



U.S. Department of Education Issues Long-Awaited Revised Title IX Regulations

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This morning, the U. S. Department of Education released the long-awaited [Final Title IX Regulations](#), which become effective on August 1, 2024. The final regulations strengthen several major provisions from the current regulations and repeal others. A brief overview of these changes is provided below.

Streamlined Investigation Process

Schools now have the option to use a single-investigator model. This was a common investigation model prior to the 2020 Title IX Regulations, which prohibited a single investigator from handling a complaint. Schools may choose to use the single-investigator model in some, but not all, cases if it is clear in their grievance procedure when this model will be utilized. This enables schools to meet their Title IX obligations while providing appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures.

Further, the new Title IX regulations reflect a framework that accounts for differences in the age, maturity, needs, and level of independence of students in various educational settings. While some requirements apply to all education settings, the regulations also set forth specialized requirements tailored to post-secondary schools.

For example, the new regulations remove the post-secondary requirement of live hearings, which permitted students to cross-examine one another through representatives. Live hearings are still allowed under the new regulations, but they are optional and carry new limits. Students must now be given the option to participate in the hearing remotely, and schools must bar questions that are “unclear or harassing.” As an alternative to live hearings, college officials are permitted to interview students separately, allowing each student to suggest questions and get a recording of the

responses.

Finally, the regulations also require schools to use the “preponderance of the evidence” standard of proof unless the school uses the “clear and convincing evidence” standard in all other comparable proceedings, including proceedings related to other discrimination complaints. The prior regulations permitted a school to choose between the two standards regardless of the standard applied in other comparable proceedings.

Broadened Definition of Harassment

Chief among the changes is a wider definition of sexual harassment. Under the revised Title IX regulations, schools now must address any unwelcome sex-based conduct that is “subjectively and objectively offensive and is so severe or pervasive” that it limits a student’s equal access to an education. The prior regulations required conduct to be severe **and** pervasive. Severe conduct pertains to a single violation, whereas pervasive conduct requires repeated behavior. This change, although seemingly minor, broadens the definition of harassment.

Extending *Bostock* Holding to Protect LGBTQ+ Students and Employees from Discrimination Under Title IX

The regulations require schools to protect students in federally funded education programs from all sex discrimination and harassment based on sexual orientation, gender identity, and sex characteristics. This change applies the U.S. Supreme Court’s decision in *Bostock v. Clayton County*, holding that sex discrimination in employment under Title VII applies to gender identity and sexual orientation. The regulations also recognize that preventing someone from participating in school activities, including sex-separate activities consistent with their gender identity, causes that person more than *de minimis* harm.

Notably, the Final Title IX Regulations do **not** include new rules governing eligibility criteria for athletic teams, which would be

applicable to transgender athletes. The Department of Education does, however, reiterate that it intends to issue a separate final rule to address Title IX's application to sex-separate athletic teams.

Protections from Discrimination Based on Pregnancy

The regulations strengthen protections related to students, employees, and applicants that are pregnant or have related conditions. Specifically, the regulations strengthen requirements that schools that provide reasonable modifications for students, based on pregnancy or related conditions, allow for reasonable break time for employees' lactation and access to a clean, private lactation space for students and employees.

Training Requirements

The regulations require schools to provide clear information and training on when their employees must notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination and how students can seek confidential assistance or make a complaint of sex discrimination requiring the school to initiate its grievance procedure.

Frost Brown Todd will provide additional guidance on this issue in the near future. If you have any questions about the impact of these changes, please contact the authors or any attorney with the firm's [Government Service Practice Group](#).

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