



KROKIDAS & BLUESTEIN LLP

CLIENT ALERT

United States Department of Education Releases Title IX Final Rule

K-12 Schools Must Update Title IX Policies and Grievance Procedures

by August 1, 2024

On April 19, 2024, the United States Department of Education (“USDOE”) issued its much-anticipated Title IX Final Rule concerning sex-based harassment and discrimination. The 2024 amendments to Title IX’s regulations (“2024 Amendments”) which take effect on August 1, 2024, include several key changes to Title IX and will require all public charter and non-charter K-12 schools, and private K-12 schools that receive federal financial assistance, to update their existing Title IX policies and grievance procedures for both students and employees. The 2024 Amendments do not incorporate any changes to Title IX regulations related to athletics which are still under review by USDOE as part of a separate rulemaking process.

The 2024 Amendments continue to emphasize protections and requirements that were available under the 2020 Amendments, including:

- Providing broad protection from sex-based discrimination, including sexual violence and unwelcome sex-based conduct that creates a hostile environment by limiting or denying a person’s ability to participate in or benefit from a school’s educational program or activities.
- Requiring schools to take prompt and effective action to (1) end sex discrimination in their programs or activities, (2) remedy the effects of discrimination and harassment, and (3) prevent recurrence.
- Requiring schools to provide supportive measures to complainants and respondents, as appropriate.
- Prohibiting retaliation against students, employees, and others who report sex discrimination or harassment, or participate in, or refuse to participate in, the school’s Title IX grievance process.

More significantly, the 2024 Amendments also include several procedural and substantive changes to the 2020 Amendments. These include:

- Modifying the definition of sex-based harassment to include:
 - *Quid pro quo* harassment;
 - Specific offenses, such as sexual assault, dating violence, domestic violence, or stalking; and/or
 - Hostile environment harassment, which is now defined as: *unwelcome sex-based conduct that, based on the totality of circumstances, is subjectively and objectively offensive, and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the school's education program or activity.*
- Requiring schools to respond promptly and effectively to all complaints of sex discrimination with a fair, transparent, and reliable process that includes, trained, unbiased decisionmakers to evaluate all relevant and not otherwise impermissible evidence.
- Expressly prohibiting discrimination and harassment against LGBTQI+ students, employees and others, including but not limited to discrimination or harassment based upon sexual orientation, gender identity, or sex characteristics.
- Requiring schools to protect people from harm when they are separated or treated differently based on sex at school. This means that schools may not separate or treat any person differently based on sex in a manner that subjects them to more than *de minimis* harm, except as expressly permitted by Title IX.
- Updating and clarifying existing protections against discrimination based on pregnancy and related conditions for students, employees, and applicants.
- Clarifying that in considering allegations of sex-based discrimination, investigators and decision-makers may take into consideration the age, maturity, and level of independence of students in various educational settings as well as other contextually-relevant factors.

Schools must update their existing Title IX policies and grievance procedures to comply with the 2024 Amendments **by August 1, 2024**. A school's failure to update its Title IX policy and grievance procedures may leave it vulnerable to a USDOE Office for Civil Rights complaint or other enforcement action. The 2024 Amendments do allow schools a certain amount of flexibility to adapt Title IX's grievance procedure requirements to a school's particular needs. Of note, schools once again have discretion to utilize a single-investigator model (i.e., where the decision-maker is the same person

as the investigator or Title IX Coordinator), which was prohibited under the 2020 Amendments, as long as the school's grievance procedures makes clear when this model may be used. This change might be particularly helpful for smaller schools.

Lastly, the 2024 Amendments require schools to ensure that all nondiscrimination policies and procedures are clearly and effectively communicated to students, employees, and applicants.

If you have questions about the 2024 Amendments or require assistance with updates to your school's Title IX policy and grievance procedures or staff Title IX training, please contact **Bettina Toner** (btoner@kb-law.com) or **Elka Sachs** (esachs@kb-law.com).