Title IX Enforcement in 2014: Expect Continued Scrutiny of Institutional Efforts to Address Campus Sexual Misconduct

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In 2013, the Department of Education’s Office of Civil Rights (“OCR”) ramped up its Title IX enforcement efforts with a focus on how colleges and universities address and respond to sexual misconduct. This focus has led to several ongoing investigations that scrutinize every corner of an institution’s Title IX compliance, including:

- Impartial hearings and/or investigations into sexual misconduct;
- Student, faculty and staff training;
- Prevention of sexual misconduct; and
- Resources for sexual assault victims

Institutions of all sizes have found themselves under OCR’s microscope, from the University of Connecticut, to the University of North Carolina - Chapel Hill, to Cedarville University, to Swarthmore College. Just last month, OCR initiated an investigation into a complaint filed by the American Civil Liberties Union on behalf of an anonymous student against Carnegie Mellon University alleging that the University failed to adequately protect a victim of sexual assault after it found that a sexual assault had occurred. Recently, OCR took the unprecedented step to investigate how Dartmouth College allegedly mishandled sexual misconduct complaints, based on a Clery complaint alleging that the College underreported sexual assault statistics.

An investigation by OCR can result in months of inquiries and an investigation beyond the particular incident of alleged sexual misconduct that sparked the investigation in the first place. Typically, OCR reviews all other sexual misconduct grievances that have been filed over an extended period of time, along with an institution’s Title IX policies, procedures, and training records to determine whether there are any other violations. This expanded look results in a significant diversion of resources and expenditure of funds by an institution, along with a range of possible administrative remedies if a violation is found, including monetary and non-monetary settlements to the initiation of administrative proceedings to suspend, terminate, or refuse to grant or continue financial aid.

As we begin a new calendar year, OCR’s recent focus on sexual misconduct highlights the importance of reviewing your institution's policies and procedures to ensure that they are compliant with Title IX and recent OCR guidance. Prudent institutions should begin 2014 by assessing the following areas:

- **Campus Culture** - Does the culture on campus reflect the institution’s policies prohibiting gender bias and sexual harassment (including sexual misconduct)? Determine whether there are any barriers -- or perceived barriers -- to reporting such incidents. Additionally, determine whether students, faculty, and staff understand various types of sex-based harassment and are familiar with reporting procedures, and campus outreach, education and prevention efforts. Well-drafted policies and procedures have marginal value if the campus culture reflects differently and students, faculty and staff do not recognize sex-based harassment, and are not encouraged to report this type of conduct to campus officials.

- **Campus Resources** - Are sufficient resources allocated to responding to sexual misconduct to ensure that reporting procedures are accessible and the institution’s response to reports is both adequate and timely? Again, well-drafted policies are of little value without sufficient resources -- and the right resources -- to implement them effectively, and OCR's recent
enforcement efforts have scrutinized institutions believed to have devoted insufficient resources for Title IX compliance.

- **Training** - Have students, faculty, and staff been sufficiently trained both to recognize incidents of sexual misconduct and the process for reporting them when they do? Training protocols should be reviewed to confirm that students, faculty, and staff all understand their respective rights and responsibilities. Each constituency should know what type of conduct needs to be reported, the process for investigating such incidents, victim's/accused's rights, and what resources are available for alleged victims of sexual misconduct and others impacted by it.

If you have additional questions about interns or the FLSA, please do not hesitate to contact the author or any member of Waller.

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