

Future of 2011 Dear Colleague Letter In Doubt?

BY BRIAN MULLIN • DECEMBER 30, 2016

In the weeks since Donald Trump won the presidential election there has been considerable discussion and speculation about the future of the 2011 Dear Colleague letter and subsequent guidance documents issued by the Department of Education's Office for Civil Rights ("OCR") interpreting the scope of Title IX and the obligations of Institutions with respect to preventing and responding to incidents of sexual misconduct on campus ("Guidance"). Since their issuance, critics, including Republican members of Congress, have argued that the Guidance constitute an unlawful expansion of Title IX and liability for Institutions that fail to comply. This view is supported by statements in the 2016 Republican Party platform promoting repeal of the Guidance (GOP Platform).

It will not be difficult for the Trump administration to repeal or modify the Guidance if it is inclined to do so. As the Guidance is the product of executive agency action, the administration could simply rescind the Guidance or change it by issuing new guidance. The administration could also effectively repeal the Guidance by electing not to defend lawsuits currently pending against the Department of Education challenging the validity of the Guidance.

It is not possible to say what action the Trump administration may take with respect to the Guidance. However, even if the Guidance is repealed, Institutions will still be obligated to provide a safe and non-discriminatory educational environment for their students. To do so, Institutions will need to continue efforts to educate their communities about issues of sexual misconduct and to implement and review policies and practices directed to preventing and effectively responding to incidents of sexual misconduct.

Client Tip: *Institutions must continue to comply with the requirements of the Guidance until changes, if any, become effective. If changes come, lessons learned in the implementation of Guidance will continue to inform Institutions efforts to provide a safe and non-discriminatory educational environment.*

©2026 Bowditch & Dewey LLP. All Rights Reserved.