



# Department of Justice

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**STATEMENT FOR THE RECORD OF**

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CIVIL RIGHTS DIVISION  
U.S. DEPARTMENT OF JUSTICE**

**BEFORE THE**

**COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS  
UNITED STATES SENATE**

**FOR A HEARING ENTITLED**

**“SEXUAL ASSAULT ON CAMPUS: WORKING TO ENSURE STUDENT  
SAFETY”**

**JUNE 26, 2014**

**Statement for the Record of Jocelyn Samuels  
Acting Assistant Attorney General, Civil Rights Division  
U.S. Department of Justice  
Before the Health, Education, Labor, and Pensions Committee  
United States Senate  
Concerning the Department of Justice’s Role  
in Combating Sexual Assault on Campus  
June 26, 2014**

The Department of Justice appreciates the opportunity to submit this statement for the record of the Committee’s June 26, 2014 hearing on combating sexual assault and violence under Title IX of the Education Amendments of 1972 (Title IX) and related legislation. In this statement, the Department will outline its responsibilities under Title IX, Title IV of the Civil Rights Act of 1964 (Title IV), and other laws, as well as provide some examples of Department’s work on campus sexual violence issues. Our enforcement work under these statutes and the stories of the brave survivors we have met through that work have further strengthened our commitment to use all of the tools at our disposal to combat sexual assault.<sup>1</sup>

Sexual harassment and assault deny students the ability to live and learn in a safe educational environment – and are a form of sex discrimination that can violate the nation’s civil rights laws when they create a hostile environment. Survivors are often unable to complete their academic work, and suffer serious short- and long-term negative mental health consequences. Feeling unsafe on campus, they are more likely to leave the university before graduating. The devastating rates of sexual assault remind us of the continuing critical importance of enforcing these civil rights laws to address sex discrimination in all education programs.

**I. Introduction**

Passed by Congress on June 23, 1972, Title IX bars sex discrimination in education programs and activities offered by entities receiving federal funds. In the forty-two years since its enactment, Title IX has improved access to educational opportunities for millions of students, helping to ensure that they all have an “equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities.”<sup>2</sup> In 2012 alone, Title IX

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<sup>1</sup> Sexual violence refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of providing consent. Sexual violence includes rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. When using the term sexual assault, this testimony refers to all forms of sexual violence on campus.

<sup>2</sup> *U.S. v. Virginia*, 518 U.S. 515, 532 (1996).

protected over 49 million students enrolled in elementary and secondary schools,<sup>3</sup> as well as over 20 million students enrolled in postsecondary education.<sup>4</sup>

Title IV was passed in 1964 to prohibit public schools, colleges, and universities from discriminating against students on the basis of race, color, national origin, and religion, and was amended in 1972 to prohibit sex discrimination as well. As applicable here, the fundamental principle underlying both Title IX and Title IV is that students may not be denied educational opportunities based on their sex – a principle that applies to the wide range of educational programs and activities offered by schools, including but not limited to: academic programs; financial aid for post-secondary institutions; student services and counseling; and athletics and physical education. Additionally, educational institutions may not retaliate against a person because he or she opposed, reported, or complained about sex discrimination or participated in a discrimination investigation or proceeding.

These laws protect students from sexual harassment, including sexual assault, that creates a hostile environment. When educational institutions fail to respond adequately to campus sexual assault, they engage in discrimination by forcing the affected students to attend school in a hostile sex-based environment. Under Title IX, Title IV, and other laws discussed below, educational institutions must respond to sexual assault quickly and effectively, including supporting survivors during the investigation and bringing perpetrators to justice. Ensuring that campus police respond to complaints of sexual assault, and that educational institutions' investigative and disciplinary processes are prompt, fair, adequate, and reliable for both victims and alleged perpetrators is critical to protecting the civil rights of all students on campuses.

## **II. Department of Justice Enforcement Authority**

The Department of Justice's commitment to preventing and responding to sexual assault and to holding schools accountable for fulfilling their obligations under federal law is one that is shared across different divisions of the Department, including the Civil Rights Division, the Office on Violence Against Women,<sup>5</sup> and the Office of Justice Programs.

The Civil Rights Division of the Department of Justice combats sexual assault through enforcement of four laws: Title IX, Title IV, Section 14141 of the Violent Crime Control and

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<sup>3</sup> "Digest of Education Statistics, 2012," *National Center for Educational Statistics* available at [http://nces.ed.gov/programs/digest/d13/tables/dt13\\_203.20.asp](http://nces.ed.gov/programs/digest/d13/tables/dt13_203.20.asp).

<sup>4</sup> "Digest of Education Statistics, 2012," *National Center for Educational Statistics* available at [http://nces.ed.gov/programs/digest/d13/tables/dt13\\_302.10.asp](http://nces.ed.gov/programs/digest/d13/tables/dt13_302.10.asp).

<sup>5</sup> The Department of Justice's Office on Violence Against Women administers grant programs that provide federal funds to colleges and universities under the Violence Against Women Act (VAWA). The Department's Office of Justice Programs, Office of Civil Rights enforces the provisions of the Violence Against Women Reauthorization Act of 2013 that prohibit discrimination on the basis of sex, among other bases, by recipients of VAWA funds.

Law Enforcement Act of 1994, and the Omnibus Crime Control and Safe Streets Act of 1968. The Department's unique enforcement authority under these four laws enables the Division to address sexual assault in a holistic manner by engaging all of the entities that play a role in preventing and responding to sexual assault, thus strengthening the potential for sustainable and community-wide solutions.

**a. Title IX of the Education Amendments of 1972 ("Title IX")**

As described above, Title IX applies to all educational institutions that receive federal funds, including all K-12 public school districts and almost every college and university. When the Department of Justice provides federal funds to a school, it can initiate a Title IX compliance review or Title IX complaint investigation. The Department of Justice also coordinates Title IX enforcement for all federal agencies and can initiate litigation to enforce Title IX upon referral from the agency funding the discriminating school when findings of sex discrimination cannot be voluntarily resolved with the educational institution. In addition, the Department of Justice can intervene, file *amicus* (friend-of-the-court) briefs, or file statements of interest in Title IX lawsuits initiated by private parties.

**b. Title IV of the Civil Rights Act of 1964 ("Title IV")**

Title IV prohibits discrimination on the basis of sex, as well as race, color, national origin, and religion in *public* schools, colleges, and universities, regardless of whether they receive federal funds. Under Title IV, the Department of Justice may conduct investigations and, upon receipt of a complaint, file enforcement actions in court to address sex-based discrimination, including sexual harassment, at public educational institutions.

**c. Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994 ("Section 14141") and the Omnibus Crime Control and Safe Streets Act of 1968 ("Safe Streets Act")**

These two laws prohibit law enforcement agencies, including campus police, from engaging in a pattern or practice of discriminating on the basis of sex in their response to sexual assault. Section 14141 authorizes the Department of Justice to review whether a law enforcement agency engages in a pattern or practice of misconduct that violates people's federal statutory or constitutional rights. Where the Department of Justice finds such a pattern or practice of misconduct, it may seek injunctive relief to remedy these violations. Additionally, the Department of Justice enforces the anti-discrimination provisions of the Safe Streets Act. Under this Act, the Department is authorized to investigate and, where appropriate, file suit to

address allegations of a pattern or practice of discrimination on the basis of race, color, sex, or national origin by law enforcement agencies receiving federal funds.<sup>6</sup>

Below, we address the standards applicable under Title IV and Title IX in more detail.

### **III. Investigative Standards**

Sexual violence is a form of sexual harassment. It refers to physical sexual acts perpetrated against a person's will or where a person is incapable of providing consent. Sexual violence includes rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. An educational institution violates Title IX and Title IV if: (1) a student is sexually harassed and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program (i.e., the harassment creates a hostile environment); (2) the educational institution knew or reasonably should have known about the harassment; and (3) the institution fails to take immediate effective action to end the harassment, eliminate the hostile environment, prevent its recurrence, and address its effects, where appropriate.

To determine whether a hostile environment based on sex exists, the Civil Rights Division considers whether there was any harassing conduct that was sufficiently serious – that is, sufficiently severe, pervasive, or persistent – to deny or limit a student's ability to participate in or benefit from a school program, activity, or opportunity based on sex. Under Title IX's administrative enforcement standard and Title IV's injunctive relief standard, "severe, pervasive, or persistent" sexual harassment establishes a hostile environment; if an educational institution knew or reasonably should have known of it, the school must effectively address it.

In determining whether it is fulfilling its legal obligations, an educational institution must examine from an objective and subjective perspective all relevant circumstances with respect to whether a hostile environment exists, including: the type of sexual harassment (e.g., whether it was verbal or physical or both); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the educational institution; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical, e.g., rape.

As the Office for Civil Rights' (OCR) of the U.S. Department of Education has stated, when a school knows or reasonably should know of possible sexual assault, the educational

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<sup>6</sup> Under the Safe Streets Act, the Department of Justice's Office of Justice Programs, Office for Civil Rights has the authority to investigate individual complaints that grantees of Department of Justice funds have violated the Safe Streets Act's prohibition on discrimination.

institution must take immediate and appropriate steps to investigate or otherwise determine what occurred, subject to the survivor's requests for confidentiality, in which case the school must consider a range of factors. These factors are discussed in OCR's recent Questions and Answers guidance about sexual violence issued on April 29, 2014. Investigations must be prompt, thorough, and impartial to reliably determine what occurred. If the educational institution finds that a hostile environment has been created, it must take prompt and effective action to stop the harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, address its effects. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

In its investigation and enforcement work determining whether a hostile environment exists and whether an educational institution has adequately responded to allegations of sexual assault, the Civil Rights Division considers whether schools:

- Have and implement sexual assault policies that are clear, consistent with federal law, and readily accessible to students;
- Provide appropriate training for school officials and campus law enforcement;
- Respond promptly and effectively to complaints of sexual assault; and
- Eliminate sex-based hostile environments when they are found, including providing meaningful relief to address the impact on affected students and, where appropriate, the larger campus community.

In addition to working with educational institutions to address sexual assault, the Division also provides guidance to courts through its filings of complaints, motions, and amicus briefs to ensure the application of proper legal standards under Title IX and Title IV.

**a. Developing Clear and Accessible Policies That Protect All Students**

To effectively prevent sexual assault, schools' sexual misconduct policies should provide definitions of sexual assault, sexual harassment, and other relevant terms that are clear and consistent with federal law. Confusion over what constitutes "consent" or where and when "sexual harassment" should be reported can make it more difficult to hold alleged perpetrators accountable. For example, by definition, being under the influence of psychoactive substances can impact an individual's ability to consent to sexual activity. While the reporting rate for all sexual assaults is low, in cases where the survivor has used alcohol or drugs, reporting rates are even lower. In a recent study of rape among college women, 11.5% of survivors reported the rape to law enforcement officials, but only 2.7% of survivors who had used alcohol or drugs at the time of the rape reported the crime.<sup>7</sup> Sexual misconduct policies must be drafted to make clear that all survivors can come forward for counseling and to file a complaint.

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<sup>7</sup> Wolitzky-Taylor KB1, Resnick HS, Amstadter AB, McCauley JL, Ruggiero KJ, Kilpatrick DG. Reporting rape in a national sample of college women. *J Am Coll Health*. 2011;59(7):582-7. doi: 10.1080/07448481.2010.515634. available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3211043/>.

These policies also should be drafted in culturally-responsive and inclusive ways to protect all survivors of sexual violence. Without inclusive policies, schools too often inappropriately treat survivors of same-sex violence and dating violence differently than other victims - by perpetuating the perception that rape is only acted out by a man against a woman or by a stranger, for example.

Schools must also broadly disseminate policies so that students know how to report assaults; who they can talk to - both confidentially and when they want to file a complaint; and how to access support services. Students must be clearly informed that the decision as to whether to file a complaint with law enforcement is the survivor's decision. And most importantly, schools must implement their policies and grievance procedures to ensure safe, nondiscriminatory learning environments for all students.

#### **b. Providing Appropriate Training for School Officials**

Individuals investigating sexual assault and harassment complaints and those responsible for coordinating Title IX compliance must also receive adequate training. All first responders and persons involved in the investigation and disciplinary process should be "trauma informed" – meaning that they understand the physiological and neurobiological changes caused by trauma, which affect how survivors behave, recall information, and interact with investigators and prosecutors.

School employees tasked with investigating and adjudicating sexual misconduct must also be trained on the school's policies applicable to the adjudication process, and those policies must be fair to both survivors and perpetrators. And all students on campus should receive training on the school's policies and procedures as well.

Finally, training is also critical for campus law enforcement. Investigating sexual assault can be difficult even for seasoned police officers, and a survivor's interaction with law enforcement can affect whether the survivor is willing to go forward with the case. In addition to jeopardizing an investigation, ineffective or sporadic sexual assault response and investigation training can deprive officers of the knowledge necessary to avoid re-traumatizing survivors.

#### **c. Ensuring Prompt and Effective Responses to Complaints of Sexual Violence**

Schools have a duty to respond promptly and effectively to complaints of sexual assault. Delayed investigations and other flawed responses can too often lead to the loss of critical evidence and to students missing class, taking leaves of absence, or dropping out of school due to fears for their safety or retaliation. The Civil Rights Division looks carefully at how campus law enforcement responds to complaints of sexual assault, and how the colleges' investigative and judicial processes treat both survivors and alleged perpetrators. Ensuring that the college

adjudication process is prompt, fair, and impartial is critical to compliance with federal civil rights laws.

**d. Delivering Meaningful Relief to Students and Campus Communities**

When schools learn of a report of sexual assault, they must offer interim relief as necessary to protect the student’s safety and well-being. This can involve a number of accommodations, from providing counseling or legal services to changing the student’s living, class, or testing arrangements. The school should provide these supports as necessary regardless of whether the student wants to proceed with an investigation or discipline the accused.

If a school determines that sexual assault has created a hostile environment for the student or for the campus more broadly, it must not only take effective steps to stop the harassment but also to remedy its effects, where appropriate. These steps can include ensuring that the student is safe from further harassment and is able to stay in school with appropriate supports and accommodations, such as medical, counseling, and academic support services. This also can include campus-based remedies such as providing training for students and employees, strengthening school policies, conducting bystander intervention programs with students, and undertaking other activities to prevent the recurrence of sexual assaults. And, of course, institutions should ensure that no student is subject to retaliation for complaining about sexual assault or bringing concerns to the institution’s attention.

In our complaint investigations and compliance reviews, the Division works to design resolutions that will bring meaningful relief to student survivors and create lasting change to improve the campus climate for all students. Our agreements addressing sexual assault under Title IX, Title IV, the Safe Streets Act, and Section 14141 agreements are posted publicly on the Department’s and White House’s websites and provide information to students, advocates, and universities that can be used to help improve schools’ and law enforcement’s responses to and prevention of sexual assault.

**IV. Examples of Investigative Activities**

In May 2012, the Department of Justice announced investigations of the University of Montana at Missoula, the University of Montana’s Office of Public Safety (OPS), the Missoula Police Department (MPD), and the Missoula County Attorney’s Office (MCAO) to ensure that these entities were adequately responding to reports of sexual assaults and meeting their legal obligations under Title IX, Title IV, Section 14141, and the Safe Streets Act. With cooperation from the University president, the Departments of Justice and Education reached an agreement with the University of Montana, and the Department of Justice reached a separate agreement with OPS. The Department of Justice also reached separate agreements with MPD and MCAO. These agreements embodied a comprehensive approach to resolving sexual assault issues; it is

our hope that they will serve as an example for other postsecondary institutions and law enforcement agencies seeking to ensure compliance in these areas.

In addition, the Department of Justice has pursued Title IV and Title IX cases in K-12 schools, protecting young people against sexual assault and harassment. In recent years, in Tennessee, Pennsylvania, California, and New York, the Department of Justice has reached settlements or consent decrees with school districts to resolve issues of sexual assault or sexual harassment.

**a. Missoula, Montana**

In Missoula, Montana, the Department of Justice engaged in four investigations of sex discrimination using the full breadth of our enforcement authorities under the four applicable statutes just mentioned. As detailed below, the investigations found serious deficiencies in the response to sexual assault by the University of Montana-Missoula, OPS, MPD, and MCAO. In May of 2013, the Department entered into agreements with the University, OPS, and MPD to resolve findings related to those parties. In June of 2014, the Department entered into an agreement with MCAO. All of the entities have agreed to work cooperatively together and with the Department of Justice to implement these agreements and improve the safety of all students and other members of the Missoula community.

***i. University of Montana-Missoula and the University of Montana's Office of Public Safety***

The Department of Justice's Title IV investigation and the Title IX compliance review conducted jointly by the Departments of Justice and Education identified several ways in which the University's response to sexual assault fell short of its legal responsibilities. The Departments found that the reported incidents of rape or sexual assault were sufficiently serious that they interfered with or limited female students' ability to participate in or benefit from the school's program. As a result, students faced a hostile environment – they could not engage in or complete their academic work; they experienced negative mental health consequences; they felt unsafe on campus; and some left the University. The Departments further found that the University failed to take effective action to fully eliminate this sexually hostile environment, prevent its recurrence, and remedy its effects. For example, the Departments' investigation determined that the University's sexual harassment and assault policies did not provide clear notice of the conduct prohibited by the University or clear direction about where and how to file complaints; the University's grievance procedures did not ensure prompt and equitable resolution of complaints of sex-based harassment; and the individuals investigating sexual assault and harassment complaints and those coordinating the University's Title IX efforts did not receive adequate training.

In May 2013, with the full cooperation of the University administration, the Departments of Justice and Education reached a comprehensive resolution agreement with the University to resolve the findings of noncompliance under Title IX and Title IV. The agreement requires the University to, *inter alia*: revise its sex-discrimination policies and grievance procedures; retain a consultant with expertise in addressing sexual assault and harassment to help the University develop effective sexual assault and harassment policies and grievance procedures; conduct extensive training for University employees and students; develop a system for tracking and resolving reports of sexual assault and harassment in a timely and effective manner; and conduct campus climate surveys to assess whether the reforms put in place by the agreement are proving successful at preventing and effectively responding to sexual assaults.

The Department of Justice also conducted a comprehensive investigation of OPS, under the Safe Streets Act and Section 14141, to assess whether OPS was discriminating on the basis of sex in responding to reports of sexual assault. The investigation found that the OPS' response to sexual assaults was compromised by deficiencies in policy, training, and practice. These deficiencies made it more difficult for law enforcement to effectively investigate allegations of sexual assault, depriving female sexual assault survivors of basic legal protections, and reducing the ability of OPS to protect the public safety of the entire campus. In May 2013, the Department reached an agreement with the University that required OPS to develop new policies, training, and supervision related to handling sexual assault cases. This agreement also requires the University to participate in innovative initiatives such as a "community safety audit" focused on sexual assault, and an external group that reviews sexual assault cases handled by the Missoula Police Department and OPS. The implementation of these measures is being assessed and guided by an agreed-upon monitor.

**ii. *Missoula Police Department and Missoula County Attorney's Office***

Using its authority under the Safe Streets Act and Section 14141, the Department conducted a comprehensive investigation of the MPD's response to sexual assault at the University of Montana-Missoula and in Missoula more generally. The Department found that deficiencies in MPD's response to sexual assaults compromised the effectiveness of sexual assault investigations from the outset, making it more difficult to uncover the truth and having the effect of depriving female sexual assault survivors of basic legal protections. In May 2013, the Department reached an agreement with MPD requiring it to develop new policies, training, and supervision related to handling sexual assault cases. The agreement requires MPD to participate in the "community safety audit" focused on sexual assault and to establish an external group to review sexual assault cases handled by the MPD and OPS. A monitor will assess and guide implementation of all of these measures.

The Department also investigated alleged gender bias in the prosecution of sexual assaults by the MCAO. In June of this year, the Division reached a landmark agreement to

resolve its investigation under which the MCAO and Missoula County agree to improve MCAO's response to allegations of sexual assault and eliminate discrimination and gender bias. Under the agreement, the MCAO will take many significant steps to address gender bias and help restore community confidence in the county criminal justice system. These steps include the development and implementation of sexual assault policies and training for county prosecutors, the improvement of county prosecutors' treatment of individuals who report sexual assault, and enhanced county prosecutor collaboration with local law enforcement agencies in conducting investigations and pursuing prosecutions. The MCAO also agreed to hire an in-house survivor witness coordinator and analyze survivor witness surveys to improve coordination and communication with other Missoula stakeholders regarding sexual assault response. The implementation of these measures is being assessed and guided by an agreed-upon technical advisor and the Montana Attorney General's Office.

**b. Allentown, Pennsylvania**

In July 2012, the Department of Justice and the Allentown School District filed a consent decree addressing multiple complaints of sexual assault of students at an elementary school, including allegations that six- and seven-year-old students were sexually assaulted by another student in the boys' bathrooms. The Department had intervened in the private Title IX lawsuit against Allentown in 2009 to ensure that Title IX was properly interpreted and that the serious claims were effectively remedied. In this case, the Department alleged that the sexual assaults occurred on at least five separate occasions; that the district was made aware of each incident immediately after it occurred; and that despite this notice, the district did not take appropriate action, and in some circumstances took no action, to prevent the harassment from recurring. Furthermore, the Department alleged that both before and after the sexual harassment of the students, the district failed to adopt and implement adequate and effective sexual harassment policies and procedure as required by federal law.

The consent decree requires systemic relief, including: implementation of a comprehensive plan to prevent and address sexual harassment in all district schools; revised and effective sexual harassment policies and procedures, including procedures for communicating with police, hospital, and child protection agencies; and training of administrators, faculty, staff, students, and parents. We have been actively monitoring this consent decree to ensure that the district fulfills its obligations and provides a safe learning environment free of sex discrimination.

**c. Nashville, Tennessee**

In 2008, the Department intervened in another privately brought Title IX case against the Nashville public school district. The parent alleged that her nine-year old autistic child was sexually assaulted by another student while riding a special education school bus. After

conducting extensive discovery, the Department determined that the student perpetrator had a lengthy and well-documented history of sexual misconduct prior to assaulting the young autistic boy, that district officials were aware of this history, and that the district did not take steps to protect the passengers on the perpetrator's school bus. In 2010, the Department of Justice successfully negotiated a consent decree with the school district that requires it to take extensive steps to enhance the security of students with disabilities on public school buses. These steps include: staffing bus monitors to assist drivers on all special education buses; implementing comprehensive screening procedures to ensure that students with disabilities are not assigned to buses where they would be at risk of harassment; expediting the investigation of suspected acts of sexual harassment involving students with disabilities; and ensuring open lines of communication between transportation officials and school-based personnel. The district also agreed to pay the family \$1.475 million as part of the settlement. The Department of Justice continues to monitor compliance with the consent decree, including conducting a recent site visit of the district.

#### **d. Other Cases**

The Department has addressed sexual assault and sexual harassment in other cases. For example, in 2011, the Department of Justice and the Department of Education reached a settlement with the Tehachapi, California school district to resolve a complaint of sexual harassment and assault of a middle-school boy who committed suicide. Both Departments also collaborated with the United States Attorney's Office in Minnesota in a Title IX-Title IV investigation involving gender stereotyping and other harassment that culminated in a 2012 consent decree with the Anoka-Hennepin school district in Minnesota.

The Civil Rights Division and the U.S. Attorney's Office for the Southern District of New York also successfully intervened in a private Title IX case against the Rhinebeck, NY school district, and from 2006 through 2009 jointly monitored the district's implementation of a comprehensive consent decree to resolve the hostile environment created in the district by a decade of sexual harassment of female students by a school principal.

#### **V. Other Activities**

In addition to its investigative and enforcement work, the Department of Justice participates in a variety of programs to prevent campus sexual assault. The Office on Violence Against Women helps colleges and universities improve their response to sexual assault through grant funding. The Office of Justice Programs funds law enforcement agencies developing innovative methods to respond to and prevent sexual harassment and assault. And the Department of Justice coordinates with other agencies and participates in the White House Task Force on Protecting Students from Sexual Assault.

**a. Office on Violence Against Women**

The Department of Justice's Office on Violence Against Women (OVW) administers grant programs that provide federal funds to colleges and universities under the Violence Against Women Act. Specifically, the Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking on Campus Program makes competitive grant awards to institutions of higher education, and grantees are required to implement evidence-informed prevention programs like bystander education. The Campus Program strengthens on-campus victim services, advocacy, security, and investigation and improves both prosecution and prevention of sexual assaults. Campus Program grantees must: provide prevention programs for all incoming students; train campus law enforcement or security staff; educate campus judicial or disciplinary boards on the unique dynamic of sex-related crimes; and create a coordinated community response to enhance victim assistance and safety while holding offenders accountable.

Since the inception of the Campus Program in 1999, OVW has funded approximately 388 projects, totaling more than \$139 million, for grantees addressing domestic violence, dating violence, sexual assault, and stalking on campuses. The Office solicits applications from institutions of higher education across the country, including community colleges, Historically Black Colleges and Universities, Tribal Colleges and Universities, universities and colleges that serve primarily Latino or Hispanic populations, and universities and colleges based in the five U.S. territories.

To reach beyond Campus Program grantees, OVW is working to share information with colleges and universities across the country. In the coming weeks, OVW will launch the first phase of a comprehensive online technical assistance project for campus officials. Key topics will include victim services, coordinated community responses, alcohol and drug-facilitated sexual assaults, and compliance with the Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (Clery Act). Webinars and materials will include the latest research, promising practices, training opportunities, policy updates, prevention programming, and recent publications. The project will feature strategies and training materials for campus and local law enforcement.

OVW also uses Violence Against Women Act grant programs to help communities institute sexual assault response teams, support sexual assault nurse examiners, train law enforcement on trauma and special investigative techniques, and develop special prosecution units. The Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program is particularly essential to supporting these proven-effective strategies. In addition, OVW funds cutting-edge technical assistance projects with law enforcement associations, including the International Association of Chiefs of Police and the Police Executive Research Forum. Universities and colleges can collaborate with these community resources to improve and ensure the most effective responses to sexual assault.

## **b. Office of Justice Programs**

In FY 2014 the Department of Justice's Office of Justice Programs (OJP) Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) is launching the Campus Sexual Assault Perpetrator Treatment Pilot Project. The SMART Office will award a grant to develop a treatment curriculum for campus sexual assault offenders based upon evidence-based approaches with a proven track record. The curriculum will be implemented on one or more campuses, and made available for implementation at other colleges and universities across the country.

## **c. Coordination with Other Agencies**

Partnering with other federal agencies to combat sexual assault sends a powerful message. For example, the Civil Rights Division partnered with the Department of Education's Office for Civil Rights in its investigation of allegations of sexual assault and harassment at the University of Montana. The Civil Rights Division has also worked closely with the Office for Civil Rights on Title IX guidance, and assists other federal agencies to promote consistent enforcement of Title IX.

The Civil Rights Division is also a member of the White House Task Force to Protect Students from Sexual Assault. Created this year by President Obama, the Task Force works to increase transparency, enforcement, public awareness, and interagency coordination to prevent sexual violence and support survivors. The first report of the Task Force was released on April 29, 2014, and on the same day, a website to assist students and schools and to increase transparency was launched at [NotAlone.gov](http://NotAlone.gov). Resources include a sample Sexual Assault Policy Checklist and a sample Campus Climate Survey.

## **VI. Challenges**

In its enforcement efforts against sexual assault and harassment, the Civil Rights Division has encountered numerous challenges, a few of which are included here.

First, it is important to increase reporting of sexual assault and ensure that those who report get the help they need. Vague or unclear policies that create confusion about where to report and/or the misimpression that sexual misconduct needs to be quite severe before reporting contribute to underreporting. This problem can be mitigated by a single comprehensive policy with clear definitions that encourages reporting; wide distribution of available resources; more streamlined procedures for handling reports; and training for all students, employees, and faculty.

The Departments of Justice and Education have further found that too many schools, colleges, and universities fail to respond to complaints properly and effectively, including by failing to conduct investigations or failing to support complainants during and after investigations. We also have found instances when schools did not respond adequately to complaints of retaliation following a report, which in turn exacerbates under-reporting. It is critical that when students report traumatic experiences of sexual assault, those who respond are properly trained to do so. Unfortunately, both Departments have found that individuals investigating and adjudicating sexual assault complaints and those responsible for coordinating Title IX compliance across campuses often do not receive adequate training.

Finally, despite recognizing that sexual harassment is a form of discrimination prohibited by Title IX, the Supreme Court has established legal standards in two cases – *Gebser v. Lago Vista Ind. School District*<sup>8</sup> and *Davis v. Monroe County Board of Education*<sup>9</sup> – that impose significant burdens on students who attempt to recover damages under Title IX for harassment suffered at the hands of school employees or fellow students. Under *Gebser* and *Davis*, it is harder for students to gain full relief in Title IX sexual harassment cases than it is for employees to obtain redress for sexual harassment in the workplace under Title VII of the Civil Rights Act of 1964.

## **VII. Conclusion**

Education is the great equalizer – it offers a lifeline to young men and women for whom a successful future is not predetermined. And for all students to have the opportunity to succeed, all students must feel safe and have confidence in schools’ demonstrated commitment to protect them. For that reason, the Department of Justice will continue to vigorously enforce our nation’s civil rights laws, including by ensuring that sex discrimination does not prevent students from achieving their goals and by fostering safe and nurturing environments where every student has the opportunity to prosper.

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<sup>8</sup> *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998).

<sup>9</sup> *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).