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Department of Education Close to Releasing Proposed Title IX Regulations

Based on a leaked version of the document that was shared with other federal agencies, but is not yet final, there will likely be several significant changes to the Title IX regulatory environment. These highly anticipated proposed rules, if adopted, would result in a new administrative enforcement standard, impose numerous procedural changes focused on due process, clarify the scope of a school's Title IX jurisdiction, and make it easier for religious institutions to claim a Title IX exemption, among many other changes.

Husch Blackwell's team of Higher Education attorneys has prepared a full summary of the proposed changes, which is available [here](#).

During the Obama administration, ED issued several sub-regulatory guidance documents articulating how its Office for Civil Rights would interpret and enforce Title IX. In September 2017, ED expressly withdrew two of the most significant guidance documents, issued new interim guidance, and stated its intent to eventually propose new final rules governing institutional response to sexual misconduct.

The leaked version of the notice of proposed rulemaking widely circulating today suggests ED's release of its proposal for new rules is imminent. Once ED formally issues the notice of proposed rulemaking, institutions and other interested persons will have a period of time to submit written comments. While ED is likely to make some changes to the proposed regulations in light of comments received, the proposed regulations will provide a clear picture of the substantial changes in Title IX enforcement that will occur as a result of the rulemaking process.

What This Means to You

ED's anticipated notice of proposed rulemaking will contain significant changes to Title IX regulations that will necessitate policy and practice revisions at many, if not all, institutions. Once the notice is issued, institutions should carefully evaluate the proposed regulations, decide whether to submit written comments, and begin the process of anticipating necessary policy and practice revisions to ensure compliance with the regulations, once finalized.

We will continue to monitor communications from ED and will provide additional information once the notice of proposed rulemaking is finally issued.

Contact Us

If you have questions or require more information about the implications of this rapidly developing trend for your institution, please contact your Husch Blackwell attorney or Derek Teeter at 816.983.8331 or Michael Raupp at 816.983.8324.

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