



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

August 23, 2018

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Mr. Hahnel and Ms. Jones:

This letter responds to your June 27, 2018 Information Quality Act Request (IQA Request) regarding the 2017 Dear Colleague Letter (2017 DCL) issued by the U.S. Department of Education (Department), Office for Civil Rights (OCR). The 2017 DCL withdrew earlier OCR guidance on Title IX and sexual violence<sup>1</sup>, and referenced a Q&A on campus sexual misconduct, issued contemporaneously with the DCL.

The Department is committed to ensuring that the information it disseminates and uses for policymaking purposes is both useful and accurate. In 2002, in response to the Information Quality Act (IQA), the Department adopted its Information Quality Guidelines (the Guidelines) to describe the Department's policies and procedures for reviewing and verifying the quality of information disseminated to the public.<sup>2</sup> The Guidelines were developed in conformance with the Office of Management and Budget's (OMB) published guidelines, and were approved by OMB.

The Guidelines place the burden of proof on the party seeking a correction of information. Specifically, the Guidelines require:

- A detailed description of the information that the requestor believes does not comply with the Department's or OMB's guidelines, including the exact name of the data collection or report, the disseminating office and author, if known, and a description of the specific item in question;

<sup>1</sup> Specifically, the Dear Colleague Letter on Sexual Violence, dated April 4, 2011, and the 2014 Questions and Answers on Title IX and Sexual Violence, dated April 29, 2014. You refer to these documents as "Prior Guidance" in your IQA Request.

<sup>2</sup> <https://www2.ed.gov/policy/gen/guid/iq/infoqualguide.pdf>.

- Potential impacts on the requestor from information identified for correction (i.e., describe the requestor’s interest in the information and how the requestor is affected by the information in question); and
- An explanation of the reason(s) that the information should be corrected (i.e., describe clearly and specifically the elements of the information guidelines that were not followed).

In your IQA Request, you indicate that the 2017 DCL does not comply with the Department’s Guidelines because it contains “various factual assertions about procedures that schools use or have used to resolve Title IX complaints,” and includes no citations for these assertions.<sup>3</sup> In particular, in your IQA Request, you reference six statements from the 2017 DCL that you state “purport to contain factual information about what schools were doing prior to 2011 or that the Prior Guidance ‘result[ed]’ in or ‘led to’ particular effects.”<sup>4</sup> You request that the Department first correct the 2017 DCL by “retracting the assertions containing unsupported factual information,” and then “[unwind[...]] the rescission altogether” because the decision to withdraw the Prior Guidance, as announced in the 2017 DCL, was based on “unsupported factual information.”<sup>5</sup> We have carefully reviewed your correction request, and decline to either amend or withdraw the 2017 DCL and, furthermore, decline to reverse the rescission of the Prior Guidance.

Prior to the issuance of the 2017 DCL, Department leaders engaged in ongoing discussions with students, parents, survivors, accused students, school administrators, advocacy groups, attorneys, and policy experts to learn about their experiences with Title IX, and to hear their views on how best to assist schools in fulfilling their obligations under Title IX.<sup>6</sup> In addition to engaging in these listening sessions, the Department also considered a wide range of other materials, including Title IX case resolutions, federal case law, and reports and recommendations issued over the past several years by legal scholars, commentators, and organizations.<sup>7</sup> After

<sup>3</sup> IQA Request at 1.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 9.

<sup>6</sup> See, e.g., Department of Education press release announcing Title IX listening sessions (July 13, 2017), <https://www.ed.gov/news/press-releases/secretary-devos-host-title-ix-listening-sessions>.

<sup>7</sup> See, e.g., *Doe v. Brandeis Univ.*, 177 F.Supp.3d 561, 572 (D. Mass. 2016) (noting that “substantially spurred by [OCR],” universities nationwide “have adopted procedural and substantive policies intended to make it easier for victims of sexual assault to make and provide their claims and for the schools to adopt punitive measures in response” and finding that Brandeis “appears to have substantially impaired, if not eliminated, an accused student’s right to a fair and impartial process.”); Open Letter from Members of the Penn Law School Faculty, *Sexual Assault Complaints: Protecting Complainants and the Accused Students at Universities*, Wall St. J. Online (Feb. 18, 2015), [http://online.wsj.com/public/resources/documents/2015\\_0218\\_upenn.pdf](http://online.wsj.com/public/resources/documents/2015_0218_upenn.pdf) (expressing concern that universities felt pressured by OCR to adopt procedures that do not afford fundamental fairness and specifically noting that the hearing process adopted by Penn falls short of ensuring fundamental fairness); Jacob Gerson and Jeannie Suk, *The Sex Bureaucracy*, 104 Calif. L. Rev. 881 (2016); ABA Criminal Justice Section Task Force on College Due Process Rights and Victim Protections: Recommendations for Colleges and Universities in Resolving Allegations of Campus Sexual Misconduct (June 2017) at 3, <https://www.americanbar.org/content/dam/aba/publications/criminaljustice/2017/ABA-Due-Process-Task-Force-Recommendations-and-Report.authcheckdam.pdf> (noting that “courts across the country have started finding that aspects of the procedures and practices used at a number of schools to investigate and adjudicate reports of sexual misconduct violate principles of fundamental fairness, and in the case of public institutions, procedural due process”); American College of Trial Lawyers Task Force on the responses of Universities and Colleges to

considering these and other materials, as well as the views of many interested parties, the Department made the decision to issue the 2017 DCL and engage in a rulemaking process.

Separately, your IQA Request references four statements that use the phrase “many schools” and alleges that these statements are incorrect because the term “many” means a large percentage figure or a majority.<sup>8</sup> Specifically, your IQA Request alleges that these statements in the 2017 DCL impliedly reference “schools numbering in the thousands, or even the majority of such schools.”<sup>9</sup> Similarly, your IQA Request also references a statement in the DCL that uses the phrase “many students.”<sup>10</sup> However, you cite to no definition codified by either the Department or OMB for the term “many,” and the 2017 DCL never uses the term majority.

## Appeal

You may file an appeal of this response within thirty (30) calendar days of your receipt of this response. If you choose to submit an appeal, you must include a copy of your initial IQA Request, a copy of this decision, and a letter explaining why you believe the Department’s decision was inadequate, incomplete, or in error. The appeal may be sent to:

Chief Privacy Officer  
Office of Management  
U.S. Department of Education  
RE: Information Quality Request  
Room 2E215, LBJ  
400 Maryland Avenue, SW  
Washington, DC 20202

Alternatively, you may email an appeal to the following address: [OMInformationQualityRequest@ed.gov](mailto:OMInformationQualityRequest@ed.gov). If sending by email, please indicate that you are submitting an Information Quality Appeal in the subject line of the e-mail, and include all information specified for an appeal submitted by regular mail.

Thank you for playing a role in ensuring the Department’s information quality. If you have any questions, please feel free to contact OCR at (800) 421-3481 or via email at [ocr@ed.gov](mailto:ocr@ed.gov).

Sincerely,



Kenneth L. Marcus  
Assistant Secretary for Civil Rights

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Allegations of Sexual Violence, White Paper on Campus Sexual Assault Investigations (March 2017) at 18, [https://www.actl.com/docs/default-source/default-document-library/position-statements-and-white-papers/task\\_force\\_allegations\\_of\\_sexual\\_violence\\_white\\_paper\\_final.pdf](https://www.actl.com/docs/default-source/default-document-library/position-statements-and-white-papers/task_force_allegations_of_sexual_violence_white_paper_final.pdf) (expressing the belief that “OCR has imposed on colleges and universities an investigative and adjudicative system that does not ensure basic fairness for all students” and advocating for “a system that encompasses essential elements of fairness.”).

<sup>8</sup> IQA Request at 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 6.