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FINAL VERSION OF TITLE IX REGULATIONS RELEASED

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They're here! On Friday, April 19, 2024, the Department of Education ("Department") released the [final version of the Title IX regulations](#).¹ With an effective date of August 1, 2024, educational institutions will have only a short time to revise their Board policies and codes of conduct, and to train their employees in preparation for the 2024-2025 academic year.

Some key highlights include:

Sex-Based Discrimination Expanded to Include LGBTQI+ and Pregnancy Status	Sexual Harassment Redefined: "Severe OR Pervasive" not "Severe AND Pervasive AND Objectively Offensive"
Quid Pro Quo Harassment Expanded to Include Agents and Volunteers of a School	Title IX Complaint Need Not be Written or Signed; Oral Complaints Enough to Trigger Duty to Investigate
Significant Additional Employee Training Required & Employee Obligation to Notify Title IX Coordinator of Possible Sex-Based Discrimination	Informal Resolution Can be Offered in all Circumstances Except K12 Employee-Student Sex-Based Harassment; No Formal Complaint Needed
Emergency Removal of Respondent Student Expanded Slightly	Retaliation Expanded to Include Peer Retaliation

The final regulations are largely the same as the regulations that the Department proposed in June 2022. Nonetheless, the final rule reflect significant changes from the 2020 regulations.

The final regulations cover all complaints of sex-based discrimination, not just complaints about sexual misconduct and harassment. Sexual harassment is redefined for Title IX purposes, bringing its definition closer in alignment to that of Title VII and California law, and directs a "totality of the circumstances" evaluation of unwelcome conduct that examines whether it is severe or pervasive and considers objective and subjective factors. With this expanded

¹ This is the unpublished draft version of the Final Rule. The Final Rule has not yet been published in the Federal Register. Nonetheless, the rule itself announces its effective date as August 1, 2024.

definition, it seems likely that educational institutions could see an uptick in matters that meet the new definitional criteria of Title IX sex-based harassment. The new regulations also make clear that the basis of a Title IX violation may be discrimination based on LGBTQI+ or pregnancy status.

Consistent with the proposed 2022 rule, the grievance process is considerably streamlined, allowing for the Title IX Coordinator to act as both investigator and decision maker, and in the postsecondary context, live hearings are no longer mandated. The role of the advisor is also limited to the postsecondary context for sex-based harassment matters. While recordkeeping requirements remain the same, the paperwork requirements are not. Gone, for example, is the requirement that a Title IX complaint must be written and signed by a complainant (an oral complaint can trigger a duty to investigate); in addition, in the K12 and non-harassment postsecondary contexts, no written investigation report is required, and the two separate ten-day review periods required by the 2020 rule are gone altogether. Moreover, voluntary informal resolution can be introduced even in the absence of a formal complaint and is permissible in all but K12 student complaints against an employee. Finally, educational institutions have the option of adopting different grievance procedures for different types of matters, provided that they are clearly articulated and consistently applied.

Educational institutions are now permitted to utilize supportive measures unilaterally, if they meet one of the defined purposes, including “to restore or preserve equal access to education,” to “protect safety,” or to “provide support during [the] grievance procedures or informal resolution process.” So long as they do not “unreasonably burden” one party and are not imposed for a punitive or disciplinary reason, they are permissible. In addition, the final rule adopted the proposed 2022 language, which allows for the emergency removal of a student respondent where there is an immediate and serious threat to the complainant or any individual arising from the allegations. Under the new rule, as expected, the Department has removed the requirement that the threat be physical. However, a student respondent must receive notice of the removal and can challenge the emergency removal immediately. Any removal (partial or full) must comply with a student’s IEP or 504 plan as well.

All employees are now expected to be able to identify Title IX sex-based discrimination and report it to the Title IX Coordinator, except for confidential employees, who must nonetheless tell the potential complainant how to contact the Title IX Coordinator, how to make a complaint, and about the availability of supportive measures. Where the 2020 rule required significant training for the “Title IX team” – the Title IX Coordinator, investigator(s), decision maker, and informal resolution facilitator – the new rule expands who is included among the members of the “Title IX team” (e.g., confidential employees, as well as administrators and deans who oversee supportive measures) and requires more training for all employees.

The 2024 regulations also expand an educational institution’s obligation to address allegations of a “hostile environment” even when the conduct occurred outside the institution’s “education program or activity” or outside the United States. The final rule clarified, however, that no educational institution has a “standalone obligation” to investigate an incident that wholly

occurred outside its jurisdiction; rather, such off-campus, out-of-program, or out-of-country incidents should be utilized as one factor in the “totality of circumstances” evaluation when a complaint alleges a sex-based hostile environment.

The final regulation also formalizes certain protections and accommodation rights for students who are pregnant or have pregnancy-related conditions; it also requires employees to provide students who disclose a pregnancy or pregnancy-related condition with the Title IX Coordinator’s contact information.²

The final regulations released on Friday do not address Title IX’s application to athletics, specifically to trans-athletes and single-sex athletic teams. The Title IX athletic regulations are expected to be released sometime later this year.

For more information about the implications of the 2024 regulations for your educational institution, please contact us. We can help you prepare for the upcoming academic year regarding employee training, policy revision, and other needs that you and your institution may be facing.

² The Department noted that its 2022 rule was issued one day prior to the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* 597 U.S. 215 (2022), which overturned the *Roe v. Wade* and *Planned Parenthood v. Casey* decisions, and held that the federal Constitution does not confer a right to an abortion.