

Legal Update Article

Department of Education Takes First Step Toward Release of Proposed Amendments to Title IX Regulations

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The U.S. Department of Education’s Office for Civil Rights (OCR) has [announced](#) that it has sent its draft proposed amendments to Title IX of the Education Amendments of 1972 to the Office of Information and Regulatory Affairs (OIRA) for internal review. Submission of the Notice of Proposed Rulemaking (NPRM) is the first formal step in the federal regulation revision process.

The announcement highlights the Department’s focus on advancing efforts as set out in President Joe Biden’s executive orders on guaranteeing an educational environment free from sex discrimination and preventing and combating discrimination based on gender identity and sexual orientation. These prioritization efforts likely are reflected in the Title IX NPRM, as they have guided the Department throughout the comprehensive review process of the 2020 Title IX amendments. (*See* our article, [U.S. Department of Education Will Protect LGBTQ+ Students.](#)) Changes to the procedural requirements for handling complaints, particularly in higher education, are expected.

The 2020 regulations remain in effect while the rulemaking process is ongoing; however, the Department noted that, following a [ruling](#) from a federal district court, OCR has ceased enforcement of the Title IX regulatory requirement regarding the prohibition against relying on statements not subject to cross-examination at a live hearing. Schools should continue to ensure Title IX compliance according to the language of the 2020 regulations and may refer to the Department’s [Questions and Answers on the Title IX Regulations on Sexual Harassment \(July 2021\) and Appendix](#) for compliance guidance.

Assistant Secretary for Civil Rights Catherine Lhamon noted, “[T]his submission is part of our comprehensive commitment to ensure that schools are providing students with educational environments free from sex discrimination, including sexual violence and discrimination based on sexual orientation and gender identity—it is one step of many taken and more to come.”

Review of the NPRM by OIRA and the Department of Justice may take up to three months. The purpose of internal reviews is to conduct a cost-benefit analysis and promote public accountability related to the proposed regulations. Following this review, the NPRM will be published in the *Federal Register*. Once the NPRM is published, members of the public will have the opportunity to provide comments on the proposed preamble and regulations.

The Jackson Lewis Higher Education Team is well-versed in Title IX issues and continues to analyze ongoing developments in this area. Please contact a Jackson Lewis attorney with any questions regarding the Department of Education update, Title IX policies, and any other Title IX developments.

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