

# Three Key Takeaways from National Association of College and University Attorneys Annual Conference

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Bringing together general counsel, Title IX coordinators, equity directors, ethics officers, and other key administrators, along with outside counsel, the National Association of College and University Attorneys (NACUA) 2022 annual conference provided an opportunity to contemplate the impact of the U.S. Department of the Education's release of the Notice of Proposed Rulemaking (NPRM), recent and anticipated U.S. Supreme Court decisions, and a host of other issues.

Here are a few takeaways from the conference:

### 1. Institutions Gear Up for Title IX Changes

As one speaker described it, [the new proposed Title IX regulations](#) are more akin to remodeling a house than a move to a new home in a new city. In other words, the proposed regulations follow the framework of the 2020 regulations, but with broadened scope and definitions. For example, the new regulations clarify that institutions must respond to allegations of sex discrimination, including allegations of sexual assault *and* other harassing conduct based on sex. The proposed regulations also define sex discrimination to include severe *or* pervasive conduct. In addition, the proposed rules provide that Title IX jurisdiction extends outside the United States, thereby covering an institution's study abroad programs. The proposed regulations also remove the postsecondary live-hearing requirement and appear to permit institutions to follow a more traditional Title VII approach for employee-employee incidents. As the country marks [the 50<sup>th</sup> anniversary of Title IX](#), many attendees seemed to welcome the proposed clarifications and changes.

### 2. Ignoring the Millennial Debate May Lead to Unintended Consequences

Millennial and Gen Z students and employees tend to challenge norms and seek redress more frequently than their Baby Boomer and Gen X counterparts. Recognizing this difference and understanding how it may affect those individuals' responses to certain circumstances can help the institution avoid tension on campus and, ultimately, litigation. Noting that no one generation is entitled to deference or is "correct," speakers encouraged institutions to conduct in-house assessments and engage in dialogues to explore the differences between generations as another facet of diversity, equity, and inclusion.

### 3. Preserving and Increasing Racial Campus Diversity May Be Challenging

Institutions are concerned that racial diversity on their campuses will decline if

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the U.S. Supreme Court holds that university admission practices that include race as a factor are unconstitutional. Speakers discussed the pros and cons of shifting to options based on geographic diversity, including identifying neighborhoods with low college attainment levels and other socio-economic indicators, along with prioritizing candidates with histories involving social justice. Speakers, however, noted research and alternative admission methodologies employed by institutions indicate that race-neutral methods are significantly less effective in achieving a racially diverse campus compared to practices allowing a limited consideration of race during the admission process.

Please contact a Jackson Lewis attorney with any questions regarding Title IX, diversity, equity, and inclusion practices, including maintaining and expanding racial campus diversity.

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