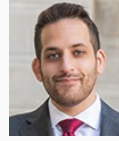


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Navigating the next wave of Title IX regulations

By Ashley R. Lynam, Esq., and David I. Singh, Esq.

Since Title IX was enacted, the regulations surrounding it and how they are enforced have undergone a series of changes, often coinciding with changes in the presidential administration. We are now facing the next wave of changes, with the U.S. Department of Education expected to release the final version of the Biden administration's proposed amendments to the Title IX regulations in the coming months.^[1] It is also expected that the Department of Education's separately announced proposed "Athletics regulation" concerning the participation of transgender students in school athletics will also be finalized in the coming months.^[2] And like a wave that washes away what lies before it, these proposed regulations do away with many changes adopted under the Trump administration.

The Department of Education, through its Office for Civil Rights (OCR), first published a set of draft rules in July 2022. OCR originally stated that May 2023 was the deadline for the revised regulations, but when that deadline passed, a new goal was set for October 2023. Unfortunately, a realistic look at the regulations' timeline reveals that adherence to the October deadline was almost impossible. Much of this delay can be attributed to the more than 244,000 comments received from the public regarding the July 2022 draft that OCR is now considering while finalizing the latest Title IX regulations.

OCR also still needs to transmit a final draft to the Office for Management and Budget, specifically to the Office for Information and Regulatory Affairs (OIRA). OIRA is tasked with conducting meetings with representatives from affected agencies and other interested parties. OCR will then take the feedback and requested changes produced from these meetings and implement them into the final regulations, a process that took approximately two months with the 2020 rule changes. The OIRA review process is expected to last between 90 and 120 days.

Under the current circumstances, it is expected that publication of the new Title IX regulations will occur four to six months after the transmission date to OIRA. OCR typically gives schools 60 to 90 days from the date of publication to comply with the regulations before enforcement begins; however, there is no binding rule on the permitted time period. Thus, higher education institutions should anticipate the final regulations by spring 2024, with implementation extended to summer 2024 in order to provide schools with ample time to revise policies and procedures and train staff members with the new rules.

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