

U.S. Department of Education Proposes Amendments to Title IX Regulations

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In conjunction with the [50th anniversary of Title IX](#), the U.S. Department of Education has released its [proposed amendments](#) to the regulations for Title IX of the Education Amendments of 1972 for public comment.

According to Assistant Secretary for Civil Rights Catherine E. Lhamon, “The proposed regulations reflect the Department’s commitment to give full effect to Title IX, ensuring that no person experiences sex discrimination in education, and that school procedures for addressing complaints of sex discrimination, including sexual violence and other forms of sex-based harassment, are clear, effective, and fair to all involved.”

The proposed regulations make the following key changes to existing Title IX regulations:

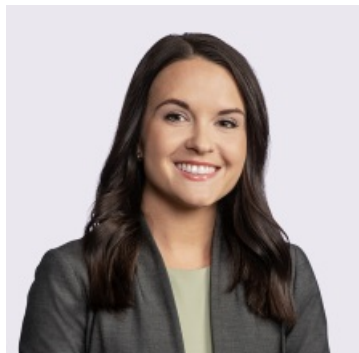
- Live hearings will no longer be required at the postsecondary level; schools can determine what fair and reliable process works best for its community, including use of a single-investigator model.
- Although a live hearing is not required, a decision-maker must assess the credibility of parties and witnesses through live questioning.
- A recipient would be required to address sex-based discrimination in its education program or activity, including when sex-based discrimination occurred outside the recipient’s education program or activity or outside the United States.

The proposed regulations clarify:

- Title IX’s prohibition on discrimination based on sex applies to discrimination based on sexual orientation and gender identity, as well as sex stereotypes, sex characteristics, and students who are pregnant or experiencing pregnancy-related conditions.
- Preventing someone from participating in school programs and activities consistent with their gender identity would cause harm in violation of Title IX, except in some limited areas set out in the statute or regulations.
- A framework will be provided tailored to sex-based harassment complaints at postsecondary institutions, taking into account students’ age, maturity, needs, and level of independence.

Under the proposed rules schools must continue to:

- Treat complainants and respondents equitably.
- Ensure Title IX coordinators, investigators, decision-makers, and facilitators of an informal resolution process do not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- Provide a grievance procedure that gives the parties an equal opportunity to present relevant evidence and respond to the relevant evidence of other parties.



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- Use the preponderance-of-the-evidence or the clear-and-convincing-evidence standard in all other comparable proceedings, including other discrimination complaints, in which case the school may use that standard in determining whether sex discrimination occurred.
- Not impose disciplinary sanctions under Title IX on any person, unless it determines that sex discrimination has occurred.

Under the proposed rules, school have the option of continuing to:

- Provide informal resolution for resolving sex discrimination complaints.

The Department also announced that it will release a separate notice of proposed rulemaking to address whether and how the Department should amend the Title IX regulations to address students' eligibility to participate on a particular male or female athletics team.

The public may submit comments for 60 days from the date of publication in the *Federal Register*.

The Department also issued a [Fact Sheet](#) regarding the proposed 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. Please also visit the Jackson Lewis website for additional updates regarding the proposed Title IX regulations.

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