



ARCHIVED INFORMATION

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 4, 2016

Susan Kruth
Senior Program Officer, Legal and Public Advocacy
Foundation for Individual Rights in Education
170 S Independence Mall W, Suite 510
Philadelphia, PA 19106

Dear Ms. Kruth:

Thank you for your November 24, 2015, letter expressing concern about schools' use of the affirmative consent standard in their policies on sexual violence.

Your letter states that some schools, state systems, and states have adopted affirmative consent standards. As you know, the Department of Education's Office for Civil Rights (OCR) enforces, among other laws, Title IX of the Education Amendments of 1972 (Title IX), which requires schools receiving federal funding to respond promptly and equitably to allegations of sexual violence. OCR's guidance documents note that a school's procedures and practices for handling cases of sexual violence will vary in detail, specificity, and components reflecting differences in the age of its students, school size and administrative structure, state or local legal requirements, and what it has learned from past experiences.¹ As such, OCR does not dictate a specific definition of consent that schools must use and has not directed schools to use an affirmative-consent standard.

As you acknowledge in your letter, OCR has made clear that the rights established under Title IX must be interpreted consistently with any federally guaranteed due process rights. OCR's guidance documents consistently emphasize fair process for all persons involved in sexual violence investigations, including through explaining that procedures that ensure the Title IX rights of the complainant, while at the same time according any federally guaranteed due process to both parties involved, will lead to sound and supportable decisions.²

¹ See, e.g., OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (2001 Revised Sexual Harassment Guidance) (January 19, 2001) at 20, www.ed.gov/ocr/docs/shguide.pdf; OCR's Dear Colleague Letter: Sexual Violence (2011 Sexual Violence DCL) (April 4, 2011) at 9, www.ed.gov/ocr/letters/colleague-201104.pdf; and OCR's Questions and Answers on Title IX and Sexual Violence (2014 Sexual Violence Q&A) (April 29, 2014) at 14, www.ed.gov/ocr/docs/qa-201404-title-ix.pdf.

² See, e.g., 2001 Revised Sexual Harassment Guidance at 22; 2011 Sexual Violence DCL at 12; and 2014 Sexual Violence Q&A at 13, 26.

Anyone who believes that a school that receives federal funding has discriminated against someone on the basis of sex, including failing to respond promptly and equitably to allegations of sexual violence, may file a complaint with OCR.

I appreciate you sharing your views with us.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights