

PUBLICATION

Updated Title IX Regulations Expected from Biden Administration

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Just a few days after President Biden's Secretary of Education appointee, Miguel Cardona, was sworn in earlier this month, the President called for a sweeping revision of the Title IX regulations that went into effect in August 2020 as part of his "Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity." The Executive Order signals that many of the changes instituted under the Trump Administration in 2020 will be reversed. The regulations are likely to not only revert back to the Obama era Title IX policies but extend even further to protect victims of sexual assault. We expect that the new regulations will address specific obstacles facing students who identify as lesbian, gay, bisexual, transgender, and queer, as well as complications arising from intersecting forms of discrimination on the basis of other protected classes, such as race and disability.

A few of the specific changes we anticipate as a significant reversal from the controversial changes made by the Trump Administration include:

- Removal of the requirement of in-person hearings, with live cross-examination, for institutions of higher education.
- Reversing provisions that allow institutions to adopt a clear and convincing standard of evidence.
- Ending the exemption for off-campus and international incidents from Title IX coverage.
- Elimination of the narrower definition of sexual assault.

Mr. Cardona has been tasked with issuing new guidance in the next 100 days. If you are subject to the requirements of Title IX, you will want to prepare for the Department of Education to publish new regulations that will materially differ from what was issued just last year. Baker Donelson's Title IX team will keep apprised of updates as they occur and will be positioned to advise as soon as the Department of Education issues new guidance. If you have any questions about this matter, please contact one of the authors or your Baker Donelson attorney.