

# THE 10 BIGGEST CHANGES IN THE NEW TITLE IX REGULATIONS: YOUR INSTITUTION MUST ADAPT BEFORE AUGUST 1 DEADLINE

Insights  
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After much anticipation, federal officials finally released new Title IX regulations that make significant changes to how institutions must respond to sexual harassment and discrimination claims – as well as requiring you to disseminate information regarding your policies and reporting avenues. The April 19 release from the Department of Education sweeps away the controversial 2020 changes that required live hearings with cross-examination, among others. While these changes may be welcomed by many, colleges and universities must now rush to review and revise your 2020-era policies, procedures, and training prior to the August 1 compliance date. We'll provide a brief overview of the 10 biggest aspects of the new regulations and how they differ from previous ones, and guide educational institutions on next steps.

## How Did We Get Here?

- You may remember Obama-era Title IX policies that were intended to more forcefully address campus sexual assault.
- Almost immediately after former President Trump's inauguration, the new administration rescinded and overhauled them.
- The 2020 rules increased the procedural protections in schools' grievance resolution procedures. They required institutions to presume that those accused of sexual misconduct were not responsible and dictated that the institution bore the burden of establishing responsibility.

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- They also required colleges and universities to provide students with notice of the charges, access to all evidence, and – significantly – to hold live hearings with cross-examination.
- Though they added stalking, domestic violence, and dating violence as examples of sexual harassment under Title IX, they narrowed the definition of sexual harassment while also limiting the jurisdictional reach of Title IX to conduct occurring only within an institution’s official programs and activities, or at locations controlled by the institution.

The 2020 regulations faced much criticism related to the cross-examination requirements, the resources required to comply with the required investigation and hearing, and the increased procedural burdens. But these regulations have been the standard that educational institutions have had to follow – until the DOE released the new rule last week and started the countdown for a new day.

### What’s in the New Regulations? 10 Biggest Changes

The DOE’s administrative guidance accompanying the new rules total more than 1700 pages. Practitioners will need to carefully study them to understand the full scope of their nuance and the impact they will have on particular institutions. But here are the 10 most significant changes you should be aware of.

1. **August 1 effective date.** The new rule is set to take effect on August 1. While that date might seem far off in the distance, it will be here before you know it – and there is a lot of work to do. Start your work now to revise your policies and practices and train your team.
2. **Expanded definitions of sex discrimination.** The new rule includes sexual orientation, gender identity, and pregnancy. This change will increase your obligations to provide reasonable modifications to students experiencing pregnancy.
3. **Expanded definition of sex harassment.** It will soon include actions that create a hostile environment. This includes sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or



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denies a person's ability to participate in or benefit from your education program or activity.

4. **Broader scope of potential wrongdoing.** The new rule expands the jurisdictional scope of Title IX to cover conduct that impacts your programs and activities regardless of where it occurs. This includes conduct outside of the United States or outside of your education program or activity.
5. **Revised grievance hearings.** Get ready for significant changes to grievance procedures that resolve allegations of sexual discrimination and harassment. The new rules substantially increase your flexibility and permit you to design procedures that meet the needs of your institution. Specifically, they eliminate the requirement for live hearings with cross examination and expand the informal resolution options you may provide.
6. **Increased privacy rights.** This applies to all participants involved in the hearings process.
7. **Heightened oversight.** The rules impose a new duty on your institution to more actively monitor your programs and activities for sex discrimination. You also must seek out barriers to reporting that may prevent your Title IX Coordinator from learning of discrimination.
8. **Quicker resolutions.** The rules also require you to establish and enforce "prompt time frames" for investigating cases of sex discrimination.
9. **Expanded reporting requirements.** Your employees will have greater obligations to notify your Title IX Coordinator of known or suspected discrimination and/or harassment.
10. **Increased emphasis on supportive measures.** Your institution will be required to provide greater support to complainants at all stages of both formal and informal grievance processes.

## What's Next?

Though educational institutions have been in a period of "hurry up and wait" for quite some time now, you now have roughly 100 days to review and update your policies and procedures to comply before the August 1 effective date. While there is always the chance that the rules could be delayed or blocked by court action, you need to assume

they will take effect as scheduled and begin your work immediately.

### **What Should You Do?**

- To ensure compliance, you should engage in a comprehensive review of your policies and procedures. Work with your counsel to make sure you comply with the new rules and are tailored to your institution.
- Adjust your training sessions to ensure they capture the new standards.
- Speaking of training, make sure you give your compliance officials and leaders the resources they need to get brought up to speed on the new rules.
- You should also consider the interplay between the new regulations and existing state laws – as well as federal jurisprudence. This may alter your obligations to establish fair and equitable procedures beyond the minimum standards imposed by Title IX and the new regulations.

### **Conclusion**

Please consult your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Higher Education Team](#) to obtain practical advice and guidance on how to adapt your policies and training to comply. We will continue to monitor the latest developments and provide updates as warranted, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information.