

**Adapted from the Association for Student Conduct Administration (ASCA) News Blast emailed on
September 22, 2017.**

On September 22, 2017, the U.S. Department of Education released new, **interim** guidance on Title IX in higher education. The following is a brief analysis based on our best efforts to understand the impact to our practice.

Review of September 22, 2017 DCL & FAQ

- Rescinds April 4, 2011 Dear Colleague Letter
- Rescinds April 29, 2014 Q&A

Mandates:

- Standard of proof - The Preponderance of Evidence is no longer mandatory. Institutions may use either the preponderance of evidence or clear & convincing standard. However, institutions must use whatever is used for the rest of your conduct violations.
 - **Mt. SAC uses Preponderance of Evidence for all student conduct cases (AP 5520).**
- Written notice must be provided prior to first interview with the respondent and must include:
 - identities of the parties involved
 - the specific section of the code of conduct allegedly violated
 - the precise conduct allegedly constituting the potential violation
 - the date and location of the alleged incident.
 - **This is already practiced by HR for all Title IX investigations.**

General Changes:

- The 60-day investigation time frame has been removed.
 - "There is no fixed time frame under which a school must complete a Title IX investigation. OCR will evaluate a school's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution."
 - **The CCC Chancellor's office has a 90 day time frame for harassment discrimination investigations.**
- Clearly states burden of proof is on the school, not on either party, to gather sufficient evidence to reach a fair, impartial determination.
- It is no longer required to let both parties appeal (if there is an appeal process), however it is permissible for both parties to appeal.
 - **Under AP 5520, both parties are provided with appeal options if applicable.**
- There is a prohibition on direct questioning/cross-examination, however there is nothing to indicate that it must be allowed.
 - **Direct cross-examination is not practiced for Title IX cases during investigations and hearings.**
- The Prohibition on asking about complainant's sexual history with anyone other than the respondent has been removed, however there is nothing stating that it must be allowed.
 - **This is not practiced during Title IX hearings.**
- Interim measures are no longer required and should be used when needed to ensure equal access as well as be available to both parties.
 - **Interim measures are implemented as needed, requested, and available.**

Language from 2014 Q&A that is no longer in 2017 Q&A but is partially addressed in 2001 Guidance:

- Informal resolutions
 - 2017 Q&A removes restrictions on informal resolutions, but the 2001 Guidance document still contains restrictions, specifically that mediation is inappropriate for sexual assault cases (p. 21).
- Responsible employees - 2001 Guidance (p.13)
- Confidentiality request by complainant - 2001 Guidance (p. 17)
- Retaliation - 2001 Guidance (p. 17)

Language from 2014 Q&A that is no longer in 2017 Q&A and not in 2001 Guidance:

- Language suggesting schools offer amnesty for drug or alcohol use is gone.

- Guidance related to students with disabilities is gone
- Guidance related to international/undocumented students is gone
- Guidance about delaying when working with police is gone

Special thanks to authors of this FAQ: Martha Compton, ASCA Director of Education; Christy Anthony; Regina Curran; and Kevin Carmody.