



## ALERTS

### Executive Order Signals Significant Title IX Changes Ahead

March 16, 2021

#### Highlights

President Biden has ordered a review of all existing Title IX guidance by mid-June 2021

The executive order specifically mentions the Trump administration's Title IX regulations, suggesting that revisions are forthcoming

The order does not require schools to make any immediate change to their Title IX policies

President Biden recently issued an [executive order](#) directing Secretary of Education Miguel Cardona, to review all existing Title IX regulations, policies, and guidance by mid-June and to suggest possible revisions. The order is widely viewed as the Biden administration's first step in rescinding some of the more controversial elements of the Trump administration's 2020 Title IX regulations.

The "Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Sexual Identity," begins by reiterating Title IX's mandate that the educational environment be free from discrimination on the basis of sex. It

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then instructs Cardona, in consult with Attorney General Merrick Garland, to review all existing Title IX agency actions to determine if they are consistent with Title IX's mandate.

This order signals that the Biden administration may work to overturn the prior administration's regulations by using the lengthy notice and comment procedure tied to formal regulations, rather than by future executive orders.

Specifically, the order mentions the Trump administration's 2020 Title IX regulations as one of the items to be reviewed and directs consideration of rescinding prior guidance deemed inconsistent with Title IX's mandate, and to "consider ... publishing for notice and comment proposed rules" to revise or rescind prior guidance.

The regulations under the Trump administration narrowed the definition of sexual harassment and added due process protections for those accused of sexual harassment, such as a mandatory presumption of innocence until the conclusion of the grievance process, mandatory live grievance hearings for postsecondary schools with the cross-examination of witness, and the potential use of the "preponderance of the evidence" standard rather than the higher "clear and convincing evidence" standard at those hearings.

While this order does not require school to change their Title IX policies at present, it signals future actions may be imminent and as such, would require schools to – yet again – revise their policies.

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