Dept. of Education Announces Intent to Issue Notice of Proposed Rulemaking Regarding Title IX by April 2022

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While the full outline of a plan to revise the Title IX regulatory framework has not yet been revealed, the U.S. Department of Education appears to be on a fast track toward change. In a December 10 announcement, Office for Civil Rights Assistant Secretary Catherine Lhamon said that a notice of proposed rulemaking related to Title IX should be issued by April.

In underscoring this timeline, Lhamon stated that the actions of the Department reflect its “commitment to work as speedily as possible toward appropriate and effective regulation in recognition of the importance of ensuring equal access to
education for all students and addressing the threat to equal access posed by all forms of sex discrimination, including sexual harassment.”

Lhamon’s statement came as the federal government’s Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions was released, which identified intended steps to be taken by the Department relative to Title IX regulations. The notice, included as part of the Unified Agenda, suggests that the rulemaking process relating to Title IX will include, but not be limited to amendments affecting: “34 CFR 106.8 (Designation of coordinator, dissemination of policy, and adoption of grievance procedures), 106.30 (Definitions), 106.44 (Recipient’s response to sexual harassment), and 106.45 (Grievance process for formal complaints of sexual harassment).”

The move to amend Title IX regulations follows the issuance of two separate Executive Orders by the Biden Administration, E.O. 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, and E.O. 14021 on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity.

What does this mean for educational institutions? Based upon this action, it is clear that the formal process aimed at revising Title IX regulations is moving forward and is likely to lead to procedural changes that will affect the manner in which institutions respond to claims.

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