
US Department of Education Issues Proposed Amendments to Title IX

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On June 23, 2022, the U.S. Department of Education (DOE) issued a Notice of Proposed Rulemaking (NPRM) to amend Title IX of the Education Amendments of 1972, a federal law that prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance. The NPRM is open for public comment for 60 days after its publication. While the final rule has not yet been published, educational institutions should review its policies and be prepared to make any changes or provide clarification if necessary.

Many of the proposed amendments seek to simply clarify existing regulations. For example, the NPRM clarifies that Title IX's protections against discrimination "based on sex" protect individuals claiming discrimination based on sexual orientation and gender identity. In its *Bostock v. Clayton County* decision, the Supreme Court found that sexual orientation and gender identity were included in the "on the basis of sex" definition under Title VII, thereby prohibiting employers from taking adverse employment action on the basis of an individual's LGBTQ+ status. Even though the *Bostock* decision did not address Title IX specifically, courts often look to Title VII cases for guidance on Title IX issues. This amendment is therefore consistent with precedent in this regard. The DOE also plans to address student eligibility to participate in male or female sports teams in separate guidance.

The NPRM addresses other changes and clarifications regarding reporting, training, and policy dissemination requirements, protections against retaliation, evidentiary standards, and the provision of supportive measures. The DOE's fact sheet summarizes these points.

Taft's Higher Education group will be issuing more information in the near future, but please contact any member of the group as you begin reviewing and considering how best to prepare for the potential changes to Title IX.

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