

Department of Education Releases Final Rule Amending Title IX Regulations

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Meet the Authors



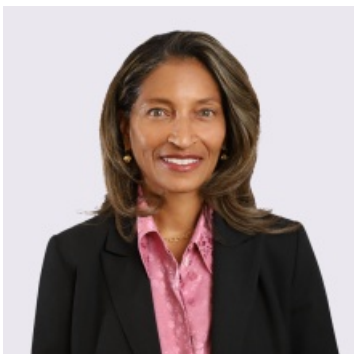
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The U.S. Department of Education has released its final amendments of the regulations to Title IX of the Education Amendments of 1972 regarding how educational institutions must handle allegations of sexual discrimination and sex-based harassment. The new regulatory requirements will go into effect Aug. 1, 2024.

The new regulatory requirements will replace the 2020 amendments, which will remain in effect until Aug. 1, 2024.

Key changes between the 2020 and 2024 Title IX regulations include:

- Post-secondary institutions are not required to conduct live determination hearings but have the option.
- At post-secondary institutions, a complaint filed by an individual or the Title IX coordinator is no longer required to trigger a post-secondary institution's duty to respond. A post-secondary institution must respond promptly and effectively when it has knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity. Further, non-confidential employees, depending on their leadership authority, must either report conduct that may reasonably constitute sex discrimination to the Title IX coordinator or provide the reporter with the Title IX coordinator's contact information and information about filing a complaint.
- As opposed to any alleged conduct occurring outside the United States being excluded, a school must respond when a sex-based hostile environment is alleged to have occurred under its education program or activity even when some conduct occurred outside the institution's program or activity or outside of the United States.

Other provisions include:

- "Sex-based harassment" includes quid pro quo harassment, specific sexual offenses (sexual assault, dating violence, domestic violence, and stalking), *and* hostile environment harassment (unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe and pervasive that it limits or denies a person's ability to participate in or benefit from the institution's education program or activity).
- The term "sex discrimination" includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

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Related Services

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- An institution must not separate or treat any person differently based on sex in a manner that subjects them to more than de minimis harm, and preventing a person from participating in an education program or activity consistent with their gender identity subjects that person to more than de minimis harm.
- An institution must ensure it does not treat students, employees, or applicants differently based on sex in connection with parental, family, or marital status.
- Schools are to ensure they provide equal access to an education program or activity by providing reasonable modifications for students related to pregnancy and related conditions, reasonable break time for lactation for employees, and lactation space for students and employees.
- Schools are obligated to prohibit retaliation (including peer retaliation) and must respond to conduct that reasonably may constitute retaliation using the same procedures that it uses for other forms of sex discrimination.
- Title IX coordinators have the added responsibility of monitoring an institution's education program or activity for barriers to reporting conduct that may reasonably constitute sex discrimination and take steps to address such barriers.
- Revised grievance procedures for sex discrimination complaints to include:
 - Reasonable steps to protect privacy of parties and witnesses during the grievance procedures;
 - If an institution adopts procedures that apply to the resolution of only some complaints, articulate principles for how the institution will determine which procedures apply;
 - Permitted consolidation of complaints in certain circumstances;
 - A process for assessing credibility when credibility is in dispute and relevant;
 - Use of a preponderance of the evidence standard of proof to determine whether sex discrimination occurred, unless the clear and convincing evidence standard is used in all other comparable proceedings, in which case that standard may be used;
- Grievance procedures for sex-based harassment complaints involving a college or university student must include:
 - A process for assessing credibility when credibility is in dispute and relevant, including questioning a party or witness during individual meetings or in a live hearing; and
 - Written notice of delays in an investigation.

Jackson Lewis' Education Group is well-versed in Title IX issues and are continuing to analyze the new regulations and ongoing developments in this area.

Institutions should stay tuned for additional guidance from Jackson Lewis, including in-depth legal analyses and webinars devoted to the new regulations and the practical implications. Please contact the Jackson Lewis attorney with whom you regularly work with any questions about the new regulations, training, and other Title IX issues.

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