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MARK A. HEINRICH, PH.D.
Chancellor

MEMORANDUM 2016-EXE-060

Date: July 25, 2016
To: Presidents, Alabama Community College System
From: Mark A. Heinrich, Ph.D., Chancellor 
Re: Gender Equity in Career and Technical Education

Recently, we received a press release and guidance from the U.S. Department's Office for Civil Rights (OCR) and the Office of Career, Technical, and Adult Education (OCTAE) regarding gender equity in career and technical education. The "Dear Colleague" letter addresses gender equity in career and technical education programs and clarifies existing legal obligations for recipients of federal education funding to ensure that all students have access to career and technical education programs free from sex discrimination.

In the Letter, OCR and OCTAE clarify that disproportionate gender enrollment in a CTE program alone does not constitute a violation of federal law but stress that colleges receiving federal funding must (1) conduct their admission, recruitment, and counseling practices in a nondiscriminatory manner and (2) respond to disproportionate gender enrollment by reviewing their policies and practices. The Letter also provides recommendations and practical examples to help colleges address any potential underrepresentation in CTE programs.

The Perkins Act requires that (1) states identify percentage or numerical targets for participation and completion rates of students in programs that are non-traditional for their gender; (2) states annually report to the Department on their progress in meeting those targets; and (3) subrecipients of the Perkins Act grants likewise identify such targets and report on their progress to their States. Non-traditional (gender) students are core indicators of performance of the Perkins Act (5P1 non-traditional participants and 5P2 non-traditional concentrators). These two core indicators have been an area of concern with regard to the college performance reports. Colleges failing to meet the 90 percent of the agreed upon performance levels, must submit a program improvement plan to ACCS.

We must take this opportunity to review recruitment, admissions, and counseling practices and materials to ensure that the methods are not contributing to disproportionate gender enrollment in CTE programs. If you have any questions or require technical assistance regarding this matter, please contact Gene Dudley at gene.dudley@accs.edu. Thank you.

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Attachments

cc: Instructional Officers

FOR RELEASE: June 15, 2016

CONTACT: Press Office, (202) 401-1576 or press@ed.gov<<mailto:press@ed.gov>>

Education Department Releases Guidance on Gender Equity in Career and Technical Education

As part of the Administration's United State of Women Summit, the U.S. Department of Education's Office for Civil Rights (OCR) and Office of Adult, Career, and Technical Education released a Dear Colleague Letter<<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201606-title-ix-gender-equity-cte.pdf>> today to make clear that all students, regardless of their sex, must have equal access to the full range of career and technical (CTE) programs offered.

"As the father of two daughters, I want my girls - and all young women in this country - to have access to the careers of their dreams, no matter the path," said U.S. Secretary of Education John B. King Jr. "Career and technical education is not just about preparing some students for successful lives and careers, it's about giving all students the tools to succeed."

Ensuring that all students have access to high-quality secondary and postsecondary CTE programs is central to achieving equity required in law. The Carl D. Perkins Career and Technical Education Act<<http://www2.ed.gov/policy/sectech/leg/perkins/index.html>> requires states to meet negotiated targets for participation and completion rates of males and females in programs that are nontraditional for their sex. Despite efforts to increase enrollment of male and female students in fields that are non-traditional for their sex, disparities persist in certain fields.

The letter clarifies the legal obligations under the civil rights laws that OCR enforces to ensure equitable access to CTE programs, and provides examples of issues that may raise concerns regarding compliance with these obligations. While the DCL focuses on discrimination based on sex in CTE programs, the Department is focused on working with schools to ensure that their CTE programs are free from all forms of unlawful discrimination.

"We anticipate that this guidance will improve equitable access, participation, completion and post-program outcomes in CTE by discouraging discriminatory practices and encouraging school communities to take proactive steps to expand participation of students in nontraditional fields, and thus expand both access to and success in high-growth fields for both men and women," said Johan E. Uvin, acting assistant secretary for Career, Technical, and Adult Education. "While this DCL focuses primarily on gender, it reminds us that other considerations such as race, ethnicity, English language status, and disability are important characteristics in examining CTE access, participation, completion and outcomes."

Assistant Secretary for Civil Rights Catherine E. Lhamon, underscored this sentiment, noting, "Ensuring equitable access to CTE programs by eliminating sex discrimination supports a pathway to high-skill, high-wage, and high-demand jobs for all learners, free from stereotype and consistent with our nation's civil rights laws."

Building on this guidance, the Department's Office of Career, Technical, and Adult Education is developing an advancing equity in CTE toolkit. This toolkit will highlight resources and strategies to support state and local education agencies, academic staff, school administrators and counselors,

parents and equity coordinators to develop and implement equitable high-quality CTE programs, services and learning practices.

The DCL clarifies schools' legal obligations to prevent and remedy sex discrimination in CTE programs. It includes:

- o Information on requirements and relevant data under the Perkins Act related to participation in non-traditional fields.
- o An overview of the applicable legal obligations under the relevant laws that OCR enforces (Title IX of the Education Amendments of 1972 and the Vocational Education Program Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap.)
- o Practical examples of issues that may raise concerns regarding compliance with these legal obligations.

As part of the Obama Administration's focus on improving outcomes for women and girls, the White House is convening the United State of Women Summit<<http://www.theunitedstateofwomen.org/summit-details/>>. The Summit covers key gender equality issues, including educational opportunities and economic empowerment for women and girls. This guidance is being announced during a Summit-related CTE event sponsored by the Department. ED's event, "Shattering Stereotypes: Creating Opportunities for Women and Girls in Non-Traditional Career and Technical Education Fields" will showcase CTE programs that are improving outcomes for non-traditional students and give students the opportunity to share how participation in CTE has impacted their educational and career trajectories.

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in all education programs and activities that receive federal financial assistance. The Department is also stepping up efforts to reauthorize the Perkins Act, which provides just over one billion dollars annually to improve CTE.

In 2010, President Obama established the National Equal Pay Task Force<https://www.whitehouse.gov/sites/default/files/rss_viewer/equal_pay_task_force.pdf> to address issues related to the gender pay gap, including breaking down discriminatory barriers that exclude women from traditionally male-dominated occupations, which tend to pay more than traditionally female dominated occupations.

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UNITED STATES DEPARTMENT OF EDUCATION
Office for Civil Rights
Office of Career, Technical, and Adult Education

June 15, 2016

Dear Colleague:

Career and Technical Education (CTE) programs are critical to strengthening our economy and securing a brighter future for our nation. Ensuring that all students have access to high-quality secondary and postsecondary CTE programs is central to achieving the equity that our nation's civil rights laws require.

The Department's Office of Career, Technical, and Adult Education (OCTAE) and Office for Civil Rights (OCR) join together in this letter to make clear to recipients¹ that all students, regardless of their sex or gender,² must have equal access to the full range of CTE programs offered.³ Ensuring equitable access to CTE by eliminating discriminatory practices and taking proactive steps to expand participation of students in fields where one sex is underrepresented⁴ can increase overall participation and success in high-growth fields, such as nursing, advanced manufacturing, information technology, computer science, and cybersecurity, for both men and women. This letter serves to support and inform recipients by clarifying the legal obligations to ensure equitable access to CTE programs, and by providing examples of issues that may raise concerns regarding compliance with these obligations.

The Department has determined that this letter is *significant guidance*.⁵ This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Department evaluates whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact

¹ Throughout this letter, the term "recipients" refers to recipients and subrecipients of Federal financial assistance that offer CTE programs.

² "Sex" and "gender" are used interchangeably in this letter because both terms are used in Title IX and the Perkins Act, respectively.

³ In this document, "CTE programs" means classes and programs that have as their primary purpose the preparation of students to pursue a technical, skilled, or semi-skilled occupation or trade; or to pursue study in a technical field; and any activities related to that program.

⁴ Fields where one sex is underrepresented may include non-traditional fields as defined by the Perkins Act. Under the Perkins Act, non-traditional fields means occupations or fields of work, including careers in computer science, technology, and other current and emerging high skill occupations, for which individuals from one gender comprise less than 25 percent of the individuals employed in each such occupation or field of work. Perkins IV § 3(20); 20 U.S.C. § 2302(20).

⁵ Office of Management and Budget, 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 at ocr@ed.gov or 800-421-3461 (TDD 800-877-8339); or OCTAE at octae@ed.gov or 202-245-7700 (TTY 800-877-8339).

The Department is committed to advancing equity, including gender equity, in CTE. Through guidance and technical assistance, OCTAE supports States and programs that are eligible for grants under the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act) in providing all CTE students the opportunity to acquire challenging academic and technical skills that prepare them for high-skill, high-wage, or high-demand occupations in the 21st century global economy. Likewise, OCR's mission is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights laws, including Title IX of the Education Amendments of 1972 (Title IX), which prohibits sex discrimination in federally funded educational programs and activities.⁶

Although disproportionate gender enrollment alone does not constitute a violation of Federal law, recipients must conduct their admission, recruitment, and counseling practices in a nondiscriminatory manner, and respond to substantially disproportionate enrollment of individuals of one sex by reviewing their policies and practices for counseling students and, if applicable, addressing any unlawful sex discrimination and sex stereotypes in their policies and practices for counseling students.⁷ Recipients may also want to keep in mind that decisions about course offerings, when based on sex stereotypes, can contribute to disproportionate access to CTE programs that lead to high-skill, high-wage, and high-demand jobs. Even if recipients determine that gender enrollment disparities are not the result of unlawful discrimination, they can still take proactive steps to increase enrollment of the underrepresented sex. The Department recognizes that many recipients are already taking these proactive efforts, and that all recipients can benefit from additional information regarding strategies for improving equitable access to, participation in, and outcomes in CTE that recipients may implement to increase enrollment of male and female students in fields where their sex is underrepresented. In light of this, OCTAE will be releasing additional resources in the coming months. These tools and resources will be available on the Perkins Collaborative Resource Network at cte.ed.gov.

The Perkins Act, administered by OCTAE, requires (1) States to identify percentage or numerical targets for participation and completion rates of students in programs that are non-traditional for

⁶ 20 U.S.C. §§ 1681-1688. Title IX prohibits discrimination on the basis of sex in all aspects of a school's educational programs and activities. The discussion in this letter is limited to some of the Title IX requirements most traditionally relevant and applicable to gender equity in CTE programs. In addition to Title IX, OCR also enforces Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin, by recipients of Federal financial assistance; Section 504 of the Rehabilitation Act of 1973, which prohibits disability discrimination by recipients of Federal financial assistance; and Title II of the Americans with Disabilities Act of 1990, which prohibits disability discrimination by public entities, including public school districts, in their services, programs, and activities. 42 U.S.C. § 2000d *et seq.*; 29 U.S.C. § 794; 42 U.S.C. §§ 12131 *et seq.*

⁷ See, e.g., 34 C.F.R. §§ 106.21, 106.23, and 106.36 and *Vocational Education Program Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap* (the *Guidelines*), 34 C.F.R. pt. 106, Appendix A, §§ IV(A), IV(K), V(B), V(C), and V(E).

their sex, subject to approval by the Secretary (or the Department); (2) States to annually report to the Department on their progress in meeting these targets;⁸ and (3) subrecipients under the Perkins Act to likewise identify such targets and to report on their progress to their States.⁹

Persistent underrepresentation of women and girls in CTE programs can limit their access to higher-paying careers, which contributes to the gender pay gap and to women's economic insecurity and in turn reinforces gender stereotyping in the field. This can also decrease the overall diversity of the workforce. For example, few women and girls are enrolled in CTE programs that include training for higher-paying jobs such as plumbers and electricians.¹⁰ Fewer than two percent of plumbers are women, and fewer than three percent of electricians are women.¹¹ In contrast, women and girls are disproportionately enrolled in CTE programs that include training for many traditionally lower-paying jobs such as childcare workers and cosmetologists.¹² Over 90 percent of childcare workers and cosmetologists are women.¹³

In addition, discouraging men and boys from pursuing education or training in certain careers that are non-traditional for their sex can limit the diversity of the workforce. For example, fewer men and boys are enrolled in CTE programs that include training for jobs in nursing and education. This has led to fewer male teachers, with men making up less than three percent of early childhood education teachers, and fewer male nurses and medical assistants, with men making up fewer than 10 percent of licensed practical and vocational nurses and medical assistants.¹⁴

According to an analysis of data from OCTAE, female participation in CTE programs leading to careers in non-traditional fields has increased from close to zero percent in 1972 to over 25 percent nationally in 2009-2010.¹⁵ Despite these gains and continued efforts to further increase enrollment of male and female students in fields that are non-traditional for their sex, disparities persist in certain fields. The 2013-2014 program year data collected under the Perkins Act show that the rate of CTE enrollment of female and male students remains disproportionately low in

⁸ Perkins IV § 113(b)(2)(A)(vi), (b)(2)(B)(v), (b)(3)(A)(i)(I), (b)(3)(A)(iv), (c)(1); 20 U.S.C. § 2323(b)(2)(A)(vi), (b)(2)(B)(v), (b)(3)(A)(i)(I), (b)(3)(A)(iv), (c)(1). See also *id.* Perkins IV § 123(a); 20 U.S.C. § 2343(a) (describing the Department's authority if performance targets are not met).

⁹ Perkins IV § 113(b)(4)(A)(i), (b)(4)(C)(i); 20 U.S.C. § 2323(b)(4)(A)(i), (b)(4)(C)(i).

¹⁰ See 2013-2014 program year data collected under the Perkins Act, perkins.ed.gov/pims/DataExplorer and Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey (Feb. 2015), www.bls.gov/cps/cpsaat11.htm. Median hourly earnings are \$24.36 for plumbers and \$24.57 for electricians. See Bureau of Labor Statistics, Occupational Employment Statistics (May 2014), www.bls.gov/oes/current/oes_nat.htm.

¹¹ See Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey (Feb. 2015), www.bls.gov/cps/cpsaat11.htm.

¹² See 2013-2014 program year data collected under the Perkins Act, perkins.ed.gov/pims/DataExplorer. Median hourly earnings are \$9.48 for childcare providers and \$11.12 for cosmetologists. See Bureau of Labor Statistics, Occupational Employment Statistics (May 2014), www.bls.gov/oes/current/oes_nat.htm.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See National Coalition for Women and Girls in Education (NCWGE). *Title IX at 40: Working to Ensure Gender Equity in Education*, Washington, D.C. (2012) [hereinafter *NCWGE Report*] at 30, www.ncwge.org/PDF/TitleIXat40.pdf.

certain non-traditional fields at a national level.¹⁶ For example, female students at the secondary and postsecondary levels make up fewer than 20 percent of the participants in the architecture and construction, manufacturing, transportation, distribution, and logistics fields.¹⁷ And even though they do not meet the Perkins Act definition of non-traditional fields, the data show that there is still persistent underrepresentation of male students in certain fields. For example, male students at the secondary and postsecondary levels make up fewer than 30 percent of the participants in the education and training, health science, and human services fields.¹⁸ Persistent underrepresentation may be the result of discriminatory barriers that a recipient can address, such as stereotypes about appropriate jobs for women and men, peer pressure to avoid non-traditional classes and careers, and sex-based harassment in non-traditional classes and careers.¹⁹ Expanding access to CTE programs that impart skills for which the wage premium is high can help promote economic mobility for individuals adversely impacted by the gender wage gap.

I. Recipients' Obligations to Prevent and Remedy Sex Discrimination in CTE Programs

Recipients may not exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex unless expressly authorized to do so under Title IX or the Department's Title IX implementing regulations.²⁰ The Department's Title IX regulations²¹ apply to all public and private schools, school districts, colleges, universities, and institutions of career and technical education receiving any Federal financial assistance. The *Vocational Education Program Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap* (the *Guidelines*), which are included as an appendix to the Title IX regulations,²² apply to the subset of these recipients that offer or administer career and technical education or training.²³ The *Guidelines* explain how civil rights laws and Department regulations apply to CTE programs.²⁴

The requirements in the Title IX regulations and the *Guidelines*, which are laid out in more detail below, protect all of a recipient's students from sex discrimination. In addition to enforcing Title IX

¹⁶ perkins.ed.gov/pims/DataExplorer

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See *NCWGE Report*, *supra* note 15, at 30.

²⁰ 20 U.S.C. § 1681(a); 34 C.F.R. § 106.31.

²¹ 34 C.F.R. pt. 106.

²² 34 C.F.R. pt. 106, Appendix A. The *Guidelines* are also included as Appendix B to C.F.R. Parts 100 (Title VI of the Civil Rights Act of 1964) and 104 (Section 504 of the Rehabilitation Act of 1973). The *Guidelines* cover discrimination on the basis of race, color, national origin, sex, and disability. The discussion in this letter is limited to the requirements related to discrimination on the basis of sex.

²³ *Guidelines* § I(B). See *Guidelines* §§ I(C) and I(D) for examples of the types of recipients and schools covered by the *Guidelines*. Title IX and the *Guidelines* use the terms "vocational education" and "institution of vocational education" (as opposed to "career and technical education" and "institution of career and technical education"). The terms "career and technical education" and "institution of career and technical education" are used throughout this letter as this is now the preferred terminology.

²⁴ 44 Fed. Reg. 17,162 (Mar. 31, 1979). The *Guidelines* "derive from and supplement and must be read in conjunction with civil rights laws and Department regulations." 44 Fed. Reg. 17,163 (Mar. 31, 1979).

and the *Guidelines*, through its Methods of Administration (MOA) authority, OCR oversees the civil rights compliance programs of State agencies that administer career and technical education. The State agencies' responsibilities under the MOA program are set forth in the *Guidelines*.²⁵ The purpose of the MOA program is to ensure that all students, regardless of race, color, national origin, sex, or disability, have equal access to high-quality career and technical education programs.

State educational agencies (SEAs) also have an important role in assisting school districts and other entities with civil rights compliance in their CTE programs. Every SEA that receives Federal financial assistance has, as a matter of Federal law, an obligation to ensure that any school district or other entity to which it provides money (regardless of whether they are Federal or State funds), or other significant assistance, is not discriminating on the basis of sex.²⁶

In addition to these requirements, the Perkins Act requires that States submit to the Department, in their Perkins State plans, their agency's program strategies for serving special populations (*e.g.*, individuals preparing for non-traditional training and employment, individuals with disabilities, and individuals from economically disadvantaged families), including a description of how individuals who are members of special populations will be provided with equal access to activities and will not be subjected to discrimination.²⁷

A. Recruitment and Promotional Activities

In order to ensure equitable opportunity for all students to participate in a recipient's CTE program, a recipient's first step is often recruiting a diverse pool of students. Recipients are prohibited from discriminating on the basis of sex in recruitment activities.²⁸ The *Guidelines* recommend that recruitment activities portray a broad range of occupational opportunities and not be limited on the basis of sex, and recruiting teams include persons of different sexes.²⁹ Recipients also may not undertake promotional efforts (*e.g.*, career days, events aimed at parents and guardians, shop demonstrations, visitations by prospective students and by representatives of business and industry) in a manner that creates or perpetuates sex-based stereotypes or limitations. Further, materials that are part of promotional efforts may not create or perpetuate stereotypes.³⁰ The

²⁵ *Guidelines* § II. The State agencies' responsibilities under the MOA program as set forth in the *Guidelines* include conducting targeted compliance reviews of selected subrecipients and reporting civil rights activities and findings to OCR. State agency employees who coordinate these responsibilities are typically referred to as MOA coordinators.

²⁶ 34 C.F.R. § 106.31(b)(6); *see also id.* §§ 76.500, 76.770 (requiring States and subrecipients, including SEAs, to have procedures "necessary to ensure compliance with applicable statutes and regulations," including non-discrimination provisions of Title IX).

²⁷ Perkins IV § 122(c)(9); 20 U.S.C. § 2342(c)(9).

²⁸ *Guidelines* § V(C). The Title IX regulations covering recruitment, however, only apply to institutions of career and technical education, professional education, graduate higher education, and public institutions of undergraduate higher education. 34 C.F.R. § 106.23.

²⁹ *Guidelines* § V(C).

³⁰ *Guidelines* § V(E).

Guidelines also recommend that such promotional materials portray males or females in programs and occupations in which these groups traditionally have not been represented.³¹

B. Admissions and Access to Classes and Schools

Recipients are prohibited from discriminating on the basis of sex in the admission of students.³² Recipients may not develop, impose, maintain, approve, or implement admissions criteria that unlawfully discriminate on the basis of sex.³³ Recipients are also prohibited from: giving preference to one person over another on the basis of sex, by ranking applicants separately on the basis of sex or otherwise; applying numerical limitations on the number or proportion of persons of either sex who may be admitted; and otherwise treating one individual differently from another on the basis of sex, including stereotypical assumptions about interests and abilities.³⁴ Recipients also may not use any test or criterion for admission to a school or degree program that has a disproportionately adverse effect on individuals of one sex unless certain criteria are met.³⁵

Regardless of whether Title IX covers a recipient's admissions practices, all recipients are prohibited from excluding any person, on the basis of sex, from access to any CTE classes or from admission to any institution of career and technical education.³⁶ Furthermore, CTE classes and programs may never be offered on a single-sex basis in coeducational schools.³⁷

C. Counseling and Appraisal Materials

A recipient must ensure that its counseling practices and appraisal materials are nondiscriminatory. Recipients are prohibited from discriminating on the basis of sex in the counseling or guidance of students or applicants for admission³⁸ and may not direct or urge any student to enroll in a particular career or program or predict a student's prospects for success in any career or program based upon the student's sex.³⁹ Recipients are required to develop procedures for ensuring that

³¹ *Id.*

³² *Guidelines* § IV(A). The Title IX regulations covering admissions, however, only apply to institutions of career and technical education, professional education, graduate higher education, and public institutions of undergraduate higher education. 34 C.F.R. § 106.21.

³³ *Guidelines* § IV(A).

³⁴ 34 C.F.R. § 106.21(b)(1); *Pederson v. La. State Univ.*, 213 F.3d 858, 880 (5th Cir. 2000) ("If an institution makes a decision not to provide equal . . . opportunities for its female students because of paternalism and stereotypical assumptions about their interests and abilities, that institution intended to treat women differently because of their sex" in violation of Title IX).

³⁵ A school may use such a test or criterion for admission if it is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable. 34 C.F.R. § 106.21(b)(2); *Guidelines* § IV(K).

³⁶ 34 C.F.R. §§ 106.34(b), 106.35.

³⁷ See *supra* note 32; 34 C.F.R. § 106.34(b). See also OCR's Questions and Answers on Title IX and Single-Sex Elementary Classes and Extracurricular Activities at Question 5 (Dec. 1, 2014), www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf.

³⁸ 34 C.F.R. § 106.36(a).

³⁹ *Guidelines* § (V)(B).

their counseling and appraisal materials do not discriminate on the basis of sex.⁴⁰ Recipients that use testing or other materials for appraising or counseling students are prohibited from using different materials for students on the basis of sex.⁴¹ If a recipient finds that a particular class or course of study contains a substantially disproportionate number of students of one sex, it must take action to ensure that the disproportion is not the result of sex discrimination in counseling or appraisal materials or the result of sex discrimination by counselors.⁴² To ensure this, a recipient could, for example, interview counseling staff to obtain information regarding how they counsel students, observe counseling sessions, review all counseling and appraisal materials, and/or offer training to address issues identified through the review and observation, including, where appropriate, on issues like implicit bias,⁴³ ambient bias,⁴⁴ and sex stereotyping.⁴⁵

D. Title IX Procedural Requirements

In addition to the requirements in Title IX and the *Guidelines* related to the recruitment, admissions, and counseling of students, recipients are also required to comply with the procedural requirements of Title IX and the *Guidelines*, as outlined in this section. The following procedural requirements are important for the prevention and correction of any type of sex discrimination and can play a critical role in improving equitable access, participation, and retention of students in CTE programs specifically.

(i) Notice of Nondiscrimination

Title IX requires recipients to publish a notice of nondiscrimination stating that they do not discriminate on the basis of sex in the education programs and activities they operate.⁴⁶ Recipients must notify all of their students and employees of the name or title, office address, telephone number, and email address of the recipients' designated Title IX coordinator.⁴⁷ The notice must be

⁴⁰ 34 C.F.R. § 106.36(b).

⁴¹ *Id.*

⁴² 34 C.F.R. § 106.36(c); *Guidelines* § (V)(B).

⁴³ Implicit bias is a term used to describe social stereotypes that we form outside of our own consciousness. These stereotypes stem from our brain's adaptations, create unconscious barriers in the classroom, and impact how we relate to people. See White House Office of Science and Technology Policy, *Implicit Bias* (2015), www.whitehouse.gov/sites/default/files/microsites/ostp/bias_9-14-15_final.pdf.

⁴⁴ Sapna Cheryan, et al., *Designing Classrooms to Maximize Student Achievement*, 1 POL'Y INSIGHTS FROM BEHAV. AND BRAIN Sci. 4 (2014) ("Scientific studies reveal the unexpected importance of a classroom's symbolic features; such as objects and wall décor, in influencing student learning and achievement in that environment. Symbols inform students whether they are valued learners and belong within the classroom, with far-reaching consequences for students' educational choices and achievement."), http://ilabs.washington.edu/sites/default/files/14Cheryan_etal_Meltzoff_Designing%20Classrooms.pdf.

⁴⁵ See OCR's presentation on Title IX and Access to Courses and Programs in Science, Technology, Engineering, and Math (Title IX and STEM) (Oct. 2012) at 28, www.ed.gov/ocr/presentations/stem-t9-powerpoint.pdf.

⁴⁶ 34 C.F.R. § 106.9.

⁴⁷ 34 C.F.R. §§ 106.8(b), 106.9. See also OCR's Title IX Resource Guide (Apr. 24, 2015) at 6, www.ed.gov/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf and OCR's Sample Notice of Nondiscrimination (Aug. 2010), <http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.pdf>.

widely distributed to students, employees, applicants for admission and employment, and other relevant individuals. To ensure wide distribution, recipients can prominently post the notice on their websites, at various locations on campus, and in electronic and printed publications for general dissemination. In addition, the notice must be included in any bulletins, announcements, publications, catalogs, application forms, or recruitment materials.⁴⁸ Recipients can also include the notice in all CTE recruitment materials and on CTE program websites, and post the notice in buildings where CTE classes are held.

The *Guidelines* require recipients that offer CTE programs to publish a separate annual notice of nondiscrimination prior to the beginning of each school year, stating that all CTE opportunities will be offered without regard to sex.⁴⁹ The annual notice should include a brief summary of the school's program offerings and admissions criteria and the name or title, address, and telephone number of the school's Title IX coordinator.⁵⁰ Recipients could also include the email address for the Title IX coordinator in the annual notice. The annual notice must reach students, parents, employees, and the general public.

(ii) Title IX Coordinator

Recipients must designate at least one employee to coordinate their compliance with Title IX and notify all students and employees of the name or title and contact information for this person.⁵¹ The Title IX coordinator can play an important role in the recipients' efforts to ensure equitable opportunity for male and female students to participate in the school's CTE programs. For example, the Title IX coordinator could monitor students' participation across academic fields to identify programs with disproportionate enrollment based on sex and ensure that sex discrimination is not the cause of the disproportionate enrollment or is otherwise affecting a student's equal access to educational opportunities in CTE programs. The Title IX coordinator could also work with school officials to help remind the school community that all students must have equal access to all programs, including classes in fields where one sex is underrepresented.

Where disparities exist in enrollment or are otherwise identified, the Title IX coordinator can help ensure that such disparities are not the result of discrimination on the basis of sex by reviewing data, including data the recipient is required to collect and make available to the public under the Perkins Act and OCR's Civil Rights Data Collection,⁵² and working with other employees to review

⁴⁸ 34 C.F.R. § 106.9(b).

⁴⁹ *Guidelines* § IV(O). This type of notice is sometimes referred to as the annual notice of nondiscrimination. The notice must also state that CTE opportunities will be offered without regard to race, color, national origin, and disability.

⁵⁰ The notice should also include the contact information for the recipient's Section 504 coordinator.

⁵¹ 34 C.F.R. § 106.8(a).

⁵² Perkins IV § 113(b)(4)(C); 20 U.S.C. § 2323(b)(4)(C). OCR administers the Civil Rights Data Collection, which collects information on key education and civil rights issues from public local educational agencies and schools, including juvenile justice facilities, charter schools, alternative schools, and schools serving students with disabilities. The information is used by OCR in its enforcement efforts, by other Department offices and Federal agencies, and by the public, including policymakers and researchers.

counseling practices and appraisal materials. The Title IX coordinator could also conduct surveys or exit interviews of members of the underrepresented sex who completed, or who started but did not complete, the program to obtain additional insight from students regarding potential sex discrimination in the CTE program and maintain an ongoing dialogue with members of the underrepresented sex as they move through the program. Title IX coordinators at institutions of career and technical education, institutions of professional education, graduate higher education, and public institutions of undergraduate higher education could also help these schools ensure that they do not discriminate on the basis of sex by reviewing their materials related to recruitment and admission of students.⁵³

The Title IX coordinator may also assist recipients in conducting regular education and awareness programs regarding harassment and bias and how to utilize mechanisms already in place for addressing such concerns (*e.g.*, procedures for resolving civil rights complaints). These programs could include training on implicit bias, ambient bias, and sex stereotypes, and include the array of elements of students' learning environments that have an impact on their enrollment, retention, and academic success.⁵⁴

(iii) Grievance Procedures

Recipients are required to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.⁵⁵ These procedures are intended to provide recipients with a mechanism for discovering incidents of discrimination as early as possible and for effectively correcting individual and systemic problems. To help identify and correct these problems in the CTE context, recipients may want to review grievance procedure complaint data to examine any trends applicable to CTE programs (*e.g.*, recurring issues with sexual harassment, a particular class or a particular person) and determine what steps can be taken to address the concerns.⁵⁶

E. Title IX Requirements Related to Enrollment, Retention, and Academic of Students of the Underrepresented Sex

In addition to complying with their legal obligations related to recruitment, admissions, and counseling and the procedural requirements of Title IX, recipients must take steps to eliminate any discriminatory practices that discourage continued enrollment and achievement. The section below focuses on types of discrimination that students of the underrepresented sex have experienced. In addition to the types of discriminatory practices discussed below, recipients may also want to consider whether other aspects of the learning environment (*e.g.*, in the

⁵³ See Title IX Resource Guide at 8-9.

⁵⁴ See Title IX and STEM at 53.

⁵⁵ 34 C.F.R. § 106.8(b).

⁵⁶ See Title IX and STEM at 55.

administration of discipline, sponsorship of apprenticeships, or administration of courses) have an impact on their ability to retain students of the underrepresented sex.⁵⁷

(i) Pregnancy and Parental Status⁵⁸

Title IX protects prospective students from discrimination on the basis of marital and parental status, as well as on the basis of pregnancy, with respect to admissions to institutions of career and technical education, institutions of professional education, graduate higher education, and public institutions of undergraduate higher education. When determining whether a person satisfies admissions criteria, these recipients are prohibited from applying any rule related to the actual or potential parental, family, or marital status of a student that treats persons differently on the basis of sex.⁵⁹ These recipients also must not discriminate against or exclude any person on the basis of pregnancy or related conditions in admissions.⁶⁰ These recipients are prohibited from making pre-admission inquiries as to the marital status of an applicant and may only make pre-admission inquiries as to the sex of an applicant if such an inquiry is made equally of applicants of both sexes and the results of the inquiry are not used in connection with discrimination prohibited by Title IX.⁶¹

Title IX also prohibits all recipients from discriminating against or excluding students from participating in any part of an educational program or activity based on pregnancy or related conditions.⁶² Recipients may require pregnant students or students who have given birth to submit medical certification for school participation only if the recipient also requires such certification from all students with physical or emotional conditions requiring the attention of a physician.⁶³ Recipients must excuse students' absences because of pregnancy or childbirth for as long as the students' doctors deem the absences medically necessary, and when the students return to school, they must be allowed to return to the same academic and extracurricular status as before the medical leave began.⁶⁴ Recipients also are prohibited from applying any rule related to students' parental, family, or marital status that treats students differently based on sex.⁶⁵

⁵⁷ For additional information about Title IX's requirements in these and other areas, please see the Title IX Resource Guide.

⁵⁸ For additional information about Title IX's requirements related to pregnancy and parental status, please see OCR's Pamphlet on Supporting the Academic Success of Pregnant and Parenting Students Under Title IX (June 25, 2013), www.ed.gov/ocr/docs/pregnancy.pdf.

⁵⁹ 34 C.F.R. § 106.21(c)(1).

⁶⁰ 34 C.F.R. § 106.21(c)(2).

⁶¹ 34 C.F.R. § 106.21(c)(4).

⁶² 34 C.F.R. § 106.40(b)(1).

⁶³ 34 C.F.R. § 106.40(b)(2).

⁶⁴ 34 C.F.R. § 106.40(b)(5).

⁶⁵ 34 C.F.R. § 106.40(a).

(ii) Sex-Based Harassment⁶⁶

Title IX prohibits sex-based harassment, which may manifest in various ways. One type is sexual harassment, which is unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment. Sex-based harassment also includes unwelcome conduct based on an individual's actual or perceived sex, including harassment based on gender identity or nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature. Harassing conduct may take many forms, including verbal acts and name-calling, as well as non-verbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

While sex-based harassment is a concern generally, it is of particular concern for students enrolled in fields in which they are the underrepresented sex because the small numbers of students of one sex may increase the potential that these students become targets of harassment. Title IX prohibits sex-based harassment by peers, employees, or third parties that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's education programs and activities (*i.e.*, creates a hostile environment). When a recipient knows or reasonably should know of possible sex-based harassment, 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 recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects.⁶⁷

II. Examples of Violations of Title IX and the *Guidelines* Related to Equitable Access to CTE Programs and Related Remedies

To help illustrate the legal requirements described above, the following are hypothetical examples of how a recipient offering a CTE program could fail to comply with the legal requirements of Title IX and the *Guidelines* related to equitable access to such programs and the actions a recipient could take to remedy the violations.

Example 1: Recruitment and Promotional Activities

A high school is planning to sponsor a career day for all students to promote its information technology program. This is the only promotional effort that the high school will undertake for its

⁶⁶ See Title IX Resource Guide at 15-17.

⁶⁷ For additional information on sex-based harassment, including various aspects of appropriate investigations into sex-based harassment, please see OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Jan. 19, 2001), www.ed.gov/ocr/docs/shguide.pdf; Dear Colleague Letter on Sexual Violence (Apr. 4, 2011), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>; and Questions and Answers on Title IX and Sexual Violence (Apr. 29, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

information technology program. All of the current students and recent graduates of the program who will be invited to speak at the career day are male, even though some female students are currently enrolled in and have recently graduated from the program. The high school has not revised its promotional materials in a number of years, and all of the materials distributed at the career day depict males and use male pronouns to refer to students in the program. The high school only distributed these promotional materials at the career day and did not distribute them to members of the student community who did not attend the career day. The inclusion of only male students and graduates as speakers at the career day and promotional materials depicting only males and using only male pronouns may perpetuate the stereotype that information technology is a field for men, and, thus, may violate the *Guidelines*.

To remedy this potential violation, the high school could alter its plans for the career day and include presentations from both male and female current students and graduates of the program about their experiences in the information technology program. The materials distributed at the career day could depict both males and females performing information technology-related tasks, include information about information technology-related jobs and college programs, and use gender-neutral pronouns. The school could also ensure that the materials depicting more gender diversity are sent to all members of the student community. In addition, in future years, the school could ensure that its career day and promotional materials are both gender-neutral and inclusive.

Example 2: Admissions

A community college requires students who wish to enroll in its construction management program to have taken classes in construction technology in high school. Few female students are enrolled in the college's construction management program. Each year a number of female students who express interest in the program are not able to enroll because they did not take classes in construction technology in high school. Title IX and the *Guidelines* prohibit schools from using admissions criteria that have a disproportionate adverse effect on students of one sex unless the criteria are validated as essential to participate in the program and are shown to predict success in the program. The college has not determined whether previous classes in construction technology are essential to participate in or predict success in the construction management program.

To remedy this, the college could convene a committee to study whether taking previous classes in construction technology is essential to participate in the construction management program. If the committee determines that although previous classes in construction technology are helpful, they are not essential to or do not predict success in the program, the college can eliminate this admissions requirement. To make up for any potential knowledge gaps, the college could offer an introductory class in construction technology to all students who did not take classes in construction technology in high school or who want a refresher course. Alternatively, or in addition, even if the committee determines that the previous coursework is essential or predictive for success, the community college could explore whether outreach programs or partnerships with

its area high schools could encourage all students to take the necessary prerequisite courses to build a more equal pipeline of students prepared for admission to the program.

Example 3: Access to Classes and Schools (Single-Sex Classes)

A coeducational high school wants to increase the number of female students enrolled in its automotive technology classes after recognizing a pattern of disproportionate under-enrollment. The administration heard that some female students feel uncomfortable in the classes because they are outnumbered by male students, so it created a single-sex automotive technology class for female students. However, Title IX prohibits coeducational schools from offering CTE classes on a single-sex basis.

To remedy this, the high school must eliminate the single-sex automotive technology class. To increase enrollment of female students in coeducational automotive technology classes, the high school's counselors could create promotional materials that depict both males and females in automotive technology-related careers. The high school could also conduct outreach to all incoming students regarding automotive technology and train automotive technology teachers on how to ensure that all students feel comfortable in class, including training teachers on avoiding sex stereotypes, implicit bias, and ambient bias. The high school could also start an automotive technology club that would provide mentorship and support to all students, including female students

Example 4: Counseling

A high school enrolls a substantially disproportionate number of female students in its early childhood education program and a substantially disproportionate number of male students in its automotive mechanics program. The high school is aware of the disparity, but takes no action to determine whether this disparity is the result of discrimination, as required by Title IX and the *Guidelines*.

To remedy this, administrators at the high school observe the introductory counseling sessions that the counseling staff conducts with all students to assist students in selecting CTE programs. Observations of these counseling sessions reveal that the counselors often encourage female students to pursue early childhood education programs and advise male students to consider programs like automotive mechanics. The counselors explain that they make these suggestions because women's nurturing ability makes them well suited for careers as early childhood educators while men are better suited for careers in automotive repair because men like to work with their hands. Some students also reported that when they asked their counselors about enrolling in classes where their sex was underrepresented, the counselors cautioned them that it might be difficult for them to find employment after graduation.

When male students visit the counseling office and request information on the high school's early childhood education program, although the counselors provide the students with a basic

promotional brochure on the early childhood education program, they do not provide any additional information about the high school's early childhood education program. In contrast, when female students visit the counseling office and request information on the early childhood education program, the counselors encourage the students to enroll and offer additional information besides the promotional brochure. This stereotype-based counseling violates Title IX and the *Guidelines*.

To remedy the sex-based discrimination in the high school's counseling practices, the high school could provide training to its counseling staff regarding the prohibition against directing or urging students to enroll in a particular career or program or predicting a student's prospects for success in any career or program based upon the student's sex. The training could also include information regarding implicit bias, ambient bias and sex stereotypes. After receiving the training, school administrators, including the school's designated Title IX coordinator, can monitor whether counselors suggest CTE classes to students on a sex-neutral basis and encourage students to pursue careers in fields where their sex is underrepresented. This could be done by surveying students to determine what information they were provided by the high school's counselors. The high school could also monitor enrollment in CTE classes by tracking the number of enrolled students by sex on an annual basis to determine if its efforts to eliminate sex-based counseling practices have been successful.

Example 5: Pregnant or Parenting Students

The director of a community college's advanced manufacturing program does not permit students to take the required machine process lab course while they are pregnant because the director thinks it is too dangerous for any pregnant person to use the machines. All other students are permitted to take this course. This course is a prerequisite for many other required courses in the program. Title IX prohibits schools from excluding students from classes based on pregnancy. To remedy this, the college must permit all students to enroll and fully participate in this course regardless of whether they are pregnant. To ensure that the school does not violate Title IX in this way again, the school could offer training to the program's director, as well as other administrators and faculty, on the requirements of Title IX related to pregnancy and other forms of sex discrimination.

Example 6: Sex-Based Harassment (Sexual Harassment)

Some male students in a community college's aviation maintenance program routinely make sexually vulgar comments to the female students in the class. The male students also routinely smack the female students on the rear as they walk by, display sexually explicit material on the computers in the classroom, and use the various tools available in the class to simulate male body parts. Many of the female students and some of the male students experienced this conduct as creating a hostile environment. These students feel uncomfortable in class, which makes it hard for them to concentrate, and a few of these students have skipped some classes. These students

reported the incidents to the director of the aviation maintenance program, and he told them to toughen up and ignore the comments. The college's failure to take immediate and appropriate steps to investigate or take steps to address reports of sexual harassment violates Title IX.

To remedy this, the college must conduct an investigation to determine what occurred and provide interim measures, as appropriate, pending the outcome of the investigation. If the investigation reveals that the comments created a hostile environment, the college must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects. These steps may include counseling and disciplining the male students who engaged in the harassment; offering the male and female students the chance to make up any work missed during the classes they skipped; offering counseling services to interested students; and providing training to students, the program's director, and other administrators and faculty regarding Title IX and sexual harassment.

Example 7: Sex-Based Harassment

Male students and teachers in a community college's manufacturing program routinely make discriminatory comments to the female students. The comments are often subtle and refer to female students not being able to perform the same manual tasks as the male students or the female students not pursuing a gender-appropriate career path. This conduct makes the female students feel uncomfortable, and they have been skipping classes as a result. The female students reported the incidents to the director of the manufacturing program, and he told them to consider changing to another program, such as nursing. The college's failure to take immediate and appropriate steps to respond to reports of sex-based harassment violates Title IX.

To remedy this, the school must conduct an investigation to determine what occurred. If the investigation reveals that the comments created a hostile environment, the college must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects. These steps may include counseling and disciplining the male students and teachers who engaged in the harassment; providing training to the students, teachers, and program's director regarding Title IX and sex-based harassment; and offering the female students the chance to make up any class assignments they may have missed during the classes they skipped.

III. Conclusion

The Department is committed to ensuring that all students have access to high-quality CTE programs, including classes in fields where their sex is underrepresented. In support of this goal, OCTAE will release technical assistance resources outlining promising practices for expanding recruitment and outreach efforts, building staff capacity and knowledge of equity issues, partnering with families to mitigate perceptions of CTE fields that might impact program participation, and using data to monitor recruitment, enrollment, and persistence trends.

We look forward to working with recipients to ensure that their CTE programs are free from all forms of unlawful discrimination and assisting recipients in implementing proactive efforts to improve equitable access, participation, and outcomes for all students in CTE programs, regardless of race, sex, or disability. If you need technical assistance, please contact the OCR regional office serving your State or territory by visiting <https://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> or call OCR's Customer Service Team at 1-800-421-3481; TDD 1-800-877-8339. You may also contact Sherene Donaldson, Education Program Specialist in the Office of Career, Technical, and Adult Education at Sherene.Donaldson@ed.gov or 202-245-6041.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

/s/

Johan E. Uvin
Deputy Assistant Secretary,
Delegated the Duties of the Assistant Secretary
for Career, Technical, and Adult Education