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ALERT

TITLE IX COORDINATORS: REVIEW OF NEW GUIDANCE
FROM THE DEPARTMENT OF EDUCATION

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On April 24, 2015, the Department of Education Office for Civil Rights (OCR) published a new [Dear Colleague Letter](#) (DCL) and a [letter directly to Title IX Coordinators](#), as well as a new 25-page [Title IX Resource Guide](#). These reflect OCR's focus on ensuring that Title IX Coordinators have the appropriate authority and full support necessary from their institutions in order to perform their responsibilities.

It is clear that OCR is pushing for full-time Title IX Coordinators, annual campus climate surveys and increased visibility through a dedicated Title IX webpage, a "prominently displayed link" to that page on the institution's homepage and the use of social media. In addition, the *Title IX Resource Guide* reminds Title IX Coordinators that while OCR's focus has been on responding to and preventing sexual assault, the Coordinator remains responsible for ensuring compliance with prohibitions on sex-based discrimination in recruitment, financial assistance, athletics and discipline.

Unlike the April 2011 Dear Colleague Letter and the April 2014 *Questions and Answers on Title IX and Sexual Violence*, OCR did not designate any of the Title IX Coordinator documents "significant guidance documents." As the administrative agency tasked with interpreting Title IX and its implementing regulations, OCR's significant guidance documents are generally entitled to

deference where they interpret those regulations. Nonetheless, the DCL and *Title IX Resource Guide* provide insight on OCR's focus for compliance in the coming year in three main categories: (1) factors to consider in designating a Title IX Coordinator; (2) the Title IX Coordinator's responsibilities and authority, also the subject of the *Title IX Resource Guide*; and (3) ensuring support and visibility of the Title IX Coordinator.

1. Designating a Title IX Coordinator

The requirement to designate a Title IX Coordinator has been in effect for more than thirty years, yet according to the recent *Sexual Violence on Campus* report and survey by Senator Claire McCaskill, 12% of all responding institutions and more than 20% of institutions with fewer than 1,000 students reportedly did not have a Title IX Coordinator. The DCL states that the most "egregious and harmful" violations are found where there is no designated Title IX Coordinator or the Coordinator has not been sufficiently trained or given the appropriate authority to oversee compliance.

Pursuant to the DCL and *Title IX Resource Guide*, institutions are required to have at least one Title IX Coordinator and the "position may not be left vacant; [an institution] must have at least one person designated and actually serving as the Title IX Coordinator at all times." Thus, if the existing Title IX Coordinator leaves an institution, the

institution must ensure that another person is designated and actually takes over the responsibilities of the Title IX Coordinator until that position is filled. In addition, OCR states that institutions should do the following:

- Designate a full-time Title IX Coordinator to minimize conflicts of interest and to ensure sufficient time to perform of all of the assigned responsibilities. If the Title IX Coordinator has any other job titles, those should be listed on the notice identifying the Coordinator;
- Ensure the Title IX Coordinator reports directly to senior leadership (suggesting, without reference to the size of the institution, “the college or university president”);
- Designate multiple Title IX Coordinators for larger institutions and have one lead Coordinator with ultimate oversight responsibility; and
- Avoid conflicts of interest that are likely to arise in positions such as “a disciplinary board member, general counsel, dean of students, or athletics director.” Note that OCR states that the Title IX Coordinator can, but does not have to, determine the outcome of complaints provided there are no conflicts.

2. Responsibilities of the Title IX Coordinator

OCR reiterates the primary focus of coordinating compliance and reminds Title IX Coordinators to oversee the grievance procedure for resolving Title IX complaints.

Pursuant to OCR, the Title IX Coordinator must:

- Receive all reports and complaints regardless of where a complaint is initiated;
- Coordinate the response to these complaints, including monitoring outcomes and identifying and addressing patterns; and

- Be knowledgeable of the institution’s policies and procedures on sex discrimination.

And the Title IX Coordinator should:

- Oversee the collection and analysis of data of OCR-recommended annual climate surveys and regularly review the effectiveness of the institution’s efforts to provide a campus free from sex-based discrimination;
- Evaluate requests for confidentiality in the context of providing a safe, non-discriminatory environment for all students;
- Be available to meet with employees, students and parents to discuss Title IX;
- Monitor enrollment in athletics, administration of discipline and incidents of sex-based harassment and awards of financial assistance to address possible sex discrimination issues as they arise;
- Be involved in drafting and revising Title IX related policies and procedures;
- Provide training and technical assistance and develop programs on school policies and Title IX rights and obligations, including the prohibition of discrimination against pregnant and parenting students;
- Ensure that transgender students are treated consistent with their gender identity in the context of single-sex classes and activities; and
- Assist the institution’s officials in accurately reporting information required by the Clery Act.

The *Title IX Resource Guide* provides more detail on these responsibilities.

3. Support and Visibility of Title IX Coordinators

Institutions are reminded they must provide “*full support*” to allow Title IX Coordinators to effectively oversee compliance with Title IX, with a

focus on visibility and training provided to Coordinators, not just by them.

To increase the visibility of Title IX Coordinators, institutions are:

- Required to publish nondiscrimination notices that include the position title, office address, telephone and email address of the Title IX Coordinator, and to include the notice in all bulletins, announcements, publications, catalogs, applications, and recruitment materials;
 - The non-discrimination notice does not need to name the individual, but the institution's website must include the complete and current information about the Title IX Coordinator, including his or her identity;
- Required to widely distribute the Title IX Coordinator's contact information, which should be easily found on the institution's website and in its publications ;
- Strongly encouraged to create a dedicated Title IX page on its website with the contact information for its Title IX Coordinator(s), Title IX policies and grievance procedures, and other related resources and to "prominently display" a link to that page on its homepage;
- Should, if an institution uses social media, display the contact information for its Title IX Coordinator on that social media.
- Should designate the lead coordinator when an institution has more than one Title IX Coordinator and make all contact information available for each coordinator, including their area of focus (e.g., Gender Equity in Athletics, Employee Complaints, specific campus)

Institutions must ensure that Title IX Coordinators have comprehensive knowledge in all areas for which they are responsible. OCR advises that institutions will need to provide training "in most

cases" except where: (1) they have received effective prior training, (2) they have experience investigating sex discrimination complaints, and (3) they have received training on current regulations, guidance and university policies and procedures.

To ensure Title IX Coordinators are properly trained institutions should:

- Provide ongoing training to the Title IX Coordinator and all employees "whose responsibilities may relate to the recipient's obligations under Title IX."
- Explain the regulatory provisions, OCR guidance, and the institution's Title IX policies and grievance procedures.
- Explain the Federal and state laws, regulations and policies that overlap with Title IX, such as FERPA and the Clery Act.
- Encourage collaboration with regional Title IX Coordinators. ♦

This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.

For assistance with properly training your Title IX Coordinator, updating your policies and procedures and evaluating these compliance requirements, or for more information about Schnader's Higher Education Practice Group, please contact:

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