

NCHERM Reaction to the April 4th, 2011 OCR Dear Colleague Title IX Guidance on Campus Sexual Assault

The eleven consultants and higher education attorneys at NCHERM applaud the release on Monday by the U.S. Department of Education's Office for Civil Rights (OCR) of a [Dear Colleague letter](#) giving higher education greater clarity on how Title IX impacts on campus sexual violence. Announced with a press conference at the University of New Hampshire by Vice President Biden and Secretary of Education Arne Duncan, and coupled with an announcement from the Obama White House, the spotlight on campus sexual assault clearly showed how significant a priority Title IX is for this administration.

Our hope is that this guidance will lead to policy and practice changes on college and university campuses that will more effectively empower and embrace the rights of complaints, and further the goal of an equitable result via an equitable process. The failure to embrace rights such as complainant appeals, moving an accused student to alternate housing, and keeping a complainant apprised of the investigation has resulted in years of successful legal challenges to and liability for colleges and universities. We are optimistic that OCR's action will bring about a sea change now.

Acting on the Dear Colleague letter with revised policies and practices will more effectively shield campuses from liability because it offers campuses a roadmap for delivering prompt and effective remedies to campus sexual violence. Yet, it is important to recognize that the substance of the Dear Colleague letter is not new. Our interactions with OCR investigations and involvement with significant cases have given us an unrivaled depth of understanding of best practices, and we at NCHERM have been sharing that roadmap with our clients for years. Title IX does not define the entire universe of best practices for colleges and university response to sexual violence, but it provides a significant foundation. Failing to meet Title IX requirements is non-compliance that can result in adverse findings, consent decrees, legal action, and potentially, fines or loss of federal funding.

With this Dear Colleague letter, OCR has not expanded Title IX. What OCR has done is finally to promulgate guidance that reflects the substance of its enforcement. To date, that enforcement has been accomplished campus-by-campus, without public dissemination of the findings and compliance requirements. We've had to read tea leaves to discern OCR's expectations. Now, we have greater clarity on a number of key issues. The roadmap has effectively gained a GPS capability.

Below, please find a series of links to recent OCR actions, announcements, decision letters and compliance resources. Additionally, the entire OCR case letter file of more than 200 Title IX findings on complaints of sexual violence against colleges and universities is now available freely available online as the result of a collaboration between NCHERM and the Center for Public Integrity to publicize these documents. We hope these resources will be invaluable to your campus:

- [Title IX Implementing Regulations](#)
- [2001 Guidance](#)
- [Dear Colleague Bullying Letter](#)
- [Dear Colleague First Amendment Letter](#)

- [Dear Colleague Sexual Assault Letter](#)
- [NCHERM Database of Title IX OCR Investigations](#)
- [Eastern Michigan University Finding Letter](#)
- [Notre Dame College Finding Letter](#)
- NCHERM Title IX-related Whitepapers – [2001](#), [2005](#), [2010](#), [2011](#)
- Vice President Biden Remarks at University of New Hampshire Press Conference – [video](#), [transcript](#)

We trust that you will continue to turn to NCHERM to keep you out ahead of the government's expectations, and firmly in the realm of best practices. Upcoming, NCHERM has two Title IX-related events we hope you will consider attending, including a Rapid Response Webinar on the OCR Dear Colleague Letter, and the first-ever training and certification course for Campus Title IX Coordinators. See details on each event, below:

[9/12/11 - Comprehensive Sexual Misconduct Board Training - An NCHERM webstream presented by Brett A. Sokolow, J.D., W. Scott Lewis, J.D., Sandra K. Schuster, J.D. and John Wesley Lowery, Ph.D.](#)

NCHERM makes it easier for you to meet your training needs with comprehensive training from noted experts. We have created a training that can be used whenever you want, on various topics, for any length of time you want to provide training. This fall, NCHERM will stream four, one-hour sexual misconduct board training modules from our website. One price gets you access all year, as many times as you want, in any order, for as many trainees as you need.

[October 17-20, 2011 - Comprehensive Campus Title IX Coordinator Certification and Training Course . Philadelphia, PA](#)

Every college and university in the country is required by the Department of Education to have a campus Title IX Coordinator, and to designate that individual to the department and the campus community as a contact point for a Title IX communications and grievances. Title IX Coordinators all over the country have reported to NCHERM a lack of clarity on the role, responsibilities and the expectations the Department of Education has for their position. Campus administrators report confusion over whether there is more to the Coordinator role than being a designee for Office for Civil Rights (OCR) communications, who their campus Title IX Coordinator is, and what that person is supposed to do. To address these questions and the confusion about the responsibilities of a campus Title IX Coordinator, NCHERM has created this four-day training program. After attending this program, Coordinators will know chapter and verse on their role and responsibilities, and will receive a certificate of completion from NCHERM.