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Higher Education Alert

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Department of Education publishes final rule recodifying 2020 Title IX regulations

By Alexandra A. Mitropoulos, Michal E. Cantor, Kasey K. Hildonen and Steven M. Richard

The 2024 Title IX rule is officially removed from the CFR, restoring the 2020 framework and teeing up future regulatory changes.



What's the impact?

- The final rule formally repeals the 2024 Title IX regulations and restores the 2020 framework in the CFR.
- Most colleges and universities face limited immediate impact as the 2020 rules have been back in effect since January 2025.
- Institutions should watch for future Title IX rulemaking on the definition of "sex" and OCR investigative procedures, which amend these same sections of the CFR.

Overview

On September 29, 2026, the US Department of Education (the Department) published a final rule formally repealing the 2024 Title IX regulations and restoring the text of the 2020 Title IX regulations in the Code of Federal Regulations (CFR).

For most colleges and universities, the practical impact is limited. The Department has been enforcing the 2020 regulations since January 2025, following the vacatur of the 2024 regulations. The final rule therefore largely puts the CFR in the same place that institutions have already been operating.

The more important takeaway is what comes next. The Department's regulatory agenda identifies additional changes to the Title IX regulations, including revisions concerning the definition of "sex" and the Office for Civil Rights' (OCR) investigative procedures. The recodification clears the way for those amendments.

The 2024 regulations are formally removed from the CFR

The Department's 2024 Title IX regulations were challenged almost immediately after their publication. Between June and August 2024, multiple federal courts issued preliminary injunctions blocking enforcement of the regulations in numerous states and against individual institutions. In January and February 2025, two federal district courts subsequently vacated the 2024 regulations in their entirety. *Tennessee v. Cardona*, 762 F. Supp. 3d 615 (E.D. Ky. 2025), and *Carroll Independent School District v. Department of Education*, 2025 WL 1782572 (N.D. Tex. 2025). The appeals in both cases were subsequently dismissed, leaving the vacatur in place.

As a result, the Department returned to enforcing the 2020 regulations in January 2025. The Department's own current description of the regulatory framework confirms that the 2024 regulations are not effective and that the 2020 regulations remain in effect. The new final rule addresses that discrepancy by formally restoring the 2020 regulatory text.

What is—and is not—being restored

The Department is restoring the 2020 regulations essentially in their entirety, subject to four narrow exceptions:

- / The cross-examination exclusion rule vacated in *Victim Rights Law Center v. Cardona*. The Department is not restoring the portion of 34 C.F.R. § 106.45(b)(6)(i) that was vacated by the US District Court for the District of Massachusetts. That clause barred decision makers from relying on any statement of a party or witness who did not submit to cross-examination. The Department is also deleting the second clause of that provision, which prohibited decision-makers from drawing an adverse inference about responsibility solely on a party's absence from the hearing or refusal to answer questions. More on the deletion of this second clause is discussed below.
- / Appendix A to Part 106. This appendix was a cross-reference to an appendix that has since been rescinded through separate rulemaking.
- / 34 C.F.R. § 106.41(d). This provision addressed an "adjustment period" for athletics

compliance that expired decades ago.

- / 34 C.F.R. § 106.3(c)–(d). These provisions imposed one-time self-assessment and recordkeeping requirements tied to the original 1975 implementation of Title IX.

What this means for colleges and universities

NO IMMEDIATE OVERHAUL OF TITLE IX PROCEDURES IS REQUIRED

The most important operational point is straightforward: this final rule does not put institutions into a new Title IX regime. Institutions should have been following the 2020 regulations since January 2025 and should generally continue doing so. The final rule principally aligns the regulatory text in the CFR with the framework that the Department has already been enforcing.

Institutions that made policy or template revisions to conform to the 2024 regulations should confirm that their current policies, notices, training materials, and grievance forms are aligned with the 2020 framework now reflected in the CFR. Institutions also should review any policy provisions that incorporate Title IX regulations by cross-reference, particularly provisions addressing live hearings, cross-examination, evidentiary reliance, and adverse inferences.

THE NEXT ROUND OF TITLE IX RULEMAKING IS MORE SIGNIFICANT

The Department's Unified Regulatory Agenda identifies at least two forthcoming Title IX rulemakings that could result in substantive changes to the current regulatory framework. The update to the CFR sets the groundwork for making these more material changes, which will amend this same section of the CFR:

Definition of "sex." The Department plans to amend the Title IX regulations concerning the definition of "sex" to align with the administration's interpretation of biological sex. The precise scope and effect of any changes will not be known until the Department publishes a proposed rule.

OCR investigative procedures. The Department also plans to revise OCR's procedures for investigating complaints under Title IX and Title VI. Changes to those procedures could affect how institutions respond to OCR investigations, the information they are expected to provide, and the way OCR evaluates compliance.

Institutions should watch out for proposed rules in these areas, both because they may have more direct operational consequences and because they will likely present an opportunity for public comment.

A closer look: the cross-examination exclusion rule and the adverse inference proviso

In *Victim Rights Law Center v. Cardona*, 552 F. Supp. 3d 104 (D. Mass. 2021), the court vacated the portion of 34 C.F.R. § 106.45(b)(6)(i) providing that a decision-maker could not rely on a party's or witness's statement if that individual did not submit to cross-examination at a live hearing. The court concluded that the provision was arbitrary and capricious. The Department subsequently treated that portion of the regulation as vacated. The Department itself has described the *Victim Rights Law Center* (VRLC) decision as vacating the prohibition on relying on statements not subject to cross-examination (i.e., permitting reliance on statements made by an individual who was not present at a live hearing).

The sentence at issue, however, contained a second clause with an additional protection. It provided that a decision-maker could not draw an inference about responsibility based solely on a party's or witness' absence from the hearing or refusal to answer cross-examination or other questions. The Department has now deleted the entire sentence from the recodified regulations.

While the VRLC decision only addressed the first clause, the Department concluded in its rulemaking that the two clauses should be treated together. Its rationale is that the second clause appeared as a proviso to the first and that removing one without the other could produce a regulatory provision that the original drafters did not contemplate. The result is that the recodified regulations no longer contain an express prohibition against drawing an inference concerning responsibility based solely on a party's or witness's absence from a hearing or refusal to answer questions.

This does not necessarily mean that decision-makers are now affirmatively permitted to draw adverse inferences from non-participation. Other legal requirements, including constitutional due process principles where applicable, as well as an institution's own policies and procedures, may continue to constrain the decision-maker. Given the emphasis of recent court decisions and the Department on procedural due process, institutions should be careful about removing this second proviso from their policies despite the deletion by the Department.

As a practical matter, institutions should be cautious about treating the deletion as permission to change hearing practices, particularly where existing policies already prohibit adverse inferences from nonparticipation.

Looking ahead

The Department characterizes this final rule as a technical or conforming action that brings the CFR into alignment with the regulations currently in effect. For institutions, that characterization is largely accurate from an immediate operational standpoint.

But the timing is important. The Department's regulatory agenda contemplates further amendments to Part 106, including changes to the definition of "sex" and OCR's investigative procedures. The recodification gives the Department a clean regulatory baseline from which to propose those changes.

We will continue to monitor these developments and provide updates as the Department's forthcoming Title IX rulemakings take shape.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Alexandra A. Mitropoulos

617.345.6177

amitropoulos@nixonpeabody.com

Michal E. Cantor

516.832.7634

mcantor@nixonpeabody.com

Kasey K. Hildonen

518.427.2667

khildonen@nixonpeabody.com

Steven M. Richard

401.454.1020

srichard@nixonpeabody.com