



EDUCATION LAW UPDATE

NEW TITLE IX REQUIREMENTS ON THE HORIZON

Approximately two years after adopting Title IX regulations that significantly altered the scope and implementation of Title IX by schools, the U.S. Department of Education issued proposed new Title IX regulations in June 2022. These proposed regulations are not yet law – they are only *proposed* and are subject to revision, following a public comment period, which extends through September 12, 2022. The current rules will remain in effect until the public comment period closes and the Department of Education officially adopts new regulations.

Although some of the provisions may be modified in response to public input, most of the proposed rules will likely remain substantively unchanged. Below are some of the key revisions reflected in the proposed rules. This summary is not an exhaustive but gives you a sense of how your Title IX obligations, including your grievance procedures, might need to be modified in the near future.

- **Expanded scope of Title IX regulations.** Currently, the Title IX regulations and the grievance procedures set forth in the regulations only apply to “sexual harassment,” which is narrowly defined. The proposed regulations would expand the regulations’ applicability to all sex-based harassment, including harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions (for both students and employees), sexual orientation, gender identity, and harassment that creates a hostile environment.
- **Expanded definition of “hostile environment.”** Under the proposed regulations, a “hostile environment” would be any unwelcome sex-based conduct that is sufficiently severe *or* pervasive that it denies *or limits* a person’s ability to participate in an educational program or activity. If adopted, this would be a significant expansion of the definition found in the current



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regulations, which prohibits conduct that is severe *and* pervasive and *denies* a person's ability to participate in an educational program or activity.

- **Expanded requirements for responding to sex discrimination.** The proposed regulations would require schools to take prompt and effective action to end any prohibited sex discrimination, prevent its recurrence, and remedy its effects. The current regulations only require schools to respond in a manner that is not deliberately indifferent to any sexual harassment about which they have actual knowledge.
- **Revised grievance procedures.** The proposed regulations may also necessitate changes to your procedures themselves. Among other changes, the proposed regulations would require your grievance procedures to be revised to: (1) apply to off-campus behavior in certain circumstances; (2) make an informal resolution available, even when a formal complaint has not been filed; (3) provide the parents of K-12 students rights to participate in the grievance process; and (4) protect the privacy of the parties and witnesses to the extent possible. One welcome change to the regulations would be the return of the "single investigator" model – the decisionmaker could now be the same person as the Title IX Coordinator or the investigator.
- **Modified Title IX Coordinator's duties.** In addition to their current reporting and related functions, Title IX Coordinators under the proposed regulations would be required to monitor for any barriers to reporting information that may be a violation of Title IX, among other duties.

We anticipate that any new regulations will not take effective for at least 6-9 months, as the Department of Education must consider public comments and then determine whether to modify the proposed regulations in response to those comments. You can review the complete set of proposed regulations [here](#). The link to the proposed regulations also includes information about how to submit public comments.

As we did with the current Title IX regulations, we will prepare a form Title IX Policy that meets the requirements of the new Title IX regulations for your purchase once the regulations have been finalized and adopted. Please let us know if you have any questions about the proposed regulations, and we will continue to keep you updated!



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