

LEGAL UPDATES

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Department of Education Answers 52 Questions on Title IX and Sexual Violence for Colleges and Universities

On April 29, 2014, the Department of Education’s Office for Civil Rights (OCR) issued a “significant guidance document” to assist institutions of higher education in meeting compliance obligations under Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in federally assisted education programs and activities. This new document expands upon previous OCR guidance issued in a 2001 document titled, “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties,” and in a “Dear Colleague Letter” dated April 4, 2011.

This latest document is in the form of 52 questions and answers (Q&As) and addresses matters of sexual violence – including rape and sexual assault – as a particular form of sexual harassment. The introduction to the Q&As notes that the previous guidance remains in full force and recommends that the Q&As be read in conjunction with it. The aim of OCR’s latest guidance is to further clarify the legal requirements of Title IX and the guidance previously issued. It also aims to provide examples of proactive efforts and remedies that institutions can use to prevent sexual violence and address its effects.

The 52 Q&As address the following topics:

A school’s obligation to respond to sexual violence

Students protected by Title IX

Title IX procedural requirements

Responsible employees and reporting

Confidentiality and a school's obligation to respond to sexual violence

Investigations and hearings

Interim measures

Remedies and notice of outcomes

Appeals

Title IX training, education and prevention

Retaliation

First Amendment

The Clery Act and the Violence Against Women Reauthorization Act of 2013

Availability of further federal guidance

Examples of new or expanded guidance contained in this document include, but are not limited to, the following topics:

Ensuring that the training of those responsible for receiving and responding to complaints of sexual violence (including investigators and hearing board members) incorporates appropriate guidance about working with LGBT and gender-nonconforming students and same-sex sexual violence;

Ensuring that any school reporting forms, information, or training about sexual violence make materials accessible to students and employees with disabilities, such as by providing electronically-accessible versions of paper forms to individuals with print disabilities, or by providing a sign language interpreter to a deaf individual attending a training;

Balancing a victim's request for confidentiality with the institution's obligation to address acts of sexual violence; and

Providing for appeals of hearing results where procedural error or previously unavailable relevant evidence could significantly impact the outcome, or where a sanction is substantially disproportionate to the findings (even though the guidance acknowledges that appeal provisions are not required).

What This Means to You

The problem of sexual violence is receiving significant national attention, and this OCR guidance follows the recent attention on the subject from the U.S. Senate and the White House. It is likely that this heightened attention will lead to increased scrutiny, not only from OCR but also from students, parents and other outside constituencies. Therefore, institutions should review these Q&As and previous OCR guidance on Title IX compliance and ensure that their policies and procedures for preventing sexual violence and responding to complaints of such violence are in order.

Contact Information

Husch Blackwell will continue to analyze the Q&As and will provide further alerts as appropriate. In the meantime, if you have questions, please contact your Husch Blackwell attorney, Joe Cornelison at 816.983.8280 or Hayley Hanson at 816.983.8377.