

Federal Education Secretary Announces Plans to Revamp Title IX Directives

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The U.S. Department of Education recently announced plans to "revoke or rescind" current guidance addressing enforcement of Title IX.

Secretary Betsy DeVos [said earlier this month](#) the department plans to review and overhaul guidance issued to schools under the Obama administration. The current guidance provides direction for educational institutions to investigate and address claims of sexual assault, rape, and sexual harassment.

DeVos announced no specific policy shifts, but criticized a 2011 federal "dear colleague letter". She pronounced "rule by letter is over" and said her department would initiate a formal rulemaking process. To date, there has been no further action taken to launch a notice-and-comment process. However, on September 14, members of the U.S. Senate [issued a letter to DeVos](#) expressing concern over proposed changes to Title IX enforcement in schools.

Title IX prohibits institutions that receive federal funding from engaging in discrimination on the basis of sex. Under existing guidance, schools are required to implement policies and procedures aimed at addressing any form of sexual violence on campus. That includes implementation of formal hearing procedures regardless of whether criminal proceedings are initiated.

Through this most recent announcement, the department has expressed plans to significantly revamp guidance included in the dear colleague letter as well as later guidance documents issued in April 2014. While the Obama administration guidance has not yet been officially rescinded, the department appears primed to move forward with the notice-and-comment process.

DeVos focused most specifically on concerns of a denial of due process to individuals accused of sexual misconduct. She also suggested that current practices often further traumatize victims as a result of the mishandling of complaints and delays in processing. Prior to her September 7 remarks, DeVos held a series of meetings with various groups and individuals concerned about the current state of Title IX enforcement.

One primary area of focus that has involved considerable debate is the standards of evidence. Current Title IX guidance tells institutions to apply a "preponderance of the evidence" rather than the more stringent "clear and convincing evidence" standard in sexual misconduct hearings. Critics have argued the clear and convincing evidence standard is more appropriate, given the significant impact findings can have on the accused.

We will continue to monitor developments on this issue and provide additional updates as appropriate. If you have any questions or concerns, or if we can provide any additional assistance as you review your existing policies and procedures, please do not hesitate to contact any of the attorneys in [Barley Snyder's Education Law Practice](#)

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