The U.S. Department of Education's Proposed Revisions to the Title IX Regulations:

Highlighted provisions of the July 12, 2022, Proposed Rule and related WASB comments

Topic/Issue	Key References in the Proposed Rule	WASB Comment
1. Scope of sex discrimination under Title IX The Proposed Rule (PR), if adopted, would expressly implement the Department of Education's current interpretation of the scope of sex discrimination under Title IX, including by amending relevant regulatory definitions and mandates to expressly reference school districts' obligations not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Specifically regarding sexual orientation and gender identity, the Department of Education's "Fact Sheet" regarding the PR states: "The proposed regulations would clarify that Title IX's prohibition on discrimination based on sex applies to discrimination based on sexual orientation and gender identity. They would make clear that preventing someone from participating in school programs and activities consistent with their gender identity would cause harm in violation of Title IX, except in some limited areas set out in the statute or regulations."	106.10; 106.31(2)	Different school districts are likely to take different views of (1) the Department's current interpretation of the scope of Title IX; and (2) the specific application of the Department's interpretation to different facts, circumstances, and complaints. Wisconsin school districts also need to be aware of judicial interpretations of Title IX, particularly within the U.S. Court of Appeals for the Seventh Circuit.
2. Application of Title IX to participation in athletics based on gender identity The application of the PR to questions of gender identity in athletics is of particular interest to many school officials. According to the Department of Education's Fact Sheet, "The Department plans to issue a separate notice of proposed rulemaking to address whether and how the Department should amend the Title IX regulations to address students' eligibility to participate on a particular male or female athletics team." Such additional rule-making would address potential amendments to section 106.41, which the PR does not propose to substantively amend. This statement and similar statements found in the preamble (i.e., U.S. Department of Education commentary) to the PR indicate that the Department has no specific intent to use the PR to directly change the status quo on this issue.	106.31(2)	Some school districts may prefer that the final rules expressly clarify the potential application (or non-application) of proposed section 106.31(2) to the issue of participation in athletics based on gender identity.

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However, broad language included in section 106.31(2) of the PR creates some ambiguity that calls into question whether the PR might, in fact, change the status quo on the issue of participation in athletics. Specifically, section 106.31(2) of the PR states: In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a school district must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, unless otherwise permitted by Title IX or this part. Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.		
3. Definition of sexual harassment: Harassment that creates a hostile environment The PR would continue to cover harassment that creates a hostile environment, redefined under the PR as unwelcome sex-based conduct that is sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively, it denies or limits a person's ability to participate in or benefit from the school district's education program or activity. The current regulations define and prohibit harassment that creates a hostile environment as follows: Unwelcome sex-based conduct that is "so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school district's education program or activity." Compared to the current regulations, the PR's revision to the definition of harassment that creates a hostile environment broadens the scope of conduct that would need to be addressed as Title IX sexual harassment. The proposed definition is also broader than the scope of conduct that the U.S. Supreme Court determined must be proven to support a claim for monetary damages against a school district for a failure to appropriately address student-on-student "hostile environment" sexual harassment.	106.2 (definition of "sex-based harassment")	The expanded definition of harassment that creates a hostile environment must be considered in light of other changes, such as the employee reporting requirements and the proposed changes to the grievance procedure. But, one practical result of the expanded definition is that districts might determine that nearly all initial reports of sex-based harassment would need to be treated as though the situation *could* fall under Title IX (requiring supportive measures, use of the grievance procedure to address complaints, etc.). The reference to a "subjective" and "objection" evaluation creates some ambiguity.

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4. Definition of sexual harassment: "Quid pro quo" sexual harassment The PR would continue to cover quid pro quo harassment—when an employee or other person authorized by a school district to provide an aid, benefit, or service explicitly or impliedly conditions that aid, benefit or service on a person's participation in unwelcome sexual conduct. The substantive clarification the PR makes (relative to the current regulations) is that such conduct is prohibited by persons beyond solely "employees." Thus, a volunteer coach could be determined to have engaged in "quid pro quo" sexual harassment.	106.2 (definition of "sex-based harassment")	The additional clarification provided by the PR appears to be reasonable. However, it may be beneficial to parallel this clarification with a clarification within 106.44(h) of the PR to confirm that a school may use administrative leave (or its equivalent) regarding a person authorized by a school district to provide an aid, benefit, or service who is not an employee.
5. Obligation of the district to take action upon being notified of conduct that may constitute sex discrimination; duty of employees to notify Title IX Coordinator The PR states that a school district "must take prompt and effective action to end any sex discrimination that has occurred in its education program or activity, prevent its recurrence, and remedy its effects." Under the PR, school districts would have to require the district's Title IX Coordinator to take the following steps upon being notified of conduct that may constitute sex discrimination under Title IX: (1) Treat the complainant and respondent equitably; (2) (i) Notify the complainant of the district's Title IX grievance procedures; and (ii) If a complaint is made, notify the respondent of the applicable grievance procedures and notify the parties of the informal resolution process under this section if available and appropriate; (3) Offer and coordinate supportive measures, as appropriate, to the complainant and respondent to restore or preserve that party's access to the school district's education program or activity; (4) In response to a complaint, initiate the district's Title IX grievance procedures or informal resolution process; (5) In the absence of a complaint or informal resolution process, determine whether to initiate a complaint of sex discrimination that complies with the grievance procedures, if necessary to address conduct that may constitute sex discrimination under Title IX in the school district's education program or activity; and	106.44(a); 106.44(b); 106.44(c)(1); 106.44(f)	The expectations created in the PR with respect to the duties of the Title IX Coordinator expand the expressly mandated scope of the Coordinator role. Districts would have to be prepared to accommodate such duties, and the related time and other resources, within the position(s) that are designated as a Title IX Coordinator.

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(6) Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the school district's education program or activity, in addition to remedies provided to an individual complainant. Many of the above-listed responsibilities of a Title IX Coordinator are similar to obligations that exist under the current regulations with respect to sexual harassment. However, the PR expands the obligations to apply to of any type of sex discrimination. The PR also states that a school district must "require its Title IX Coordinator to monitor the [district's] education program or activity for barriers to reporting information about conduct that may constitute sex discrimination under Title IX," and "take steps reasonably calculated to address such barriers." The PR coordinates the above obligations to respond to notification of conduct that may constitute sex discrimination with an express requirement that a school district "must require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX." The duty of employees to notify the Title IX Coordinator is arguably an implicit expectation of the current regulations with respect to sexual harassment, but the PR makes the duty an express requirement and expands the duty to clearly include any type of sex discrimination.		
6. Single grievance procedure for all complaints of discrimination under Title IX The PR would do away with the existing distinction between (1) a "grievance process" that is used solely for formal complaints of sexual harassment; and (2) a "grievance procedure" that is issued to address all other complaints of sex discrimination and related unlawful conduct (such as retaliation). Instead, all school districts would be required to "adopt and publish grievance procedures … that provide for the prompt and equitable resolution of complaints made by students, employees, or third parties who are participating or attempting to participate in the [school district's] education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX and [the Title IX regulations]." Under the PR: 1. Certain identified persons may submit an oral or written request to the school district to initiate the school district's grievance procedures as described in proposed sections 106.45 (and, for post-secondary institutions, 106.46). 2. Subject to some general/minimum requirements, the grievance procedure can be somewhat flexible and, to a degree, tailored to the nature and seriousness of the allegations.	106.8(b)(2); 106.45	Relative to the 2020 regulations, the proposed change to a single "grievance procedure" that is substantially more flexible would be a welcome change for nearly all school districts. After a full review of section 106.45 of the PR, some districts may decide that they wish to advocate for even greater flexibility or for specific changes to the minimum requirements.

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3. The timelines associated with specific procedural steps would be less rigid as compared to the current regulations, generally permitting faster investigations and decisions than is currently possible. 4. There is flexibility to either offer appeals, or not, following an initial decision on the merits of a complaint at the end of a grievance procedure. However, the parties must be given an opportunity to appeal the dismissal of a complaint (i.e., dismissal prior to a determination).		The option to not offer an appeal might be applied, for example, in situations where the school board (if trained and if permitted under the grievance procedure) acts as the decisionmaker.
7. Details of the grievance procedure: One person may serve as both investigator and decisionmaker The PR provides that, within a school district's grievance procedure, the decisionmaker <u>may</u> be the same person as the Title IX Coordinator or investigator. The PR requires that the decisionmaker for an **appeal of a dismissal of a complaint** must not have been involved in an investigation of the allegations or the dismissal of the complaint. With respect to complaints of sexual harassment under Title IX, the current regulations require the investigator and the decisionmaker to be different individuals. Any appeal decisionmaker must also have not had a role earlier in the process for that complaint.	106.45(b)(2); 106.45(d)(3)(ii)	Most school districts, and particularly smaller districts, are likely to support this flexibility. Under the current regulations, school districts have experienced challenges finding different qualified individuals to fill the relevant Title IX roles.
8. Details of the grievance procedure: A school district must comply with the grievance procedure before it imposes any disciplinary sanctions Generally, this means that a district must determine that sex discrimination occurred under the local grievance procedures before imposing any disciplinary sanctions against a respondent. Thus, even when evidence is overwhelming or undisputed (e.g., the respondent has admitted to the conduct), there can be a delay between the conduct (or report of conduct) and the imposition of discipline. This is similar to the existing regulations, except that under the PR the restriction on discipline applies to respondents involved in allegations of any type of sex discrimination under Title IX, not solely sexual harassment. The more flexible procedures allowed under the PR may mean that the delay in reaching a determination may be somewhat shorter under the PR. (Note: Under the PR, "emergency removals" and the use of administrative leave for employees are still possible and the relevant authority under the PR would be similar to the authority that exists under the current regulations.)	106.45(h)(4); 106.44(h); 106.44(i)	Schools struggle with this limitation under the current regulations because of the difficulty of coordinating the Title IX regulations with other disciplinary processes (suspension, expulsion, athletic code violations, etc.) and the need to effectively single out Title IX issues from all other misconduct. The PR would not resolve this complexity and would in some ways amplify the issues due to the scope of conduct/allegations that are covered by the PR's restriction on disciplinary sanctions.

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9. Details of the grievance procedure: Use of the "preponderance evidence standard" to determine whether sex discrimination occurred The PR provides, following an investigation and evaluation process under the grievance procedure, school districts must use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred, unless the school district uses the clear and convincing evidence standard of proof in *all other comparable proceedings*, including proceedings relating to other discrimination complaints, in which case the recipient may elect to use that standard of proof in determining whether sex discrimination occurred." Under the current regulations, school districts were required to "apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment."	106.45(h)(1)	Nearly all school districts adopted the "preponderance of the evidence standard" in their current Title IX grievance process, so this change is not likely to raise substantial concerns for many districts.
10. The scope of prohibited retaliation The PR defines retaliation to include intimidation, threats, coercion, or discrimination against any person by a student, employee, person authorized by the school district to provide aid, benefit, or service under the school district's education program or activity, or school district for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process under § 106.44(k), in grievance procedures under § 106.45, and if applicable § 106.46, and in any other appropriate steps taken by a school district in response to sex discrimination under § 106.44(f)(6). As is the case under the current regulations, the scope of what constitutes prohibited retaliation for a *refusal to participate* in the grievance procedure (e.g., an investigation) or in other appropriate steps taken by a school district in response to sex discrimination is ambiguous under the PR.	106.2 (definition of "retaliation")	Districts could benefit from greater clarity regarding their authority to expect/require good-faith participation in the grievance process – particularly by district employees. Subject to other legal requirements (such as providing so-called *Garrity* warnings), some school officials may take the position that in Title IX matters (as in other employment-related investigations) schools have clear authority to compel an employee to provide truthful responses to questions about the employee's conduct and impose a consequence for a refusal to respond.

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<tr><th>Topic/Issue</th><th>Key References in the Proposed Rule</th><th>WASB Comment</th></tr>
<tr><td>11. Mandatory training: Training would be required for all employees

Under the PR, all employees would have to be trained on:
(i) The school district’s obligation to address sex discrimination in its education program or activity;
(ii) The scope of conduct that constitutes sex discrimination under the Title IX regulations, including the definition of sex-based harassment; and
(iii) All applicable notification and information requirements under §§ 106.40(b)(2) and 106.44 of the PR.

There is no exception or other clarification regarding substitute employees, limited term employees, or other special cases. At the same time, a non-compensated volunteer coach would not be covered by the proposed training mandate, even though it is arguably more important to provide training to the volunteer coach than to (as an example) a temporary summer employee.

Under the current regulations, there is no similar “all employee” training mandate, but the practical reality is that in order for a school district to comply with its obligations to respond to “actual knowledge” of sexual harassment (on the part of any employee), some type of training or professional development work is needed.

Because the PR generally requires (1) school employees to notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX; and (2) a district response to any such information/report, some district-wide training is still probably the only practical approach to overall compliance.</td><td>106.8(d)(1)</td><td>Even recognizing the general practical need for such training, school districts would likely benefit from some flexibility to make reasonable exceptions regarding some limited-term positions or other special cases.</td></tr>
<tr><td>12. Mandatory training: Role-specific training

The PR requires role-specific training for Title IX Coordinators, investigators, decisionmakers, facilitators of informal resolutions, and other persons who are responsible for implementing the school district’s grievance procedures or have the authority to modify or terminate supportive measures. The PR expands the focus of such mandated training to include a variety of aspects of Title IX and different types of sex discrimination, beyond only sexual harassment.

The current regulations focus on training related to allegations of sexual harassment.</td><td>106.8(d)</td><td>The changes that affect the role-based training appear to be reasonable. However, as is the case under the current regulations, the training mandates of the PR will require significant resources and present some implementation challenges.</td></tr>
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13. Expansion of obligation to publish/publicize the district's Title IX notice of nondiscrimination The PR continues to require school districts to provide a copy of the district's Title IX notice of nondiscrimination directly to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the school district. The PR additionally provides that a school district must prominently include all elements of the required notice of nondiscrimination on its website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the school district, or which are otherwise used in connection with the recruitment of students or employees. As a limited exception to publishing the complete notice, if necessary due to the format or size of any publication, the PR permits a district to instead include in a particular publication a shorter statement that the school district prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the Title IX Coordinator, and providing the location of the notice on the school district's website. Under the current regulations, the obligation to publicize the Title IX notice of nondiscrimination applies to displaying the notice on the school district website and in each handbook or catalog that the school district makes available. Even this more limited obligation presents many practical challenges.	106.8(c)	The expanded duties to publish/publicize the notice are not well defined. Under any interpretation, the duties would be extremely broad. Even if the ambiguity were reduced, the mandates would still likely be impractical. Aside from the difficulty of identifying each handbook, catalog, announcement, bulletin, and application form and then determining whether the "long form" or "short form" notice would be appropriate, a school district also has to address competing notice requirements (such as the USDA nondiscrimination statement requirements within food service programs). Stated simply, not every civil rights law can be covered with an express notice in every school district "announcement" or "bulletin." A school district also has an interest in not implying that Title IX has greater importance than other important civil rights laws.

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14. The new role/concept of "confidential employees" would be added to the regulations As applied and potentially relevant to school districts, the PR defines a "confidential employee" as: (1) An employee of a school district whose communications are privileged under Federal or State law associated with their role or duties for the institution; (2) An employee of a school district whom the school district has designated as a confidential resource for the purpose of providing services to persons in connection with sex discrimination— but if the employee also has a role or duty not associated with providing these services, the employee's status as confidential is limited to information received about sex discrimination in connection with providing these services; Under the PR: (1) A school district must notify all participants in the school district's education program or activity of the identity of any confidential employee. (2) A school district must require a confidential employee to explain their confidential status to any person who informs the confidential employee of conduct that may constitute sex discrimination under Title IX and must provide that person with contact information for the school district's Title IX Coordinator and explain how to report information about conduct that may constitute sex discrimination. In providing services related to sex discrimination as a confidential employee, the confidential employee would not have an obligation to refer the matter/information to the Title IX Coordinator.	106.2 (definition of "confidential employee"); 106.44(d)	The application of this new concept within the K-12 setting is complicated by the fact that most students are minors. The intended purpose and role of a confidential employee in the K-12 setting requires greater clarification to fully evaluate this new concept.
15. Offering opportunities for informal resolution The PR would generally permit a school district to offer an informal resolution process, if appropriate, whenever it receives a complaint of sex discrimination or has information about conduct that may constitute sex discrimination under Title IX. The current regulations permit informal resolution of an allegation of Title IX sexual harassment only if a formal complaint alleging sexual harassment has been filed. There are some additional modifications to the requirements for an informal resolution process, including the clarification that potential terms that may be included in an informal resolution agreement include but are not limited to: (1) Restrictions on contact; and	106.44(k)	WASB does not foresee that the proposed modifications regarding informal resolutions will be problematic. Offering an opportunity for informal resolution at all remains discretionary under the PR.

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(2) Restrictions on the respondent's participation in one or more of the school district's programs or activities or attendance at specific events, including restrictions the school district could have imposed as remedies or disciplinary sanctions had the school district determined that sex discrimination occurred under the school district's grievance procedures.		
16. Discrimination based on pregnancy and related conditions The proposed regulations would clarify that recipients must protect students and employees from discrimination based on pregnancy or related conditions (defined in proposed § 106.2), including by providing reasonable modifications for students, (proposed § 106.40(b)(3)(ii) and (b)(4)), reasonable break time for employees for lactation (proposed § 106.57(e)(1)), and lactation space for both students and employees (proposed §§ 106.40(b)(3)(iv) and 106.57(e)(2)). The proposed regulations would also modernize and clarify Title IX's longstanding prohibition against treating parents differently on the basis of sex, including by defining "parental status" to include, e.g., adoptive or stepparents, or legal guardians). (Proposed § 106.2) Under the proposed regulations, a recipient would be required ensure that when a student (or a student's parent, guardian, or authorized legal representative) tells a recipient's employee of the student's pregnancy or related conditions, the employee must provide information on how to contact the Title IX Coordinator for further assistance. (Proposed § 106.40(b)(2)). Once a student or the student's representative notifies the Title IX Coordinator, the Title IX Coordinator must: • Provide the student with the option of individualized, reasonable modifications as needed to prevent discrimination and ensure equal access to the recipient's education program or activity. • Allow the student a voluntary leave of absence for medical reasons and reinstatement upon return. • Provide the student a clean, private space for lactation.	106.2;(definitions of "pregnancy or related conditions" and "parental status"); 106.21(c); 106.40; 106.57	The provisions affecting pregnant students are likely to have a comparatively more significant impact at institutions of higher education. However, school districts are unlikely to have a strong objection to any of the applicable requirements. The provisions add more express duties for the Title IX Coordinator, and, again, increase the time and resources that school districts must be prepared to dedicate to the role.
17. The distinction between the U.S. Department of Education's "administrative enforcement" standards and the civil liability standard in a private suit for monetary damages. The preamble to the PR repeatedly emphasizes the difference between (1) "standards of liability" for purposes of "administrative enforcement," and (2) standards of liability that apply in private litigation when a person seeks monetary damages as a judicial remedy. See, e.g., 87 Fed. Reg. at 41432-41435. Several of the proposed amendments to the Title IX regulations, including the proposed broadening of the definition of "sexual harassment" within the regulations rely directly on the U.S. Department of Education presumed authority to promulgate and enforce requirements that effectuate	(general comment)	Some districts may disagree with the Department's position that "administrative enforcement standards" should often be procedurally and substantively different than the judicial enforcement standards.

Topic/Issue	Key References in the [Proposed Rule]()	WASB Comment
Title IX's nondiscrimination mandate, *even in circumstances that would **not** give rise to a claim for monetary damages in a private lawsuit.* The preamble further states, " The Department's longstanding position is that it cannot compel a recipient to comply with Title IX—for example by terminating Federal funds from the recipient—simply because an official identified in the ''actual knowledge'' definition of the current regulations (e.g., an elementary school teacher or bus driver) knew of sexual harassment and failed to tell the recipient's Title IX administrators about it, with the result that the school failed to promptly and effectively respond. This is consistent with OCR's practice when it seeks to administratively enforce the Department's Title IX regulations through an investigation or compliance review. OCR begins by providing notice to the recipient of the allegations of potential Title IX violations it is investigating; if OCR finds a violation, OCR is required to seek voluntary corrective action from the recipient before pursuing fund termination or other enforcement mechanisms. 20 U.S.C. 1682; 34 CFR 100.7(d) (incorporated through 34 CFR 106.81); see also Gebser, 524 U.S. at 287–89; 2001 Revised Sexual Harassment Guidance at iii–iv. *In the administrative enforcement process, OCR provides notice of the alleged sex discrimination to the recipient, as well as an opportunity for the recipient to take appropriate corrective action at multiple stages during the process.* Notwithstanding that a recipient cannot be liable for monetary damages, or be subject to administrative enforcement, unless and until officials with authority to take corrective action are made aware of the problem and fail to adequately respond, because Title IX provides that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,'' 20 U.S.C. 1681(a), a recipient has a legal duty to operate its education program or activity free from sex discrimination at all times. This legal duty to operate its education program or activity in a manner in which people are not subjected to sex discrimination exists regardless of who has notice of any discriminatory conduct. It also covers all forms of sex discrimination and is not limited just to sexual harassment. Thus, proposed § 106.44(a) would require a recipient to take prompt and effective action to end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects, consistent with the statutory text. This requirement would include situations in which a recipient determines that a respondent's conduct violated its prohibition on sex discrimination, which would amount to a determination that sex discrimination had occurred, as explained in the discussion of the proposed definition of ''respondent'' (§ 106.2). This requirement would also include situations in which a recipient		Given the content of both the current regulations and the content of the PR, some school districts may wish to advocate for any final rule to include an express statement that the regulations (1) are created for purposes of furthering the purposes of Title IX and are to be enforced through administrative action by the Department; (2) do not create any private cause of action or source of liability in private litigation; and (3) should not be construed to alter the existing standards that apply to liability for monetary damages in a private cause of action. In addition, if there are any exceptions to the notion that in an enforcement action the OCR would seek voluntary corrective action from a school district **before** pursuing termination of a school district's federal funding or other enforcement mechanisms, then such exceptions should be expressly identified.

Topic/Issue	Key References in the [Proposed Rule]	WASB Comment
reviews its own actions in response to a complaint and determines that it discriminated based on sex in its policy or practice. For example, proposed § 106.44(a) would require a recipient to provide remedies as appropriate to a student who experienced discrimination as a result of another student violating its prohibition on sex discrimination and prevent the recurrence of that … In the administrative enforcement context, the Department proposes that a recipient meets its obligation to take prompt and effective action to end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects by complying with the steps required under the additional provisions in proposed § 106.44, as appropriate. Importantly, nothing in the proposed regulations would affect the fact that the Department may not ‘‘terminat[e] or refus[e] to grant or to continue [Federal financial] assistance under [a] program or activity to any recipient’’ until the Department has made an express finding on the record of a failure to comply with a regulatory or statutory requirement, ‘‘after opportunity for hearing.’’ 20 U.S.C. 1682. *See* Preamble at 41433-41435.		

About this Document and the Public Comment Period Established for the Proposed Rule:

The Proposed Rule to amend the Title IX regulations is subject to a public comment period and, thereafter, further revisions by the U.S. Department of Education. The public comment period is an opportunity for school districts and other interested parties to attempt to influence the final version of the regulations.

The general summary and commentary provided in this document is intended to help school district leaders understand the scope of the Proposed Rule and determine whether their school district wishes to submit any comments for purposes of their local advocacy. The WASB has attempted to identify the proposals that are likely to be of greatest interest to most school districts. However, it is important to note that the table above highlights only some of changes that are included in the Proposed Rule.

The deadline for submitting comments on the Proposed Rule is **September 12, 2022**. School districts may submit comments via the "Federal eRulemaking Portal" at **http://www.regulations.gov**. Any submissions should include the docket ID (ED–2021–OCR–0166) at the top. The Department of Education prefers for comments to be uploaded as a Microsoft Word file.

At this time, it is not known when any final regulatory amendments will be published or when they will take effect–other than that it will be sometime after the public comment period closes. Thus, the 2020 version of the Title IX regulations will remain in effect for at least the start of the 2022-23 school year. Amended regulations may or may not take effect prior to the end of 2022-23.

More information about the 2022 proposed (i.e., draft) changes to the Title IX regulations can be found at the following links:

- The **official version of the Proposed Rule**, including all U.S. Dept. of Education commentary (190 pages), as published in the Federal Register on July 12, 2022 (87 Fed. Reg., No. 132, at pages 41390 to 41579).
- An excerpt of the proposed rule consisting only of the 13 pages that show **the specific proposed amendments to the Title IX regulations** (i.e., proposed changes to 34 C.F.R. Part 106). The excerpt covers pages 41567 to 41579.
- A **U.S. Department of Education Fact Sheet**, which includes a link to a **table/chart that summarizes major provisions** of the proposed rule.
- The **current Title IX regulations** that are presently in effect: **34 C.F.R. Part 106**.