

White House Addresses Sexual Misconduct in K-12 Schools

By Susan D. Friedfel

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A new notice and resource materials from the White House remind K-12 schools of their obligations to prevent and address sexual misconduct under Title IX of the Education Act of 1972. Like colleges and universities, K-12 school districts have a legal obligation under Title IX to respond to allegations of sexual misconduct.

The White House's Task Force to Protect Students from Sexual Assault's September 19, 2016 notice offers suggestions for how school districts should draft and implement sexual misconduct policies. The notice did not issue new regulations, only reminded schools of existing obligations under Title IX and its implementing regulations.

The notice encourages school districts to develop a separate, freestanding sexual misconduct policy. The Task Force cautioned school districts to engage in a comprehensive drafting process, considering the unique aspects of the districts and their student body.

The goal of the drafting process, the Task Force explained, is to create a policy that is user-friendly, age-appropriate and appropriate in tone, when reviewed from the perspective of a student who has been affected by sexual misconduct.

To facilitate this goal, the Task Force suggests that districts seek comments on aspects of the policy from "key stakeholders" — students, parents, employees, student groups (including lesbian, gay, bisexual, and transgender (LGBT) groups and students with limited English language skills), student resource officers, local law enforcement, survivors of sexual misconduct, victim support services providers, and local departments of children and family services. The notice suggests that districts draw on key stakeholder experience and expertise, and imagines an open dialogue between school districts and these key stakeholders throughout the drafting process.

Drafting Tips

In drafting sexual misconduct policies, the Task Force suggested that school policies should:

- Include a clear statement of the district's prohibition against sex discrimination and commitment to address sexual misconduct;
- Clearly define the persons and conduct covered by the policy, including a definition of consent;
- Explicitly cover every school, alternative setting, and other worksite within the district, as well as school-sponsored and school-recognized activities off of school grounds (*i.e.*, athletic events or field trips);
- Identify the Title IX coordinator and explain his or her role in responding to sexual misconduct;
- Identify resources for victims of sexual misconduct who are seeking immediate assistance, and explain mandatory reporting obligations;
- Offer resources for ongoing assistance for victims of sexual misconduct, including counseling, academic accommodations, and interim measures;
- Provide details regarding formal and informal reporting procedures; and
- Outline the stages of proceedings for bringing a complaint of sexual misconduct.

The Task Force also encouraged school districts to provide details of prevention plans and training efforts in sexual misconduct policies.

"Safe Place to Learn"

In conjunction with the notice, the Department of Education (DOE) and the White House Council on Women and Girls released Safe Place to Learn, an online, interactive resource package. Safe Place to Learn is funded by the DOE and provides resources to support school efforts to prevent and eliminate peer-to-peer sexual harassment and sexual violence. The resource package includes guidance for administrators, e-learning modules for all school staff, a coordinated response team planning guide

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and training module, a trauma sensitivity training module, and action steps, discussion guides, bystander supports, and other resources.

The Obama Administration has been active in addressing sexual assault, including issuance of several Dear Colleague Letters (DCL), the most influential of which was published in April 2011.

While the DCLs have addressed both K-12 and collegiate learning environments, the vast majority of their impact to date has been felt in the higher education environment. Some experts believe that addressing college sexual assault should start during the K-12 curriculum. The September 19 notice and Safe Place to Learn are intended to serve this purpose.

Next Steps

School districts should consider whether revisions are necessary to their sexual misconduct policies. Districts also should train school administrators, human resources, and faculty on how best to respond to reports of sexual misconduct.

Please contact Jackson Lewis for assistance with the September 19 notice, sexual misconduct, and Title IX in general.

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