



 **LIVE WEBINAR**

UNDERSTANDING THE NEW TITLE IX REGULATIONS

Title IX of the Education Amendments of 1972 (Title IX) was signed into law more than 50 years ago. It prohibits sex-based discrimination in any school or any other education program that receives funding from the federal government. In July of 2022, the Biden Administration released proposed regulations. The US Department of Education subsequently received and reviewed more than 240,000 comments from the public on those proposed regulations. In April 2024, the Department of Education released updated final regulatory guidance that affects the way Title IX is implemented in K-12 schools and on postsecondary campuses nationwide starting August 1, 2024.

Understanding the Newest Title IX Regulations

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Agenda

- Title IX: Final Anti-Harassment Rule Changes
- Legal Challenges to Final Rules
- Where that Leaves Us

Final Title IX Regulations

- Released April 19, 2024
- **Effective August 1, 2024**
- Final Title IX Regulations address anti-harassment provisions only

Title IX Sports Regulations

- Proposed rule issued April 6, 2023
- USDOE's position is that April 2024 Final Regulations do not apply to sports
- The Department's rulemaking process is still ongoing for a Title IX regulation related to athletics. The Department proposed amendments to its athletics regulations in April 2023, and received over 150,000 public comments.

Non-Exhaustive Review of the Final Title IX Regulations

1. Expands and clarifies definitions
2. Introduces “*de minimis* harm” standard
3. Grievance process changes

Definition Changes

- Expanded definition of “complaint” leading to application of more robust procedures and safeguards to cover “sex discrimination” not just “sexual harassment”
- “Scope” includes “discrimination on the basis of sex” which covers discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity
- Definition of “formal complaint” removed from regs
- Creation of “Confidential employees” as being someone separate from the Title IX Coordinator (e.g., counselor or medical provider whose communications are privileged or confidential)

Definition Changes

- Definition of “education program or activity” revised to ensure conduct occurring outside education programs and activities or outside the U.S. are included if they contribute to a hostile environment
- Provides more comprehensive guidance on “supportive measures”
- Adds requirements for considering “supportive measures” when the complainant or respondent is a student with a disability

De Minimis Harm Standard

- The final regulations clarify that a school must not separate or treat people differently based on sex in a manner that subjects them to more than de minimis harm, except in limited circumstances permitted by the statutory text and specifically cited regulations relating to housing and athletics

***De Minimis* Harm Standard**

Definition of *de minimis* harm:

Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than *de minimis* harm on the basis of sex.

Grievance Process Changes: No Complaint is Filed or Withdrawn Complaint

Title IX Coordinator must consider, at a minimum, the following factors:

1. The complainant's request not to proceed with initiation of a complaint;
2. The complainant's reasonable safety concerns regarding initiation of a complaint;
3. The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
4. The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
5. The age and relationship of the parties, including whether the respondent is an employee of the recipient;
6. The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
7. The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
8. Whether the recipient could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures

Various Grievance Process Changes

1. Provides explicit permission for complaints to be made by students, employees, parents/guardians, the Title IX Coordinator, and any other person other than a student or employee who was participating or attempting to participate in the education program or activity at the time of the alleged sex discrimination
2. Permits use of a Decisionmaker who was / is also the Title IX Coordinator or investigator (so long as there is still no conflict of interest or bias) – “single investigator model”
3. No longer requires notice of a right to an advisor or that an advisor must be permitted to participate (right to an advisor is in postsecondary requirements only).

Various Grievance Process Changes

4. No requirement that there be an Investigator's Report exchanged. All that is required is the right to respond to the evidence (as accurately described or as reviewed by the parties).
5. No right of parties to ask questions or exchange questions with other parties / witnesses at a hearing, as was previously required—now only need a “process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.”

Various Grievance Process Changes

6. No specific requirement for what must be in the Decisionmaker's decision other than: notice of "whether sex discrimination occurred . . . the rationale for such determination, and the procedures and permissible bases for . . . appeal."
7. Expands upon the requirement to provide the parties with the evidence and sets forth specific procedural requirements for doing so, explicitly permitting access to the evidence only and not necessarily requiring that control of the evidence be relinquished to the parties

Judicial Challenges

- Multiple lawsuits filed to challenge the 2024 Title IX regulations:
 1. April 29, 2024: LA, MS, MT, ID, and 17 school boards in LA filed lawsuit in the Western District of Louisiana
 - **Injunction Granted June 13, 2024**
 2. April 29, 2024: AL, FL, GA, SC and several special interests groups filed lawsuit in the Northern District of Alabama
 - Oral arguments occurred July 1, 2024
 3. April 29, 2024: Texas along with two University of Texas professors filed a third lawsuit in the Northern District of Texas
 - Briefing in process
 4. April 30, 2024: KY, TN, OH, IN, VA, and WV filed a challenge in the Eastern District of Kentucky
 - **Injunction Granted June 17, 2024**
 5. May 14, 2024: KS, AK, UT, WY, and other parties filed a challenge in federal court in Kansas
 - **Injunction Granted July 2, 2024**

Where that Leaves Us

- Review anti-harassment policy and procedures already offered; consider options in light of court challenges in your jurisdiction
- Contains guidance for Title IX coordinators, investigators, and decision-makers that is helpful for practical application under new and existing rules
- Expect future ongoing legal battles and clarification regarding sports, facilities, and accommodations