



# New Title IX Regulations

Micah Schwartz  
VASS Legal Counsel

June 2024

**WILLIAMS MULLEN**

# AGENDA



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1. Background on Title IX and its sex harassment procedures
2. New Title IX regulations issued by U.S. DOE – effective August 1, 2024
3. Practical advice for dealing with changes

# DISCLAIMERS

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- > This is guidance, not legal advice
  - You should still consult with your Board counsel about compliance with Title IX regulations
  
- > This presentation is not intended to replace the training on sex harassment adjudication procedures required by Title IX
  - You should still take the training course provided by your Title IX coordinator or another vendor

# WHAT JUST HAPPENED?



- > U.S. Department of Education issued new Title IX regulations
  - “Non-Discrimination on the Basis of Sex in Education Programs or Activities”
- > Revamping of federal rules that dictate how schools respond to allegations of sex discrimination
- > New rules go into effect on August 1, 2024



**BACKGROUND**

# WHAT IS TITLE IX?



> The federal Education Amendments Act of 1972

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance”

> This is the primary federal law that prohibits discrimination in schools based on sex



# WHAT IS TITLE IX?



- > Since its inception in 1972, this law was most widely known for its requirement of gender parity in high school and college sports



# WHAT IS TITLE IX?

- > In early 2000s, the U.S. Department of Education began focusing on the impact that sex harassment and assault had on women's and girls' ability to obtain an education
- > From this came the "Dear Colleague" Letter from the DOE in 2010
  - Put schools on notice that failing to respond adequately to sex harassment allegations was a Title IX violation that the DOE would punish
  - Required prompt remedying of complaints to ensure fair access to education





# WHAT IS TITLE IX?



- Prior to 2020, DOE only provided “guidance” not “regulations” on schools’ obligations for investigating sex harassment allegations

- Guidance

- Suggestions
- Can change easily

- Regulations

- Law
- Require “notice and comment”
- Hard to change

# 2020 TITLE IX REGULATIONS

- > This changed in 2020, when the DOE issued Title IX regulations for the first time
  - Product of a conservative administration
  - Pendulum swing back from Obama administration's focus on complainants



# 2020 TITLE IX REGULATIONS

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## > Key terms in 2020 Title IX regulations

- Elimination of “single investigator” model
  - Investigator and decision-maker must be different people (layers of decision-making)
- Hearings (adversarial model)
- Appeals (i.e., more layers of decision-making)
- Standard of proof: clear-and-convincing evidence
- No punishment of respondents prior to adjudication of claims

# NEW TITLE IX REGULATIONS

# 2024 TITLE IX REGULATIONS



- > In April, the DOE issued revised Title IX regulations
  - Product of a progressive administration
  - Pendulum swing back from the Trump administration’s focus on due process  
(but a smaller pendulum swing)
  - Return of focus on complainants



# 2024 TITLE IX REGULATIONS



## Headlines

1. No more hearing requirement
2. Return of the single investigator and decision-maker model
3. Sex orientation and gender identity included
4. Everyone needs training





## 1. No more hearing requirement

- 2020 rules required “live” hearings for universities, and “paper” hearings at least for K-12 schools
  - Due process focus
  - Adversarial model for adjudicating claims
  - Both sides provided with evidence from other side
  - Both sides can cross-examine other side by presenting questions for investigator to pose



## 1. No more hearing requirement

– 2024 rules allow for return to “discipline as usual”

- Building administrator investigates allegations, draws conclusions based on what he/she learned, and implements punishments and remedies accordingly
- No need to provide parties with evidence presented by other side
- No need to allow parties to provide questions for the other side (i.e., cross-examination)





## 2. Return of the Single Investigator Model

- 2020 regulations required a Title IX Coordinator, an investigator, and a decision-maker
  - These roles could not all be served by the same person
  - Separation of powers: prosecutor and judge should be different people
  - Required a written investigation report and a written decision



## 2. Return of the Single Investigator Model

- 2024 regulations allow for investigator and decision-maker to be the same person
  - If the same person investigating and deciding wrongdoing, there only has to be one written document (less paperwork, less time)
  - Appeals no longer necessary
  - Requires involvement of less personnel
  - Still must be a Title IX Coordinator, but now, this person can do everything (easier for small divisions)

# 2024 TITLE IX REGULATIONS – KEY TERMS

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- > Bottom line: simpler procedures for investigating and adjudicating claims
- > But....more things get the “Title IX treatment”

## 3. Sexual Orientation and Gender Identity

- 2020 regulations required heightened procedure just for sex harassment and assault
- Now “on the basis of sex” includes sexual orientation and gender identity
- Schools have to investigate and adjudicate allegations of different treatment, harassment, and assault based on sexual orientation or gender identity, too

## 3. Gender Identity

- Schools cannot deny transgender students from selecting “facilities” (e.g., bathrooms) based on gender identity
  - This was already law in Virginia based on case law (*Grimm v. Gloucester County*)



## 3. Gender Identity

- Schools can still require sex separation in sports based on biological sex
- Stars aligned: this rule is consistent with VHSL rule and VDOE model policies
- But...Biden Administration's transgender sports rule anticipated in second term (if there is one)



## 4. Everyone Needs Training

- All employees now need training on division’s sex discrimination policies
- Investigators and decision-makers need heightened training
- Options for training
  - Board counsel
  - Vendors

# TITLE IX REGULATIONS – WILL THEY GO INTO EFFECT?



- > Some parts of this rule conflict with VDOE's transgender model policies
- > Virginia sued DOE to stop enforcement of new Title IX regulations
  - Argument: how can rule designed to protect girls based on their sex require that boys be allowed to use girls bathrooms?





# TITLE IX REGULATIONS – WILL THEY GO INTO EFFECT?



- > Despite multiple lawsuits, new regulations have not yet been canceled by courts
- > Still go into effect on August 1
  - Planning on defeat of regulations prior to then is a gamble
  - Prudent move: assume regulations will go into effect on August 1

# TITLE IX REGULATIONS – YOUR HOMEWORK

- > Use this summer to review rules and consider which changes need to be made to policies



# FINAL THOUGHTS



- > Sex discrimination (and now sexual orientation and gender identity discrimination) still require special treatment
  - A light bulb should go off when disciplinary matters involve these kinds of allegations
- > But the treatment is less special, and more closely resembles “discipline as usual”

# QUESTIONS & ANSWERS

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## Micah B. Schwartz

Williams Mullen

434.951.5737

[mschwartz@williamsmullen.com](mailto:mschwartz@williamsmullen.com)

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