

JUNE 2012



# TITLE IX

# ENFORCEMENT HIGHLIGHTS

OFFICE FOR CIVIL RIGHTS

*U.S. Department of Education*



**U.S. Department of Education**

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**June 2012**

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Office for Civil Rights**

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*“The steady movement to a more fair and just society plays out every day in the classrooms, colleges and universities all across America—and I believe that the only way to achieve equity in society is to achieve equity in the classroom.”*

*—Secretary Arne Duncan, July 14, 2010*



**Title IX of the Education Amendments of 1972 is a federal law prohibiting discrimination on the basis of sex in all education programs and activities operated by recipients of federal funds. It states: “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.”**

*“Title IX  
is one of the  
great civil  
rights success  
stories in  
education.”*

*—Secretary Arne Duncan,  
April 20, 2010*

**Title IX’s protection applies at all elementary and secondary schools, colleges and universities—public or private—that receive federal financial assistance, and at certain other educational institutions. The protection extends to all aspects of these institutions’ education programs and activities. Title IX prohibits all forms of sex discrimination, including gender-based harassment, sexual harassment, and sexual violence.**

**As we mark the 40th anniversary of Title IX, we celebrate the great progress made toward ensuring equality on the basis of sex, and at the same time remind ourselves of how far we have left to go. The law remains an important guarantor of civil rights, and the U.S. Department of Education’s Office for Civil Rights will continue to vigorously enforce Title IX and work hard to help realize its vision.**

**The Office for Civil Rights (OCR) works to eradicate discrimination and create environments in which all students can learn safely. OCR has taken on tough issues arising under Title IX and vigorously enforced its protections at educational institutions of all types and sizes, including some of the nation’s largest K-12 school districts, colleges, and universities. In doing so, we’ve used the following tools:**

**Policy Guidance:** To help schools and colleges and the public understand what Title IX requires, OCR provides detailed policy guidance documents. These documents, which we send to institutions around the country, address the legal requirements and considerations governing situations frequently encountered by schools, and provide recommendations for how they can

meet their legal obligations. Since January of 2009, OCR has issued nine such policy guidance documents, three of which pertain to Title IX on topics such as bullying, sexual harassment, sexual violence, and equity in athletics programs.

**Enforcement:** OCR investigates allegations of discrimination and obtains robust remedies that address the root causes of the discrimination. Almost 600 OCR team members lead this work in headquarters and 12 regional offices around the country.

**Complaints and Proactive Investigations:** In the last three fiscal years<sup>1</sup>, OCR received nearly 3,000 Title IX-related complaints – more than ever before in a similar period – and launched more than 35 proactive, system-wide investigations that, collectively, address a broad range of Title IX-related issues and systemic discrimination in institutions across the nation.

**Technical Assistance:** Educators, as well as parents and students, must have the knowledge and skills to identify discrimination, to prevent discrimination from occurring, and to address it or get help when it does occur. Every year, OCR provides technical assistance to schools and communities around the country on both longstanding and emerging civil rights issues. In the last three years OCR has conducted hundreds of Title IX technical assistance activities, 65 in the first six months of FY 2012 alone.



## Enforcing Title IX

This document highlights a small sample of OCR's Title IX work on the following issues:

- **COMPARABLE EDUCATIONAL OPPORTUNITIES, INCLUDING COLLEGE AND CAREER PREPARATORY PROGRAMS:**

Promoting girls' and women's access to courses that promote college and career readiness, such as science, technology, engineering and math ("STEM") courses.

- **THE RIGHT TO EQUAL TREATMENT:**

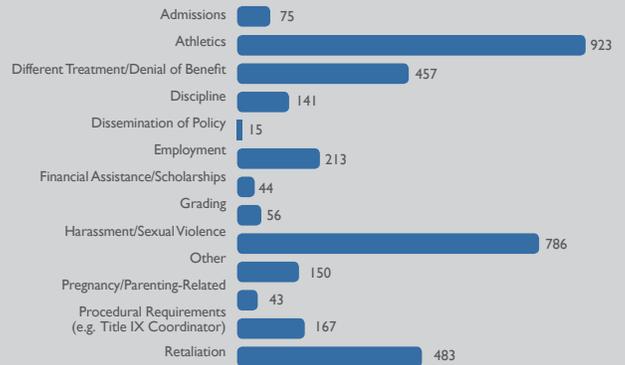
Requiring that schools treat students equally on the basis of sex in all programmatic areas, including academic and extracurricular activities, financial aid, facilities, and housing.

- **ATHLETICS:** Requiring that schools provide equal access to athletic opportunities and benefits at all levels.

- **SEXUAL VIOLENCE:** Requiring that schools protect students from and adequately respond to sexual violence.

- **SEXUAL AND GENDER-BASED HARASSMENT (INCLUDING BULLYING THAT RISES TO THE LEVEL OF HARASSMENT):** Enforcing the prohibition against sexual harassment as well as bullying and harassment based on gender or sex stereotypes (including sexual harassment and gender-based harassment of lesbian, gay, bisexual and transgender (LGBT) students because of their nonconformity to sex stereotypes).

### Issues\* Raised in Title IX Allegations in FY 2009-2010 and FY 2010-2011



- **ADDITIONAL AREAS OF FOCUS:** Beyond the issues addressed in this document, OCR routinely handles an array of topics related to Title IX, including admissions, financial aid, academic programs, rights of pregnant and parenting students, student treatment and services, counseling and guidance, discipline, grading, vocational education, housing, and employment.

- **THE TRANSFORMED CIVIL RIGHTS DATA COLLECTION:** Providing new information from schools across the country to improve compliance with Title IX. The Civil Rights Data Collection now covers issues ranging from access to college and career preparatory courses to discipline to school finances, which can be analyzed by race, gender and disability status.

\* A single complaint can raise multiple issues; therefore the total number of issues raised will exceed the number of complaints received.

## Equal Access to Comparable Educational Opportunities including College and Career Preparatory Programs

**While women and girls have made great progress in an array of fields of study, female students remain underrepresented in many of the most rigorous math and science courses. This mixed picture is shown in OCR's Civil Rights Data Collection (CRDC): the data sample reveals that more girls than boys are enrolled in Geometry and Algebra II, but girls remain underrepresented in Physics and AP Math (Calculus and Statistics) and are less likely to take and pass AP tests than their male peers.**

**In higher education, in 2008-09, women earned fewer than 18 percent of all bachelor's degrees in computer and information sciences, and women from underrepresented minorities earned less than 7 percent of bachelor's degrees in computer and information sciences. Similarly, fewer than 17 percent of all bachelor's degrees in engineering were awarded to women, and less than 4 percent were awarded to women from underrepresented minorities.<sup>ii</sup>**

### ***Enforcement: College and Career Readiness and Success***

OCR works to ensure gender equity in access to courses and to career training. For example, in one proactive investigation of a school district, OCR is examining the underrepresentation of girls in advanced math and science courses. OCR's goals for a resolution in this type of case include the development of policies and procedures to ensure fair and equitable access to AP STEM courses for female high school students as well as better preparation of K-8 female students for their future success in such courses.

In a similar proactive investigation of a community college, OCR is examining the disparity between male and female participation and graduation rates and degree attainment in programs

traditionally dominated by men, like engineering and computer science.

A third example responded to the insults and harassment experienced by the sole female student in a college's aviation maintenance technology program. The harassment was so severe that the student was forced to drop out of the program. In that case, the college and OCR reached a resolution that helped both the individual student as well as the overall college community. The resolution agreement required the college to reimburse the student for the educational costs she incurred while attending the college, and to eradicate the culture of hostility by, for example, issuing an anti-discrimination statement to students and staff, revising its non-discrimination and anti-harassment policies and procedures, and providing training for staff.

**The Right to Equal Treatment**  
**Under Title IX, OCR works to ensure equal access to education services and benefits and to prevent acts of retaliation against those who report Title IX violations. Title IX prohibits treating individuals differently on the basis of sex when providing services or benefits.**

**Enforcement: Equal Treatment**

In responding to Title IX complaints at the K-12 level, OCR has addressed issues such as disparate discipline, denial of extracurricular opportunities, and denial of access to educational programs of students based on sex. Cases include:

- The suspension of male but not female students for wearing earrings and the harsher treatment of male students compared to female students by school resource officers.
- Allegations of the denial of academic and extracurricular services based on a student's sex, including the failure to provide reading and math instruction to male students.
- The failure to implement the IEP of female students; and the denial of an opportunity to participate on (or the removal from) athletic and dance teams and music groups.

OCR addresses similar issues at the postsecondary level. Cases include allegations that, based on their sex:

- 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 from programs.
- Male students were being held to a higher standard than female students during the physical fitness portion of law enforcement training classes.



## Equal Access to Athletic Opportunities and Benefits

**From scholarships to placement on teams to other athletic program resources such as facilities, coaching, and equipment, women and girls still do not have equal access to opportunities and benefits in athletics. Although there has been undisputable progress since Title IX was enacted, women and girls continue to represent a disproportionately low percentage of college and high school athletes when compared to their enrollment rates. Women make up 57 percent of college students but receive only 43 percent of positions on varsity sports teams.<sup>iii</sup> And girls make up roughly half of all high school students but receive only 41 percent of positions on varsity sports teams.<sup>iv</sup>**

**Policy Guidance: Athletics** As part of an ongoing effort to ensure the equal opportunities guaranteed by Title IX, OCR issued policy guid-

ance in April 2010 on how to assess whether an institution is providing nondiscriminatory athletic participation opportunities based on its students' interests and abilities. The guidance reinstated the Department's longstanding policy that it will analyze multiple indicators to determine whether the school's athletics program is meeting the interests and abilities of the school's underrepresented sex, usually women.

The letter withdrew policy guidance issued in 2005 that had inappropriately changed the Department's longstanding policy to allow an institution to rely on a single e-mail survey to assess the interests of the underrepresented sex, to count non-responses to the survey as indicating a lack of interest in athletics, and thereby to presumptively comply with Title IX—and in so doing potentially significantly underestimated the interests and abilities of its students.

OCR's April 2010 policy guidance ensures that institutions will be held accountable for meeting the full range of athletic interests and abilities of the underrepresented sex. The letter also provides institutions with recommendations for developing effective procedures for collecting, maintaining, and evaluating information on students' interests and abilities as this information is critical to determining whether institutions are providing nondiscriminatory athletic opportunities.

**Enforcement: Athletics** OCR's investigations have ensured that thousands of female students at an array of schools, including some known for athletic prowess, have an equal opportunity to participate in varsity sports. From FY2009 through FY2011, OCR initiated 17 proactive in-



vestigations of possible Title IX violations in athletics programs. During the same time period, OCR received more than 900 complaints from students, parents, coaches, and others alleging Title IX violations in athletics programs. Where appropriate, OCR has obtained resolution agreements from school districts and universities to ensure that female students have an equal opportunity to participate in sports programs across the country. Recipients have agreed to provide female athletes with additional opportunities to participate in sports and receive financial aid. For example, recipients have agreed to provide female athletes with additional financial aid; they have added new teams; and they have taken steps to ensure that female athletes have comparable quality coaching, facilities, equipment and other athletics-related benefits.

For example:

- OCR is investigating fundraising by athletic booster clubs predominantly for male teams to determine if this is creating inequities in benefits between male and female athletes in violation of Title IX.
- In another investigation of an entire sports league, OCR is ensuring equal opportunities for secondary school athletes by requiring the league and its member school districts to equitably treat female and male students in “primetime” scheduling of athletic events, in scheduling of practice times and in providing publicity for their events.
- OCR obtained redress for women athletes at a university that was providing significantly fewer and inferior resources to its women’s sports teams in comparison to the men’s programs. Among other things, the university failed to maintain adequate equipment and locker room facilities for its

female athletes, who were forced to change in cars and sheds. Female student athletes often received inferior medical and training services from less experienced staff. In addition, unlike the men’s teams, when the women’s teams went on “away” games, they were crowded into hotel rooms or had to make long journeys back home on the same day as their games. A robust resolution agreement between the university and OCR resulted in the construction of upgraded practice and competitive facilities, new and improved locker rooms, appropriately sized equipment and other equitable treatment for the women’s athletic program.

- OCR helped expand opportunities for girls in a school district that had roughly equal enrollment of boys and girls but a 57 percent-to-43 percent split between boys’



and girls' participation in interscholastic athletics. OCR negotiated an agreement with the district that resulted in athletic participation opportunities for girls and boys that are substantially proportionate to their respective enrollments, without cutting any sports or spots on individual teams. The district has hired a new athletic director with significant Title IX experience; added girls' sports teams, such as bowling, water polo, and wrestling; developed outreach activities at middle schools to encourage participation in interscholastic athletics; and created an athletics improvement committee.

### Prohibiting Sexual Assault and Violence on Campus

**Too often, women and girls are victims of sexual harassment or sexual violence. About one in five women will be a victim of actual or attempted sexual assault while in college, as will about 6 percent of undergraduate men.<sup>v</sup> Public high school students reported nearly 3,600 incidents of sexual battery and over 600 rapes and attempted rapes in a recent year.<sup>vi</sup> That**

**is why addressing sexual violence is a top priority of OCR. Through policy guidance, proactive investigations, complaint resolution, and other responses to events around the country, OCR aims to ensure that no student fears for his or her safety or loses out on educational benefits and opportunities because of sexual violence.**

**Policy Guidance: Sexual Violence** OCR issued a first-of-its-kind policy guidance on April 2011 to ensure that schools and colleges fully understand their Title IX obligations relating to sexual violence. The letter advises institutions on how they can prevent assault and sexual violence from occurring and ensure it gets identified and reported when it does occur, and explains their responsibility to respond to any incident of sexual violence swiftly and effectively. It includes examples of the types of remedies institutions can implement for the victim and the entire school community. It also describes proactive measures schools and colleges can take to prevent sexual violence. Additionally, the guidance emphasizes the need to keep students notified of nondiscrimination and anti-harassment

*“We’re taking new steps to help our nation’s schools, universities and colleges end the cycle of sexual violence on campus.”*

*—Vice President Joe Biden on releasing new guidance on sexual violence protections under Title IX (April 4, 2011).*

policies and to involve law enforcement agencies when necessary. Since the guidance's release, dozens of colleges and universities have made changes to their policies and procedures consistent with the guidance.

**Enforcement: Sexual Violence** OCR received nearly 100 complaints relating to sexual violence and launched multiple proactive investigations on sexual violence at dozens of college campuses and school districts in the last three years. These have led to groundbreaking remedies such as the implementation of procedures by which schools address alleged sexual violence as a Title IX civil rights issue, rather than leaving this matter to be handled only by the criminal justice system; providing interim protection and services for victims of sexual violence; systematizing cooperation between school officials and local law enforcement authorities to ensure Title IX investigations are completed promptly; conducting climate surveys; establishing advisory committees comprising students, faculty, and community members to monitor the school climate and advise the school's administration; conducting peer-to-peer sexual harassment training; and publicizing school policies so that students know where and with whom to file reports and what to expect from the process.

The facts surrounding the sexual violence cases investigated and resolved by OCR are tragic. In one college, several incidents of student-on-student sexual assault had occurred. The college referred the complaints to the police for treatment solely as a criminal matter while other sexual assaults took place, notwithstanding the college's Title IX obligation to address the inci-

dents through in-school measures. In another, a local prosecutor threatened to charge college officials with obstruction of justice when they tried to conduct the school's Title IX investigation while the criminal investigation was pending. In a third, a student was found murdered in her dorm room after a fellow student had allegedly sneaked into her room, raped her, and then smothered her with a pillow; for ten weeks school officials maintained that no foul play was involved.

In another case, three victims did not receive an equitable hearing—they were made to sit very close to the accused; the accused was allowed to review evidence in advance of the hearing while the accusers were not; the accused was allowed to question the complainant and the two other accusers directly, including questions about their sexual histories; the accused, but not the accusers, was allowed to present character witnesses; and a victim was not allowed to present a witness to testify regarding the underlying events.

- OCR has also launched two proactive system-wide investigations into K-12 school districts where gang rape allegedly occurred, in one case by students and community members. Investigations have uncovered widespread peer-to-peer sexual violence and harassment suffered by middle and high school students, as well as some evidence of teacher-student violence or harassment.

- Where appropriate, OCR also works with the local prosecutor's office and police department to ensure that the college will be able to meet its Title IX obligation to conduct prompt investigations when it receives complaints of sexual harassment, even if there is a concurrent criminal investigation; and OCR requires the school to publish revised Title IX grievance procedures and nondiscrimination notices, to develop a Title IX training program for students and staff, and to conduct periodic assessments of campus climate to assess the effectiveness of its efforts to respond to and prevent sexual misconduct.

In addition, OCR has required schools and colleges to ensure that victims of harassment are provided services as needed, even before the outcome of the Title IX or criminal investigations, which can include counseling and academic support services, compensatory services and interim remedies. OCR has made it clear that hearings must be equitable—and what is provided to the accused during the hearing, such as the ability to present witnesses and the right to an appeal, must also be provided to the victim. OCR has also made clear that schools and colleges must keep accurate records and monitor progress in creating a safer campus in part by conducting community meetings and periodic assessments of the campus climate.

## Prohibiting Sexual and Gender-based Harassment (Including Bullying that Rises to the Level of Harassment)

**Sex- and gender-based harassment inflicts profound educational, emotional and physical consequences for the harassed students and their peers. Harassing conduct may take many forms, including bullying and name-calling, graphic and written statements, or other conduct that may be physically threatening, harmful, or humiliating. OCR seeks to eradicate discriminatory harassment and create environments in which all students are safe to learn.**

**Policy Guidance: Harassment** The Department's first-of-its kind 2010 policy guidance on harassment and bullying explains that when bullying or other harassment based on sex or gender creates a hostile environment that is serious enough to limit or interfere with a student's ability to benefit from the services, activities, or opportunities offered by the school, the harassment violates Title IX. If an institution knows or has reason to know about student-on-student harassment, Title IX requires that the school take immediate and effective action to eliminate the harassment, to prevent its recurrence, and, when appropriate, to address its effects on the harassed student and the school community. OCR's policy guidance provides examples of harassment and illustrates how a school should respond in each

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case. (The policy guidance also addresses harassment based on race, color, national origin and disability, which is covered by the other statutes OCR enforces.)

The 2010 guidance document also made clear that schools may violate Title IX by failing to effectively respond to bullying or harassment of LGBT students. Although Title IX does not cover discrimination based solely on sexual orientation, harassment of LGBT students constitutes sex-based discrimination if it is based on the student's failure to conform to sex stereotypes. For example, a student may be bullied

because he or she does not act or dress according to his or her classmates' gender-based expectations for boys or girls. In addition, the guidance makes it clear that Title IX prohibits sexual harassment of all students, regardless of their actual or perceived sexual orientation or gender identity. The guidance reminds schools and universities that when harassment targets LGBT students, includes anti-gay comments, or is partly based on a target's actual or perceived sexual orientation, Title IX obligates the institution to investigate and remedy any overlapping sexual or gender-based harassment of those students.



**Enforcement: Harassment** In FY2009 through FY2011, OCR received nearly 700 complaints involving sexual or gender-based harassment. The types of sexual harassment found in OCR investigations include student-on-student harassment as well as teacher-student harassment. Recently, this behavior included:

- Two separate investigations involved students who were bullied and subjected to chronic sexual and gender-based harassment at school for not acting and dressing in ways that conformed to traditional gender stereotypes. Students were routinely called hostile and demeaning names. Female students reported being called “manly,” “guy,” or “he-she”; male students reported being called “girl,” and “gay boy.” In one case a middle school student was subject to insult and harassment for years, including being called “sissy” and “girl” and was the target of insults meant to question his masculinity, including references to his clothing as “girly”

and suggestions that he “get surgery” to become a female. Students in these investigations were physically threatened and assaulted because of their nonconformity to gender stereotypes. Some of these students suffered physical and mental health problems or stopped attending school for periods of time, left the school district, entered into independent study programs, or dropped out of school entirely. One student committed suicide after experiencing prolonged harassment.

- In another case, a teacher allegedly bribed a student with candy and money and inquired about which students were homosexual, and locked another student in a classroom and sexually assaulted him.

These investigations led to resolution agreements in which the school districts agreed to take steps to prevent, eliminate and respond appropriately to sex-based harassment and to take certain further actions such as the revision of harassment policies, mandatory trainings on harassment, including training on empowering bystanders and the community to help stop bullying, hiring of new staff assigned to ensure equity and safety, mental health counseling for students who had been harassed, implementation of school climate surveys to assess school climate and student behavior, the formation of an advisory committee composed of diverse members of the school community, and the establishment of a student peer-based leadership program.



## The Transformed Civil Rights Data Collection: New Information to Improve Compliance With Title IX

**Information and transparency about disparities in educational opportunities and resources are powerful tools to aid schools in crafting policy to advance equity. Beginning in the summer of 2009, OCR worked to transform the Civil Rights Data Collection (CRDC) so that the 2009-10 collection released in 2012 includes a vast array of new indicators on the differences in the educational experiences of male and female students, including more data than ever on high school course offerings, course taking, and discipline, as well as long-standing indicators on single-sex classes and interscholastic athletics. For the 2011-12 school year, the CRDC will be conducted universally to include every school and district in the nation.**

The data paint a picture of great success for girls in some areas and a need for more progress in others. Some of the key findings include the following:

### **College and Career Readiness:**

Boys take AP tests and pass AP tests at a higher rate than girls. In fact, 73 percent of boys enrolled in an AP course took an AP exam, compared to 70 percent of girls. And 60 percent of boys passed an AP exam, compared to 55 percent of girls.

### **Interscholastic Athletics:**

Across the CRDC sample, girls represented 42 percent of the interscholastic athletics participants and 49 percent of enrollment in schools. 35 percent of the schools offering interscholastic athletics reported a gap of 10 percentage points or more between the percentage of girls enrolled and the percentage of athletes who are girls.

### **Bullying and Harassment:**

- 55 percent of students bullied or harassed on the basis of sex were female, although females represent 51 percent of the population.
- 79.6 percent of students disciplined for bullying or harassment on the basis of sex were male.

**CRDC's New Functionality:** A new Web tool now includes the ability to search the database for types of schools as well as schools or districts meeting certain criteria, and most indicators collected by OCR's CRDC are now capable of being cross-cut by race, disability status and sex. For example:

- **DISCIPLINE** Although the data show more males disciplined by every measure (e.g., male and female students each represent about half the student population, and males made up 74 percent of the students expelled), African American girls are suspended at higher rates than boys of most other races.

**Expanding the Data Set:** For the 2011-12 school year, the CRDC will include every school and district in the nation.

**While data alone cannot be a substitute for the thorough investigation necessary to establish violations of civil rights law, this treasure trove of new data should help schools, districts and communities deepen their self-analysis and understanding of where change is needed.**

**Endnotes**

- i Note: Each federal fiscal year runs from October to September. For example, “fiscal year 2011” or “FY2011” runs from October 1, 2010 to September 30, 2011.
- ii Digest of Education Statistics 2010, Table 316. Available at [http://nces.ed.gov/programs/digest/2010menu\\_tables.asp](http://nces.ed.gov/programs/digest/2010menu_tables.asp). See also <http://www.nsf.gov/statistics/wmpd/minwomen.cfm>.
- iii NCAA Sports Sponsorship and Participation Rates Report Student Athlete Participation 1981/1982-2010-2011. Available at: <http://www.ncaapublications.com/productdownloads/PR2012.pdf>
- iv National Federation of State High School Associations 2010-11 High School Athletes Participation Survey. Available at: <http://www.nfhs.org/content.aspx?id=3282>
- v Christopher P. Krebs et al., The Campus Sexual Assault Study Final Report xiii, 5-5 (Nat’l Criminal Justice Reference Service, Oct. 2007).
- vi National Center for Education Statistics, Indicators of School Crime and Safety: 2011. Available at [http://nces.ed.gov/programs/crimeindicators/crimeindicators2011/tables/table\\_06\\_1.asp](http://nces.ed.gov/programs/crimeindicators/crimeindicators2011/tables/table_06_1.asp).

### **Office for Civil Rights Mission:**

To ensure equal access to education and to promote educational excellence throughout the nation through the vigorous enforcement of civil rights.

#### **OCR's Goals:**

- Protect individual complainants' civil rights through the complaint investigation and resolution process.
- Identify and eliminate any systemic violations of civil rights laws through proactive compliance reviews.
- Increase students' and their families' awareness of students' civil rights by releasing policy guidance and providing technical assistance and outreach services.
- Record-keeping and monitoring requirements that promote accurate and immediate identification and resolution of harassment-related issues, patterns and problems.
- Increase schools', colleges', and universities' understanding of their civil rights obligations by releasing policy guidance documents and providing technical assistance and outreach services

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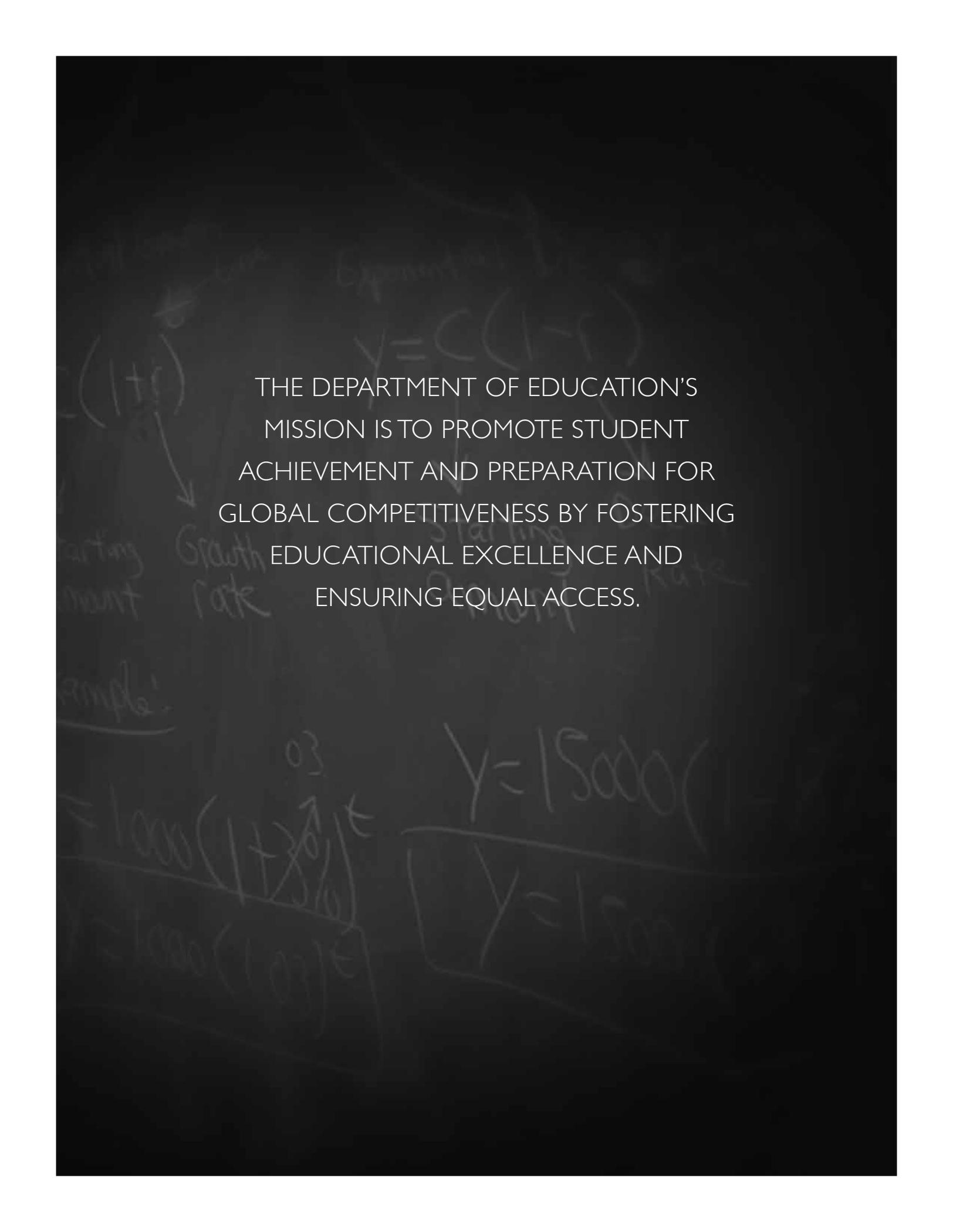
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The background is a dark chalkboard with faint, light-colored chalk markings. These include mathematical formulas such as  $y = C(1+r)^t$ ,  $y = 1000(1+r)^t$ , and  $y = 15000$ . There are also handwritten notes like "Growth rate", "Starting amount", and "Example!".

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MISSION IS TO PROMOTE STUDENT  
ACHIEVEMENT AND PREPARATION FOR  
GLOBAL COMPETITIVENESS BY FOSTERING  
EDUCATIONAL EXCELLENCE AND  
ENSURING EQUAL ACCESS.