

## NESDEC Legal Services Update

### Increasingly mandated by OCR, equity audits provide improvement roadmap

By Jeanne M. Colachico, Esq.

The investigative findings and reviews conducted by the Office for Civil Rights at colleges, universities, and public school districts increasingly include the directive to conduct an equity audit as one of the constructive remedial actions. Such audits are



becoming standard requirements regardless of the outcome of the investigation conducted. Additionally, institutions and districts are often instructed to retain an equity consultant to conduct audits and to develop assessment tools such as climate surveys to facilitate these assessments.

Few consultants and fewer institutions have developed standard vehicles for assessing or measuring the implications of gender-based harassment across an institution or school district to meet this requirement. At a minimum, an equity audit requires a contextual review of the effect and impact of an institution's policies and procedures as they apply to student demographics, student treatment, training, and the application of relevant processes by academic and non-academic personnel.

#### Consider distribution and treatment of students

Substantial variances in the representation of and participation by female students in various institutional activities can point to institutional trends and patterns with Title IX implications. As such, an equity audit should begin by considering the representation of female students compared the representation of males in the overall institution or district. This analysis should include key areas of study, such as science, math, technology, and advanced placement classes, in addition to athletics, with an eye for areas of low representation.

Special attention to the size of the graduating class and drop-out rates over time may also provide a statistical framework for considering whether male or female students are being negatively impacted somehow; confirmation that male and female students are afforded equal opportunities to succeed in programs; and whether harassment, bullying, or other Title IX issues might be at play within the institution or district.

An audit might further consider and document any formal outreach programs to female students to ensure their participation in science or athletic programs, which have been historically male dominated. It's also worth looking at any routinely retained metrics used to evaluate the effectiveness of such outreach programs.

A review of the gender composition of faculty teaching math, science, and technology classes, as well as of those selecting students for advanced placement classes and in guidance and career counseling functions may provide useful insights.

To evaluate the implications of student demographics on student treatment, an equity audit should focus on both the institution's or district's: 1) policies and grievance procedures; and 2) program administration, including training and information dissemination.

In assessing policies and procedures, an equity audit should minimally examine nondiscrimination policies and other relevant guidance provided to students, such as brochures, booklets, posters, and procedures for reporting discrimination (including sexual harassment) on the basis of gender. The audit should also consider complaint data retained by the institution or district over a reasonable period (at least three years) to assess whether sex discrimination (including sexual harassment) complaints, findings/resolutions, procedures, and outcomes comply with existing policies.

In reviewing policies and procedures, particular consideration should be given to the following:

- If the formal and informal stages of any process are being effectively used.
- Whether the roles and responsibilities of various offices involved are clearly defined.
- If there are equitable and prompt procedures that are user-friendly, with clear standards to determine whether rules violations have occurred, and clear means for redressing violations and appeal opportunities to ensure due process.
- Whether policies are appropriately accessible to the student body.

To assess whether institutional programs are implemented equitably, review the outcomes of any past climate surveys, as well as the types and frequency of equal opportunity, diversity, sexual harassment, and gender bias training offered to students. Other indicators of an equitable environment might include the existence of organizations on campus meant to encourage female participation in science, technology, and math.

Look at the steps taken by the Title IX coordinator to determine whether concerns related to gender bias or harassing conduct exist and/or are being addressed. And look at any activities undertaken by administrators to encourage student participation in education and awareness opportunities beyond required sexual harassment training. Are administrators vigilant about finding and addressing subtler forms of gender-based discrimination? Additionally, formal assurance that the institution's or district's policies and practices ensure a safe physical environment for all students may also be an important indicator of equity.

#### **Don't overlook equity issues on the employee side**

Title IX's non-discrimination mandate extends to protect both students and employees. Therefore, a faculty or a staff member may also raise a claim of discrimination or harassment under Title IX. Accordingly, as the third main area for review and analysis, an equity audit should consider employment demographics of teaching and non-academic personnel. It should also include a review of relevant policies and procedures and their implementation, and program administration in regards to employees. Nondiscrimination in employment covers many areas, including policies and procedures, recruitment, compensation, promotions, tenure, leaves of absence (including pregnancy), childbirth, job classification, fringe benefits, and marital or parental status. Since the faculty and staff in some institutions and many school districts are represented by collective bargaining agreements, the relevant union agreement provisions related to these issues should also be included in the audit.

With respect to employment data, the goal of an equity audit should be to analyze the overall impact of any employment-related decision related to faculty and non-academic staff over a reasonable time period. As such, it's wise to review the gender breakdown of new hires, applicants by position, and termination for any reason over the most recent three-year period.

For faculty, consideration should be given to training/education, including unconscious or implicit gender bias issues, as well as any efforts made by the campus to increase gender diversity. Any trends relative to departures, grievances, and complaints indicating gender issues should also be identified. In similar fashion to the consideration given to student issues, this part of the audit should review nondiscrimination policies and other relevant information provided to faculty, including manuals, grievance/complaint procedures for reporting discrimination based on gender, and grievance/complaint data.

Additionally, consider the results of any past climate surveys for faculty, as well as the possible presence of gender bias-related training. Any faculty assignments or non-teaching assignments that specifically aid programmatic inclusion of female students in male-centric programs (e.g., sciences, math, and athletics) should be identified. Finally, look for signs of demonstrated concern for gender equity by institutional or district leaders. Some signs of this include encouraging faculty to participate in educational and awareness opportunities beyond required sexual harassment training or discussion in faculty meetings.

Individual interviews with subject matter experts (e.g., the Title IX coordinator) and small focus group meetings with students, faculty, non-academic personnel, or, as appropriate, parents, should help to facilitate and verify the equity audit findings and document compliance between policies and practice.

OCR has begun to include an equity audit as a requirement in many of its outcomes. While it may be a time-consuming task, conducting an equity audit can provide a roadmap for achieving equity, making such an audit well worth the effort, whether or not OCR mandates it.

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