



Association of
Title IX Administrators

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Time with IX: Proposed Title IX Regulations Steps to Take Now

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ZOOM ETIQUETTE

This program is being recorded.

1. Please keep your microphone **muted** throughout the meeting. You can choose to have your video on or off.
2. To ask a question, please use the “Raise Hand” feature.
 - Click on “participants” at the bottom of your screen, then click “raise hand.” Keep your hand raised and we will call upon you to speak.
 - If you click raise hand by accident or if your question is answered, you can click the button again to lower your hand.
 - If you would like to ask a question anonymously, you can send that to the moderator in a private chat.





Upcoming Trainings and Events

July

- 19-20 | Title IX Coordinator Four: Advocacy, Prevention, and Trauma
- 21 | What the Title IX Team Needs to Know About Stalking Allegations Workshop
- 26-27 | Title IX Coordinator Five: Bias and Cultural Competencies
- 28 | Special Edition Time with IX: Roe v. Wade and Title IX Implications

August

- 1 | K-12 Coordinator One: Foundations
- 2 | K-12 Civil Rights Investigator One: Foundations
- 3 | K-12 Title IX Compliance and Athletics
- 3 | K-12 Decision-Maker One
- 4 | K-12 Coordinator Two
- 5 | K-12 Civil Rights Investigator Two
- 5 | K-12 ADA/504 Coordinator
- 8-9 | Title IX Hearing Officer and Decision-Maker
- 9 | Consent Workshop
- 10 | Rationale Writing Workshop for Decision-Makers and Investigators
- 11 | Title IX Advisors
- 10 | Time with IX: The Case for Mandatory Dismissals

September

- 9 | K-12 Institute for Equity, Safety, and Wellness Session I
- 19 | Solutions for Managing Intake, Jurisdiction, and Dismissals Workshop

TODAY'S TOPIC

Proposed Title IX Regulations – Steps to Take Now

In this members-only Time with IX Community Event, ATIXA's Title IX experts will offer their thoughts on the proposed regulations and what steps you can take now to prepare during the comment period.

This event is designed to provide Title IX practitioners with a step-by-step plan to understand the NPRM process. We will highlight best practices in making comments and walk you through how our collective voice during the comment period can be used to inform OCR of the real-world implications of the final regulations.



THE NPRM COMMENT PROCESS

TITLE IX REGULATIONS

- Congress passed Title IX of the Education Amendments in 1972
- Since 1980, the Department of Education's Office for Civil Rights (OCR) has had primary responsibility for enforcing Title IX
- November 2018: OCR proposed the most detailed and comprehensive Title IX regulations to date¹
- August 2020: Significantly amended, due-process oriented Regulations took effect (proposed in Nov. 2018)
- June 2022: OCR published the Notice of Proposed Rule Making (NPRM) outlining proposed changes to the Title IX regulations
- On July 12, 2022, the NPRM was published in the Federal Register and the 60-day comment period began

¹ U.S. Office of the Federal Register, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, <https://www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

APA & THE RULEMAKING PROCESS

- Administrative Procedures Act (5 U.S.C §§ 551-559)
 - Federal statute which sets forth process federal agencies (OCR) must use when establishing new regulations: The “Rulemaking” process
 - Main elements of rulemaking process:
 - Notice of Proposed Rule Making (NPRM; published in Federal Register)
 - Window of time in which interested individuals may participate in process through submission of comments
 - Consideration by agency; also OMB review
 - Adoption and publication of rules, with a statement of their basis & purpose

SUMMARY

- Official publication in the Federal Register July 12, 2022
- Review and comment period
 - 60-day comment period ends September 12, 2022
 - Submit comments to the Department of Education's Office for Civil Rights (OCR)
- Final Rule expected to be issued in Spring 2023
- Effective Date approximately Summer/Fall 2023
- Watch for ATIXA webinars and other opportunities 😊

SUBMITTING COMMENTS

- Comments should be in **Microsoft Word** format whenever possible
- A “print-to-PDF” document is acceptable, though not preferred
- Scanned PDFs are **not** accepted
- Maximum allowable file size is 10 MB
- OCR Contact for Questions:
Alejandro Reyes
U.S. Department of Education
400 Maryland Ave. SW
PCP-6125
Washington, DC 20202

Telephone: 202-245-7705
- You may also email your questions to T9NPRM@ed.gov

REGULATIONS.GOV SUBMISSION

Submission Website: [regulations.gov/commenton/ED-2021-OCR-0166-0001](https://www.regulations.gov/commenton/ED-2021-OCR-0166-0001)

Regulations.gov
Your Voice in Federal Decision Making

SUPPORT

Comment Period Ends: 62 Days

You are commenting on a Proposed Rule by the **Department of Education**
Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Write a Comment

Commenter's Checklist

Comment*
Start typing comment here... 5000

What is your comment about?
Select a Comment Category


Attach Files
You can attach up to 20 files, but each file cannot exceed 10MB. Valid file types include: bmp, docx, gif, jpg, jpeg, pdf, png, pptx, rtf, sgml, tif, tiff, txt, wpd, xlsx, xml.

Drop files here or [Browse...](#)

Comment page if you go through the regulations.gov website

FEDERAL REGISTER SITE SUBMISSION

You are submitting an official comment to Regulations.gov.
Comments are due 09/12/2022 at 11:59 pm EDT.

 **regulations.gov**
close comment form

Thank you for taking the time to create a comment. Your input is important.

Once you have filled in the required fields below you can preview and/or submit your comment to the Education Department for review. All comments are considered public and will be posted online once the Education Department has reviewed them.

You can view [alternative ways to comment](#) or you may also comment via Regulations.gov at, https://www.regulations.gov/commenton/ED_FRDOC_0001-0995.

Comment*
...

What is your comment about?

Upload File(s) **+ Add a file** *Note: You can attach your comment as a file and/or attach supporting documents to your comment. [Attachment Requirements](#).*

Email
this will NOT be posted on regulations.gov

Opt to receive email confirmation of submission and tracking number?

Comment page if you click the button in the Federal Register

EFFECTIVE COMMENTS

- Reflect understanding of the intent and actual impact (i.e., you actually read the proposed regulations)
- Are organized:
 - By heading, and/or
 - Referencing specific subsections of the proposed regulations
- Respond to questions posed/topics raised in the NPRM
- Include statistics, hypothetical scenarios, and personal experiences to illustrate anticipated effects
- Demonstrate respectful disagreement with specific proposals and other commenters, when appropriate

EFFECTIVE COMMENTS (CONT.)

- Remember: the agency only has authority to regulate within the bounds of the statute. Certain proposed regulations may exceed that authority.
 - *Ultra Vires*: acting beyond the legal authority (provided to the agency)
 - No requirement to comment on every portion of the proposed regulations – write about what you know and what impacts you
 - “Many in the public mistakenly believe that a submitted form letter constitutes a ‘vote’ regarding the issues concerning them. A single, well-supported comment may carry more weight than a thousand form letters.”²

² *Tips for Submitting Effective Comments*

WHAT TO EXPECT AFTER THE COMMENT PERIOD?

- The agency may choose to publish a supplemental rule if sufficiently serious questions or challenges are raised which require adjustments to the proposed rule.
- When the proposed rule is finalized, it will be published again, along with an effective date of enforcement, typically 30-60 days from the date of publication.
- If the agency decides to publish a final rule, it has several responsibilities related to the comments it received.
- The final rule must include substantive responses to questions and criticisms, and provide explanations for why the agency declined to incorporate suggested changes.



PLANNING FOR IMPLEMENTATION

AREAS OF PROPOSED CHANGE

- 1 Scope & Applicability (§ 106.11, § 106.31)
- 2 Definitions (§ 106.2)
- 3 Reporting & Response to Disclosures (§ 106.44)
- 4 Intake & Preliminary Inquiry (§ 106.44, § 106.45, § 106.46)
- 5 Grievance Procedures (§ 106.45, § 106.46)
- 6 Pregnancy and Related Conditions (§ 106.40, § 106.57)
- 7 K-12 School/District Requirements (various § 106)

PREPARING FOR IMPLEMENTATION

- Must continue to fulfill obligations under the current regulations for the 2022-2023 academic year.
- Anticipate OCR will expect schools to implement the new Title IX regulations before the start of the 2023-2024 academic year.

Steps to Take Now:

- Prepare to educate your community on the changes
- Identify stakeholders that will need to be involved in making policy decisions (e.g., whether to have hearings)
- Determine how you will manage policy changes
- Plan for the training needs for your community
- Consider state laws, court decisions, and other regulations that may affect your institutional approach