Title IX
2021: Where are we?

During the first three months of his administration, President Biden has issued several Executive Orders relating to Title IX and gender discrimination – a clear signal that the 2020 Title IX Regulations are expected to be amended and that Title IX implementation in post-secondary education will remain in a state of flux for the foreseeable future.

EO 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation* **signed 1/20/2021 by Pres. Biden.** (Copy provided with Title IX Update materials).

EO 14004, *Enabling All Qualified Americans to Serve their Country in Uniform* **signed 1/25/2021 by Pres. Biden.** (Copy provided with Title IX Update materials).

EO 14020, *Establishment of the White House Gender Policy Council* **signed 3-8-2021 by Pres. Biden.** (Copy provided with Title IX Update materials).

EO 14021, *Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*, published in the *Federal Register* **signed 3/08/21 by Pres. Biden.** (Copy provided with Title IX Update materials).

> **"… all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence,**

and including discrimination on the basis of sexual orientation or gender identity."

- EO 14021 required DOE and Attorney General 100 days to review the 2020 regulations, and report on need for amending, revising or rescission (by June 20th)

- DOE OCR noticed the public hearing pursuant to Executive Order 14021, which directed the Secretary of Education to review the Final Rule entitled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," published in the *Federal Register* on May 19, 2020 (85 FR 30026), and other agency actions that are or may be inconsistent with governing law, including Title IX, and the Executive Order.

- This public hearing was also a step toward fulfilling the directives of Executive Order 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, published in the *Federal Register* on January 25, 2021 (86 FR 7023).

The public hearing took place from 6-7-2021 through 6-11-2021.

DOE OCR published the transcript of the June 2021 virtual public hearing on Title IX. (Copy of the transcript provided with Title IX Update materials).

This transcript includes comments from over 280 students, parents, teachers, faculty members, school staff, administrators, and other members of the public on providing students with educational environments free from sexual harassment and sexual violence; ensuring fair and equitable resolution of incident reports; and addressing discrimination based on sexual orientation and gender identity.

QUOTE FROM SECRETARY MIGUEL CARDONA

"For decades, brave LGBTQ+ Americans have fought for and gained ground for equality and justice. They have fought to be treated fairly, to live their lives without fear of harassment, exclusion, and discrimination, and to love whom they love and be who they are -- *without exception, and with understanding and appreciation*. Yet, in 2021, the fight continues, including in education. It's not enough to work toward schools free of harassment: We should *deliberately* and *actively promote* positive learning climates, where all students are respected, celebrated, and embraced. It's not enough to outlaw discriminatory practices: We should *uplift* schools and communities that are *actively celebrating* students' differences, including differences in sexual orientation and gender identity. No individual's differences render them less than anyone else. In fact, whatever our similarities may be, every individual is also distinct, vibrant, and precious. Our differences expand our insights. Our varied life lessons and experiences increase our compassion and strength. Our unique qualities deepen our curiosity about the identities and perspectives of others…. Tolerance is not, and cannot be, our goal. Instead, we strive for environments that value and *take pride* in LGBTQ+ youth."

-- Secretary of Education Miguel Cardona **(6/9/21)**

CURRENT STATUS:

The current regulations remain in place and educational institutions that receive federal funds should continue to comply with their requirements.

DOE OCR issued its Questions and Answers on the Title IX Regulations on Sexual Harassment on July 20, 2021. (Copy of the DOE OCR Q&A document is provided with the Title IX Update materials).

> Provides institutions with guidance they can use to revise their Title IX procedures should they wish to over the summer to reflect the "discretion" promised by DOE.
>
> Clarifies how DOE OCR interprets schools' existing obligations under the 2020 amendments, and the Appendix provides examples of Title IX procedures.

The Q&A resource does not have the force and effect of law and is not meant to bind the public or regulated entities in any way. It is intended only to provide clarity to the public regarding OCR's interpretation of existing legally binding statutory and regulatory requirements. OCR's enforcement of Title IX stems from Title IX and its implementing regulations, not this or other guidance documents.

FUTURE:

It is anticipated that there will be a notice and comment regarding rulemaking in the near future, but it is not expected prior to the 2022-2023 school year.

It is expected that the rulemaking will address LGBTQ issues, potential expansion of the definition of sexual harassment that is prohibited by Title IX both as to conduct and as to geographic reach, providing more flexibility concerning live hearings and cross-examination of witnesses at the post-secondary level, and expanding the definition of when an institution has knowledge of a complaint of sexual harassment.

COVID ? …. NO COVID ? …. COVID WITH US FOREVER ? ….

The DOE OCR issued its "Questions and Answers on Civil Rights and School Reopening in the COVID-19 Environment" on May 13, 2021.

(Copy provided with Title IX Update materials).