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DEREK T. TEETER
KANSAS CITY:
816.983.8331
DEREK.TEETER@
HUSCHBLACKWELL.COM

JULIE MICELI
OMAHA:
402.964.5000
JULIE.MICELI@
HUSCHBLACKWELL.COM

MICHAEL T. RAUPP
KANSAS CITY:
816.983.8324
MICHAEL.RAUPP@
HUSCHBLACKWELL.COM

Department of Education Releases Proposed Title IX Regulations

Today, the Department of Education (ED) released its long-awaited notice of proposed rulemaking relating to Title IX of the Education Amendments of 1972. While a version of the notice was leaked in early September, the document released by ED today includes the final draft of ED's proposed Title IX regulations.

The proposed regulations would result in substantial changes to how ED enforces Title IX and the processes colleges and universities use to investigate and adjudicate reports of sexual harassment. These changes, if finally adopted following the close of the comment period, will result in:

- A new administrative enforcement standard
- Numerous procedural changes focused on due process
- A prohibition on single-investigator models of adjudication
- A mandate for live hearings and cross-examination
- Allowance of the clear-and-convincing standard of evidence
- New record-keeping and training requirements
- An easier path for religious institutions to claim a religious exemption to Title IX requirements, among many other changes

CLICK HERE FOR HUSCH BLACKWELL'S SUMMARY OF THE NOTICE OF PROPOSED RULEMAKING

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 regulations governing institutional response to sexual misconduct.

The notice of proposed rulemaking released today is the penultimate step in the current administration's efforts to replace the Obama-era guidance with new regulations. Once the notice is published in the federal registrar (likely within the next few days), interested persons, including colleges and universities, will have 60 days to provide comments. ED will then evaluate those comments and may, or may not, modify the proposed regulations in response. At the end of the comment process, ED will issue regulations that will be binding on institutions, absent a successful lawsuit enjoining their issuance.

What This Means to You

ED's proposed Title IX regulations will result in significant changes to Title IX compliance efforts at your institution. Your institution should carefully evaluate the proposed regulations and consider whether to provide comments to ED raising any concerns or suggested modifications. Under the assumption the proposed regulations may survive the comment process without significant changes, institutions should plan now for how they may need to modify their policies, practices, and procedures to align with the new regulations.

Contact Information

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, Julie Miceli at 312.526.1521 or Michael Raupp at 816.983.8324.

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