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Title IX: A New Approach

On Thursday, September 7, 2017, Education Secretary Betsy DeVos delivered an address that was harshly critical of the prior administration's approach to Title IX in general, and the campus sexual assault guidance in particular.¹ This speech, coupled with a June 28, 2017, speech by Candace Jackson, Acting Assistant Secretary, Office for Civil Rights (OCR), and Tom Wheeler, Acting Assistant Attorney General for Civil Rights, entitled "A New Day at OCR," signal a significant change in approach toward Title IX enforcement.²

While the new administration has made it clear that it will continue to aggressively enforce civil rights laws, the approach OCR takes toward investigations and enforcement will change. Secretary DeVos was clear that the changes come from the top and announced a retreat from the prior administration's use of unilateral sub-regulatory guidance documents such as Dear Colleague Letters and instead a return to a "transparent notice-and-comment process."

Consistent with this new approach are recent modifications to OCR's Case Processing Manual. Among the changes that take effect immediately are the following:

- A reduction in the scope of initial document requests: OCR will no longer follow the existing investigative rule of obtaining three (3) years of past data/files to assess a recipient's compliance.
- Limiting investigations to allegations actually made in the complaint: There is no longer a "one size fits all approach."
- Limiting a "systemic" or "class action approach" and ensuring that investigative staff clear case backlogs and resolve complaints within a reasonable time frame.
- Finally, OCR's goal is to swiftly address compliance issues raised by individual complaint allegations, reach reasonable resolution agreements with defined, enforceable obligations placed upon recipients directly responsive to addressing the concerns raised in the individual complaint being resolved,

and encourage voluntary settlements whenever possible.²

As a consequence of these changes, educational entities should expect (and are seeing) outreach from OCR regional offices on most pending matters, particularly those that have languished for multiple years. Consistent with the foregoing directives, this outreach is usually accompanied by some form of proposed voluntary resolution agreement. Remember that these proposals are just that, and you should negotiate the terms with the OCR investigator. If you have a pending matter and have not been approached, or are not getting satisfaction from the investigator, push your issue up the chain of command to regional management, and if that does not work, with OCR in Washington.

Tom Wheeler and Candace Jackson will be addressing these changes in two joint appearances next month. They will address the New York State School Boards Association's Annual Convention & Exposition in Lake Placid, New York, on October 12, 2017⁴, and then on October 19, 2017, will address the NSBA Council of School Attorneys' 2017 School Law Practice Seminar in Chicago, Illinois, on "Federal Civil Rights Enforcement in Public Schools: Priorities of the Administration."⁵

If you would like assistance in dealing with the Department of Education or OCR on Title IX or other education issues, please contact [Tom Wheeler](#) or [Joe Scholler](#) in Frost Brown Todd's Education Law Group.

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1. The full transcript of the speech may be accessed at: https://www.washingtonpost.com/news/grade-point/wp/2017/09/07/transcript-betsy-devoss-remarks-on-campus-sexual-assault/?utm_term=.b75f08d3ef2f.
 2. <https://www.insidehighered.com/news/2017/06/28/trump-administration-civil-rights-officials-promise-colleges-fairer-regulatory>
 3. <https://www.documentcloud.org/documents/3863019-doc00742420170609111824.html>.
 4. <http://www.nyssba.org/clientuploads/convention-2017/pdf/precon-law-brochure-08022017.pdf>

5. <https://www.nsba.org/events/nsba-council-school-attorneys>

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