



## CLIENT ALERT

### U.S. Department of Education Issues Proposed Amendments to Title IX

On June 23, 2022, in recognition of the Fiftieth Anniversary of the enactment of Title IX of the Education Amendments of 1972 (“Title IX”), the United States Department of Education (“Department”) issued its proposed amendments to the Title IX regulations. Title IX prohibits all forms of discrimination based upon sex, including sexual harassment and sexual violence, in elementary, secondary and post-secondary schools that receive federal funding. Title IX includes protection against sex-based discrimination for students and employees.

The proposed amendments to the current Title IX regulations are chiefly intended to (1) reinstate protections for victims of sex-based discrimination which were eroded in the most recent amendments to Title IX; (2) strengthen existing protections for LGBTQI+ students; and (3) enhance and reaffirm Title IX’s current provisions concerning the fairness of due process protections to all parties.

The proposed amendments include the following key provisions and goals:

- **Clearly protect students and employees from all forms of sex discrimination.** The new regulations clarify that Title IX includes protections based on sex stereotypes, pregnancy, sexual orientation and gender identity.
- **Provide full protection from sex-based harassment.** The proposed regulations will restore protections against all forms of sex-based harassment, some of which are not considered a violation under the current regulations.
- **Protect the right of parents and guardians to support their elementary and secondary school children.**
- **Require schools to take prompt and effective action to end any sex discrimination in their education programs or activities – and to prevent its recurrence and remedy its effects.**
- **Protect students and employees who are pregnant or have pregnancy-related conditions.** The proposed regulations will require schools to provide reasonable modifications such as break time for pregnant employees and lactation space.
- **Require schools to respond promptly to all complaints of sex discrimination with a fair and reliable process that includes trained, unbiased decision-makers to evaluate the evidence.** The proposed regulations would require schools to respond to all sex discrimination complaints whereas the current regulations only require responses to formal complaints.

- **Require schools to provide supportive measures to students and employees affected by conduct that may constitute sex discrimination, including students who have brought complaints or been accused of sex-based harassment.** The current regulations only require supportive measures when sexual harassment is alleged.
- **Protect LGBTQI+ students from discrimination based on sexual orientation, gender identity, and sex characteristics.** The proposed regulations enhance protections for LGBTQI+ students and clarify that Title IX prohibits discrimination based upon sexual orientation and gender identity.
- **Clarify and confirm protection from retaliation for students, employees, and others who exercise their Title IX rights.**
- **Improve the adaptability of the regulations' grievance procedure requirements so that all recipients can implement Title IX's promise of nondiscrimination fully and fairly in their educational environments.** The proposed regulations recognize that schools must consider the age, maturity, needs and level of independence of students in various settings in responding to complaints of sex-based discrimination.
- **Ensure that schools share their nondiscrimination policies with all students, employees, and other participants in their education programs or activities.**

The Department also announced that it will conduct a separate rule-making process specifically relating to Title IX in athletics including a student's eligibility to participate on a particular male or female athletic team.

The Department will accept public comment on the proposed regulations for sixty days from publication in the federal register. An unofficial version of the proposed changes is available [here](#). K&B is collecting comments for a consolidated submission to the Department of Education. **If you have comments on the proposed amendments or current Title IX regulations that you would like included in that submission, please contact Bettina Toner ([btoner@kb-law.com](mailto:btoner@kb-law.com)) by July 29, 2022.**

If you have questions about the proposed amendments to the Title IX regulations or the current Title IX regulations, please contact Bettina Toner ([btoner@kb-law.com](mailto:btoner@kb-law.com)) or Elka Sachs ([esachs@kb-law.com](mailto:esachs@kb-law.com)).