

U.S. DEPARTMENT OF EDUCATION ANNOUNCES LONG-AWAITED FINAL TITLE IX REGULATIONS

Hodgson Russ Education Alert
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After an almost two-year rulemaking process, the U.S. Department of Education (“Education Department”) published the final version of the highly anticipated Title IX Regulations on April 19, 2024. The final regulations, which will not take effect until August 1, 2024, do not make any significant departures from the proposed regulations initially released by the Education Department back in 2022. Elementary schools, secondary schools, and post-secondary institutions that receive federal funding should be aware of how the final regulations will impact their policies and practices. Below is a high level-summary of the most notable changes.

The Education Department’s final regulations impose new rules and standards for institutional response to allegations of sexual harassment. Most significantly, the final regulations expand Title IX’s protections against sex discrimination to include sexual orientation, gender identity, sex stereotypes, sex characteristics, pregnancy or pregnancy-related conditions, parental status, familial status, and marital status.

The final regulations also modify the burden of proof required to successfully plead a claim of sexual harassment under Title IX, ultimately making Title IX more complainant-friendly. The 2020 regulations required a complainant to prove that he or she was subject to sexual harassment that could be characterized as “severe, pervasive, and objectively offensive.” The new regulations broaden the standard to require a complainant to only prove that the harassment was either “severe or pervasive.”

Schools will have increased responsibility under the final regulations to ensure a prompt response to all allegations of sexual harassment. The regulations require schools to respond to all complaints of sex discrimination with a “fair, transparent, and reliable process that includes trained, unbiased decisionmakers.” With this framework in place, schools have more flexibility under the new regulations to conduct investigations that “account for variations in school size, student populations, and administrative structures.” Schools may offer an informal resolution process for sexual discrimination claims, unless the complaint includes allegations that an employee engaged in sex-based harassment of a student, or such informal process conflicts with federal, state, or local law.

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Significantly, the obligation to investigate Title IX claims under the new regulations extends to conduct that occurs off school campus. In this regard, the authority to act on a Title IX claim is based on “whether the [school] has disciplinary authority over the respondent’s conduct in the context in which it occurred.”

Schools will also be required to offer “appropriate” supportive measures necessary to restore or preserve an involved party’s access to the school’s education program and support during the grievance procedures. When a student with disabilities is involved in an investigation, the Title IX Coordinator must consult with the CSE or 504 team to assure that the student receives necessary special education instruction and support.

The final regulations’ other key changes include the following:

1. Pregnant students, employees, and applicants will receive new rights and protections under the final regulations. Pregnancy, childbirth, termination of pregnancy, lactation, related medical conditions, and/or recovery from any of the aforementioned conditions will be protected characteristics under Title IX.
2. Schools will be required to provide reasonable modifications for pregnancy-related conditions, reasonable lactation break time where applicable, as well as a private space for lactation.
3. LGBTQI+ individuals will also receive expanded protections under Title IX. The final regulations specifically prohibit discrimination based on sexual orientation, gender identity, and sex characteristics in any federally funded education programs.
4. Sex-separate facilities are permissible, so long as the facilities are comparable and constructed in a manner that does not impose more than a “de minimis” harm to affected students. Importantly, the regulations make clear that preventing a student from participating in school activities, including sex-separate activities, in a manner that is consistent with their gender identity causes the student more than a de minimis harm.
5. Schools are prohibited from disclosing personally identifiable information obtained in connection with Title IX, absent written consent.
6. The regulations provide enhanced anti-retaliation protections for students, employees, or any other covered individuals who reported sexual harassment or otherwise exercised their protected rights under Title IX. The final regulations specify that schools must protect students from peer retaliation at the hands of other students.

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7. Schools are required to provide annual training for all employees on when they must notify the Title IX Coordinator about conduct that may constitute sex discrimination, as well as other information regarding their reporting obligations under Title IX.
8. Schools must clearly and effectively inform all relevant individuals, including students, employees, and applicants, of their non-discrimination policies and procedures.

Notably, the final regulations do not offer additional insights on transgender students' participation in athletics. The final rule on this issue is anticipated after November 2024.

This alert is only a broad overview of the new Title IX regulations. More detailed information will be soon forthcoming. If you have any questions about your institution's obligations under the final Title IX regulations, please contact any member of the [Hodgson Russ Education Practice](#).

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