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It's Time to Revise Your Title IX Policy and Procedures: The Biden Administration Rolls Back Trump-Era Title IX Regulations and Expands Protections

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Over a year after proposing sweeping changes to the current Title IX regulations and delays on the official release date, the Biden Administration has officially released its revised Title IX regulations for all education programs and activities that receive federal funds. Educational institutions now have until August 1, 2024, to update their policies and procedures to comply with the 2024 Final Rule.

As anticipated, the new regulations provide broader protections under Title IX for students and employees of educational institutions and place a higher burden on educational institutions to ensure that sex-based discrimination and harassment are promptly and effectively addressed.

The final changes to the regulations will undoubtedly require that schools update their current policies and procedures.

What You Should Know

Key changes from the current regulations include, but are not limited to:

- Expanded prohibition of all forms of sex discrimination, including discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity;
- Expanded definition of harassment beyond just sexual harassment, to include all forms of sex-based harassment, including harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identity; and other sex-based conduct that meets requirements described immediately below;
- Broader protections for pregnancy, including a requirement to provide reasonable modifications for students, reasonable break time for employees for lactation, and a clean, private lactation space for both students and employees;
- Broader definition of harassment: conduct that creates a hostile environment – unwelcome 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 denies a person's ability to participate in, or benefit from, the recipient's education program or activity;
- Covering conduct that occurs off-campus if it creates or contributes to a hostile environment in a student's education program or activity; this conduct may now include acts occurring outside the United States;
- Requiring educational institutions with knowledge of conduct that **reasonably may constitute** sex discrimination in their education program or activity to respond promptly and effectively, not just when the school has actual knowledge of sexual harassment;
- Requiring certain employees to notify the school's Title IX Coordinator of conduct that may constitute sex discrimination under Title IX;

- A complainant has broader rights to report sex discrimination, including reporting for the purpose of seeking confidential assistance only and not instituting grievance procedures (unless otherwise required under the regulations to be initiated by the Title IX Coordinator) and reporting even when they have chosen to leave the school;
- Numerous changes to the grievance procedures, including being required to use the preponderance of evidence standard unless the clear and convincing standard is used in all other comparable proceedings and placing the burden on the school to gather sufficient evidence;
- Formal grievance procedures for sex-based discrimination/harassment, not just sexual harassment;
- Informal resolution must be offered for any complaint of sex discrimination, not just a formal complaint of sexual harassment; and
- Protection of students from peer retaliation.

Review and revision of your institution's Title IX policies and procedures should be undertaken promptly in order to ensure compliance with the new regulations. For assistance with such revisions and compliance with Title IX, please contact your Baker Donelson **Title IX team**.