

ALERTS

Higher Education Law Alert - New Guidance On Title IX From The U.S. Department Of Education

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On Sept. 22, U.S. Secretary of Education Betsy DeVos [announced new standards](#) on how the Department of Education's Office of Civil Rights (OCR) will regulate schools' investigation and adjudication of campus sexual misconduct. DeVos stated the purpose of the change is to ensure the process is "fair and impartial, giving everyone more confidence in its outcomes." The changes are effective immediately.

Most notably, OCR has withdrawn the April 4, 2011, "Dear Colleague Letter" on sexual violence, and the April 29, 2014, "Questions and Answers on Title IX and Sexual Violence" guide. OCR will promulgate regulations in the near future to replace these guidance documents. The department will seek comments from stakeholders and the public during the process.

In the interim, to evaluate schools' compliance with Title IX in addressing sexual misconduct allegations, OCR will rely on the department's new [Q&A on Campus Sexual Misconduct](#) and older guidance documents, in particular the 2001 Revised Sexual Harassment Guidance and the 2006 Dear Colleague Letter on Sexual Harassment.

The new, interim Q&A guidance provides the following substantive changes:

- Schools are no longer required to apply the "preponderance of the evidence" standard in adjudicating sexual misconduct cases. Schools may apply either the preponderance standard or the "clear and convincing evidence" standard, consistent with the standard the school applies in other types of misconduct cases.\
- Schools are now free to use informal resolution methods such as mediation to resolve sexual misconduct complaints, if all parties involved consent to it.
- The new rules demonstrate a focus on achieving more balance in the complaint-adjudication process, requiring schools to provide the same notice, procedural safeguards, and campus services to reporting and responding parties.

We will issue updates as the department and OCR provide more information on their rulemaking process and regulation practices. For more information, please contact the Barnes & Thornburg attorney with whom you work or Chris Bayh at 317-231-7449 or Chris.Bayh@btlaw.com or Lauren Nottoli at 574-237-1127 or Lauren.Nottoli@btlaw.com.

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RELATED PEOPLE



Christopher J. Bayh

Partner

Indianapolis, Washington, D.C.,
Chicago

P 317-231-7449

F 317-231-7433

chris.bayh@btlaw.com

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