

**LEGAL STAFF**

**Alexis Alvarez**

Staff Attorney

**Mana Barari**

Senior Staff Attorney

**Marisa C. Diaz**

Staff Attorney

**Katherine Flester**

Staff Attorney

**Michael T. Galtley**

Director, Community Legal Services

**Jenna Gerry**

Attorney

**Christopher Ho**

Director, Immigration and  
National Origin

**Jinny Kim**

Director, Disability Rights

**Elizabeth Kristen**

Director, Gender Equity & LGBT  
Rights

**Rachael Langston**

Senior Staff Attorney

**William C. McNeill III**

Director, Racial Equality

**Julia Parish**

Staff Attorney

**Maria Tapia-Hernandez**

San Diego Workers' Rights Clinic  
Fellow

**Sharon Terman**

Director, Work and Family

**Kim Turner**

Senior Staff Attorney

**Carole Vigne**

Director, Wage Protection

**Stacy Villalobos**

Skadden Fellow

**Allyssa Villanueva**

Sanford Heisler Public Interest  
Diversity Fellow

**Katherine Wutchiett**

Skadden Fellow

**PARALEGAL/**

**LEGAL ASSISTANTS**

**Ruby Ponce**

**Tishon Smith**

**Valerie Sprague**

**CLINIC STAFF**

**Leslie Chaires**

Community Legal Services Outreach  
Coordinator

**King Szeto**

Language Access Coordinator

**SPECIAL COUNSEL**

**Robert E. Borton**

Honorable Joseph R. Grodin (Ret.)

**Henry Hewitt**

**Cacilia Kim**

**Ruth Silver Taube**

**Daniela Urban**

**Richard Zitrin**

**Diane L. Webb**

Chief Program Officer and General  
Counsel

**Joan Messing Graff**

President

Via <http://www.regulations.gov>

September 20, 2017

Hilary Malawer  
Assistant General Counsel  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Avenue SW  
Room 6E231  
Washington, DC 20202

Re: Request for Comments on Existing Dept. of Ed. Regulations and  
Guidance (in subtitles A and B of title 34 of the Code of Federal  
Regulations)

Dear Ms. Malawer:

Legal Aid at Work (formerly Legal Aid Society-Employment Law Center)  
submits the following comments on the Department of Education's Request  
for Comments on Existing Department of Education Regulations and  
Guidance (in subtitles A and B of title 34 of the Code of Federal  
Regulations ("CFR")).

Legal Aid at Work is a 100 year old nonprofit providing free legal services  
across California and in other states to low-income individuals and their  
families who face unlawful discrimination and other injustices. We advance  
equality and access in the workplace, schools, and other community and  
public facilities, including through enforcement of Title IX. Fair Play for  
Girls in Sports, a project of Legal Aid at Work, has been dedicated for  
nearly 15 years to expanding the possibilities for girls and young women  
by enforcing Title IX in educational environments, specifically as to athletic  
programming.

We daily work on matters to enforce Title IX's promise of equity, in  
particular focusing on girls in public schools in grades K-12 to ensure  
gender equality in education, specifically in schools' athletic programming.  
Girls who participate in sports experience better academic, health, and  
employment outcomes. Through the experience of our work and that of  
enforcing Title IX across the country alongside many other advocates we  
have seen Title IX's profound impact on girls' and women's athletic  
participation. Millions more female students are now able to participate in  
sports, and on a more "equal playing field," than before the law's

passage—the supporting regulations and guidance have been critical in achieving such progress.

Within the Fair Play project we regularly rely and focus on the regulations pertaining to athletic equality, in particular Subtitle B—Regulations of the Offices of the Department of Education, Chapter I—Office for Civil Rights, Department of Education. Within Subtitle B, the regulations 106.1 to 106.71 are of key importance to enforcing Title IX to ensure nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance. Not only do educational institutions, students, and staff rely on the clear guidance of the regulations, many courts do as well. *See e.g. Mansourian v. Regents of Univ. of California*, 602 F.3d 957, 964 (9th Cir. 2010). We strongly recommend that the Department maintain the regulations and related guidance governing schools to ensure such educational institutions are gender equitable.

In addition the aforementioned regulations, the Dear Colleague letters, 1979 Policy Interpretation, and the OCR Investigators' Manual pertaining to athletics are central to enforcement of Title IX. For example, the Policy Interpretation has been cited by 100 federal courts throughout the country. *See e.g., Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 854 (9th Cir. 2014). Similarly, dozens of courts rely on the Investigator's Manual to appropriately navigate and apply Title IX's standards. *See e.g., Cohen v. Brown Univ.*, 809 F. Supp. 978, 984 (D.R.I. 1992), *aff'd*, 991 F.2d 888 (1st Cir. 1993). And the Dear Colleague Letters relating to athletics, as well as clarifications and other letters as to sports offerings in the educational context provide further guidance to the courts and public as to how Title IX must be applied to provide gender equitable athletic programming to girls and women. *See e.g., Biediger v. Quinnipiac Univ.*, 728 F. Supp. 2d 62, 92 (D. Conn. 2010), *aff'd*, 691 F.3d 85 (2d Cir. 2012).

Thank you for taking into consideration our comments regarding the critical regulations and related materials promulgated by the Department of Education which serve as a lynchpin for ensuring schools, colleges, and universities adhere to Title IX's requirements. While unfortunately not all institutions are yet in compliance, the regulations and guidance are crucial to ongoing efforts to bring such institutions into the compliance fold—to ensure girls and young women nationwide can learn and participate in educational-athletic activities critical to their lifelong wellbeing. We would be more than happy to discuss our comments further and/or answer any questions you may have. For additional information, please contact me at 415-864-8848.

Sincerely,



Kim Turner  
Senior Staff Attorney  
Fair Play for Girls in Sports Project / Gender & LGBT Rights Program  
Legal Aid at Work