear Ms. Green:

Thank you for your letter to Secretary Duncan dated February 10, 2014. You inquired about the U.S. Department of Education's (Department's) legal authority to require States that receive Federal education funds and operate career and technical education (CTE) programs to administer the so-called "Methods of Administration" (MOA) program to identify and remedy unlawful discrimination by subrecipients on the basis of sex or disability.[1] Your inquiry was referred to the Department's Office for Civil Rights (OCR) for review. I am pleased to respond.

OCR has the legal authority to address issues of unlawful discrimination on the basis of sex and disability, as well as on the basis of race, color, and national origin, through the MOA program. The *Vocational Education Programs Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap* (*Guidelines*) describe the responsibilities for compliance with Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), and Section 504 of the Rehabilitation Act of 1973 (Section 504) under the MOA program by recipients of financial assistance from this Department that operate CTE programs. The *Guidelines* were published after notice and comment in 1979 and are now included as Appendix B to 34 C.F.R. Parts 100 and 104 and Appendix A to 34 C.F.R. Part 106.[2]

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[1] In your letter, you acknowledge the Department's legal authority to require State grantees to administer the MOA program to identify and remedy unlawful discrimination on the basis of race, color, and national origin.

[2] The *Guidelines* were first published in the *Federal Register* for notice and comment by the Department's predecessor, the Department of Health, Education, and Welfare, as Appendices to regulations for three Federal laws: Title VI, prohibiting discrimination in programs or activities receiving Federal financial assistance on the basis of race, color, and national origin; Title IX, prohibiting sex discrimination in such education programs and activities; and Section 504, prohibiting disability discrimination in such programs and activities. *See* 43 Fed. Reg. 59,105 (December 19, 1978) (publication for comment); 44 Fed. Reg. 17,162 (March 21, 1979) (final guidelines). After the initial publication of the *Guidelines*, the Department republished them in 1980 as Appendices to 34 C.F.R. Parts 100 (Title VI), 104 (Section 504), and 106 (Title IX) when the Department was established. *See* 45 Fed. Reg. 30,802 (May 9, 1980).

As you are aware, all recipients of Federal financial assistance from the Department, including grantees under the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act), are required to comply with the Education Department General Administrative Regulations (EDGAR), which include, among other provisions, 34 C.F.R. § 76.500 and § 80.40. Section 76.500 specifically requires States and State subgrantees to comply with Federal nondiscrimination statutes and regulations, including Title IX, Section 504, and their implementing regulations. Under section 80.40(a) of EDGAR, "[g]rantees are responsible for managing the day-to-day operations of grant and subgrant supported activities." Specifically, section 80.40 requires grantees to "monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements [and] [g]rantee monitoring must cover each program, function or activity." Thus, monitoring subrecipients to ensure compliance with the Federal civil rights laws, which include Title IX and Section 504, is a requirement of receipt of Department funding for all State grantees, including grantees under the Perkins Act.

The Department's regulations under Section 504 and Title IX also prohibit a recipient (or subrecipient) from engaging in the discriminatory practices that the *Guidelines* are designed to address. For example, a recipient is prohibited from "providing significant assistance to an agency, organization, or person that discriminates." 34 C.F.R. §§ 104.4(b)(1)(v); 106.31(b)(6).

For the past 35 years, the *Guidelines* have provided that States are to evaluate subrecipients' compliance with all nondiscrimination requirements, and States have done so without objection. Indeed, in carrying out the responsibilities to implement the MOA program, every State routinely finds instances of unlawful discrimination by subrecipients on the basis of sex and disability. A review of the reports submitted to the Department under the MOA program for the 2011-12 school year (the last year we have data from all States) shows that *every* State found violations by its subrecipients. Indeed, more than ninety percent of the compliance reviews required corrective action by the subrecipients, demonstrating the importance of State monitoring to achieve compliance with the statutory and regulatory requirements. Under these circumstances, a State must continue exercising its responsibilities under the MOA program, consistent with the regulations described above and the *Guidelines*.

Because your letter also expresses concerns regarding the resources necessary for carrying out States' responsibilities under the MOA program, we note the following changes made by the Department over the years to reduce the resources necessary to comply with the MOA program by promoting efficiency while maintaining the integrity of the program. Following extensive collaboration with the States, in September 1996, the Department revised the 1979 *Procedures for Preparing the Methods of Administration Described in the Vocational Education Guidelines*. The 1996 revisions resulted in significant reductions in the requirements of the MOA program.[3] Also, in December 1998, the Department issued a Dear Colleague Letter based on feedback we received from a weeklong focus group that we planned and conducted with MOA coordinators, which provided substantive content recommendations for each of the required items in biennial reports.

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[3] These include, for example, entirely eliminating the desk-audit requirement; halving the number of required compliance reviews from 5 to 2.5 percent of the subrecipient universe; capping the number of required compliance reviews to no more than 25 per year; streamlining the contents of reports to the Department; and making those reports biennial instead of annual.

Most recently, in January 2012, the Department issued another Dear Colleague Letter (2012 letter) in response to MOA coordinators' requests. The 2012 letter explains that States have a variety of ways to demonstrate the thoroughness of their reviews.[4] Like so much of the Department's other MOA program guidance, the 2012 letter was the culmination of extensive consultation with the State MOA coordinators.[5]

We are pleased that the Department and States continue to share a collaborative and positive relationship aimed at ensuring that States have the necessary guidance and are able to maximize resources for identifying and remedying all unlawful discrimination by subrecipients.

We hope this information is helpful to you, and we look forward to continuing to work with you to ensure that all students have equal access to career and technical education.

Sincerely,

Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education

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[4] For example, while letters of findings must include a summary of evidence to support all findings underlying a violation of Federal civil rights laws, no such summary is required for findings where there is no evidence of a violation.

[5] This included a 2009 series of telephonic focus groups with MOA coordinators to reach a common understanding of what would be fair and reasonable expectations for demonstrating and documenting the thoroughness of compliance reviews, given States' available resources, as well as allowing all MOA coordinators to review and comment on the 2012 letter prior to its issuance.