

# White Paper: Ending Title IX's Disparate Impact On College Students With Invisible Disabilities



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## **Identification of the Problems and Recommendations:**

*Background* – In both 2011 and 2014,<sup>1</sup> the Department of Education’s Office for Civil Rights (OCR) issued guidance regarding how it expects institutions of higher education to maintain compliance with Title IX, a law which prohibits sex-based discrimination in educational programs and activities receiving federal financial assistance. However, in its effort to clarify Title IX’s requirements, OCR did not adequately provide colleges and universities with enough instruction regarding how to avoid disability-based discrimination, which is also prohibited by federal law,<sup>2</sup> in their execution of their Title IX obligations.

Students Advocating for Students (SAS)<sup>3</sup> has identified three primary problems with the current manner in which students with “invisible” disabilities who may be party to a Title IX proceeding are treated at the nation’s colleges and universities. The phrase “invisible” disability is a colloquial term in the disability field and is distinguishable from a “visible” disability in the following manner. Students with visible disabilities can be immediately identified because they may, for example, use a wheelchair or cane, communicate with sign language or wear a hearing aid. Students with an invisible disability are not immediately identifiable because their disability stems from an intellectual or mental health issue.<sup>4</sup> Examples of invisible disabilities would be a student with a diagnosis of ADD, AD/HD, Asperger’s, autism, anxiety disorder, bi-polar, or a processing disorder. For the purposes of this paper, we will be using the term invisible disability interchangeably with the term disability.

The first problem that SAS has identified is that colleges and universities are not providing their faculty, staff, and students with the necessary training for them to identify and understand the unique needs of students with invisible disabilities and equitably provide assistance to them if they are complainants or respondents in a Title IX complaint proceeding.

Second, SAS has found, through a review of current lawsuits and through its assistance to families/students involved in campus Title IX proceedings, that the resources and supports being offered to students with invisible disabilities in a Title IX proceeding do not meet their unique needs. This is a stark contrast to the resources offered to complainants and respondents who do not have these types of diagnoses. These issues are discussed in greater detail below.

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<sup>1</sup> This is specifically a reference to the following two resources issued by OCR: the “*Dear Colleague*” letter (April 4, 2011), hereinafter referred to as the *DCL 2011*, and the *Questions and Answers on Title IX and Sexual Violence* (April 29, 2014), hereinafter referred to as the *Q&A Document 2014*.

<sup>2</sup> This is a reference to Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.

<sup>3</sup> SAS is a non-profit, 501(c)(3) organization that is dedicated to educating students about their civil liberties and empowering them to defend those civil liberties. One of the ways in which we do this is to provide complainants and respondents in campus Title IX proceedings with access to resources and support.

<sup>4</sup> Christy Oslund, *Supporting College and University Students with Invisible Disabilities*; Jessica Kingsley Publishers, 2014, pp. 16-17.

Third, for a variety of reasons, there is not adequate coordination between Title IX offices and Disability Services offices when a student with an invisible disability becomes involved in a Title IX proceeding. Due to laws regarding student confidentiality and privacy, it is SAS's understanding that Disability Services offices cannot receive comprehensive information from Title IX offices regarding a student's involvement in a Title IX proceeding without receiving prior consent from that student. Through SAS experiences, students do not appear to be fully aware of their ability to waive their confidentiality rights and enable a transfer of this important information between these offices. As a result, the Disability Services offices, which are often times the primary resource available to students with disabilities who become involved in the Title IX process, are often times unable provide accommodations and resources to the population of students they are set up to service.

As a remedy to these problems, SAS recommends that the following policies be addressed in the form of a guidance document solely focused on these issues to all colleges and universities under OCR's jurisdiction.<sup>5</sup>

*Recommendation #1* – Colleges and universities should be instructed to provide training to officials involved in Title IX proceedings at colleges and universities. This training should include information about how students with invisible disabilities are likely to behave during a Title IX complaint process. Additionally, training regarding how to identify and interpret the behavior of a victim of sexual misconduct who has an invisible disability should also be provided to faculty and staff members who have reporting obligations under Title IX. Given the difficulty students with certain invisible disabilities may have in interpreting and giving consent during sexual encounters, students should also be provided with training on this topic during their Title IX orientation training. This will allow students without disabilities to better understand the behaviors of their peers with invisible disabilities and will hopefully aid in de-stigmatizing these behaviors within the campus culture.

*Recommendation #2* – Institutions of higher education should be obligated to provide appropriate resources and accommodations for complainants and respondents with invisible disabilities who are involved in Title IX proceedings. This obligation could be met by providing access to these resources either in person or online at the appropriate school website. Some examples of appropriate national resources for complainants and respondents with invisible disabilities would be the National Disability Rights Network, the Special Needs Alliance, CHADD, Autism Speaks, the College Autism Network (CAN), the Asperger Autism Spectrum Education Network (ASPEN), the National Alliance on Mental Illness, and SAS.<sup>6</sup> It is important to remember that off-campus resources are essential when dealing with this population of students. As mentioned

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<sup>5</sup> SAS strongly believes that OCR needs to address the concerns and recommendations raised in this white paper through a guidance document designed explicitly to address the discussed needs of students with invisible disabilities. Previous guidance documents have addressed this issue along with a multitude of other obligations, and the subsequent results have been damaging for students with invisible disabilities. As a result, the most effective way to remedy the situation is in a manner that allows schools to view their obligations towards students with disabilities independently of other Title IX obligations.

<sup>6</sup> As stated in footnote 3, SAS is a national, non-profit 501(c)(3) organization. Included in our many services is a database of national and local resources for all types of students involved in campus Title IX proceedings. Access to this database, as well as any of SAS's services, would be provided free of charge.

previously, students with these disabilities have many unique needs which require a trained specialist. Additionally, many students may feel a certain stigma by revealing and discussing their diagnosis. This reality is particularly likely at a small college or university, making an on-campus organization less helpful for students with invisible disabilities who become involved in Title IX proceedings. Offering an off-campus resource to these students alleviates the concern for privacy by giving them the option to speak freely with someone not affiliated with the school. It also increases the likelihood that they will be working with someone who is highly trained and familiar with their diagnosis.

*Recommendation #3* – Colleges and universities must ensure that students involved in a Title IX proceeding are immediately made aware by the Title IX office of their ability to waive their confidentiality rights so that the Disability Services office can be informed of the proceedings and supply whatever supports and resources may be necessary. By providing students with a consent form which explains the right to waive their confidentiality at the start of a Title IX process, institutions of higher education will have made it easier for students with invisible disabilities to facilitate the transfer of information that is required for the Title IX office and Disability Services office to adequately provide them with assistance. SAS also recommends that students be made aware of their right to inform their parents about their involvement in a Title IX proceeding.

## **Precedent For These Policy Recommendations:**

The implementation of the policy recommendations discussed above can be carried out in a similar manner to pre-existing OCR guidance and provided through programs and services that are already being offered by colleges and universities.

*Recommendation #1* – Throughout OCR’s *Q&A Document 2014*, colleges and universities are instructed to provide training to their employees and their students.

Section B-2 states the following: “In addition, a school should ensure that staff are capable of providing culturally competent counseling to all complainants. Thus, a school should ensure that its counselors and other staff who are responsible for receiving and responding to complaints of sexual violence, including investigators and hearing board members, **receive appropriate training** about working with LGBT and gender- nonconforming students and same-sex sexual violence.” (emphasis added). However, Section B-3, which addresses concerns that “may arise with respect to students with disabilities who experience sexual violence,” creates unequal treatment for students with invisible disabilities as it contains no such requirement for a school to ensure that its appropriate counselors and other staff receive proper training about working with these students.

Although, Sections J-1 through J-4 are entirely dedicated to answering questions about the training schools are obligated to provide to its employees and students, training specific to understanding the unique behaviors and needs of students with invisible disabilities, as such behaviors and needs pertain to Title IX, is never once mentioned in these sections.<sup>7</sup>

Since OCR has repeatedly issued guidance regarding the training schools should provide its employees and students on the topic of Title IX, it would not be contradictory with past guidelines to issue more specific guidance on this topic as it pertains to training regarding students with invisible disabilities.

*Recommendation #2* – OCR has in recent guidance documents repeatedly discussed the need for institutions of higher education to provide students involved in a Title IX complaint proceeding with information regarding resources and services designed to assist their needs.<sup>8</sup> In fact, Section J-4 of OCR’s *Q&A Document 2014* states the following: “A school’s sexual violence education and prevention program should clearly identify the offices or individuals with whom students can speak confidentially and the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling, **disability services, health and**

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<sup>7</sup> It is important to point out that the *DCL 2011* also repeatedly discusses the topic of Title IX training and similarly never once establishes a requirement that colleges and universities ensure equitable treatment of students with disabilities through the provision of appropriate training to employees and students on the topic of understanding the unique behaviors and needs of students with disabilities as they pertain to Title IX.

<sup>8</sup> Through SAS’s experiences in working with students at different schools across the country and evaluating different schools Title IX resource guides, colleges and universities predominately provide resources that cater to complainants’ needs and leave respondents with noticeably less options for assistance and help.

**mental health services**, and legal assistance.”<sup>9</sup> (emphasis added). Section B-3 of this document attempts to explain the ways in which institutions of higher education can provide students with disabilities involved in the Title IX process with specialized assistance: “In addition, students with disabilities who experience sexual violence may require additional services and supports, including psychological services and counseling services. Postsecondary students who need these additional services and supports can seek assistance from the institution’s disability resource office.”<sup>10</sup>

However, despite this language, SAS has discovered by contacting over a dozen institutions of higher education in Massachusetts, including University of Massachusetts-Boston, Northeastern, Tufts, Boston College, Boston University, MIT, Williams and Amherst, that colleges and universities are not properly providing students with disabilities these necessary resources. A review of the online resources offered to parties in Title IX proceedings revealed that **none** of the colleges and universities examined offered **any** resources specifically directed to students who may have an invisible disability. This is in stark contrast to the resources offered to complainants involved in Title IX proceedings. Complainants at these schools are typically offered access to the Victim’s Rights Law Center, the Boston Area Rape Crisis Center, Rape, Abuse & Incest National Network (RAINN), the Network for Battered Lesbians/LA Red, the Gay Men’s Domestic Violence Project, among others. Clearly, these schools are offering off-campus resources that target complainants’ individual needs, so why aren’t the needs of students with invisible disabilities also being addressed? The failure of schools to address the needs of this population while addressing the needs of other populations is discriminatory and needs to be remedied. It should also be noted that these same schools provided no resources that were independently tailored to the needs of respondents, regardless of whether they had a disability.

SAS also contacted the Title IX offices and Disability Services offices at Massachusetts’ colleges and universities and posed the following question, “What supports and resources are available to students with a disability involved in campus Title IX proceedings?” The responses from these institutions were remarkably similar. Some Disability Services offices said they could not be involved unless the student or Title IX office contacted them. Then, they would try to accommodate the students. When asked if they offered off-campus resources for Title IX support, we were told they did not. Some Disability Services told us to contact the Title IX office because their office did not get involved in Title IX proceedings or know of resources to help students with invisible disabilities navigate these proceedings. The Title IX offices either referred us to Disability Services or to their online resources, which as discussed above did not offer specific resources for students with disabilities. Overall, the following picture emerged. None of the schools offer support or resources specifically directed towards the needs of students with disabilities. If a student with disabilities wants resources, it is incumbent upon the student, regardless of whether he/she is a complainant or respondent, to seek them out independently.

There is clear OCR precedent regarding the provision of accommodations to individuals

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<sup>9</sup> Similar statements are made in Sections A-5, B-3, D-5, and G-1 of the same document. Additionally, a similar statement is made on pages 16 and 17 of the *DCL 2011*.

<sup>10</sup> For the variety of reasons expressed in this White Paper, SAS believes that simply telling college students with disabilities to seek assistance through these offices is both inadequate and inequitable.

involved in a Title IX complaint proceeding who have an invisible disability. Footnote 22 in the *DCL* 2011 states the following: “Additionally, if an alleged perpetrator is an elementary or secondary student with a disability, schools must follow the procedural safeguards in the Individuals with Disabilities Education Act (at 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-300.519, 300.530- 300.537) as well as the requirements of Section 504 of the Rehabilitation Act of 1973 (at 34 C.F.R. §§ 104.35- 104.36) when conducting the investigation and hearing.” While these laws explicitly pertain to the rights of individuals with disabilities at the elementary and secondary levels of education, SAS believes there to be no reason that comparable safeguards and accommodations, adapted appropriately for the college setting, cannot be granted to students with disabilities at the college level who are involved in Title IX proceedings, especially given the fact that a school’s Title IX process is obligated to be equitable.

Given all of these circumstances, issuing more definitive guidance on the topics of resources and accommodations as they pertain to complainants and respondents who have disabilities would be both in line with previous practice and highly necessary.

*Recommendation #3* – Students at colleges and universities have the ability to waive their confidentiality rights for a variety of information ranging from SAT scores to general personally identifiable information. For example, FERPA permits there to be a release of information upon a college student’s written “consent for disclosure of education records,” when such a consent is “signed and dated, specify[ing] the records that may be disclosed, stat[ing] the purpose of the disclosure, and identify[ing] the party or class of parties to whom the disclosure may be made.”<sup>11</sup> If OCR were require schools to inform students directly of their ability to waive their confidentiality at the beginning of a Title IX procedure, individuals with invisible disabilities would be able to properly facilitate the necessary transfer of information between their Title IX office and Disability Services office so as to equitably receive support services and assistance. They would also be able to have their parents receive information regarding their involvement in the Title IX proceeding.

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<sup>11</sup> 34 CFR § 99.30.

## **Recent Cases Involving These Issues:**

*Background* – The below cases describe two ongoing lawsuits at Drake University and the University of Notre Dame as well as the personal experiences and insight gained by Lori Tucker, Esq. through her work with students who are involved in Title IX complaint proceedings.<sup>12</sup> Given that the lawsuits are ongoing, the below analysis is based on the allegations being raised against these two schools. Due to the confidential nature of Ms. Tucker’s work, the analysis of her experiences has been redacted in certain areas to protect the identities of the students and their families.<sup>13</sup>

*Drake University*<sup>14</sup> –According to a complaint filed in the Southern District of Iowa on December 1, 2016, John Doe, a male student at Drake, at the time in his senior year, was expelled as a result of allegations raised against him of nonconsensual sexual activity with fellow Drake student Jane Doe. There are many complicated factors in this case; however, the following allegations are particularly pertinent to this White Paper and concerning to anyone who wishes to ensure that students with disabilities are equitably treated while partaking in Title IX proceedings.

Prior to becoming involved in a Title IX proceeding, John Doe had been diagnosed with multiple disabilities. He had been diagnosed with ADHD and dyslexia at the age of five, for which he was prescribed medications which he took as needed, and he had also been diagnosed with language-based learning difficulties, anxiety and trouble with word retrieval.<sup>15</sup>

John Doe’s complaint offers the following concerning statements: “John Doe was not provided with disability accommodations at any time throughout the investigation and hearing in order to fully defend himself. Given John Doe’s unmet accommodations required for his learning disabilities, he was not qualified to serve as his own attorney for nine hours during the hearing process. . . . In fact, after the Plaintiff’s father sent various correspondence to the Board of Trustees, claiming his son’s Title IX and ADA civil rights were violated, the Board of Trustees felt that was cause for Plaintiff’s father to be dismissed from the Board of Trustees in a July 19,

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<sup>12</sup> While the cases discussed in this section only examine how respondents with disabilities are treated, it is SAS’s strong belief, based on the evidence presented throughout this White Paper, that complainants with disabilities equally face undue burdens when taking part in a Title IX complaint proceeding. As SAS’s research continues, cases involving complainants with disabilities will be publicly released. Additionally, this section intends to place no judgement on the guilt or innocence of the individuals discussed in these cases; it seeks to bring attention to the way these individuals were treated while these cases were conducted.

<sup>13</sup> It is important to note that these case studies detail accounts from the perspectives of respondents involved in Title IX proceedings, however, as stated repeatedly throughout this White Paper, SAS believes that both parties in a Title IX proceeding require the policy recommendations discussed in this document.

<sup>14</sup> John Doe’s complaint against Drake is attached as Case Study #1. The complaint has been highlighted in certain areas to provide the readers with points of emphasis that especially pertain to this White Paper; however, SAS encourages everyone to read the complaint in its entirety to best understand the allegations being made.

<sup>15</sup> These disabilities are detailed in John Doe’s complaint as well as in Ashe Schow’s article (which can be found at this link: <http://watchdog.org/291268/father-fired-defending-disabled-son-campus-kangaroo-court/>)

2016 teleconference vote. ... Drake omitted the fact that it had failed to provide John Doe with the proper accommodations, prevented John Doe from having someone speak for him at the hearing, and wholly disregarded John Doe's known disabilities when making assessments of credibility. As Drake appeared to treat John Doe differently, and worse than, other non-disabled students because of his disabilities, the foregoing constituted discrimination against John Doe, in violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and other federal and state laws."

*The University of Notre Dame*<sup>16</sup> – According to a complaint filed in the Northern District of Indiana on April 20, 2017, John Doe, a male student at the University of Notre Dame, was dismissed from school "just three weeks before graduation during a difficult moment in his life when he was experiencing episodic depression including suicidal ideation, and was clearly in need of mental health resources and formative remedies."

As equally troubling as the allegations made against Drake, the complaint against Notre Dame provides the following concerning statements: "To make matters worse for John—a depressed student struggling with thoughts of suicide—the University affirmatively interfered in the therapeutic relationship between John and the psychologist with whom had he had been treating through the University's Counseling Center. John's therapist submitted a letter on his behalf during the disciplinary proceeding that described the progress John had made in counseling and his commitment to ceasing all contact with Jane. For these efforts, the University admonished John's psychologist and made clear that the University Counseling Center was never again to advocate for male students accused of sexual misconduct. ... on April 18, 2017 John's psychologist advised that she was required to terminate their relationship because of a conflict of interest. Accordingly, the University effectively stripped John of one of the few resources he was provided. ... Defendant has treated Plaintiff unequally compared to students that do not have a disability. Defendant has also used criteria and methods of administration that have the effect of subjecting Plaintiff to discrimination on the basis of his perceived disability, and that have the purpose or effect of defeating or substantially impairing the accomplishment of the objective of its program with respect to individuals with disabilities and in particular with respect to Plaintiff."

*Personal Experience #1* – During the fall of 2016, Ms. Tucker spoke with the parent of a student who was enrolled at a public university in New York state. This student had a diagnosis of Asperger's Syndrome but was not officially registered with the school's office of disability services. The student had been recently accused by a fellow student of sexual misconduct and he was upset and having extreme difficulty processing the accusations being made against him. His father was several hours away by car and was worried his son was going to harm himself. As he was racing to get to his son, he sought advice from Ms. Tucker. She advised him to immediately notify the school about his son's disability, provide supporting documentation to the Title IX office regarding the diagnosis of the disability, and make sure the administrators and faculty

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<sup>16</sup> John Doe's complaint against Notre Dame is attached as Case Study #2(a), and Judge Simon's determination on Doe's Corrected Motion for a Temporary Restraining Order and Preliminary Injunction is attached as Case Study #2(b). These complaints have been highlighted in certain areas to provide the readers with points of emphasis that especially pertain to this White Paper, however SAS encourages everyone to read the complaint in its entirety to best understand the allegations being made.

involved in the Title IX proceeding were aware of the son's disability and knew how to accommodate it. She also gave him the name of an attorney experienced in Title IX proceedings who could represent his son in the process. Ms. Tucker immediately contacted this attorney to inquire about his availability and to let him know this father would be calling him. This attorney was retained by the family within a day.

It is important to note, that it was the father who contacted Ms. Tucker, not the son. This son was so overwhelmed by his circumstances that he was immobilized. Other than calling his father, he was unable to do anything else to advocate for himself. Even if he had been able to advocate for himself, the resources offered by his school were woefully inadequate for his personal needs. This student's needs would not have been met by SurvJustice, Legal Momentum, Pandora's Project, the GLBTQ Domestic Violence Project, RAINN, or Safe Horizons, the resources listed on his school's website, because they are all geared towards victims of sexual assault and likely do not have specialized training in working with people with Asperger's Syndrome. One must wonder what would have happened to this student if he had not notified his father about the accusations being leveled against him? What would have happened if his father had not spoken with Ms. Tucker, an attorney with years of experience in the field of disabilities and with an extensive database for referrals? How many students with profiles similar to this student are facing Title IX proceedings on their own and in silence about their disability with only their school's limited offering of resources to help them?

Personal Experience #2 –In the fall of 2016, Ms. Tucker communicated with the mother of a student who was a respondent in a sexual misconduct case at a university out west. They were in need of an attorney to help represent their son. Based upon the description of their circumstances, Ms. Tucker referred them to an attorney who had a background in special education law and in Title IX campus proceedings. A short time later, Ms. Tucker received the following email from this mother (portions have been redacted for privacy reasons):

***I wanted to thank you so much for referring my family to X (attorney) and Y (her partner). They are a literal answer to our prayers and our saving grace! I don't think I am exaggerating to say they were the perfect attorneys to help us, and I would have never found them without you.***

***Our story has taken a very unexpected turn. My son and I met X and Y in October in order to prepare J for his first interview with the Title IX officer and the investigator.... X is and (sic) Education attorney as you know, and has spent her career working with special needs kids and their parents. She saw something in J that led her to believe he should be tested.... J....underwent extensive testing. To our absolute shock, he was diagnosed with autism, specifically Aspergers. This is a kid who went through 13 years of public school, was on the varsity basketball team, had the lead in plays, and took all college level classes, and no one ever caught it. Looking back there were clear signs, but we never even co spidered (sic) that this was a possibility. Thank God for X and Y and their ability to think outside of the box!***

***They decided that the actual report from the psychiatrist was fairly difficult to read and interpret, so X reached out to a colleague who put her in touch with a woman named Lee Burdette Williams who is a former college Dean of Students who now works with autistic***

*college students....They contacted her and asked her for help in explaining in "administrator speak" how a young man with Aspergers could mistake the non-verbal signs of consent, and the deficiencies a person with Aspergers brings to a relationship with the opposite sex. She wrote a very well written and convincing letter to the administrators at (name of school redacted). To our absolute shock and joy, the Dean of Students contacted X attorney and showed mercy toward my son. They have decided that J (details of settlement redacted for privacy purposes). X and Y said they cried after the phone call because it was so unexpected. They now are negotiating with (name of school redacted) .... I ... feel like maybe this nightmare is coming to an end.... So even though we now have this huge new challenge in our lives, we are grateful that we now know what we are facing. ...I really wanted you to know how finding X and Y has changed everything for us, not just as far as the Title IX charges, but finding out this life changing information about J. There is absolutely no way we would have him tested without X suggesting it, and it will change the rest of my son's life for the better, I am sure. So, thank you for responding to my plea for help, and for putting me in contact with X. We will forever be grateful to you.....*

Again, the question must be asked, how different would these proceedings, and this young man's life, have turned out if his mother had not been directed towards the appropriate resources? What would have happened to this student if he had not told his mother about his involvement in the Title IX proceedings? It is highly unlikely that the school's Title IX administrators and staff would have recognized that he had Asperger's because they do not have training to recognize the characteristics of individuals with this diagnosis.

Personal Experience #3 – Several weeks ago, the mother of a student with autism was referred to Ms. Tucker by a member of Families Advocating for Campus Equality (FACE). This mother relayed the following to Ms. Tucker: Her son, a student at a university in California, was recently accused of campus sexual misconduct. The Interim Associate Dean of Students called this student on his cell phone, told him he was under investigation for making another student “feel uncomfortable” and needed to come to a meeting with her at the school the following week. This student is registered with the school's Office of Disability Services and attends the school with a full time 1:1 aide. Nothing was sent to this student in writing, his mother was not notified by the school, his aide was not notified by the school and the Office of Disability Services was not notified by the school. The student told his mother that she and he needed to attend a meeting with the Associate Dean of Students the following week, but he was unable to provide any further information. The mother immediately called the Office of Disability Services to inquire about what was happening. They called the Interim Associate Dean of Students and were told it was a confidential situation that could not be discussed with them. This was relayed to the mother who immediately called the Interim Associate Dean's office. At first, they refused to relay any information to her, even when being informed her son had autism. Due to her persistence, she was finally given information about the date and time of the meeting, which she ultimately attended with her son. After a brief investigation, all of the charges were dismissed. In the letter explaining the reasons for the dismissal, the school cited reports from the agency administering the 1:1 aide regarding typical behavior of the student in regards to communications with other students and lack of knowledge of any of the reported occurrences taking place. The letter also cited a “[l]ack of recognition of the Complainant” by the accused. Although this matter has been closed, the accused student is totally traumatized by what

occurred. No one at the school attempted to process with him why he was accused, what the procedures would be and why the case was not pursued. He is frightened to return to school despite attending it for nearly five years.

Again, the following questions must be posed: What would have happened to this student if he had not told his mother about the meeting at the school? Would the case have been dismissed if this student had attended the initial meeting alone? Why wasn't the student or his mother apprised of the student's right to sign a waiver so information about him could be released to the necessary parties? Why weren't arrangements made for the student to give permission for the Title IX office and the office of disabilities to communicate with one another? Would this student be less traumatized if the administrators/staff handling the proceedings were trained to work with autistic students?

It is our belief that the aforementioned scenarios illustrate the need for the recommendations laid out in this paper.

## **Statistics:**

*Challenges on Finding Supporting Statistics* – Finding specific statistics regarding individuals with invisible disabilities in institutions of higher education is challenging for several reasons. Primarily, it is SAS’s current understanding that colleges and universities do not keep publicly available data on how many of their students have invisible disabilities, and they certainly do not have publicly available information regarding how many of these students become complainants and respondents in Title IX proceedings. Presumably, this is due to the confidential and personal nature of this information.

*Important Statistical Evidence* – Despite the challenges in collecting specific statistics regarding students with disabilities becoming involved in Title IX complaint proceedings, there is important data on larger trends that pertain to this issue. First, it has recently been estimated that up to 433,000 students with autism will be enrolled at a college or university by 2020.<sup>17</sup> Additionally, 2014 statistics indicate that people with disabilities are three times more likely to experience sexual violence than people who do not have disabilities.<sup>18</sup> In fact, in the *DCL 2011*, OCR explicitly stated that “the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population. The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school’s programs and activities.”<sup>19</sup>

SAS is continuing to gather together data on this topic, and we will gladly share further findings as we accumulate them.

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<sup>17</sup> This statistic comes from the College Autism Network’s third slide from a presentation entitled “A Spectrum of Student Success” (this presentation can be found at [collegeautismnetwork.org](http://collegeautismnetwork.org) under the website’s research section and in the ASHE 2016 conference package).

<sup>18</sup> This statistic comes from page seven of Know You’re your IX’s *State Policy Playbook For Ending Campus Sexual Assault*, which can be found at this link: [https://actionnetwork.org/user\\_files/user\\_files/000/016/520/original/Know\\_Your\\_IX\\_State\\_Policy\\_Playbook.pdf](https://actionnetwork.org/user_files/user_files/000/016/520/original/Know_Your_IX_State_Policy_Playbook.pdf)

<sup>19</sup> This statement can be found in the first paragraph of page 2 of the *DCL*.

## **Conclusion:**

In conclusion, SAS strongly suggests that the policy recommendations presented in this White Paper be issued by OCR in the appropriate form of guidance to colleges and universities across the country. Ideally, this guidance should be issued in a separate document from other OCR mandates and instructions so it receives the proper attention. As discussed previously, even though OCR has addressed some of the issues raised in this White Paper previously, it has been done in the midst of other Title IX instructions, and schools seem to have overlooked their obligations to students with disabilities. A separate letter addressing the topics raised in this paper should avoid a similar situation in the future.

In order to end Title IX's disparate impact on students with invisible disabilities, this White Paper's policy recommendations must not be issued as a footnote or a few sentences, as has been done in the past. Rather OCR should provide schools with a concise and specific guidance document exclusively detailing their obligations to equitably provide assistance to students with disabilities when carrying out their Title IX requirements.