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LEGAL ALERT- UPDATED TITLE IX REGULATIONS

On May 6, 2020, U.S. Secretary of Education, Betsy DeVos, updated the Title IX regulations to clarify how schools must respond to sexual harassment under Title IX. Accordingly, school district officials, employees, and representatives should familiarize themselves with the updated regulations to ensure compliance. To assist with this endeavor, we identify the major provisional updates to Title IX below.

Notice to Schools: Actual Knowledge

K-12 schools must respond whenever any employee has notice of sexual harassment (including allegations of sexual harassment). K-12 employees are mandatory reporters of child abuse. Notice includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator or any official of the school who has authority to institute corrective measures on behalf of the school.

Accessible Reporting to Title IX Coordinator; Adoption & Publication of Title IX Procedures

Each school must designate and authorize at least one employee to coordinate its efforts to comply with its Title IX responsibilities, and that employee must be referred to as the “Title IX Coordinator.” Schools must prominently display on their websites the required contact information for the Title IX Coordinator.

School’s Mandatory Response Obligations

A school must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means in a way that is not clearly unreasonable in light of the known circumstances.

Investigations, Hearings, and the Standard of Evidence

The school must investigate the allegations in any formal complaint and send written notice to both parties of the allegations upon receipt of a formal complaint. The Final Rule clarifies that hearings are optional for K-12 schools. With or without a hearing, after the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to do the following: submit written, relevant questions that a party wants asked of any party or witness; provide each party with the answers; and allow for additional, limited follow-up questions from each party. The Final Rule also provides rape shield protections for complainants, deeming irrelevant questions and evidence about a complainant’s prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent. Lastly, the Final Rule requires the school’s grievance process to state whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard. Schools must apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty

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Appeals and Informal Resolution

A school must offer both parties an appeal from a determination regarding responsibility and from a school's dismissal of a formal complaint (or any allegations) when certain conditions are met. The Final Rule allows a school, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation, so long as both parties give voluntary, informed, written consent to attempt informal resolution.

Retaliation Prohibited

The Final Rule expressly prohibits retaliation against any individual for exercising Title IX rights.

Although there have been extensive adjustments to Title IX's protections against sexual harassment, it is extremely important for school district officials to ensure that the new rules are followed. In the event that these regulations are not adhered to, school districts will be liable for their violations. In an effort of continued support, White & Story will continue monitoring the legal revisions of Title IX and associated matters to ensure that our clients are well informed.