

Title IX Litigation Alert

October 23, 2017

Key Points:

- An equal rights group and three individual plaintiffs have filed a civil suit in U.S. District Court in Boston against the Department of Education (ED) and Secretary of Education Betsy DeVos. The complaint alleges that the “Q&A on Campus Sexual Misconduct” (2017 Q&A), issued by the ED’s Office of Civil Rights (OCR) last month, violates numerous federal and state laws.
- The plaintiffs are asking the federal court to (a) set aside the 2017 Q&A in its entirety, and (b) prohibit the ED from requiring or permitting college and university compliance with the guidance contained in the document.
- The complaint also seeks a temporary restraining order, which, if granted on one or more of the federal claims, would stop the 2017 Q&A from going into effect nationwide while the suit is pending.



Department of Education Sued in Connection with Recently Issued Q&A on Campus Sexual Misconduct

A new civil suit against the ED and Secretary Betsy DeVos attacks the legality of the 2017 Q&A issued by the OCR last month in connection with the rescission of certain Obama-era Title IX guidance. The complaint, filed in U.S. District Court in Massachusetts by Equal Means Equal and three anonymous individuals, attacks the 2017 Q&A on some of the same grounds that Secretary DeVos herself cited for rescinding the prior guidance. The plaintiffs claim that the 2017 Q&A was issued “without observance of procedure required by law.” In a major policy [speech](#) on September 7, 2017, Secretary DeVos leveled similar criticisms against the now-rescinded guidance, calling it “policy by political letter,” and insisting that “the era of rule by letter is over.”

In addition to the procedural challenges to the 2017 Q&A, the plaintiffs also allege that the 2017 Q&A:

- violates Title IX by allowing schools to increase the burden of proof applied to Title IX proceedings concerning sexual misconduct to a “clear and convincing evidence” standard, which the lawsuit says is inconsistent with the evidentiary standard applied to other civil rights claims and therefore permits schools to treat Title IX claims differently on the basis of gender
- violates the right to free speech and the right to petition under the First Amendment insofar as the 2017 Q&A has a chilling effect on victims’ rights to report sexual misconduct and seek redress

- violates the equal protection laws of the Commonwealth of Massachusetts in permitting schools to discriminate based on gender and, in particular, to discriminate against female students.

Two of the individual plaintiffs are women who are currently complainants in active OCR Title IX investigations. The complaint alleges that OCR has declined to tell either of these anonymous plaintiffs whether the guidance contained in the 2017 Q&A will be applied to their cases. The third anonymous individual is a plaintiff in a civil lawsuit pending in Massachusetts Superior Court, alleging that Boston University violated Massachusetts law—including the Equal Protection Clause of the Massachusetts Constitution—by not complying with Title IX. The fourth plaintiff, Equal Means Equal, is identified in the complaint as a “national non-profit organization that advocates for sex/gender equality and fully equal rights for women.”

The plaintiffs are asking the court to vacate the 2017 Q&A in its entirety and stop the ED or Secretary DeVos from requiring that colleges and universities comply with the guidance in the document. They are also seeking an affirmative order from the court stating that the 2017 Q&A document is discriminatory and unlawful. They have asked the court for a temporary restraining order, which, if granted on one of the claims founded in federal law, would stop the 2017 Q&A from going into effect nationwide while the lawsuit is pending.

The case is *Equal Means Equal, et al. v. United States Department of Education, et al.*, No. 1:17-cv-12043 (D. Mass.).

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