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U.S. Department of Education

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Office for Civil Rights Blog

AN UPDATE ON THE RULEMAKING PROCESS FOR TITLE IX

February 18, 2022



Yesterday, the Department of Education sent

(<https://web.archive.org/web/20231006025154/https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp>) the draft of our proposed amendments to the Department's regulations implementing Title IX of the Education Amendments of 1972—the law that prohibits all forms of sex discrimination in education programs and activities that receive federal funding—to the Office of Information and Regulatory Affairs (OIRA), the part of the Office of Management and Budget responsible for coordinating the review of all Executive Branch regulations.

Our submission of the draft amendments, known as a Notice of Proposed Rulemaking, or NPRM, is the next, important, step in the Department's effort to advance the priorities set out in President Biden's executive orders on guaranteeing all students an educational environment free from sex discrimination, including sexual violence (<https://web.archive.org/web/20231006025154/https://www.govinfo.gov/content/pkg/FR-2021-03-11/pdf/2021-05200.pdf>), and preventing and combating discrimination based on gender identity and sexual orientation (<https://web.archive.org/web/20231006025154/https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>). As President Biden stated, "all students should be guaranteed an educational environment free from discrimination on the basis of sex, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity." Within the Office for Civil Rights, we are guided by those words; they are at the heart of the mission of our office, and we take seriously our charge to fulfill the promise embodied in Federal civil rights laws.

At this stage of the rulemaking process, the draft NPRM remains internal to the federal government and is not yet available for public viewing. OIRA coordinates an interagency Executive Branch review of the draft. The process, known as a 12866 review, implements Executive Order 12866

(<https://web.archive.org/web/20231006025154/https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>), issued in 1993 to ensure an effective rulemaking process across federal agencies. The

process includes an analysis of the costs and benefits of proposed rules and is designed to promote accountability to the public. For more on OIRA review of agency proposed rules, please see the FAQs on OIRA's website (<https://web.archive.org/web/20231006025154/https://www.reginfo.gov/public/jsp/Utilities/faq.myjsp>).

In addition to OIRA's coordinated review, the NPRM draft will also be reviewed by the Department of Justice (DOJ), which has responsibility under Executive Order 12250 (https://web.archive.org/web/20231006025154/https://www.justice.gov/sites/default/files/crt/legacy/2013/05/31/EO_12250.p) for reviewing federal agencies' proposed rules related to civil rights, including proposed rules that would prohibit discriminatory practices on certain bases, including sex, in programs and activities receiving federal funds. For more on this review, please see DOJ's website (<https://web.archive.org/web/20231006025154/https://www.justice.gov/crt/federal-coordination-and-compliance-section-202>).

Following these review processes, the Department anticipates publishing the NPRM in the Federal Register, at which point the public will have the opportunity to comment on the proposed regulations and preamble. We look forward to sharing more information about the public comment process at the time of publication.

While the proposed amendments to the Title IX regulations undergo the processes described above, OCR continues active enforcement of Title IX and its implementing regulations. As we have noted (<https://web.archive.org/web/20231006025154/https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf>), however, OCR has ceased enforcement of the regulatory requirement in 34 C.F.R. § 106.45(b)(6)(i) regarding the prohibition against relying on statements not subject to cross-examination, following a ruling from a Federal district court vacating that requirement. *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021), *appeals pending* (1st Cir.).

Again, this submission is part of our comprehensive commitment to ensure that schools are providing students with educational environments free from sex discrimination, including sexual violence and discrimination based on sexual orientation and gender identity—it is one step of many taken and more to come.

For more on the Department's efforts to ensure implementation of Title IX's prohibition on sex discrimination in federally funded education programs and activities, please see OCR's blog post on [Our Commitment to Education Environments Free From Sex-Based Harassment, Including Sexual Violence](https://web.archive.org/web/20231006025154/https://www2.ed.gov/about/offices/list/ocr/blog/20211008.html) (<https://web.archive.org/web/20231006025154/https://www2.ed.gov/about/offices/list/ocr/blog/20211008.html>).

Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education

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