UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

March 21, 2016

Dana Bolger
Executive Director
Know Your IX
dana@knowyourIX.org

Dear Ms. Bolger:

Thank you for your letter, dated March 2, 2016, requesting that the U.S. Department of Education's Office for Civil Rights (OCR) take steps to clarify schools' financial obligations with respect to sexual violence and other discriminatory conduct.

As you acknowledge in your letter, OCR has made clear that it interprets Title IX and its regulations (together "Title IX") to require that, when student-on-student sexual violence creates a hostile environment, the school must take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, and prevent its recurrence.[1] If a school delays responding to allegations of sexual violence or responds inappropriately, and the school's own inaction subjects the student to a hostile environment, OCR interprets Title IX also to require the school to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and equitably.[2] OCR also interprets Title IX to require 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.[3]

Your letter requests that OCR provide additional guidance to schools articulating the particular accommodations that schools must provide at no personal cost to students who have experienced discrimination and clarifying under what circumstances such free accommodations must be provided. OCR has provided examples of the types of remedies that a school may be required to provide both as interim measures and as remedies after the final outcome of an investigation. These include, but are not limited to, counseling and medical services; academic support services; providing an escort to ensure that the complainant can move safely between classes and activities; arranging for the complainant to re-take or withdraw from a course without a penalty; and tuition adjustments.[4] Further, as you note in your letter, OCR has made clear that it interprets Title IX to require that if interim measures and remedies are necessary to ensure equal access to education

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[1] *See, e.g.,* Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (2001 Guidance) (January 2001) at 12-13, www.ed.gov/ocr/docs/shguide.pdf; Dear Colleague Letter on Sexual Violence (2011 DCL) (April 4, 2011) at 4, www.ed.gov/ocr/letters/colleague-201104.pdf; Questions and Answers on Title IX and Sexual Violence (2014 Q&A) (April 29, 2014) at 2-3, www.ed.gov/ocr/docs/qa-201404-title-ix.pdf.

[2] *Id.*

[3] *See* 2014 Q&A at 32.

[4] *See, e.g.,* 2001 Guidance at 16-17; 2011 DCL at 16-17; 2014 Q&A at 32-35.

programs, a school cannot require a student to pay for receipt of those remedies.[5] Additionally, as you note in your letter, resolution agreements that OCR has negotiated to resolve investigations have included provisions to reimburse survivors for educational expenses where those remedies were required to eliminate a hostile environment or remedy the effects of sexual violence. We hope and expect that greater transparency regarding resolutions of our investigations, coupled with our guidance, will assist schools in understanding OCR's construction of Title IX.

Your letter states that OCR has not required all schools to provide financial reimbursement to complainants and that, even in the agreements in which OCR has secured financial reimbursement for complainants, it does not provide the same reimbursement for non-complainants. To address these concerns, your letter recommends that OCR consider a number of updates to its Case Processing Manual. OCR's voluntary resolution agreements are tailored to the specific facts of each case. Thus, OCR's determination as to whether it is appropriate to secure financial reimbursement for a complainant (or anyone else) is based on the individual facts developed in each case. Anyone who believes that a school has violated Title IX by not responding appropriately to allegations of sexual violence, including with respect to any financial injuries suffered as a result, may file a complaint with OCR.

Your letter also requests that OCR provide specific forms of technical assistance to schools and school districts and students and their families to facilitate schools' compliance with the law. OCR staff provides technical assistance to schools and other members of the public on an ongoing basis. This technical assistance work includes responding to questions from schools and members of the public on a variety of topics, including OCR's views about schools' obligations to provide interim measures and appropriate remedies under Title IX. It also includes giving technical assistance presentations at various schools and conferences across the country. Additionally, OCR has a close working relationship with the U.S. Department of Justice's Office on Violence Against Women (OVW). As part of this relationship, OCR staff regularly consults with OVW staff on questions that OVW receives from its Campus Program grantees and OCR staff presents annually at the OVW meeting for new Campus Grantees.

Thank you for your suggestions and for the work you do to ensure all students have access to safe learning environments.

Sincerely,

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

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[5] *See* 2014 Q&A at 33.