

Accused Student Protected from Retaliation
Office for Civil Rights
U.S. Department of Education
February 5th, 2015

Question: “If a complainant directs harassing comments to a male student she has accused of sexual assault, after the investigation has commenced, does OCR consider the accused student to be engaged in protected activity for purposes of being protected from retaliation by his complainant and/or her friends? The circuit courts seem divided on whether being accused and cooperating with the investigation places a respondent within the definition of protected activity under Title VII, what about under Title IX. “

Answer: Each case is fact-specific and each determination is based on the particular set of facts presented. Although we do not give legal advisory opinions, we do provide information on how the civil rights laws that OCR enforces apply generally.

The Federal civil rights laws make it unlawful for a recipient of Federal financial assistance to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. It is unlawful for a recipient to retaliate against an individual because he or she made a complaint, testified, or participated in any manner in an OCR investigation or proceeding. Thus, once an individual complains formally or informally to a school about a potential civil rights violation or participates in an OCR investigation or proceeding, the recipient is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating against the individual) because of the individual’s complaint or participation. OCR vigorously enforces this prohibition against retaliation.

Title IX of the Education Amendments of 1972 also requires a recipient to appropriately respond to peer-on-peer sexual harassment. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the alleged conduct is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s educational program or activities. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces. When a school knows or reasonably should know of possible harassment based on one or more of these bases, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that the harassment created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

OCR is committed to providing the public with information about the civil rights laws OCR enforces. In responding to correspondence, OCR provides general, publicly available information about a wide variety of civil rights issues in the education context. OCR does not, however, provide legal or other advice or issue advisory opinions to customers concerning specific factual scenarios. Correspondence issued by OCR in response to an inquiry from the public does not constitute a formal statement of OCR policy and should not be construed as creating or articulating new policy. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public.

