Review of Department of Education’s July 2021 Q&A on the Title IX Regulations

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Agenda

• Brief recap of the Q&A and big picture impact.
• What parts of the final rule did the Department emphasize in the Q&A?
• Where did the Department expand on or alter prior guidance or regulations?
• What are the most significant compliance challenges associated with the Q&A?
What’s the big picture with respect to the Q&A?

How will the current Department enforce the prior administration’s rule?
Big Picture?

No major substantive changes.

• Reiterated substance and definitions in the final rule
• Did not rescind any subregulatory guidance.
What points did the Department reiterate?

*Key parts of the final rule that the new administration emphasized in the Q&A.*
Here’s what hasn’t changed.

Major points in the final rule that the Department appears to remain committed to.

- Response to conduct that falls outside Title IX jurisdiction is permitted.
- Title IX jurisdiction remains limited.
- Reporting obligations are unchanged.
- The hearing process, including cross examination, remains unchanged.
Where did the Department take a bit of latitude?

New guidance on our response obligations that adds to or alters the prior guidance.
New instructions.

Some areas of revised guidance and clarification from the Department include:

- Title IX Coordinator formal complaint obligations
- Limitations on cross examination by advisors
- What about sex discrimination that’s not sexual harassment?
What are the most significant compliance challenges arising from the Q&A?

Complications and things we need more information on.
Challenges.

- Exclusion of untested statements – how will this shake out?
- Retroactivity and responses to pre-8/14/2020 conduct