



School attorneys weigh in on final Title IX regs

For many education and civil rights experts, it was a happy Friday. The U.S. Education Department released final regulations April 19 for Title IX, the federal civil rights law that prohibits discrimination on the basis of sex in education programs or activities that receive federal funding. Along with explicit protections for LGBTQ+ students and a broader definition of sexual harassment, the final regulations also feature many additions and changes for special education professionals to explore.

"It was a bit of a surprise that the [Education Department] was all of a sudden releasing them," said Samantha Lewis, an attorney at Parker Poe Adams & Bernstein LLP in Atlanta. "There had been rumblings that they were going to be coming out in the spring. But there was not a long runway at all."

The final regulations have broadened the scope of what is covered under Title IX, Lewis said. This may have a range of effects on students with disabilities.

The new definition of hostile environment sexual harassment, for example, describes unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). 34 CFR Sec. 106.2.

"It's going to cover more students in general, which will include students with disabilities," Lewis said. "It also has relaxed standards for complainants to report incidents, which could impact students with disabilities. Respondents are now going to find themselves covered under the Title IX that previously wouldn't have been [covered]."

At the same time, the final regulations do not specify in depth how the Title IX regs will interact with the IDEA or Section 504, Lewis said.

"A lot of people were really hoping for guidance on that," she said. "The new regulations kind of tip the hat for IDEA and Section 504 and include some provisions that when a student involved in a Title IX grievance is covered under an IEP or Section 504 plan, a member of the IEP team or Section 504 team should be consulted. A lot of districts were probably already doing that. But it does formalize and require that."

*Palm Beach Gardens, FL 33418. All rights reserved. **Special Ed Connection**[®] is your go-to source for compliance guidance and use-today solutions for all your day-to-day special education responsibilities. For FREE access or more information, please call 1-800-341-7874 or visit www.SpecialEdConnection.com. For more **LRP Publications** resources, visit www.shoplrp.com.*



This compares to the proposed regulations, which emphasized the importance of consulting the IEP team or Section 504 team and would have likely caused scheduling and staffing issues, according to Bobby Truhe, an attorney at KSB School Law PC LLO in Lincoln, Neb., and Sioux Falls, S.D.

"That's a really significant and interesting development," he said. "The Title IX coordinator can meet with the case manager or a district representative and say, 'This new complaint came in and it involves a student with an IEP. What the heck are we going to do?' I like that the regulations now explicitly say that that is a sensible approach at the outset."

A full IEP team or Section 504 team would still have to come together to discuss supportive measures if they would change student programming, said James Munnely, an attorney at Sand & Saidel PC in Philadelphia.

"There may be some restriction to accessing the program in which you are offering the IEP," he said. "I would be hard-pressed not to have an IEP team meeting. If supportive measures are preventing access to specially designed instruction or a one-to-one aide, whatever it may be, I think an IEP team meeting definitely would have to happen to figure out how to deal with that."

Districts now need to draft new policies, offer training opportunities

The regulations will go into effect August 1. They will apply to complaints of sex discrimination regarding alleged conduct that occurs on or after that date.

Districts need to start as soon as possible to create new policies and procedures and plan for training over the summer, Lewis said. They will have to adopt a new non-discrimination policy in light of the new definitions and ensure that the policy is published on their website and in other district materials.

Districts are going to have to offer trainings for staff members on non-discrimination obligations and definitions as well as individual employees' reporting and notice expectations, Truhe said. They are going to have to offer Title IX coordinator training and training on informal resolutions.

*Reprinted with permission from: **Special Ed Connection**®. © 2024 LRP Publications, 360 Hiatt Drive, Palm Beach Gardens, FL 33418. All rights reserved. **Special Ed Connection**® is your go-to source for compliance guidance and use-today solutions for all your day-to-day special education responsibilities. For FREE access or more information, please call 1-800-341-7874 or visit www.SpecialEdConnection.com. For more **LRP Publications** resources, visit www.shoplrp.com.*



"I think there's going to be more flexibility, but with flexibility comes more localized decision-making," he said. "So much was plainly spelled out before. There's going to be more local discussions about philosophical and procedural-type of stuff than there was before."

ED has released additional documents along with the final regulations to help with these efforts. There is a [fact sheet](#), [summary of major provisions](#), and a [resource for drafting nondiscrimination policies, notices of nondiscrimination, and grievance procedures](#).

They are [scheduled](#) to appear in the *Federal Register* April 29.

Don't miss Attorney Samantha Lewis' session [Title IX: Why Special Educators Need to Keep Their Eye on the Ball](#) at LRP's [National Institute on Legal Issues of Educating Individuals with Disabilities](#)® in Savannah, Ga., May 5-8, 2024.

[Cara Nissman](#) covers autism, school psychology, and IEP team issues for LRP Publications.

April 19, 2024

Copyright 2024© LRP Publications

Reprinted with permission from: **Special Ed Connection**®. © 2024 LRP Publications, 360 Hiatt Drive, Palm Beach Gardens, FL 33418. All rights reserved. **Special Ed Connection**® is your go-to source for compliance guidance and use-today solutions for all your day-to-day special education responsibilities. For FREE access or more information, please call 1-800-341-7874 or visit www.SpecialEdConnection.com. For more **LRP Publications** resources, visit www.shoplrp.com.