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Universities will see increased flexibility in sexual assault investigation

By AARON MUDD amudd@bgdailynews.com Sep 23, 2017

Universities will have more flexibility in the standard they use for investigating campus sexual assaults following a move Friday by the U.S. Department of Education's Office for Civil Rights to withdraw Obama-era guidance on the matter.

The change rescinds guidance released in 2011 and then updated in 2014 that instructed universities to use a "preponderance of evidence" standard when responding to sexual assault claims, according to The Associated Press. New temporary guidelines allow colleges to choose between that standard and a "clear and convincing evidence" standard, which is harder to meet.

“The whole thing is a little suspicious since it’s coming from this administration,” said Kristi Branham, an associate professor and the director of WKU’s Gender and Women’s Studies program.

The temporary guidance will be in effect while the Education Department gathers comments from stakeholders and the public to write new guidance, according to the AP.

It follows a speech given by Education Secretary Betsy DeVos earlier this month in which DeVos described the current process as a “disservice to everyone involved,” including victims and accused students who’ve had their due process rights violated.

“This interim guidance will help schools as they work to combat sexual misconduct and will treat all students fairly,” DeVos said in an Office for Civil Rights news release.

“Schools must continue to confront these horrific crimes and behaviors head-on. There will be no more sweeping them under the rug. But the process also must be fair and impartial, giving everyone more confidence in its outcomes.”

Responding to the change, Branham said she thought it was a step in the wrong direction. She said the guidance issued during the Obama administration has helped bring about many positive changes on college campuses, including WKU. Branham said she’s benefited from the additional training WKU employees have been required to have.

“I thought that was a really great change and I learned things from that,” she said.

Students can choose whether to report assault claims to the police or have them investigated through universities under federal, anti-sex discrimination law, known as Title IX.

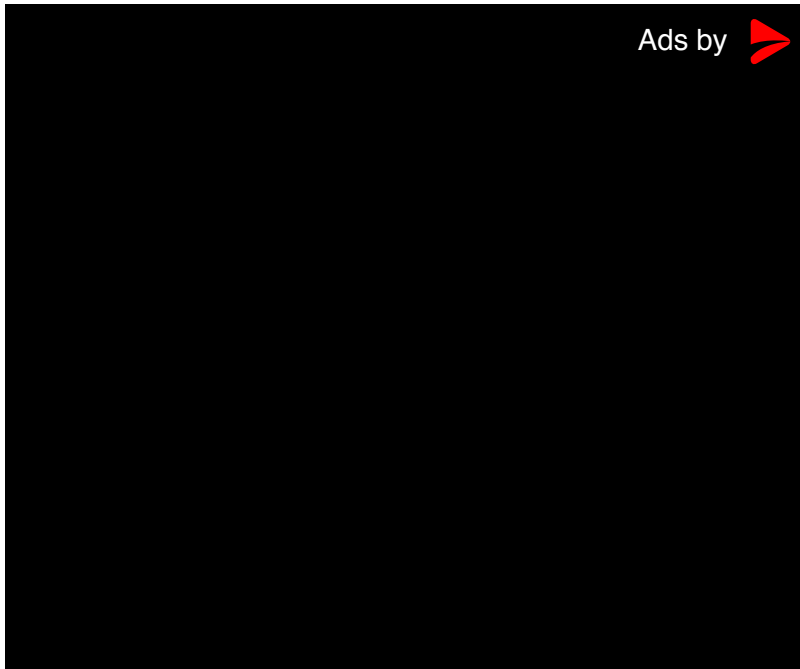
Andrea Anderson, WKU’s assistant general counsel and Title IX coordinator, responded in a recent interview to DeVos’ speech about how fairly colleges investigate and address sexual misconduct.

Anderson said it hasn’t been her experience that the current approach for investigating campus sexual assault is a disservice to the rights of the accused.

“I’m not opposed to having more detailed guidelines about due process rights,” Anderson said, but also stressing that Title IX isn’t the guide colleges have for protecting due process rights.

“There are other federal laws that we have to comply with that have some overlap with Title IX,” she said, citing the Violence Against Women Act as one example.

Under WKU’s Title IX policy and procedures, accused students are notified immediately and told, in writing, the time and place of a conference held by a University Disciplinary Committee at three days before the hearing. The policy states that a decision will be made about whether a violation of misconduct occurred and sanctioned if appropriate.



While the process doesn’t allow for direct cross-examination of accusers, Anderson said accused students can present questions for the accuser to answer.

“We really strive to have parity in our proceedings,” said Anderson, adding that each party has equal rights.

Branham is skeptical of claims that accused students’ due process rights are being violated on a massive scale, and described the concern as a component of rape culture that perpetuates sexual violence.

“I don’t see where there’s a large number of universities that are being investigated for not following due process,” she said.

When asked to respond to the new interim guidance provided by the Education Department on Friday, Anderson referred to a statement from the Association of Title IX Administrators.

“OCR guidance on Title IX to higher education and preK-12 since 2011 has been both a blessing and a curse, with many benefits, some confusion, and a few unintended consequences,” the statement said. “Most importantly, OCR focused colleges’ attention on the critical issue of sexual violence, and the importance of implementing clear and equitable policies and grievance procedures.

“Regardless of what happens with OCR guidance, it is clear that this focus is not going away. Advocacy groups, activists, and the media will keep the pressure on to ensure that there is no tolerance for mishandling allegations of sexual violence, and that colleges do not roll back protections. The pre-2011 days are, indeed, gone for good.”

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