



CLIENT ALERT

United States Department of Education Issues Proposed Regulations on the Application of Title IX to School Athletics

On April 6, 2023, the United States Department of Education (the “Department”) issued a notice of proposed rulemaking (“NPRM”) on athletic eligibility under Title IX that would apply to K-12 schools and higher education institutions that receive federal funding. The proposed regulations, available [here](#), were published in the Federal Register on April 13, 2023 and are open to public comment until May 15, 2023.

Under the proposed regulations, schools would be prohibited from adopting any policy that categorically prohibits transgender students from participating on athletic teams consistent with their gender identity. Schools must take into consideration differences in grade and education level, level of competition, and the particular sport in establishing any eligibility criteria that would restrict transgender students from participation. Nevertheless, the Department proposes to allow schools flexibility to develop participatory criteria that will serve “important educational objectives” such as fairness in competition and prevention of injuries, as long as the regulatory requirements are met.

As a general guideline, the Department noted in the Fact Sheet accompanying the NPRM, that under the proposed regulations:

- **Elementary School Students** would generally be able to participate in school sports teams consistent with their gender identity; and
- **High School and College Students** could not be restricted from participation unless the school could demonstrate that such restriction (1) is substantially related to an important educational objective, such as fairness in competition, and (2) meets the other requirements and objectives of Title IX in assuring equal participation and minimizing the harm to students whose opportunity to participate on a team consistent with their gender identity would be limited or denied.

In anticipation of the Department’s adoption of a final rule on athletic participation, schools should review their current Title IX policies and consider revisions and updates that may be required when the revised regulation is adopted.

If you have any questions about Title IX or need assistance with review and update of school policies, please contact Bettina Toner (btoner@kb-law.com) or Elka Sachs (esachs@kb-law.com).