Department of Education Plans to Issue New Title IX Regulations in October 2023

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In January, we reported that based on information from the Office of Management and Budget, it appeared that the Department of Education would issue new Title IX regulations in May 2023. As of today, May has come and gone with no new regulations, and the Department has now explicitly stated that they will issue the new regulations in October.

Unlike the May date, which was based on the Office of Management and Budget's agenda, the October date was announced directly by the Department of Education in an online post on May 26, 2023. The Department also announced October 2023 as the anticipatory date for its Title IX Athletics regulations, which were proposed separately from general anti-discrimination regulations, to issue. There is one caveat: the Department has referred to October as an "anticipated" date for the rules to issue, and, as always, further delay is a possibility.

While issuing the regulations in October may be good news for administrators (and education attorneys) who are hoping for a relaxing summer, it may pose a challenge for the next school year. Past regulations gave approximately three months for institutions to comply, so if the Department follows past practice, institutions may be facing a mid-academic year shift in their non-discrimination policies. While current policies addressing sexual harassment are likely compliant with proposed regulatory changes, there are changes in training requirements, and changes in required policies surrounding non-harassing discrimination and pregnancy accommodations that will represent a shift for most institutions.

Remember, the proposed regulations gave institutions multiple ways to comply, as opposed to the prescriptive sexual harassment scheme that is currently in effect. If the new regulations maintain the "options" approach and require compliance in January, institutions may consider a two-step overhaul of their policies, with "bare bones" compliance achieved through limited amendments mid-year, and a more thorough review and edit of policies for the 2023-2024 academic year.

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CLIENT TIP

Bowditch attorneys Brigid Harrington, Aimee Bierman, and Chelsie Vokes gave a webinar on the proposed Title IX regulations when they were issued in June 2022. Please reach out to us to ensure that you are prepared to comply with the final version of these regulations.

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