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U.S. Department of Education Submits Final Title IX Rule to the Office of Management and Budget

February 6, 2024

On February 2, 2024, the U.S. Department of Education (the "Department") submitted its final rule on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance to the Office of Management and Budget's Office of Information and Regulatory Affairs ("OIRA").[i] This action represents a significant step forward in the regulatory process before the final rule is made available to the public in the Federal Register. The submission is now listed as pending review.

OIRA is part of the Office of Management and Budget, which is an agency within the Executive Office of the President.[ii] Under E.O. 12866, originally signed by President Bill Clinton on September 30, 1993 and subsequently amended by multiple administrations, OIRA reviews draft proposed and final regulations for all "significant regulatory actions" before publication in the Federal Register. The period for OIRA review is limited by E.O. 12866 to ninety (90) days. [iii] The review period may be extended indefinitely by the head of the rulemaking agency. The review period may also be extended by the Office of Management and Budget Director on a one-time basis for no more than thirty (30) days. There is, however, no minimum period for review.

As discussed in prior alerts, on June 23, 2022, the Department released the proposed amendments to the regulations implementing Title IX of the Education Amendments of 1972 ("Title IX"), which prohibits discrimination based on sex in education programs and activities that receive federal financial assistance.[iv] The anticipated release date of the final Title IX rule has been delayed by the Department several times, from May 2023 to October 2023[v] to, most recently, March 2024.

The Department's submission to OIRA was limited to the proposed amendments to the Title IX regulations related to sex discrimination, including sex-based harassment, not the proposed rules affecting athletics.[vi] Though it was originally expected that the two rules would be released together, the Title IX athletics rule remains under review by the Department.[vii]

Although the exact date remains uncertain, the timing of this procedural step suggests that the Department is planning for a late spring 2024 release of the final rule, with an intended August 2024 implementation date. If so, this timeline would be similar to the Department's release of the 2020 Title IX regulations, which were published in the Federal Register on May 19, 2020 and became effective on August 14, 2020.[viii]

Cullen and Dykman LLP's Higher Education Practice Group will continue to monitor developments on this topic and provide updates when available. We are also available to discuss strategies and best practices on how to prepare your institution for the Department's release of the final Title IX rule.

Should you have any questions regarding this alert, please contact Dina Vespia, Jennifer McLaughlin, or Nicole Donatich.

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.

Footnotes

[i] https://www.reginfo.gov/public/do/eoDetails?rrid=381662

[ii] https://www.whitehouse.gov/omb/information-regulatory-affairs/

[iii] https://www.reginfo.gov/public/jsp/Utilities/faq.myjsp

[iv] https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html

[v] https://blog.ed.gov/2023/05/a-timing-update-on-title-ix-rulemaking/

[vi] https://www.ed.gov/news/press-releases/fact-sheet-us-department-educations-proposed-change-its-title-ix-regulations-students-eligibility-athletic-teams

[vii] https://www.k12dive.com/news/title-ix-regulations-advance-white-house/706563/

[viii] https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal

Practices

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