

# U.S. Department of Education Releases Final Title IX Regulations

April 19, 2024

Today, the U.S. Department of Education (the “Department”) published the unofficial version of its [final Title IX regulations](#) (the “2024 Final Rule” or “Final Rule”) governing how elementary schools, secondary schools, postsecondary institutions or other entities that operate education programs or activities and receive Federal funds from the Department (collectively, “schools” or “institutions”) must address allegations of sex discrimination in accordance with Title IX of the Education Amendments of 1972 (“Title IX”). Along with the unofficial version of the Final Rule, the Department also published a [Fact Sheet, Summary of Major Provisions](#), and a [Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures](#) to assist schools in understanding their existing and new obligations under the Final Rule. The Final Rule is effective August 1, 2024 and makes amendments to 34 C.F.R. § 106.1 et seq.

Per the Department’s Fact Sheet, the Department received and reviewed more than 240,000 comments from the public in response to its proposed Title IX regulations, which were released nearly two years ago in July 2022. As discussed in [prior](#) legal alerts, the release of the Final Rule has been delayed several times.

The Final Rule encompasses several prominent changes to the Department’s 2020 amendments to the Title IX regulations (the “2020 Final Rule”). For example, the 2020 Final Rule required an institution to respond when it had “actual knowledge” of allegations of “sexual harassment,” and “only in a manner that is not deliberately indifferent.” The 2024 Final Rule requires that an institution, “respond promptly and effectively” whenever it has “knowledge of conduct that reasonably may constitute sex discrimination.” In the Preamble to the 2024 Final Rule, the Department stated, in explaining an institution’s duty to address sex discrimination, “The Department has concluded that Title IX does not permit a recipient to act merely without deliberate indifference and otherwise allow sex discrimination to occur. Rather, in the administrative enforcement context, in which the Department is responsible for ensuring that its own Federal funds are not used to further discrimination, the Department expects recipients to fully effectuate Title IX.” Preamble, at pp. 316-317.

Additionally, the 2024 Final Rule specifies that Title IX’s prohibition on sex discrimination includes “discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.” 34 C.F.R. § 106.10. This coincides with a newly expansive definition of “sex-based harassment,” which is “a form of sex discrimination” and includes harassment on the basis of sex (including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity) that constitutes *quid pro quo harassment* or *hostile environment harassment*. The 2024 Final Rule also redefines *hostile environment*

*harassment*, previously required to be “severe, pervasive, and objectively offensive,” under the 2020 Final Rule, to now include “unwelcome sex-based conduct that ... is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.” 34 C.F.R. § 106.2. The specific offenses of sexual assault, dating violence, domestic violence, and stalking also continue to independently constitute sex-based harassment under the 2024 Final Rule. 34 C.F.R. § 106.2.

By expanding the definitions of sex discrimination and sex-based harassment, the Department has clarified what conduct is encompassed within Title IX’s scope and, thus, what conduct is subject to the requirements of the Final Rule. This is a notable expansion, because institutions must now apply the grievance procedures outlined in § 106.45 to *all complaints* of sex discrimination, whereas, previously, institutions were only required to apply Title IX grievance procedures to conduct which met the definition of “sexual harassment” under the 2020 Final Rule. This is a significant change, as institutions that maintain separate policies and procedures for sexual misconduct and non-discrimination will likely need to revise both policies to comply with the 2024 Final Rule.

The 2024 Final Rule also expands protections for pregnant and parenting students. For example, § 106.40 will now require that any employee that is informed of a student’s pregnancy or related condition, promptly provide the student with the Title IX Coordinator’s contact information, and notify the student that the Title IX Coordinator “can coordinate specific actions to prevent sex discrimination and ensure the student’s equal access to the recipient’s education program or activity.” Once notified, the institution must take “specific actions” to “promptly and effectively prevent sex discrimination and ensure equal access to the recipient’s education program or activity...” 34 C.F.R. § 106.40(b)(3). These “specific actions” include providing specified information about the institution’s Title IX obligations and its notice of nondiscrimination, providing reasonable modifications to its policies, practices and procedures, providing voluntary access to separate and comparable portions of its program or activity, providing voluntary leaves of absence and providing lactation space. Institutions are also prohibited from requiring supportive documentation for these actions, unless it is “necessary and reasonable” to effectuate said actions. 34 C.F.R. § 106.40(b)(3)(vi).

The 2024 Final Rule also adds significant protections for LGBTQI+ students, employees, and others who participate in an institution’s educational programs or activities. In doing so, the Department relies on the U.S. Supreme Court’s reasoning in *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020), which provided that sex discrimination - as prohibited by Title VII of the Civil Rights Act of 1964 - encompasses discrimination based on sexual orientation and gender identity. The Final Rule’s accompanying resources provide that policies and practices which “prevent a student from participating in a recipient’s education program or activity consistent with their gender identity” expressly violate Title IX.

The Preamble to the 2024 Final Rule also includes a lengthy discussion on the preemption of State or local laws which conflict with Title IX’s nondiscriminatory mandate. The Department will issue a separate rule addressing Title IX’s application to sex-separate athletic teams at a later date.

Institutions have a little over 100 days to update their sexual misconduct and non-discrimination policies to ensure full compliance with the 2024 Final Rule. In addition to policy revision, institutions must also update

annual trainings provided to students, employees and campus Title IX stakeholders.

Cullen and Dykman LLP is here to assist you in adapting your policies and procedures to comply with the 2024 Final Rule and provide training to students, employees and Title IX stakeholders. Cullen and Dykman LLP's [Higher Education](#) team will continue to monitor for important developments surrounding the Final Rule and will provide updates as necessary.

Should you have any questions about the impact of the Final Rule on your institution's Title IX policies and practices, please contact Jennifer McLaughlin ([jmclaughlin@cullenllp.com](mailto:jmclaughlin@cullenllp.com)), Dina Vespia ([dvespia@cullenllp.com](mailto:dvespia@cullenllp.com)), or Nicole Donatich ([ndonatich@cullenllp.com](mailto:ndonatich@cullenllp.com)).

This advisory provides a brief overview of the most significant changes in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

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- Title IX

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