Trump Administration's Department of Education Contemplating Changes to Enforcement of Title IX as Applied to Sexual Misconduct

BY BRIAN MULLIN • AUGUST 4, 2017

Recent statements by Department of Education officials suggest new guidance is forthcoming with respect to enforcement of Title IX as applied to sexual misconduct on college campuses. During a stakeholders meeting last week, Education Secretary Betsy DeVos criticized the effectiveness of the current Title IX enforcement guidelines and expressed the desire to implement changes "quickly." These comments came on the heels of a New York Times interview in which high-ranking Office of Civil Rights official Candice Jackson derisively remarked that "90 percent" of sexual assault accusations on college campuses stemmed from after-the-fact regret about drunken sexual encounters.

While the Department has refused to provide specifics about any future changes, many suspect that DeVos may attempt to roll back the Obama Administration's 2011 "Dear Colleague Letter" guidance. One particular point of contention is the Letter's mandate that schools use a "preponderance of the evidence" standard in Title IX sexual misconduct investigations-prior to the Letter, many schools used the higher "clear and convincing evidence" standard, which required a finding of high probability or reasonable certainty that sexual misconduct occurred. The recent comments by DeVos and Jackson suggest they may attempt to abandon the preponderance standard requirement. We can be sure, however, that such change will not occur without a fight.

Client Tip: *Institutions should keep an eye out for new Title IX guidance from the Department of Education.*

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