

FREQUENTLY ASKED QUESTIONS on Updated Title IX Guidance (10-11-17)

Background

- Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination based on sex in education programs or activities that receive Federal financial assistance. This prohibition includes sexual misconduct, which encompasses sexual harassment and sexual violence. The U.S. Department of Education's Office for Civil Rights (OCR) enforces Title IX and periodically issues guidance on its interpretation, application, and enforcement of the law.

On September 22, 2017, OCR formally [withdrew](#) the guidance provided in its [2011 Dear Colleague Letter on Sexual Violence](#) and its [2014 Q&A on Title IX and Sexual Violence](#). At the same time, OCR issued a new [2017 Q&A on Campus Sexual Misconduct](#), in which it explains that it intends to engage in rulemaking regarding schools' Title IX responsibilities concerning complaints of sexual misconduct, and will solicit input from stakeholders and the public during that process. The questions and answers included in the [2017 Q&A](#), along with OCR's [2001 Revised Sexual Harassment Guidance](#), provide information about how OCR will assess a school's compliance with Title IX in the interim.

- **Seattle U's** current policies and procedures related to sexual misconduct remain in effect and we have no plans to change them at this time while the interim OCR guidance is in effect. Seattle U remains committed to providing a safe and equitable learning, living, and working environment, and to maintaining and continually improving upon our efforts to prevent and best respond to incidences of sexual misconduct impacting members of our community. While federal law and guidance serves as a baseline for our policies, it is our mission and values that sustain our resolve on this issue.

Seattle U's [Code of Student Conduct](#) (Code), Section 4.6, provides definitions, reporting options, resources, and other relevant information, and outlines the investigation and conduct process for matters in which a student is accused of a sexual offense, dating or domestic violence, and/or stalking. The process is designed to be thorough, prompt, and fair. The policy and process outlined are consistent with both the withdrawn and the new, interim OCR guidance.

How does the new, interim guidance affect the standard of proof used in sexual misconduct cases?

- Prior OCR guidance (now withdrawn) required schools to use the preponderance of evidence standard of review. The new, interim guidance allows schools to use *either* a preponderance of evidence standard or a clear and convincing evidence standard, though it notes that the standard of evidence a school uses in sexual misconduct matters should be consistent with the standard the school uses in other student misconduct cases.
- **Seattle U** applies the preponderance of evidence standard in sexual misconduct matters (as well other student misconduct cases). (See 4.6, Section I.b., of the [Code](#).) This standard of proof remains in effect.



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How does the new, interim guidance affect the timeline used in sexual misconduct cases?

- Prior OCR guidance (now withdrawn) did not require a school to complete investigations within 60 days, but did note that in OCR’s experience, a typical investigation takes approximately 60 calendar days. It stated that whether OCR considers an investigation to be prompt will “vary depending on the complexity of the investigation and the severity and extent of the alleged conduct.” The new, interim guidance states that there is “no fixed time frame under which a school must complete a Title IX investigation,” and explains that “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.”
- **Seattle U** works to complete all sexual misconduct matters in a prompt manner, without compromising the thoroughness or fairness of the process. Specifically, “the University will resolve all complaints and reports ... in a prompt manner, endeavoring to do so within sixty (60) calendar days of the initial report. Extenuating circumstances may arise that require an extension beyond 60 days. Extenuating circumstances may include, but are not limited to, the complexity and scope of the allegations and investigation, the number of witnesses involved, the availability of the parties or witnesses, the effect of a current criminal investigation, any intervening University break or holiday, or other unforeseen circumstances.” (See 4.6, Section I.d., of the [Code](#).) This timeline remains in effect.

How does the new, interim guidance affect the appeals of sexual misconduct cases?

- OCR has not required that schools provide an appeals process, though prior OCR guidance (now withdrawn) had recommended that schools do so. It also stated that if a school allowed appeals, it must do so for both parties. The new, interim guidance states that if a school chooses to allow appeals, the school may choose to allow only the responding party (i.e., the accused) to do so, or allow both parties to appeal, using equally available procedures.
- **Seattle U** provides *both* parties the same right to appeal the determination of whether or not a violation of the Code occurred and any sanctions imposed, utilizing the same appeals procedure. (See 4.6, Section III., of the [Code](#).) This policy and procedure remain in effect.

How does the new guidance affect the possibility of mediation for sexual misconduct cases?

- Prior OCR guidance (now withdrawn) specifically stated that “in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis.” The new, interim guidance allows mediation in all sexual misconduct cases, “if all parties voluntarily agree to participate ... after receiving a full disclosure of the allegations and their options for formal resolution and if a school determines that the particular Title IX complaint is appropriate for such a process.”
- **Seattle U** does not offer mediation in sexual misconduct matters.



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Does the new, interim guidance address “responsible employees” and their obligations to report sexual misconduct?

- While prior OCR guidance (now withdrawn), specifically the [2014 Q&A on Title IX and Sexual Violence](#), dedicated about four pages to this topic, the [2017 Q&A](#) only states that employees other than the Title IX Coordinator “may be considered ‘responsible employees’ and will help the student to connect to the Title IX Coordinator,” followed by a footnote to Section V.C. of the [2001 Guidance](#).

The [2001 Guidance](#) states that a school “will be in violation of the Title IX regulations if the school ‘has notice’ of a sexually hostile environment and fails to take immediate and effective corrective action, and goes on to state that a school “has notice if a responsible employee ‘knew, or in the exercise of reasonable care should have known,’ about the harassment.” In the 2001 Guidance, a “responsible employee” is defined as “any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.”

- **Seattle U** requires all faculty and staff – with certain exceptions and including certain student employees – to notify the University’s Title IX Coordinator of any incident of sexual misconduct experienced by a student of which the faculty or staff member becomes aware. [The *exceptions* are the following confidential resources: Counseling and Psychological Services (CAPS), Student Health Center, Campus Ministry, and a priest or member of the clergy who is serving as pastoral counselor. The students *included* are Resident Assistants, other housing student employees *while on duty*, and Department of Public Safety student employees *while on duty*.]

In recent years this notification requirement has led to positive outcomes and feedback, but also to concerns raised by some faculty and students. This is an area that the University continues to review and – with input from the campus community – may later modify, aiming to maintain the benefits while addressing the concerns. Any modification, however, will be dependent on what the finalized OCR rule and guidance ultimately requires/permits. Thus, at this time, SU’s current notification requirement remains in effect.

What else does the new, interim guidance cover?

- The new, interim guidance addresses the relationship between the Clery Act and Title IX, and explains that existing resolution agreements between OCR and other schools are still binding. It also outlines other requirements and recommendations on providing equity to both parties of a sexual misconduct matter, including considering individualized interim measures for both, offering the same access to information used to make determinations of responsibility, providing the same opportunity to be accompanied by an advisor of their choice, and concurrently notifying the parties of the outcome of a case. More information can be found [here](#).



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- **Seattle U** provides emergency, medical, and other support [resources](#), as well as [assistance](#) with safety and support measures, to all community members who have experienced or been impacted by sexual misconduct, *whether or not they pursue a formal complaint*. When the investigation and conduct process is pursued, the [respondent/accused](#) is offered resources and assistance as well.

In addition, both parties are provided an equal opportunity to present statements, identify witnesses and submit evidence, and, prior to the conclusion of the investigation, they are both given the opportunity to respond to a summary of the information developed through the investigation. (See 4.6, Section I.a., of the Code.) Both parties are permitted to be accompanied by one advisor of their choice at any meeting during the investigation and conduct process (See 4.6, Section I.f., of the Code.), and, at the conclusion, both parties are notified in writing of the outcome of the investigation and any sanctions. (See 4.6, Section I.c., of the Code.) More information about SU's investigation and conduct process can be found in the [Code](#).

What will happen next?

- In its [2017 Q&A on Campus Sexual Misconduct](#), OCR explains that it intends to engage in rulemaking regarding schools' Title IX responsibilities concerning complaints of sexual misconduct, and will solicit input from stakeholders and the public during that process. At this time no dates have been announced, though we anticipate OCR will solicit input from stakeholders and the public in the coming months.
- **Seattle U's** [Office of Institutional Equity](#) will be monitoring opportunities for Seattle U to participate and will provide information on how members of our community can lend their voices to this process.

Where can I get more information?

- OCR updates its policy guidance on sex discrimination [here](#).
- **Seattle U's** sexual misconduct web site, www.seattleu.edu/sexual-misconduct, provides valuable information, including downloadable resource guides.

If you have questions or would like additional information, you are also welcome to contact the [Office of Institutional Equity](#).

