

Education Department Rescinds Obama-Era Guidance on Campus Sexual Assault Investigations, Issues Interim Guidance

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Secretary of Education Betsy DeVos on September 22, 2017, released Title IX interim guidance, while rescinding Obama-era policies, for handling sexual assault cases on college campuses.

Specifically, the Department of Education withdrew the “statements of policy and guidance” contained within the April 4, 2011, “Dear Colleague Letter” and the corresponding April 29, 2014, “Questions and Answers on Title IX and Sexual Violence.” As part of the rationale for the withdrawal, the Department of Education posited that the previous guidance had “led to the deprivation of right for many students....”

The interim guidance signifies a sharp change in how schools are required to investigate and resolve allegations of sexual assault and sexual misconduct. Notably, while schools had been required to employ a “preponderance of the evidence” (more likely than not) standard, under the new guidance, schools are given more flexibility, which can include the imposition of a more stringent “clear and convincing standard” of proof.

The new guidelines also:

- Allow for an informal resolution process, such as mediation, in all sexual misconduct cases, if all parties agree;
- Permit schools to limit appeal processes to the responding party only;
- Eliminate the 60-day timeframe for schools to investigate and resolve complaints of sexual misconduct;
- Prohibit schools from relying on fixed rules or operating assumptions that favor one party over another when instituting interim measures; and
- Require that disciplinary sanctions be made for the purpose of deciding how best to enforce the school’s code of student conduct while considering the impact of separating a student from his or her education.

Many of the changes signal the Department of Education’s recognition of the increased number of claims being brought by accused students.

The Department intends to engage in rulemaking on an institution’s responsibilities under Title IX. As part of that rulemaking process, the Department will implement a formal notice and comment period during which input will be solicited from survivors, campus administrators, parents, students, and experts on sexual misconduct. Until then, the interim guidelines will remain in effect.

Remember that the Department’s newly issued interim guidance applies only to enforcement of federal law requirements. Colleges and universities must continue to comply with all applicable state laws regarding sexual misconduct and sexual misconduct investigations.

Please contact a Jackson Lewis attorney with any questions about this development.

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