



As we await the Title IX rule, OCR issues a report providing data on its Title IX investigations and resolutions

By Steven M. Richard

The Assistant Secretary for Civil Rights has issued the Department of Education's Office for Civil Rights' ("OCR") [Annual Report to the Secretary, the President and the Congress](#), providing data and details regarding OCR's investigations and resolutions of civil rights cases under its administrative jurisdiction.¹ The report focuses on the first two fiscal years of the Trump administration, fiscal years 2017–18, emphasizing significant changes in approach compared to the Obama administration. The report is an important and informative document to be read by college and university counsel, Title IX administrators, and equity/diversity officers.

As documented in the report, there have been dynamic and significantly debated changes in OCR's oversight of Title IX under the Trump administration. On September 22, 2017, OCR withdrew its April 4, 2011, "Dear Colleague Letter on Sexual Violence" and April 29, 2014, "Questions and Answers on Title IX and Sexual Violence," releasing in their place "Questions and Answers on Campus Sexual Misconduct." On November 29, 2018, the Department of Education issued a Notice of Proposed Rule Making on Title IX that generated over 124,000 comments; we are awaiting to learn to what extent the comments effectuated any changes in its rule's final form. While best guesses and rumors swirl predicting the rule's issuance this month with a mid-August compliance deadline, the report gives no specific advance signals, noting only that the Department "anticipates issuing the rule as final in FY 2020" and will provide "an effective date of implementation."

Also, the report cites to the February 22, 2017, withdrawal by the Departments of Education and Justice of their joint "Dear Colleague Letter on Transgender Students" issued in May 2016, stating that there must be due regard for the primary role of the states and local school districts in

¹ OCR enforces the following federal statutes and their implementing regulations: Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination); Title IX of the Education Amendments of 1972 (prohibiting sex discrimination); Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination); Title II of the Americans with Disabilities Act of 1990 (prohibiting disability discrimination by public entities, regardless of whether or not they receive federal financial assistance); the Age Discrimination Act of 1975 (prohibiting age discrimination); and the Boy Scouts of America Equal Access Act of 2001 (prohibiting discrimination of any group officially affiliated with patriotic societies).

establishing education policy. While the withdrawal document stressed the need to “more completely consider the legal issues involved,” there has not been subsequent federal regulatory promulgation three years later. In the meantime, judicial rulings have addressed, but not uniformly, the protections afforded to transsexual students under Title IX’s prohibition of discrimination “on the basis of sex.” Also, the United States Supreme Court will soon issue a significant decision addressing whether workplace discrimination on the basis of gender identity is covered by Title VII, which could have precedential implications in the Title IX analysis. The evolving judicial and regulatory developments affecting transsexual students will be an important area of Title IX law to understand going forward.

The OCR report provides interesting data evidencing significant changes in the direction of its investigations and resolutions by focusing on the specific details of a complaint, compared to the more systemic reviews undertaken during the Obama administration. OCR touts that its streamlining has created efficiencies and significantly cleared its administrative docket of backlogged Title IX complaints. Here are some key data points offered in the report:

- During fiscal years 2017/18, there was an 80% increase in Title IX allegations that OCR resolved with a school effectuating changes in policies and practices.
- OCR received 7,138 complaints alleging a total of 8,598 violations of Title IX, and it resolved 13,234 complaints. These figures include both K–12 schools and higher education institutions. Of these, 673 Title IX allegations were resolved with change. The largest numbers of these allegations involved discrimination in athletic programs.
- OCR also resolved 23 compliance reviews involving a total of 73 Title IX issues, 51 of which were resolved with change. Many of these compliance reviews resulted in remedies that required institutions to respond to reports of sexual harassment more promptly and effectively or to provide more equity to females in athletics programs.

In sum, it will be interesting to compare and analyze the above-reported data against future OCR investigations and resolutions concerning schools’ responses to sexual harassment and assault. As we await the finalized Title IX rule, differing positions have emerged whether the Department should delay its issuance in light of the operational and fiscal impacts of the ongoing COVID-19 pandemic. Education advocacy associations and several state attorney generals have written to Secretary DeVos requesting that the Department hold the rule in abeyance. Supporters of the rule counter that schools have had since November 2018 to plan for implementation. We will continue to monitor and report as Title IX issues evolve not only before OCR, but also judicially, as colleges and universities work their way through these unprecedented times.

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