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U.S. Department of Education Releases Proposed Amendments to Title IX Regulations

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Yesterday, the U.S. Department of Education (the "Department") released proposed amendments to the regulations implementing Title IX of the Education Amendments of 1972 ("Title IX") (the "Proposed Rule") that could substantially change how schools, colleges, and universities must address allegations of sexual harassment in accordance with Title IX, the federal law which prohibits discrimination based on sex in education programs or activities at elementary, secondary, and postsecondary schools that receive federal funding.

The Department conducted various hearings and listening sessions over the last year to develop these proposed regulations based on input from a variety of stakeholders including students, parents, educators, and other advocates.

Yesterday marked the 50th anniversary of Title IX and the U.S. Secretary of Education Miguel Cardona said that the Proposed Rule will further the "mission of creating educational environments free from sex discrimination and sexual violence." While some aspects of the current regulations remain, the Proposed Rule would clarify and update required procedures regarding Title IX obligations to protect against sex discrimination, including sex-based harassment. Generally speaking, the Proposed Rule provides institutions with more flexibility than the current regulations. It is important to note that the Department plans to issue a separate notice of proposed rulemaking regarding "students' eligibility to participate on a particular male or female athletics team."

The Proposed Rule encompasses several prominent changes. Among such changes is a new definition of "sex-based harassment," which encompasses more conduct than the narrow definition of sexual harassment included in the Title IX Regulations of 2020. The Proposed Rule also expands the geographic scope of Title IX to cover certain conduct that occurs outside of an institution's education program or activity as well as certain conduct that occurs outside of the United States. In addition, the Proposed Rule eliminates the requirement for live hearings and cross-examinations.

The above highlights only a few of the changes included in the Proposed Rule.

For additional information on the Proposed Rule, the Department has provided resources including:

- Fact Sheet: U.S. Department of Education's 2022 Proposed Amendments to its Title IX Regulations
- Title IX NPRM Summary of Major Provisions Chart

As noted above, this is a preliminary overview of the Proposed Rule and we will continue to update alerts in order to keep you informed of the latest developments surrounding Title IX. Cullen and Dykman is here to assist you in reviewing your policies and procedures for Title IX compliance, and provide training to students, educators, and all members of the community. If you have questions regarding any aspects of higher education law and/or any implications the Proposed Rule may have on your institution, feel free to contact Dina L. Vespia at (516) 357-3726 or **dvespia@cullenllp.com** and Jennifer A. McLaughlin at (516) 357-3889 or **jmclaughlin@cullenllp.com**.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Thank you to Sharlene Cubelo, a Fellow with Cullen and Dykman, for her assistance with this alert.

Practices

- Higher Education
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