

**Education Alert
October 2017**

**UNITED STATES DEPARTMENT OF EDUCATION'S OFFICE
FOR CIVIL RIGHTS CHANGES GUIDANCE FOR TITLE IX**

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On September 22, 2017, the United States Department of Education's Office for Civil Rights ("OCR") issued a Dear Colleague Letter and Question and Answer document on complaints of sexual misconduct and violence. A copy of those documents can be found here: <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf> and <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf>.

These documents withdraw prior guidance from OCR in 2011 and 2014 and significantly change how to address Title IX complaints of sexual misconduct and violence. The changes are as follows:

- Previously, upon receipt of a complaint of sexual misconduct or violence, school districts were required to provide interim measures to the alleged victim, pending the outcome of the investigation. Interim measures include, for example, counseling, extensions of time, escorts, or modifications in schedules. Now, school districts must provide interim measures to both the alleged victim and the alleged aggressor during the pendency of an investigation, and any interim measures provided should not favor one party over another.
- Before, school districts were told to investigate a complaint within sixty (60) days. OCR now states that there is no fixed time frame for completing a Title IX investigation – an investigation must only be “prompt.”
- OCR further prohibits school districts from issuing orders restricting either the alleged victim or alleged aggressor from discussing the investigation or allegations with others.
- OCR requires school districts upon opening an investigation to provide written notice to the alleged aggressor of the allegations, including the identity of the parties involved, the policies violated, the precise conduct allegedly constituting the violation, and the date and location of the incident. The school district must provide the alleged aggressor sufficient time to respond before any initial interview.
- OCR further requires school districts to provide written notice of any interview to the alleged aggressor and victim, with sufficient time for those individuals to prepare for the interview.



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- Previously, school districts could not use informal resolution, such as mediation, for complaints of sexual misconduct and violence. Now, school districts can utilize informal resolution, if they believe that it is appropriate and all parties agree to participate voluntarily.
- Before, OCR required school districts to use a preponderance of the evidence standard, which means more likely than not. Now, school districts can use a preponderance of the evidence standard or a clear and convincing evidence standard. Clear and convincing evidence requires that the investigating official have a firm belief that it is highly probable that the factual contentions of the claim are true. If a school district would like to move to a clear and convincing standard, it must use that standard for all complaints of student misconduct.
- OCR requires school districts to provide the investigation report in advance of any decision on culpability and provide the alleged victim and alleged perpetrator an opportunity to respond.
- Finally, previously, if school districts offered an appeal process, they had to offer the process to the alleged victims and the alleged aggressors. Now, school districts can limit any appeal rights offered to solely the alleged aggressors.

In light of this updated guidance, schools should review their Title IX procedures to ensure that they are in compliance and that the policies and procedures do not afford alleged victims more rights than alleged perpetrators.



If you have any questions about this issue, please contact Felicia Vasudevan or the attorney responsible for your account, or call (617) 479-5000.

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