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Ahead of Revised Title IX Regulations, Biden Administration Policy Directive Extends Title IX Protections to Gay and Transgender Students

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In May 2016, the Department of Education directly addressed the treatment of transgender students under Title IX and extended its protections to the LGBTQ+ community. In 2017, the Trump Administration withdrew this guidance, causing confusion about the protections and coverage of Title IX.

The Biden Administration's Department of Education recently issued a policy directive that explicitly states Title IX protections extend to gay and transgender students. This directive, which is consistent with recent U.S. Supreme Court rulings in the employment>Title VII context with the *Bostock* ruling and the earlier Obama-era interpretations of Title IX, is an early reversal of Trump-era interpretations of Title IX. Moreover, it signals the anticipated Title IX regulations will also explicitly include protections of LGBTQ+ students, shifting back to Obama-era regulations and going even further to protect these students.

The Biden Administration likely issued this policy directive in direct response to recent state and local legislation aimed at restricting transgender students from participation in sports at educational institutions. While this early policy directive does not yet have the force of law, the policy will likely be included in the Title IX regulation overhaul expected from the Biden Administration as early as late summer.

As to the anticipated Title IX regulation overhaul, between June 7 and 11, the Department of Education held public hearings on Title IX regulations. During these hearings, members of various interest groups and educational institutions had an opportunity to weigh in on Trump-era regulations versus Obama-era regulations, and the issue of extending protections to the LGBTQ+ community. Commentators voiced opinions about differences between the two sets of regulations, specifically discussing cross-examination and live-hearing requirements, jurisdictional limitations of Title IX protections, and issue of due process for accused students.

While we do not yet know how the Biden Administration will revise Title IX regulations, this early policy directive signals that the Biden Administration likely intends to provide further protections for students, potentially shifting the focus away from due process rights and limitations of Title IX jurisdiction and enforcement. Baker Donelson stands ready to interpret the new Title IX regulations and will provide further guidance as to steps needed for compliance by the deadline set forth by the Department of Education. If you have any questions on this topic, please contact one of the authors or your Baker Donelson attorney.