

EXECUTIVE SUMMARY OF TITLE IX REGULATIONS

FINAL REGULATIONS RELEASED APRIL 19, 2024

The Biden Administration's long-awaited [final Title IX regulations](#) have been released and go into effect on August 1.

In general, the new regulations significantly expand the scope of Title IX to cover all forms of sex-based discrimination, including sexual harassment and discrimination on the basis of sexual orientation and gender identity. The final rules, which differ in numerous ways from both the Obama-era guidance and the [Trump Administration's regulations](#), remove some of the requirements that currently apply to colleges and universities while adding new ones in their place.

The regulations also contain detailed procedural requirements and provide additional protections for victims of sex discrimination. Although the Department of Education did make some substantive changes and numerous technical amendments, the final regulations substantially align with the [proposed rules](#) issued in 2022.

Below is an executive summary of the key aspects of the regulations. NAICU has also produced a detailed [technical summary](#) of the rules. In addition, the Department has issued a [fact sheet](#), a [summary](#) of the major provisions, and a [resource](#) for drafting Title IX nondiscrimination policies, notices of nondiscrimination, and grievance procedures.

COVERAGE

Perhaps most notably, the Biden Administration's final regulations greatly expand the scope of conduct that is covered by the Title IX rules. Unlike the Trump Administration's Title IX regulations, which addressed sexual harassment and violence only, the Biden Administration's final rules significantly expand regulatory coverage to apply more broadly to all forms of sex discrimination, including retaliation. Specifically, the rules apply to sexual harassment, sexual violence, and discrimination on the basis of parental status and pregnancy and related conditions, including lactation.

The regulations also include an express prohibition against discrimination based on sexual orientation and gender identity. However, the rules do not address how gender identity should be handled in the context of athletics. Although the Department initiated a separate rulemaking on criteria regarding the [eligibility of transgender students to participate on sex-segregated athletic teams](#), that portion of the regulations is still under review by the Department and has not been finalized.

In addition, the regulations prohibit differential treatment that causes more than de minimis harm in certain circumstances in which Title IX permits sex-segregated programs or activities, such as sex-separate shared facilities. According to the new rules, preventing an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm. This de minimis standard does not apply to contexts in which particular practices are otherwise permitted by Title IX, such as admissions to single-sex colleges or as permitted by a

religious exemption. The preamble to the regulations also clarifies that the Department will not apply the de minimis standard to athletics.

The final regulations expand the scope of Title IX in other ways. For example, institutions are required to take prompt and effective action to end any sex discrimination that has occurred, prevent its recurrence, and remedy its effects. The rules also broaden the definition of what constitutes sexual harassment and encompass conduct that occurs outside the institution's educational program or activity or outside the country if such conduct contributed to a hostile environment within the institution's program or activity.

In addition to sex discrimination against students and employees, the final regulations obligate institutions to address sex discrimination against third parties who participated or attempted to participate in the school's educational program or activity at the time the alleged sex discrimination occurred.

The current regulations governing exemptions for religious institutions remain in place under the final rules.

PROCEDURAL REQUIREMENTS

The new regulations eliminate some of the most controversial requirements that the current regulations impose on both institutions and victims of sex discrimination. For example, the rules permit, but do not require, institutions to offer a live hearing as part of their grievance process. During a hearing, institutions are required to provide a process to assess the credibility of parties and witnesses, but doing so via direct cross-examination is optional. Supportive measures are still available, but, unlike the current regulations, institutions are permitted to offer a voluntary informal resolution process regardless of whether a formal complaint requesting initiation of the grievance procedures is filed.

On the other hand, like the Trump-era rules, the new regulations establish extensive requirements regarding many aspects of the Title IX process. For example, the rules contain highly detailed provisions governing Title IX Coordinators, designation of confidential employees, the establishment and publication of a nondiscrimination policy, employee training, and the informal resolution process.

Similarly, the rules set forth exhaustive requirements governing grievance procedures. These requirements are bifurcated into two categories: (1) general grievance procedures that apply to all claims of sex discrimination; and (2) additional grievance procedures that apply only to sexual harassment complaints involving students at postsecondary institutions.

Under the first category of grievance procedures, the rules set forth numerous requirements governing notice, conflicts of interest or bias, privacy, evidence, investigations, supportive measures, remedies, disciplinary sanctions, and dismissal of complaints. The regulations also permit the use of a single-investigator model.

In addition to complying with the general requirements governing grievance procedures, institutions must follow supplementary procedures for claims of sexual harassment at institutions of higher education. Among other things, institutions must:

- Use a preponderance of the evidence standard of proof when making such determinations, unless the institution uses a clear and convincing standard in all other comparable proceedings;
- Allow the parties to have an advisor of their choice, who may be an attorney, and to appoint such an advisor if a party does not have one for purposes of cross-examination, if permitted; and
- Offer an appeals process for determinations or dismissals based on procedural irregularities, new evidence, conflict of interest or bias, or other bases established at the discretion of the institution, as long as such bases apply equally to the parties.

OTHER PROVISIONS OF NOTE

The new regulations retain a provision specifying that the Department will not deem an institution to have violated Title IX solely because the agency would have reached a different determination. The rules also preempt state or local laws or other requirements that conflict with Title IX.