

Significant Changes to Title IX Adopted by the U.S. Department of Education

By Aaron Ross

On April 19, 2024, the United States Department of Education (the “Department”) released their long-awaited final rule amending Title IX regulations. School districts will need to prepare to implement the new regulations as they go into effect on August 1, 2024, just prior to the start of next school year. The amendments to the Title IX regulations are vast and will significantly affect the way in which school districts and coordinators handle Title IX complaints, but it is important to note that the regulations do not include any specific changes involving athletics. Some of the major changes are discussed below. Stay tuned for upcoming alerts and webinars that will cover these important changes from Roetzel’s Education Law group.

The amendments to Title IX clarify that discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. These changes are consistent with the U.S. Supreme Court’s decision in *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020).

Of significant importance to school districts, the new regulations clarify that, in the limited circumstances in which Title IX permits different treatment or separation on the basis of sex, a school district must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm. The regulation specifically clarifies that **“Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.”**

The changes made to Title IX indicate a shift of focus from sexual harassment to more broadly cover sex-based harassment. The regulations define prohibited sex-based harassment to be a form of sex discrimination and to include sexual harassment and other harassment on the basis of sex including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. This definition also includes familiar terms such as quid pro quo harassment, hostile environment harassment as well as certain criminal offenses, now specifically defined, which include sexual assault, dating violence, domestic violence, and stalking.

Quid pro quo harassment has been expanded to include not only an employee but also an agent or other person authorized to provide an aid or benefit under the education program or activity. The changes also provide clarity that quid pro quo harassment may be explicit or implied.

The regulations also expand the definition of hostile environment harassment. Of note, this expansion removes the reasonable person standard previously used and instead focuses on the totality of the circumstances. In the former regulations, a hostile environment existed only if harassment was so severe, pervasive, **and** objectively offensive that it effectively denied a person equal access to an educational program or activity. The new standard is broader in several aspects. The harassment must be subjectively and objectively offensive and so severe or pervasive that it limits or denies a person’s ability to participate

in the education program or activity. Thus, the definition of hostile environment has been broadened from “severe **and** pervasive” to “severe **or** pervasive” and, just as significant, the required effect of the harassment is expanded from including not only a denial to participate, but also a limiting of participation. The regulations also provide significant guidance on determining whether a hostile environment exists in the form of a series of factors that a school or district must consider as part of their hostile environment analysis.

Changes to Title IX have increased a school district’s responsibility to respond to sex discrimination by specifically requiring a school district with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity to respond promptly and effectively. The responsibilities of a school district’s Title IX coordinator also have been increased; they are now required to monitor the district’s education program or activity for barriers to reporting information about sex discrimination and address those barriers. Furthermore, the regulations specifically require all school district employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination.

The regulations also contain very specific steps that must be followed by a Title IX Coordinator when notified of conduct that reasonably may constitute sex discrimination, and they require that the grievance procedure include specific steps.

The definition of “complaint” has been changed and no longer requires a signed complaint. Complaint now consists of an oral or written request to the school or district that objectively can be understood as a request for the school or district to investigate and make a determination about alleged sex discrimination.

Finally, the regulations also include a new section entitled “Parental, family, or marital status; pregnancy or related conditions,” which consist in part of regulations related to discrimination based on sex in connection with parental, family, or marital status and guidance and requirements related to pregnancy and related conditions.

These changes represent only some of the major changes that have been made to Title IX. A comprehensive summary of all of the changes are available from the U.S. Department of Education’s [website](#). Don’t forget to be on the lookout for upcoming alerts and webinars from Roetzel’s Education Law group on this topic as well.

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