



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

November 3, 2022

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

Dear Senator Warren:

Thank you for your September 21, 2022, letter to Secretary Cardona expressing concerns about reports of sexual abuse of high school students enrolled in the Junior Reserve Officers' Training Corps (JROTC). The Department of Education (Department) shares your concerns about the predatory conduct recently reported by the *New York Times* and others. I am pleased to respond on behalf of the Secretary. I am providing a similar response to the co-signers of your letter.

As you may know, on June 23, 2022 the Department released a [Notice of Proposed Rulemaking](#) (NPRM) to amend its regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The Department's goals in that proposed rulemaking are specifically to ensure that no person experiences sex discrimination in education, that all students receive appropriate support as needed to access educational opportunities, and that school procedures for investigating and resolving complaints of sex discrimination, including sex-based harassment and sexual violence, are fair to all involved. It is the Department's goal to better align the regulations with Title IX's nondiscrimination mandate and in so doing to better ensure all school communities fulfill Congress' promise in Title IX. The public comment period closed on September 12, 2022, and the Department is in the process of reviewing and considering the more than 240,000 comments received, after which it will issue final regulations.

In addition to drawing your attention to this proposed rulemaking, I respond below to each question you presented in your letter.

Questions and Answers

1. How many complaints has ED received of allegations of Title IX violations in school affiliated JROTC programs in the past 10 years?

- a. How many of these cases were investigated?
- b. What was the outcome of these cases?

The Department receives Title IX complaints through the Office for Civil Rights (OCR). In the past 10 years, OCR has received three complaints alleging violations of Title IX in school-affiliated JROTC programs. One of those complaints is currently under investigation, and two were dismissed (one because the complainant did not consent to proceed with an investigation, the other because the complainant withdrew the complaint).

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

OCR also received one complaint in which a complainant alleged that after a sexual assault, the district prohibited her from attending several JROTC events to separate her from the peer respondent, and that the district failed to respond promptly and adequately to her internal complaint. OCR closed this complaint administratively in 2017 because the complainant filed a lawsuit in federal court and then informed OCR that she reached a settlement agreement with the district and wanted to withdraw her complaint.

2. Has ED issued any guidance to schools and state Departments of Education about JROTC programs' obligations to comply with Title IX?

The Department has not issued any guidance to schools and state departments of education specifically about JROTC programs' obligations to comply with Title IX. The Department has issued regulations and guidance regarding the Title IX obligations of schools and other recipients of Department funds not to discriminate based on sex in their educational programs and activities. The current Title IX regulations explain that prohibited sexual harassment includes: (1) *quid pro quo* harassment, when an employee of the recipient conditions the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; and (3) sexual assault, dating violence, domestic violence, and stalking. 34 CFR 106.30(a). Conduct by a JROTC program leader in their capacity as a school employee could constitute sexual harassment under any of the three prongs of the definition of sexual harassment in the current regulations. To assist schools, students, and others, OCR issued a [question-and-answer document in July 2021](#) (updated in June 2022) to provide additional clarity about how OCR interprets schools' existing obligations under the 2020 amendments, including the areas in which schools have discretion in their procedures for responding to reports of sexual harassment.

3. Does ED require schools or state Departments of Education to share information about allegations of sexual misconduct to ED, DoD, or other school districts who may employ JROTC instructors?

Since 1968, the Department has conducted the [Civil Rights Data Collection \(CRDC\)](#) survey, which is required to be completed by all local educational agencies (LEAs) in the country, including every public school district, charter school, juvenile justice facility, alternative school, and school serving only students with disabilities. The CRDC collects data on leading civil rights indicators related to access and barriers to educational opportunity at the early childhood through grade 12 levels.

The CRDC requires LEAs to report on the number of documented incidents that occurred at the school of (1) rape or attempted rape; and (2) sexual assault (other than rape) at the preK-12 level. The CRDC also requires LEAs to report the number of reported allegations of harassment or bullying of K-12 students on the basis of sex and other protected categories, as well as the number of K-12 students reported as harassed or bullied on the basis of sex and other protected categories, disaggregated by those categories.

In addition, the 2020-21 CRDC survey included as optional the following data requests, which the Department has proposed making mandatory for the 2021-22 and 2023-24 CRDC surveys:

- Number of documented incidents of rape or attempted rape, and sexual assault (other than rape) committed by a student that occurred at the school.
- Number of documented incidents of rape or attempted rape, and sexual assault (other than rape) committed by a school staff member that occurred at the school.
- Number of allegations made against a school staff member of rape or attempted rape, and sexual assault (other than rape) that occurred at the school, which were followed by a resignation or retirement prior to final discipline or termination.
- Number of allegations made against a school staff member of rape or attempted rape, and sexual assault (other than rape) that occurred at the school, which were followed by a determination that the school staff member was responsible for the offense.
- Number of allegations made against a school staff member of rape or attempted rape, and sexual assault (other than rape) that occurred at the school, which were followed by a determination that the school staff member was not responsible for the offense.
- Number of allegations made against a school staff member of rape or attempted rape, and sexual assault (other than rape) that occurred at the school, which had a determination that remained pending.
- Number of allegations made against a school staff member of rape or attempted rape, and sexual assault (other than rape) that occurred at the school, which were followed by a duty reassignment prior to final discipline or termination.

The CRDC does not include a request for data specific to allegations of sexual misconduct by JROTC instructors or any other subsets of employees who interact with students.

4. Does ED have in place a process to receive from DoD any reports of sexual misconduct in JROTC programs, and to investigate them for potential Title IX violations?

The Department does not currently have a specific process to receive reports of sexual misconduct in JROTC programs from DoD, but ED and DoD are reviewing effective practices. In addition, federal agencies occasionally refer complaints to the Department for possible investigation. While the Department would not have jurisdiction over complaints regarding sexual misconduct in DoD-conducted schools, we would have jurisdiction over a Title IX complaint involving a JROTC program operating in a school that receives federal funds from the Department.

5. Does ED have in place a process to report to DoD any allegations of sexual misconduct in the school-affiliated JROTC programs? Does ED have any requirement that schools share or report information to the Department about allegations of sexual misconduct by JROTC instructors? If so, how does this process take place?

The Department does not have a specific process to report to DoD allegations of sexual misconduct in school-affiliated JROTC programs but, as stated in response to Question 4 above, the Departments are reviewing effective practices. As stated in response to Question 3 above, the Department's CRDC requires LEAs to report the number of incidents of sexual harassment and assault in schools, including incidents of sexual misconduct by school staff.

I hope these answers are helpful. The Department appreciates your interest and support in ensuring a safe learning environment for all students that is free from discrimination. If you have any questions, please contact the Department's Office of Legislation and Congressional Affairs at 202-401-0020.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Lhamon', with a long horizontal flourish extending to the right.

Catherine E. Lhamon
Assistant Secretary for Civil Rights