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Department of Education Issues New Interim Guidance on Campus Sexual Misconduct

New Q&A will serve as interim guide until the conclusion of notice and comment rulemaking
Widely criticized 2011, 2014 guidance also withdrawn

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Washington — Building on her remarks from September 7, 2017, regarding the Department's commitment to protecting all students from discrimination, today U.S. Secretary of Education Betsy DeVos announced the release of a [new interim Q&A](https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf) (<https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>) for schools on how to investigate and adjudicate allegations of campus sexual misconduct under federal law.

"This interim guidance will help schools as they work to combat sexual misconduct and will treat all students fairly," said DeVos. "Schools must continue to confront these horrific crimes and behaviors head-on. There will be no more sweeping them under the rug. But the process also must be fair and impartial, giving everyone more confidence in its outcomes."

In the coming months, the Department intends to engage in rulemaking on Title IX responsibilities arising from complaints of sexual misconduct. The Department will solicit comments from stakeholders and the public during the rulemaking process, a legal procedure the prior administration ignored.

In the interim, the [newly-released Q&A](https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf) (<https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>) on Campus Sexual Misconduct explains the Department's current expectations of schools, and the Department will continue to rely on its Revised Sexual Harassment Guidance, which was informed by a public comment process and issued in 2001, as well as the Dear Colleague Letter on Sexual Harassment issued on January 25, 2006.

"In the coming months, hearing from survivors, campus administrators, parents, students and experts on sexual misconduct will be vital as we work to create a thoughtful rule that will benefit students for years to come. We also will continue to work with schools and community leaders to better address preventing sexual misconduct through education and early intervention," DeVos added.

The Department of Education is also withdrawing (<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf>) the Dear Colleague Letter on Sexual Violence dated April 4, 2011, and the Questions and Answers on Title IX Sexual Violence dated April 29, 2014. The withdrawn documents ignored notice and comment requirements, created a system that lacked basic elements of due process and failed to ensure fundamental fairness.

DeVos concluded, "As I said earlier this month, the era of rule by letter is over. The Department of Education will follow the proper legal procedures to craft a new Title IX regulation that better serves students and schools."

Press Call Information:

The Department will hold a background press call at 10:45 a.m. open to credentialed members of the media. Media interested in participating should RSVP to press@ed.gov (<mailto:press@ed.gov>) to receive additional information.

FAQs on Updated Campus Sexual Misconduct Guidance

What is the purpose of the Q&A on Campus Sexual Misconduct?

- Describes a school's responsibility to address sexual misconduct complaints
- Discusses the relationship between Title IX and the Clery Act
- Provides examples of interim measures that may be appropriate under the circumstances
- Summarizes what procedures a school should follow to adjudicate a finding of responsibility for sexual misconduct
- Describes what constitutes an "equitable" investigation
- Explains a school's obligations concerning appeals
- Clarifies appropriate evidentiary standards
- Informs schools of their responsibilities concerning notifications to parties of the outcomes of disciplinary proceedings

What are a school's obligations under Title IX regarding sexual misconduct?

- Schools must address sexual misconduct that is severe, persistent or pervasive.
- Schools must conduct a fair and impartial investigation in a timely manner.
- Title IX investigations must be led by a person free of actual or reasonably perceived conflicts of interest and biases.
- Schools must designate a Title IX Coordinator.

Do schools have flexibility to establish fair procedures?

- Schools have the discretion to apply either the preponderance of the evidence standard or the clear and convincing evidence standard.
- Schools are not required to allow appeals; however, a school may choose to allow appeals solely by the responding party or by both parties.
- Schools may permit an informal resolution, such as mediation, if it is appropriate and if all parties voluntarily agree.
- Schools should provide written notice to the responding party of the allegations, including sufficient details and with adequate time to prepare a response before any initial interview.

- OCR recommends schools provide concurrent, written notice of the outcome of disciplinary proceedings to the reporting and responding parties.

Does the rescission letter or the Q&A add legal requirements?

The rescission letter and Q&A do not add requirements to applicable law.

Does the rescission letter or the Q&A limit the right of a person to file a Title IX complaint?

No. A school must adopt and publish grievance procedures that provide for a prompt and equitable resolution of complaints of sex discrimination, including sexual misconduct. Moreover, whether or not a student files a complaint of alleged sexual misconduct or otherwise asks the school to take action, where the school knows or reasonably should know of an incident of sexual misconduct, the school must take steps to understand what occurred and to respond appropriately. In particular, when sexual misconduct is so severe, persistent or pervasive as to deny or limit a student's ability to participate in or benefit from the recipient's school's programs or activities, a hostile environment exists and the school must respond.

How can I get help from OCR?

OCR offers technical assistance to help schools achieve voluntary compliance with the civil rights laws it enforces and works with schools to develop approaches to preventing and addressing discrimination. A school should contact the OCR enforcement office serving its jurisdiction for technical assistance.

- **Telephone: 800-421-3481**
- **FAX: 202-453-6012; TDD: 800-877-8339**
- **Email: OCR@ed.gov (<mailto:OCR@ed.gov>)**

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