



Notice of Language Assistance Dear Colleague Letter on Voluntary Youth Service Organizations

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

December 15, 2015

Dear Colleague:

The U.S. Department of Education's Office for Civil Rights (OCR) has recently received questions from school districts and State educational agencies about outside organizations that provide single-sex programming to a school district's students. I write to explain the circumstances under which a school district lawfully may work with such organizations and to address legal issues that may arise under Title IX of the Education Amendments of 1972 (Title IX) and the Department's Title IX regulations.¹

School districts often work with outside organizations, such as community-based groups, local businesses, parent-teacher associations, and nonprofit organizations, to help improve the quality and diversity of the educational opportunities they offer, to target underserved or underrepresented student groups, and to expose students to opportunities not otherwise available on campus. Parent, family, and community involvement in education correlates with higher academic performance and school improvement.² The Department supports school districts' efforts to provide a diverse range of

¹ 20 U.S.C. §§ 1681–1688; 34 C.F.R. Part 106. This letter focuses on school districts, but the principles apply to any recipient of Federal financial assistance that offers an educational program or activity, including school districts, postsecondary institutions, and outside organizations. The Department has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf. OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

² See, e.g., Misty M. Kirby & Michael F. DiPaola, *Academic Optimism and Community Engagement in Urban Schools*, 49 J. EDUC. ADMIN. 542, 557 (2011) ("[I]n schools where there are high levels of community engagement, there tends to be high levels of student achievement."); Anne T. Henderson & Karen K. Mapp, National Center for Family and Community Connections with Schools, *A New Wave of Evidence: The Impact of School, Family, and Community Connections on Student Achievement* 7 (2002), <https://files.eric.ed.gov/fulltext/ED536946.pdf> (surveying research and

opportunities, including through outside organizations, to improve student achievement and address students' educational needs. A school district may not, however, absolve itself of its Title IX obligations by delegating responsibility to an outside organization.³

Title IX generally prohibits recipients of Federal funding both from excluding students from educational opportunities based on their sex and from providing significant assistance to outside organizations that do so. Nonetheless, there are instances in which Title IX permits the separation of students by sex. Specifically, Title IX does not apply to the membership practices of certain outside organizations, including voluntary youth service organizations. Under Title IX, voluntary youth service organizations are tax-exempt organizations, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age.⁴ And, because this statutory exemption is separate from the regulatory exemption for single-sex classes and extracurricular activities, a voluntary youth service organization's membership may be limited to students of one sex without triggering the detailed regulatory requirements for offering single-sex classes and activities.⁵ This is true even if the voluntary youth service organization receives significant assistance from a school district. In such cases, however, the district must comply with the Title IX requirements described in this letter to ensure girls and boys have comparable educational opportunities overall.

This letter offers guidance on how to determine whether an organization qualifies as a voluntary youth service organization under Title IX and how OCR evaluates a school district's compliance with Title IX when it chooses to work with such an organization.

concluding "When schools, families, and community groups work together to support learning, children tend to do better in school, stay in school longer, and like school more.").

³ See 34 C.F.R. §§ 106.4, 106.31(b)(6), 106.31(d); OCR Assurance of Compliance – Civil Rights Certificate, OMB Approval No. 1870-0503, www.ed.gov/ocr/letters/boy-scouts-assurance-form.pdf.

⁴ 20 U.S.C. § 1681(a)(6)(B) (Title IX does not apply to membership practices of "the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are [exempt from taxation under section 501(a) of the Internal Revenue Code], the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age"); 34 C.F.R. § 106.14(c). This exemption is separate from the Boy Scouts of America Equal Access Act (Boy Scouts Act), 20 U.S.C. § 7905, 34 C.F.R. Part 108, which prohibits recipient public school districts that have a designated open forum or limited public forum from denying equal access or a fair opportunity to meet to, or from discriminating against, any group officially affiliated with the Boy Scouts of America (or affiliated with other youth groups listed in Title 36 of the United States Code) that wishes to meet in that designated open forum or limited public forum.

⁵ See 34 C.F.R. § 106.34(b); *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities* (Dec. 1, 2014), www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf.

Title IX Prohibits a School District from Providing Significant Assistance to an Outside Organization that Engages in Unlawful Sex Discrimination

As part of its broad prohibition on sex discrimination, Title IX prohibits school districts from aiding or perpetuating discrimination by providing significant assistance to any outside organization that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees.⁶ When a school district provides significant assistance to a voluntary youth service organization, the school district is responsible if the organization engages in unlawful sex discrimination against students or employees in any aspect of the organization's program other than its membership practices.⁷

Whether a school district is providing significant assistance to an outside organization will turn on the facts and circumstances of each specific situation. OCR will consider a variety of factors, each of which could constitute significant assistance, including, but not limited to, financial support, provision of tangible resources (*e.g.*, staff, equipment, and facilities⁸), intangible benefits (*e.g.*, recognition and approval), the terms under which the school district provides similar privileges and resources to other organizations, and whether the relationship is occasional and temporary or permanent and long-term.

For example, if a school district encourages students to contact its administrative office to register for participation in an outside organization's program and allows the organization to use the school district's facilities (when those facilities are not otherwise open to the public), OCR would likely find that it provides significant assistance to the organization. If, on the other hand, the school district provides very little administrative support (*e.g.*, making a few copies of handouts or directing participants to the correct room) for the program and the outside organization pays the same amount as other nonprofit organizations for the use of the school district's facilities, OCR would likely find that the school district does not provide significant assistance to the organization. Similarly, if the only assistance a school district provides to an outside organization is to share information about the needs of a student with a disability or an English learner student, consistent with its general policy

⁶ 34 C.F.R. § 106.31(b)(6). *See also* Final Rule: Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance, 40 Fed. Reg. 24,128, 24,132 (June 4, 1975). Other civil rights laws also bar schools from providing significant assistance to outside organizations that discriminate on prohibited bases. *See, e.g.*, 34 C.F.R. § 104.4(b)(1)(v), Appendix A § (A)(6) (Section 504 of the Rehabilitation Act of 1973). This letter only addresses a school district's obligations under Title IX.

⁷ The detailed regulatory requirements for offering single-sex classes and activities described in footnote 5 do not apply to opportunities offered by voluntary youth service organizations.

⁸ A school district's provision of access to premises or facilities to an outside organization to comply with another Federal law, such as the Boy Scouts Act, does not constitute significant assistance in and of itself.

on sharing such information and its obligations under other Federal laws,⁹ OCR would not consider that communication significant assistance.

A School District May Provide Significant Assistance to a Voluntary Youth Service Organization that Limits Membership to Students of One Sex

Title IX does not apply to the membership practices of voluntary youth service organizations even when they receive significant assistance from a school district.¹⁰ Likewise, because of this exemption, a school district that provides significant assistance to a voluntary youth service organization will not be found to violate Title IX simply because of the single-sex membership of the organization.

In order to qualify for this exemption, membership in the organization must be voluntary (*e.g.*, participation may not be required as part of a class, and students may not be automatically enrolled), traditionally limited to members of one sex, and principally limited to persons under nineteen years old. A voluntary youth service organization also must facilitate public service opportunities for its members. A school district that provides significant assistance to an organization that satisfies these requirements would not violate Title IX's general prohibition against excluding students from programs on the basis of sex.

In determining whether an organization's membership (*i.e.*, the students who participate in the organization's program) has traditionally been limited to one sex, OCR will consider, on a case-by-case basis, the extent to which the organization has restricted membership by sex. To make this determination, OCR will consider factors such as whether the organization has held itself out, in its historical and foundational documents, as having single-sex membership, and whether the organization's custom is and has been to, in fact, limit membership to a single sex.

To qualify for the exemption for voluntary youth service organizations, an organization also must facilitate public service opportunities for its members. An organization does not qualify for the exemption based solely on the services it provides to its members. Many outside organizations focus on youth development, but in order to qualify for this exemption, the organization's program must also include a service component. For example, an organization that provides a program for girls in

⁹ For example, the Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. § 1232g; 34 C.F.R. Part 99 (FERPA) governs the privacy of education records. For more information on FERPA, see the Department's Family Policy Compliance Office, *The Family Educational Rights and Privacy Act Guidance on Sharing Information with Community-Based Organizations*, www.ed.gov/policy/gen/guid/fpco/doc/ferpa-and-community-based-orgs.pdf.

¹⁰ If the voluntary youth service organization receives Federal financial assistance directly from a Federal agency, its membership practices will remain exempt, but the voluntary youth service organization must comply with other Title IX regulatory requirements.

engineering would meet this requirement if the members work together on a project to develop recommendations to improve the energy efficiency of public buildings.

This exemption from Title IX is limited, however, to the organization's membership practices. A school district may not provide significant assistance to a voluntary youth service organization that engages in sex discrimination against students or employees in any other aspect of the organization's program. For example, the school district remains responsible for addressing any sexual or gender-based harassment against students participating in a program offered by a voluntary youth service organization that receives significant assistance from the school district. The school district is responsible under Title IX to the same extent as if the school district were directly offering the program if students or employees who participate in the program are subjected to sex discrimination. If OCR finds that a school district is providing significant assistance to a voluntary youth service organization that engages in sex discrimination prohibited by Title IX, OCR will require the school district to either obtain compliance from the outside organization (including prompt and effective steps reasonably calculated to end the discrimination, prevent its recurrence, and, as appropriate, remedy its effects) or terminate the significant assistance.

A School District Has Title IX Obligations to the Excluded Sex

As a condition of receiving Federal funds, a school district agrees that it will not exclude, separate, deny benefits to, or otherwise treat students differently on the basis of sex unless expressly authorized to do so under Title IX or the Department's Title IX regulations.¹¹ Although there are limited exceptions in the statute and regulations that authorize a school district to separate or treat male and female students differently, including through the provision of significant assistance to a voluntary youth service organization, it still has a Title IX obligation to ensure girls and boys have comparable educational opportunities overall.¹²

As in other contexts in which Title IX permits a school district to offer programs separately for male and female students, comparable opportunities must be offered to male and female students.¹³ To make this assessment when outside organizations are involved with the school in providing opportunities to students, OCR will look at the overall set of opportunities available by combining the opportunities offered by the school district directly and the opportunities offered by any organization to which the school district provides significant assistance. Under this comparability standard, a school district is not required to provide identical opportunities, provided the overall effects of any differences are negligible. The lack of comparability may be established by a single

¹¹ 34 C.F.R. §§ 106.4, 106.31(a).

¹² See, e.g., 34 C.F.R. §§ 106.31, 106.32(b)(2), 106.33, 106.34(b)(3), 106.40(b)(3), 106.41(c).

¹³ In comparing the school district's offerings, OCR does not consider programming provided by outside organizations that do not receive significant assistance from the school district.

disparity that is so substantial as to deny equal opportunity to students of one sex or by multiple disparities that add up to a denial of equal opportunity to students of one sex.

For example, if a school district allows a voluntary youth service organization free use of its facilities and administrative support so that the organization can provide a four-week summer science camp for the school district's male students, but offers no comparable summer opportunities for its female students, OCR would likely find a violation. To correct or avoid such a violation, the school district would have several options for complying with Title IX, including, for example, by allowing another organization to provide comparable single-sex opportunities for girls or coeducational opportunities to both boys and girls, by offering its own summer camp that is open to both boys and girls, or by terminating the significant assistance to the outside organization. The alternative camp need not be exactly the same type of camp so long as it offers comparable opportunities. The key to Title IX compliance in this context is ensuring male and female students have comparable opportunities overall.

Conclusion

Outside organizations, such as voluntary youth service organizations, can help improve the quality and diversity of the educational opportunities a school district offers, including reaching underserved or underrepresented student groups. A school district that is considering working with such an organization should, however, ensure that appropriate school district and organization officials understand their legal rights and responsibilities with respect to the issues discussed in this letter. If you need technical assistance concerning the Title IX exemption for voluntary youth service organizations or other civil rights issues, please contact the OCR regional office serving your state or territory by visiting wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm, or call OCR's Customer Service Team at 1-800-421-3481; TDD 1-800-877-8339.

Thank you for your commitment to improving public education and providing high-quality educational opportunities to our nation's students.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights