

# Title IX



- A look back at the changes in regulations:
  - Obama Administration (2011 and 2014)
  - Trump Administration (2017 and 2020)
  - Biden Administration (2022)
- Timeline for Notice of Proposed Rulemaking (NPRM)
  - 2022 June DoE Fact Sheet released
  - 2022 July Notice of Proposed Rulemaking
  - 2022 July 60-day public comment period
  - 2022 October Update institutional policy definitions
  - 2023 TBD Final regulations likely to arrive





# Overview of NPRM

- Significantly expands the scope of Title IX coverage
- Streamlines some of the most burdensome procedural requirements for institutions
- Eliminates barriers preventing victims from filing complaints
- Maintains most protections for accused students



# Expanded Coverage



- NPRM would broaden the scope of:
  - Who is protected
  - What conduct is covered, including:
    - All forms of sex discrimination, not just harassment
    - Expanded definitions of discrimination
    - Expanded territory covered
- NPRM would require institutions to take **prompt and effective action** to end any sex discrimination that has occurred, prevent its reoccurrence, and remedy its effects.



# Who is Protected?



- Students
- Employees
- Third parties who participated or attempted to participate in the schools educational program or activity at the time the alleged sex discrimination occurred
- Current religious exemptions would apply





# What Conduct is Covered?

- Discrimination based on:
  - Parental, family or marital status
  - Pregnancy or related conditions
  - Sexual orientation and gender identity
  - Sex stereotypes of characteristics
- Retaliation
- Sexual harassment
  - Hostile environment harassment
  - Quid pro quo harassment
- Sexual violence
  - Sexual assault, dating violence, domestic violence and stalking





# Added to SMIV Policy & Procedure

- Change to Domestic Violence Definition
- Added Economic, emotional, technological & Psychological Abuse
- Added Abuse in Later Life
- Added Restorative Practice





# Hostile Environment Harassment

- Current Definition
  - “so severe, pervasive and objectively offensive”
- Expanded Definition
  - “unwelcomed sex-based conduct that is sufficiently severe or pervasive, that, based on the totality of the circumstances and evaluated subjectively and objectively, denies or limits a person’s ability to participate in or benefit from the recipient’s education program or activity.”



# Sexual Orientation & Gender Identity



- In addition to the general prohibition, the NPRM:
  - Would prohibit differential treatment that causes “more than de minimus harm” in sex-segregated programs and activities.
    - Specifically references gender identity
- Would not amend the regulations governing athletics.





# Pregnancy or Related Conditions

NPRM would:

- Cover pregnancy, termination or lactation
- Require same treatment as other temporary disabilities
- Require reasonable modifications, including voluntary leave of absence
- Require notification of the Title IX Coordinator
- Require clean and private lactation room



# Expanded Territory Covered



NPRM covers all sex discrimination in the program or activity, including conduct that:

- Occurs in a building owned or controlled by an officially recognized student organization
- Is subject to an institution's disciplinary authority
- Occurs outside the educational program or activity or outside the U.S. if it contributed to a hostile environment within the program or activity.



# Procedural Requirements



- Appeals
- Assessing credibility
- Confidentiality
- Dismissal of complaints
- Enforcement
- Evidence
- General grievance procedures
- Hearings
- Informal resolution
- Investigation
- Notice
- Nondiscrimination policy
- Support Measures
- Title IX Coordinator duties
- Training



# General Obligations



- More flexibility for institutions
- Continued protection for accused students
- Reduced barriers for victims to file complaints



# NPRM Similarities



- Access to evidence
- Advisors
- Appeal process
- Emergency removal permitted
- Informal Resolution
- Supportive Measures remain available
- State laws are preempted
- Training – more of it!



# NPRM Differences



- Confidential vs. non-confidential employees
- Consolidation of complaints permitted
- General requirements for grievance procedures and separate ones for sexual harassment claims
- Nondiscrimination policy
- No mandatory dismissal
- Optional live hearing and cross examination
- Preponderance of the evidence standard
- Single investigator model permitted