

(En)Forcing a Foolish Consistency?: A Critique and Comparative Analysis of the Trump Administration’s Proposed Standard of Evidence Regulation for Campus Title IX Proceedings

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Prevention of sexual assault and sexual harassment are major challenges at United States colleges and universities today. In recent years a vigorous law and policy debate emerged within the higher education community about Title IX and whether the “preponderance of evidence” or “clear and convincing” evidence represents the more appropriate standard of evidence in campus sexual violence and sexual harassment disciplinary procedures. During the Obama administration, the Office for Civil Rights in the U.S. Department of Education issued a 2011 “Dear Colleague” letter recognizing that the preponderance of evidence standard was the appropriate standard for Title IX investigations. The Trump administration’s Office for Civil Rights rescinded this earlier guidance and in November 2018 issued a notice of proposed rulemaking regarding Title IX regulations.