

50th Anniversary of Title IX

June 23, 2022
Number 27

Written by:

Ruth E. Mendyk
Partner
Fresno

Sarah E. Fama
Senior Counsel
Walnut Creek

Emma J. Sol
Associate
Walnut Creek

June 23, 2022, marks the 50th Anniversary of Title IX. On June 23, 1972, President Richard Nixon signed Title IX of the Education Amendments of 1972 into law, prohibiting federally funded educational institutions from discriminating against students or employees based on sex. In its entirety, Title IX states:

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

Title IX applies to local and state educational agencies and other institutions that receive federal financial assistance from the Department of Education.

Background

Since its enactment, Title IX has impacted the educational world in numerous ways. Title IX protects equal access to education, including admissions, financial assistance, athletics, and counseling. Additionally, Title IX dictates how sexual harassment and assault claims are handled and processed on school campuses. The groundbreaking case, *Alexander v. Yale Univ.* (2d Cir. 1980) 631 F.2d 178, was the first time a plaintiff sued an educational institution over sexual harassment under Title IX. In the *Alexander* case, the court determined sexual harassment to be a form of sex discrimination. Several other prominent court cases have followed in *Alexander's* wake, further defining Title IX and its application within the educational system.

The federal government has also had a hand in further shaping and strengthening Title IX's impact on school campuses. In 1975, the Department of Health, Education, and Welfare issued “final regulations” that prohibited sex discrimination in athletics. In 2000, the Department of Justice drafted and published Title IX Regulations that defined “program or activity.”

In recent years, Title IX has undergone various changes, administered through different guidance from the Department of Education. Starting in 2010, the Department of Education issued five “Dear Colleague” letters, providing guidance on how to handle and process claims brought under Title IX. Initial clarification included the application of Title IX to charter schools, pregnant and parenting students, and claims of retaliation. Over the past decade, the Department of Education’s Title IX guidance has often been reversed and reimplemented.

Title IX Regulations

One of the biggest changes to Title IX has come in the form of new grievance procedures for sexual harassment complaints. On August 14, 2020, the Department of Education implemented new Title IX Regulations (Final Rule) governing the handling and investigation of sexual harassment complaints under Title IX. The Department of Education rescinded all previous Title IX guidance and, through the Final Rule, executed several changes to the sexual harassment complaint procedures under Title IX, including the exchange of evidence and the implementation of a live hearing requirement at the postsecondary level. For more information regarding the current Title IX regulations, see [2020 Client News Brief Number 49](#).

In June 2021, the Department of Education issued a Notice of Interpretation stating that Title IX prohibits discrimination based on sexual orientation and gender identity, reinstating the protection of LGBTQ+ people under Title IX. The Department of Education quickly followed its Notice of Interpretation with a question and answer guide to the Final Rule, which included the Office of Civil Rights’ interpretation of educational institutions’ existing obligations under the Final Rule, and a transcript of the public comments made during the June 2021 virtual public hearing on Title IX.

Since its release, the Final Rule has been the subject of numerous legal challenges. In August 2021, following a federal district court decision out of Massachusetts, the Department of Education announced it would not enforce what had been called the “Suppression Clause” of the Final Rule. The Suppression Clause prohibited decisionmakers from considering any statements from parties or witnesses who were not subject to cross-examination. (*Victim Rights Law Center v. Cardona*, Civil Action 20-11104-WGY (D. Mass. Jul. 28, 2021).) For more information regarding the *Cardona* decision, see [2022 Client News Brief Number 1](#).

Currently, the Department of Education is in the process of preparing new Title IX regulations. In March 2022, the Department of Education sent its draft proposed amendments (otherwise known as a “Notice of Proposed Rulemaking” or “NPRM”) to the Office of Information and Regulatory Affairs for review. These proposed regulations were initially scheduled to be released in April 2022, however, after delay, they were released on June 23, 2022, the 50th Anniversary of Title IX. (See U.S. Department of Education press release [here](#).) The draft regulations will undergo a

comment period, during which time members of the public can submit comments on the proposed regulations. (See an unofficial version of the draft regulations [here](#).) During this rulemaking revision period, the Final Rule will remain in effect, and should continue to be followed by educational institutions that receive federal funding.

For more information on Title IX and requirements for school districts, access Lozano Smith's exclusive [Title IX Overview and Toolkit](#). If you have any questions about Title IX, the parameters of Title IX regulations, or trainings on Title IX compliance, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.