

LEGAL UPDATES

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HAYLEY E. HANSON
KANSAS CITY:
816.983.8377
HAYLEY.HANSON@
HUSCHBLACKWELL.COM

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

JULIE MICELI
CHICAGO:
312.655.1500
JULIE.MICELI@
HUSCHBLACKWELL.COM

PETER G. LAND
CHICAGO:
312 526 1631

Department of Education Releases Final Title IX Regulation

Yesterday, the Department of Education (ED) released its long-awaited final rule relating to Title IX of the Education Amendments of 1972. While an earlier proposed version of the rule was published for comment in November 2018, the document released by ED yesterday includes the final text of the Title IX regulation, effective August 14, 2020.

The final regulation will 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 include:

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 FINAL RULE

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 withdrew most of this Obama-era guidance and issued a notice of proposed rulemaking in November 2018. Yesterday's action culminates ED's rulemaking process and results in a final

Title IX rule that is effective August 14, 2020, prior to the start of classes for the Fall 2020 semester.

As expected, the final regulation effectuates the present administration's long-standing desire to require greater due process protections in Title IX proceedings and to direct the use of grievance procedures that are increasingly trial-like in nature. The content of the final regulation is controversial, and there are likely to be legal challenges to all or portions of the final regulation in the coming days. These lawsuits have the potential to delay the effective date of the final regulation or to delay the effective date of certain provisions of the final regulation.

What this means to you

ED's final regulation will result in significant changes to Title IX compliance efforts at your institution. Your institution should carefully evaluate the final regulation and begin the process of revising institutional policies and practices to comport with the regulation.

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 Hayley Hanson, Derek Teeter, Julie Miceli, Pete Land, Scott Warner, Scott Schneider, or Michael Raupp.

Webinar offering

Register now and join Husch Blackwell Education attorneys for an initial overview of the final Title IX regulations and the effect they will have on colleges and universities in light of ongoing operations and pressing challenges on Monday, May 11 (12:00-1:00 p.m. CDT).

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