The Bruman Group, PLLC logo, address, and contact information
1120 20th St, NW, Suite 740 Washington, D.C. 20036
Phone: 202.965.3652
Fax: 202.965.8913
bruman@bruman.com
www.bruman.com
Fax: 

# **The Federal Update for April 19, 2024**

From: Michael Brustein, Julia Martin, Steven Spillan, Kelly Christiansen

Re: Federal Update

Date: April 19, 2024

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## Legislation and Guidance

### Final Title IX Rule on Education Programs Released

The U.S. Department of Education released a final rule this morning on discrimination on the basis of sex in education programs and activities. This long-awaited rule significantly expands the protections under Title IX of the Education Amendments of 1972 to include gender identity as well as pregnancy, and broadens the obligation of recipient entities to take action when they learn of alleged sexual harassment and assault. The new rule requires recipients to prohibit retaliation, including peer retaliation, and must respond in line with the regulations when the retaliation involves Title IX complaints. The rule will take effect on August 1, 2024 and will apply to complaints regarding alleged conduct that occurs after that date.

“For more than 50 years, Title IX has promised an equal opportunity to learn and thrive in our nation’s schools free from sex discrimination,” said Secretary of Education Miguel Cardona in a press call Thursday night. “These final regulations build on the legacy of Title IX by clarifying that all our nation’s students can access schools that are safe, welcoming, and respect their rights.”

The rule had been widely expected to expand the protections of Title IX beyond sex assigned at birth. It now states that students must be protected from discrimination and harassment based on gender identity, sexual orientation, sex characteristics, and sex stereotypes as well as biological sex. Pregnant students and staff will have additional rights to accommodations in timing of coursework, the ability to take a leave of absence or miss class for medical appointments, and reasonable time and space for students to pump or nurse.

The threshold for actionable conduct has been reduced, so now in addition to quid pro quo harassment and specific expenses, schools must take action where the conduct 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.” Students who no longer participate in a program because of alleged discrimination will now also be allowed to file Title IX complaints. Rather than requiring that an entity not be simply indifferent to such conduct, the rule would now require that it respond “promptly and effectively.” The entity’s Title IX coordinator would be required to conduct additional outreach to offer supportive measures and to update both the complainant and the respondent on the progress of the complaint process.

Though the prior rule, published in 2020, made some distinctions between K-12 and postsecondary schools in the grievance process, this final rule expands on those differences which add to the formality of the process, allowing parties to have an advisor and providing the opportunity to review and challenge evidence and question witnesses during a live hearing. The sections on grievance processes retain principles from the 2020 rule that respondents be presumed not responsible for the alleged conduct until a decision is made and reinforce that the process and personnel must be free from bias and conflicts of interest. Schools would also be prohibited from disclosing personally identifiable information without permission from a student or guardian.

Finally, the regulations offer some clarification on questions left open by the prior 2020 rule. For example, ED states that in the event of a conflict with FERPA, the Title IX rule wins out. The Title IX rule is also said to trump State laws – which is likely to be a flashpoint in anticipated litigation with States who have passed laws that conflict with this rule.

Several potential plaintiffs, including the Independent Women’s Law Center, have told reporters they will challenge the rule in court. And while the rule has been published too early for it to be overturned under the Congressional Review Act should President Biden lose reelection, it clearly has opponents in Congress. House Committee on Education and the Workforce Chair Virginia Foxx released a statement saying that “[t]his final rule dumps kerosene on the already raging fire that is Democrats’ contemptuous culture war that aims to radically redefine sex and gender” and “undermines existing due process rights, placing students and institutions in legal jeopardy.”

The Department of Education has pledged to conduct training and technical assistance on the new rule. Like the prior rule, the updated version requires that entities participate in training for staff related to their Title IX duties, with general training for all employees and more specific training for those who participate in the Title IX process. The Bruman Group can assist recipients in meeting these training requirements.

[The final Title IX regulations are available in the *Federal Register* here](https://public-inspection.federalregister.gov/2024-07915.pdf?utm_campaign=pi+subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov).

Author: JCM

### New Tranche of Student Loan Forgiveness Announced

The U.S. Department of Education and President Joe Biden announced a new round of proposed student debt relief this week. The plan would forgive unpaid interest for borrowers who owe more on their loans than they originally borrowed for individuals who earn $120,000 or less as a single filer. Other borrowers would be eligible for up to $20,000 in unpaid interest cancellation. Borrowers who have been in repayment for 20 years or longer on undergraduate loans (or 25 years on their graduate loans) would be eligible for full cancellation. The proposal would also include forgiveness for borrowers who took out commercial loans under the Federal Family Education Loan (FFEL) program before 2010, and those who would be eligible for forgiveness under an Income-Driven Repayment or other plan but are not currently enrolled. Finally, it also includes those who attended “low-value programs” (those programs which failed to provide sufficient financial value to graduates, as defined in the proposal).

The plan came in the form of a proposed regulation published in the *Federal Register*, which provides a 30-day comment window for the public to submit feedback. The U.S. Department of Education said that if implemented, the plan could benefit about 25 million borrowers, and could cost the federal government tens of billions of dollars over the next decade. House Republicans pushed back, with House Committee on Education and the Workforce Chair Virginia Foxx (R-NC) calling the plan “reckless and fiscally irresponsible” and suggesting that it violates a decision of the U.S. Supreme Court which said that the administration could not use the 2003 HEROES Act to forgive student loan balances.

[The full plan is available here](https://www.federalregister.gov/documents/2024/04/17/2024-07726/student-debt-relief-for-the-william-d-ford-federal-direct-loan-program-direct-loans-the-federal).

Author: JCM

### Uniform Grant Guidance Regulations to be Published Monday

Final updates to the Uniform Grant Guidance regulations will be officially published in the *Federal Register* on Monday, April 22. The Office of Management and Budget released an unofficial version of the final regulations earlier this month, which will impact all recipients of federal financial assistance. The rules will go into effect on October 1, 2024, but federal agencies are permitted to adopt them earlier. The U.S. Department of Education has not yet announced whether it will enforce the final rules sooner than October 1.

[The unofficial version of the final UGG is available here](https://public-inspection.federalregister.gov/2024-07496.pdf). [The official version will be accessible in the *Federal Register* here on Monday](https://www.federalregister.gov/public-inspection/2024-07496/guidance-federal-financial-assistance).

## News

### Stakeholders Endorse Children’s Privacy Legislation

This week, the National Education Association (NEA) and the American Federation of Teachers (AFT), along with the National School Boards Association, the School Superintendents Association, and other education organizations endorsed House and Senate legislation that addresses children’s privacy online. The legislation, the Children and Teens’ Online Privacy Protection Act, is an updated version of the current law – the Children’s Online Privacy Protection Act (COPPA) – which was passed in 1998.

The legislation is intended to clarify when online website or other online service operators are required to obtain parental consent before collecting personal information from children. Since COPPA’s passage in 1998, the use of technology has become commonplace in K-12 classrooms. The NEA and AFT, in a letter sent to House and Senate members this week, expressed support for the legislation and said that “the updated version of this bill finds the right balance between enhancing child and teen privacy protections online and enabling schools to effectively incorporate ed-tech into the classroom.”

Under the legislation, schools would be required to ensure any educational technology companies they contract with have adequate privacy safeguards in place for students. The legislation also increases the age under which online protections would apply from 13 to 17.

The Senate Committee on Senate, Commerce, and Justice passed an updated version of COPPA, known as “COPPA 2.0,” last summer but it has not yet been taken up by the full Senate. The House introduced a companion bill this month and held a subcommittee hearing on online privacy this week.

[The letter from education organizations supporting the bills is available here](https://www.aasa.org/docs/default-source/advocacy/2024-04-15-fepc-coppa-2.0-support-letter.pdf?sfvrsn=3fed34df_3).

Resources:

Anna Merod, “House members, witnesses agree time is ripe to pass federal data privacy laws,” *K-12 Dive,* April 18, 2024.

Juan Perez Jr., “Unions and education groups endorse ‘COPPA 2.0’ legislation,” *Politico*, April 16, 2024.

Author: KSC

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Contributors: Julia Martin, Kelly Christiansen

Posted by the California Department of Education, April 2024