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New Title IX Rules Issued by Department of Education

On May 6, the U.S. Department of Education released its final version of rules applicable to Title IX sex discrimination issues. The 2020 rules amend proposed rules issued in 2018, discussed [here](#), which in turn followed the 2017 rescission of rules issued during the Obama administration in 2011.

The rules both impose limitations and expand rights. For example, schools are no longer responsible for investigating all claims by alleged victims (complainants) for alleged sexual harassment that occurred off-campus. The rights of persons accused of sexual harassment (respondents) have been expanded to be more closely aligned with the protections afforded to criminal defendants. These stronger procedural rights, which apply to both parties, have been criticized as being harsh to a complainant but are intended to ensure that respondents enjoy the presumption of innocence until proven guilty.

The process that a school must follow to evaluate claims and determine whether there has been a violation will now be more consistent with the criminal legal process. For example, complainants and respondents alike are subject to cross-examination and no statements which have not had the opportunity to be tested on cross-examination may be considered as evidence. Similarly, live hearings are required, and the standard of guilt has changed from “preponderance of the evidence” to the higher “clear and convincing” standard.

The rules also specifically attempt to reconcile a difference in approaches and definitions across other federal laws, most notably the Violence Against Women Act and the Clery Act. In particular, stalking, domestic violence and dating violence are now covered by Title IX.

Further:

- schools may no longer use one evaluator but rather a panel of three people must hear evidence and conduct the review;
- there is no time limit on when a school must respond to, evaluate, and resolve a claim of sexual harassment; and

- there are no longer any restrictions on public comments by either the complainant or the respondent during the process.

The rules are required to be implemented by August 14. This leaves schools with just a few months to designate new positions of responsibility for the Title IX claim evaluation process, develop and implement new programs

and policies, and train all employees. Schools already in the midst of developing plans to re-open and operate their facilities with new restrictions caused by the current pandemic must now also prioritize implementing the new rules (possibly incurring additional costs to do so).

The rules apply to both higher education and K-12 schools.



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Please do not hesitate to reach out to your Stradley Ronon contact, or to any member of Stradley's Coronavirus Task Force, with any questions and concerns you may have during this period.