



**MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS, AND THE UNITED STATES DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION**

**Introduction**

The United States Department of Education, Office for Civil Rights (OCR), and the United States Department of Justice, Civil Rights Division (CRT) are committed to working collaboratively and efficiently to enforce the federal civil rights laws over which the offices share jurisdiction. To that end, and consistent with the charge of the White House Task Force to Protect Students from Sexual Assault to coordinate, make more transparent, and strengthen the federal government's response to sexual violence on college campuses, OCR and CRT enter into this Memorandum of Understanding (MOU). This MOU addresses the collaborative interagency effort to vigorously enforce Title IX of the Education Amendments Act of 1972 (Title IX), which prohibits all recipients of federal financial assistance from discriminating on the basis of sex, through administrative and litigative enforcement, compliance reviews, regulations, and policy guidance. While this MOU addresses only OCR and CRT's Title IX enforcement, the offices recognize the immeasurable value of transparency, communication, and collaboration and shall continue to confer in all areas of their shared enforcement authority to protect students from discrimination.

**I. Background and Purpose**

- A. This MOU is entered into between OCR and CRT (collectively, "the Parties").
- B. OCR, led by its Assistant Secretary for Civil Rights, exercises all functions previously administered by or with respect to the Office for Civil Rights at the Department of Health, Education, and Welfare (20 U.S.C. §§ 3413(a), 3441(a)(3)). This includes but is not limited to OCR authority to directly enforce Title IX against recipients of federal financial assistance from the Department of Education (ED) through complaint investigations and compliance reviews. OCR has primary responsibility for prompt and vigorous enforcement of Title IX against any educational program or activity that receives financial assistance from ED (20 U.S.C. § 1682; 34 C.F.R. § 106.1).
- C. CRT also directly enforces Title IX against such educational programs and activities and other recipients of federal financial assistance from the Department of Justice through complaint investigations, compliance reviews, and out of court resolution agreements. In addition, CRT is authorized to bring and participate in federal lawsuits to enforce various civil rights statutes that apply to educational institutions, including but not limited to Title IX and Title IV of the Civil Rights Act of 1964, which prohibits public schools and higher education institutions from discriminating on the basis of sex, among other bases. The Assistant Attorney General for Civil Rights, through a delegation from the Attorney General, is responsible for coordinating the

implementation and enforcement of Title IX across the federal government (Executive Order 12250 (1980)).

- D. Recognizing that effective cooperation is important to protect all persons from discrimination, the Parties hereby enter into this MOU to provide consistent and robust enforcement and implementation of Title IX, increase transparency and prevent duplication of efforts.

## **II. Continued Coordination between OCR and CRT**

In light of the overlapping jurisdiction of the Parties over educational institutions, OCR and CRT have worked collaboratively together on Title IX enforcement, public outreach, and technical assistance and will continue to do so. To further this collaboration, the Parties agree to the following:

- A. Where complaints are filed with each Party against the same educational institution and raise allegations of sex discrimination, and both Parties elect to move forward, or the Parties decide to undertake Title IX compliance reviews of the same educational institution, both Parties shall, as appropriate and to the extent permitted under applicable law and agency policy and consistent with the goals of prompt and effective resolution of complaints and compliance reviews, seek to: minimize duplication of effort; coordinate the course of their respective investigations and reviews; share information and participate jointly in the investigation and review where appropriate; and coordinate any resolution resulting from the investigation and review, including any appropriate remedies. Investigators and attorneys from each Party assigned to the complaint or review may communicate directly on matters related to the complaint or review. The Parties agree that sharing information will not constitute a waiver of any available privileges and that each Party will use processes that seek both to preserve privilege and to allow information and documents to be shared with the other Party consistent with applicable law.
- B. If at any point during the processing or resolution of a complaint by either Party it becomes apparent that the complaint or any aspect of the complaint falls outside the Party's jurisdiction, but may be within the jurisdiction of the other Party, the Party processing or resolving the complaint may dismiss all or as much of the complaint as may fall outside its jurisdiction and refer the dismissed aspects of the complainant to the other Party. The referring Party will notify the complainant of the referral. If only a portion of a complaint is referred, the Parties will coordinate their investigations and resolutions when possible.
- C. If a Party obtains information suggesting that an educational institution is not complying with an existing Title IX obligation to the other Party (including an obligation created by court order, consent decree, voluntary resolution agreement, or settlement agreement), that Party will share that information with the other Party in an appropriate manner to the extent permitted under applicable law and agency policy.
- D. The Parties shall meet as appropriate to coordinate all matters related to Title IX enforcement. Both Parties shall identify a point of contact for coordination purposes. The OCR point of

contact is the Deputy Assistant Secretary for Enforcement, the Enforcement Directors, or a designee. The CRT point of contact is the Chief of the Educational Opportunities Section of the Civil Rights Division or a designee.

- E. OCR will confer with CRT on anticipated or draft Title IX related regulations, policy, and guidance documents to promote consistency and coordination on the applicable legal standards. OCR will provide CRT an opportunity to review and comment on any significant guidance prior to submission to the Office of Management and Budget in the Executive Office of the President.
- F. OCR and CRT will seek to coordinate their public outreach and technical assistance efforts, as possible and appropriate, to maximize dissemination of information to the public regarding Title IX, including OCR and CRT's related enforcement and policy efforts.
- G. To the extent reasonably practicable, and at such times and places as might be mutually agreeable, each Party to this MOU will offer to the other (or work jointly to provide) training and technical assistance to improve understanding of each Party's enforcement and policy activities, as well as the procedures and policies, or any other matters of mutual interest.

### **III. Formal Referrals of Matters from OCR to CRT for Litigation**

- A. When there appears to OCR to be a failure or threatened failure of a recipient to comply with Title IX or an existing resolution agreement between a recipient and OCR, and if the non-compliance or threatened noncompliance cannot be corrected by informal means, OCR has several enforcement options, including:
  - 1. formally referring a matter to CRT with a recommendation that appropriate litigation proceedings be brought (34 C.F.R. § 100.8(a)(1));
  - 2. issuing an order suspending, terminating, or refusing to grant or continue federal financial assistance (after opportunity for a hearing and notice to the relevant congressional committees) (34 C.F.R. §§ 100.8(c), 100.9-100.11);
  - 3. undertaking any applicable proceedings under State or local law (34 C.F.R. § 100.8(a)(2)); or
  - 4. pursuing other administrative alternatives authorized by law (28 C.F.R. § 50.3(c)(1)(b)(2); 34 C.F.R. § 110.8(a)).
- B. Formal referral for litigation from OCR to CRT of a matter involving an educational institution receiving financial assistance from ED is a valuable enforcement tool. Such referrals can be made when the following conditions have been met:
  - 1. OCR made an investigation as to whether the recipient of federal financial assistance has failed to comply with Title IX or implementing regulations or resolution agreement;

2. OCR informed the recipient that its investigation indicates a failure to comply with Title IX or its implementing regulations or resolution agreement and attempted to resolve the matter by informal means (20 U.S.C. § 1682(2); 34 C.F.R. § 100.7(d)(1));
  3. OCR determined that compliance could not be secured by voluntary means (20 U.S.C. § 1682(2); 34 C.F.R. § 100.8(d)(1));
  4. OCR mailed a notice to the recipient regarding its failure to comply and the action needed to be taken to effect compliance (34 C.F.R. § 100.8(d)(2) & (3)); and
  5. OCR made additional efforts for at least ten (10) days from the mailing of such notice to persuade the recipient to comply with Title IX or implementing regulations or resolution agreement and to take such corrective action as may be appropriate (34 C.F.R. § 100.8(d)).
- C. Title IX requires that a concerted effort be made to persuade any noncomplying recipient to comply voluntarily; efforts to secure voluntary compliance should be pursued through each stage of enforcement action (28 C.F.R. § 50.3(c)(1)(c)).

#### **IV. Other Provisions**

- A. Nothing in this MOU is intended to conflict with existing laws, regulations, or other guidance binding on OCR or CRT. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.
- B. Nothing in this MOU diminishes either Party's authority to investigate and resolve complaints that fall within its jurisdiction.
- C. This MOU does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any individual or organization against the United States; its department, agencies, or other entities; its officers or employees; or any other person.

#### **V. Effective Date**

This MOU will take effect upon the date of the last signature of the approving officials appearing below.

#### **VI. Modification**

This MOU may be modified by the mutual, written consent of the Parties.

#### **VII. Review**

The Parties agree to review the MOU within two (2) years of the effective date to determine whether any modifications are necessary to more effectively accomplish the goals of the MOU. Failure to conduct a review, however, will not result in the termination of this MOU.

### VIII. Termination

This MOU will remain in effect unless terminated by either Party upon fourteen (14) days written notice to the other Party.



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