

## ALERTS

### Department Of Education Proposes New Title IX Regulations On Campus Sexual Harassment

November 19, 2018 | [Atlanta](#) | [Chicago](#) | [Columbus](#) | [Dallas](#) | [Delaware](#) | [Elkhart](#) | [Fort Wayne](#) | [Grand Rapids](#) | [Indianapolis](#) | [Los Angeles](#) | [Minneapolis](#) | [New York](#) | [San Diego](#) | [South Bend](#) | [Washington, D.C.](#)

On Friday, Nov. 16, the Department of Education's Office of Civil Rights [proposed new Title IX regulations](#) governing how federal-recipient institutions must address the issue of sexual harassment on campus. The stated purposes of these measures are to clarify institutions' legal obligations, "to better align... regulations with the text and purpose of Title IX" and interpreting case law, and to "help empower students to hold their schools accountable for failure to meet those obligations." Substantive proposed changes include the following:

The definition of sexual harassment—which includes all kinds of unwelcome sexual conduct— would be narrowed to conduct that "is so severe, pervasive, and objectively offensive that it effectively denies a person equal access" to the recipient's education, program, or activity.

- Schools would only be responsible for investigating sexual harassment complaints if the misconduct occurred on campus grounds or at school-sponsored events.
- Schools would need "actual knowledge" of the allegations to be required to respond.
- For disciplinary proceedings, schools would be allowed to choose the governing evidentiary standard: either a preponderance standard or a clear-and-convincing evidence standard.
- Students would be guaranteed the right to cross-examine their accuser (not individually, but through an advisor) and the right to a live hearing.
- A separate decision-maker—someone who is not the Title IX coordinator—must determine an accused student's guilt.
- Schools could offer mediation if both students consent to it.

These proposed regulations follow the Department's September 2017 issuance of the [2017 Q&A on Campus Sexual Misconduct](#). The 2017 Q&A is a guidance document that emphasized general requirements of due process, permitted flexibility in the evidentiary standard, and rescinded other guidance documents then in place: the 2011 Dear College Letter and the 2014 Title IX Q&A. If fully implemented, the proposed regulations would codify the main points in the 2017 Q&A and the points listed above.

While the Department's comment period on the new regulations is

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pending, the 2017 Q&A guidance remains in place. That comment period is now open, and will close 60 days after the proposed regulations' forthcoming publication in the Federal Register. Comments can be electronically submitted [here](#).

We will issue future updates on any notable developments.

For more information, please contact the Barnes & Thornburg attorney with whom you work, Chris Bayh (317-231-7449, [Chris.Bayh@btlaw.com](mailto:Chris.Bayh@btlaw.com)), Allison Scarlott (317-231-7833, [Allison.Scarlott@btlaw.com](mailto:Allison.Scarlott@btlaw.com)), or Mark Scudder (260-425-4618, [Mark.Scudder@btlaw.com](mailto:Mark.Scudder@btlaw.com)).

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