May 15, 2014

Arne Duncan
U.S. Secretary of Education
400 Maryland Ave., S.E.
Washington, D.C. 20202

Dear Secretary Duncan:

We are writing in reference to a February 10, 2014 letter you received from the National Association of State Directors of Career Technical Education Consortium ("the Consortium"), which questions the authority of the U.S. Department of Education to require methods of administration ("MOA") under Title IX and Section 504. We are concerned by the Consortium's letter, not only because we believe their argument is founded on an incorrect reading of the legislative history of the relevant regulations, but also because of its apparent effort to undercut the crucial role of the Office of Civil Rights ("OCR") in ensuring that discrimination does not occur in career and technical education ("CTE") programs on the basis sex, disability, race, color, or national origin.

In its letter, the Consortium argues that that OCR has the authority to require MOA only under Title VI and not under Title IX or Section 504. The Consortium's argument is based on a single footnote in the 1979 Federal Register notice accompanying the publication of the vocational education guidelines, which they claim required the Department of Education to engage in separate rulemaking before requiring MOA under Title IX and Section 504.[1] They neglect to mention that these guidelines—originally published by the Department of Health, Education and Welfare and including the requirement for MOA for race, color, national origin, disability, and sex—were adopted *in full* by the Department of Education when it was formed in 1980.[2] As part of this process, the Vocational Education Guidelines were codified under Title IX and Section 504.[3] The notice accompanying the recodification states, "It has been determined that publication of this rule as a proposal for public comment is unnecessary as it deals only with establishment and arrangement of Title 34, the recodification of certain regulations with no substantive changes, and other technical matters."[4] Thus, the Department of Education's authority to require MOA under Title IX and Section 504 was settled over 33 years ago.

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[1] *See* Vocational Education Programs Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap. 44 Fed. Reg. 17,162, 17,163 n.1 (March 21, 1979) (to be codified at 45 CFR § 80, Appendix B).

[2] *See* Establishment of Title and Chapters, 45 Fed. Reg. 30,802 (May 9, 1980) (noting which regulations were to be re-codified at Title 34). The Vocational Education Guidelines were re-codified in full as Department of Education regulations under Title VI as 34 C.F.R. § 100, Appendix B; under Title IX as 34 C.F.R. § 106, Appendix A; and under Section 504 as 34 C.F.R. § 104, Appendix B.

[3] 44 Fed. Reg. 17,162, 17,168 (March 21, 1979) (to be codified at 45 C.F.R. § 86, Appendix A and 45 C.F.R. § 84, Appendix B).

[4] Establishment of Title and Chapters, 45 Fed. Reg. at 30,802.

In addition, the Consortium's attempt to diminish the authority of OCR to oversee CTE programs is particularly problematic in light of the discrimination that women and girls face in these programs. Before Title IX's enactment in 1972, women and girls were prevented outright from taking "traditionally male" vocational education courses, based on stereotyped expectations about the interests and abilities of male and female students and their conceivable career outcomes.[5] Over forty years after Title IX was passed, women and girls continue to face discriminatory barriers to participating in CTE programs that are nontraditional for their gender. The nation's public high schools are still operating highly sex segregated, "separate and unequal" systems of vocational education for male and female students.[6] Boys are still being steered toward classes that lead to traditionally male and higher paying careers in technology and the trades, while girls are still encouraged to take classes that lead to traditionally female and lower paying jobs such as cosmetology and child care.[7] This pervasive sex segregation has a serious negative impact on young women's ability to support themselves and their families in the future. Accordingly, we urge OCR to work with the Office of Career, Technical and Adult Education to investigate and remedy gender-based inequities in CTE programs and develop best practices for increasing women's representation in nontraditional fields.

In sum, the Consortium's letter is unfounded, and it is critical that OCR continue to exercise its authority to combat discrimination in CTE programs.

Sincerely,

Fatima Goss Graves
Vice President, Education and Employment
National Women's Law Center

Shawn McMahon
Acting President & CEO
Wider Opportunities for Women

[5] National Coalition for Women and Girls in Education, *Title IX at 40: Working to Ensure Gender Equity in Education* 29 (2012), *available at* http://www.ncwge.org/TitleIX40/TitleIX-print.pdf.
[6] For example, girls and women are often discouraged by guidance counselors and other school officials from taking traditionally male courses. *Id.* at 30.
[7] *Id.* at 28. For example, a woman working as a surveying technician—a nontraditional field for women—can earn an average annual wage of $63,000, while a woman working as an administrative assistant—a traditional field for women—will earn an average annual wage of just $32,188. *Id.*

Lynn Hecht Schafran
Director
National Judicial Education Program
Legal Momentum

cc: Assistant Secretary Brenda Dann-Messier
Assistant Secretary Catherine Lhamon
Chairman John Kline
Congressman George Miller
Chairman Tom Harkin
Senator Lamar Alexander
Senator Mike Enzi
Congressman G.T. Thompson
Congressman Jim Langevin
Senator Tim Kaine
Senator Rob Portman
Kimberly A. Green, NASDCTEc

UNITED STATES DEPARTMANT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

May 5, 2014

Ms. Kimberly A. Green
Executive Director
National Association of State Directors of Career Technical Education Consortium
8484 Georgia Ave., Suite 320
Silver Spring, MD 20910

Dear Ms. Green:

Thank you for your letter to Secretary Duncan dated February 10, 2014. You inquired about the U.S. Department of Education's (Department's) legal authority to require States that receive Federal education funds and operate career and technical education (CTE) programs to administer the so-called "Methods of Administration" (MOA) program to identify and remedy unlawful discrimination by subrecipients on the basis of sex or disability.[1] Your inquiry was referred to the Department's Office for Civil Rights (OCR) for review. I am pleased to respond.

OCR has the legal authority to address issues of unlawful discrimination on the basis of sex and disability, as well as on the basis of race, color, and national origin, through the MOA program. The *Vocational Education Programs Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap* (*Guidelines*) describe the responsibilities for compliance with Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), and Section 504 of the Rehabilitation Act of 1973 (Section 504) under the MOA program by recipients of financial assistance from this Department that operate CTE programs. The *Guidelines* were published after notice and comment in 1979 and are now included as Appendix B to 34 C.F.R. Parts 100 and 104 and Appendix A to 34 C.F.R. Part 106.[2]

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[1] In your letter, you acknowledge the Department's legal authority to require State grantees to administer the MOA program to identify and remedy unlawful discrimination on the basis of race, color, and national origin.

[2] The *Guidelines* were first published in the *Federal Register* for notice and comment by the Department's predecessor, the Department of Health, Education, and Welfare, as Appendices to regulations for three Federal laws: Title VI, prohibiting discrimination in programs or activities receiving Federal financial assistance on the basis of race, color, and national origin; Title IX, prohibiting sex discrimination in such education programs and activities; and Section 504, prohibiting disability discrimination in such programs and activities. *See* 43 Fed. Reg. 59,105 (December 19, 1978) (publication for comment); 44 Fed. Reg. 17,162 (March 21, 1979) (final guidelines). After the initial publication of the *Guidelines*, the Department republished them in 1980 as Appendices to 34 C.F.R. Parts 100 (Title VI), 104 (Section 504), and 106 (Title IX) when the Department was established. *See* 45 Fed. Reg. 30,802 (May 9, 1980).

As you are aware, all recipients of Federal financial assistance from the Department, including grantees under the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act), are required to comply with the Education Department General Administrative Regulations (EDGAR), which include, among other provisions, 34 C.F.R. § 76.500 and § 80.40. Section 76.500 specifically requires States and State subgrantees to comply with Federal nondiscrimination statutes and regulations, including Title IX, Section 504, and their implementing regulations. Under section 80.40(a) of EDGAR, "[g]rantees are responsible for managing the day-to-day operations of grant and subgrant supported activities." Specifically, section 80.40 requires grantees to "monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements [and] [g]rantee monitoring must cover each program, function or activity." Thus, monitoring subrecipients to ensure compliance with the Federal civil rights laws, which include Title IX and Section 504, is a requirement of receipt of Department funding for all State grantees, including grantees under the Perkins Act.

The Department's regulations under Section 504 and Title IX also prohibit a recipient (or subrecipient) from engaging in the discriminatory practices that the *Guidelines* are designed to address. For example, a recipient is prohibited from "providing significant assistance to an agency, organization, or person that discriminates." 34 C.F.R. §§ 104.4(b)(1)(v); 106.31(b)(6).

For the past 35 years, the *Guidelines* have provided that States are to evaluate subrecipients' compliance with all nondiscrimination requirements, and States have done so without objection. Indeed, in carrying out the responsibilities to implement the MOA program, every State routinely finds instances of unlawful discrimination by subrecipients on the basis of sex and disability. A review of the reports submitted to the Department under the MOA program for the 2011-12 school year (the last year we have data from all States) shows that *every* State found violations by its subrecipients. Indeed, more than ninety percent of the compliance reviews required corrective action by the subrecipients, demonstrating the importance of State monitoring to achieve compliance with the statutory and regulatory requirements. Under these circumstances, a State must continue exercising its responsibilities under the MOA program, consistent with the regulations described above and the *Guidelines*.

Because your letter also expresses concerns regarding the resources necessary for carrying out States' responsibilities under the MOA program, we note the following changes made by the Department over the years to reduce the resources necessary to comply with the MOA program by promoting efficiency while maintaining the integrity of the program. Following extensive collaboration with the States, in September 1996, the Department revised the 1979 *Procedures for Preparing the Methods of Administration Described in the Vocational Education Guidelines*. The 1996 revisions resulted in significant reductions in the requirements of the MOA program.[3] Also, in December 1998, the Department issued a Dear Colleague Letter based on feedback we received from a weeklong focus group that we planned and conducted with MOA coordinators, which provided substantive content recommendations for each of the required items in biennial reports.

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[3] These include, for example, entirely eliminating the desk-audit requirement; halving the number of required compliance reviews from 5 to 2.5 percent of the subrecipient universe; capping the number of required compliance reviews to no more than 25 per year; streamlining the contents of reports to the Department; and making those reports biennial instead of annual.

Most recently, in January 2012, the Department issued another Dear Colleague Letter (2012 letter) in response to MOA coordinators' requests. The 2012 letter explains that States have a variety of ways to demonstrate the thoroughness of their reviews.[4] Like so much of the Department's other MOA program guidance, the 2012 letter was the culmination of extensive consultation with the State MOA coordinators.[5]

We are pleased that the Department and States continue to share a collaborative and positive relationship aimed at ensuring that States have the necessary guidance and are able to maximize resources for identifying and remedying all unlawful discrimination by subrecipients.

We hope this information is helpful to you, and we look forward to continuing to work with you to ensure that all students have equal access to career and technical education.

Sincerely,

Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education

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[4] For example, while letters of findings must include a summary of evidence to support all findings underlying a violation of Federal civil rights laws, no such summary is required for findings where there is no evidence of a violation.

[5] This included a 2009 series of telephonic focus groups with MOA coordinators to reach a common understanding of what would be fair and reasonable expectations for demonstrating and documenting the thoroughness of compliance reviews, given States' available resources, as well as allowing all MOA coordinators to review and comment on the 2012 letter prior to its issuance.