

of the review, the Department conducted outreach and held meetings with: (1) higher education and institutional stakeholders, including organizations representing public institutions; (2) faith-based organizations, including organizations representing religious IHEs; and (3) organizations that advocate for civil rights and civil liberties. On February 22, 2023, the Department published a notice of proposed rulemaking (NPRM) in the **Federal Register** proposing to rescind portions of the rule that became effective on November 23, 2020. See 88 FR 10857. Specifically, the Department proposed to rescind 34 CFR 75.500(d) and 76.500(d), which prescribe a role for the Department in enforcing grant conditions related to religious student organizations at certain public institutions of higher education (IHEs). These regulations apply to public IHEs that receive a direct grant from the Department or a subgrant from a State-administered formula grant program of the Department.

The Department accepted public comments on the NPRM from February 22, 2023, through March 24, 2023. In response to that NPRM the Department received approximately 58,000 public comments.

#### **Withdrawal of the Notice of Proposed Rulemaking and Termination of the Rulemaking Proceeding**

The Department issued the NPRM to amend 34 CFR parts 75 and 76 and provided its reasons for proposing to rescind the 2020 final regulations in that document. However, upon further consideration, the Department is withdrawing the NPRM and terminating the rulemaking proceeding.

During the public comment period, the Department received approximately 58,000 comments. Several hundred of the comments calling for withdrawal were from individuals and organizations who argued that rescinding the current rule is not necessary because it is not complex or burdensome. Additionally, many comments in support of the current regulations pointed to ongoing issues faced by religious student groups as evidence of the need to keep these regulations. Numerous commenters in favor of rescinding these provisions asserted that the current regulations are not necessary to protect these constitutional freedoms and expressed concern that the regulations could be read to require institutions to afford preferential treatment to religious student groups.

We appreciate the feedback that the Department received in response to the NPRM. In light of the concerns raised by commenters both in support of and in opposition to the proposed rescissions, the forthcoming change in administration, and the significant resources needed to review and consider all relevant matters presented in the public comments, the Department for each of these independent reasons does not believe that finalizing the proposed rescissions is an efficient use of Department resources at this time. Therefore, the Secretary exercises his discretion to withdraw the NPRM and terminate this rulemaking. We do not intend for a final rule to be issued on this NPRM. Any future rulemaking the Department may undertake on this topic would similarly be subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*<sup>3</sup>

Importantly, this withdrawal does not change or alter the Department's role with respect to the other material grant conditions added by the 2020 final regulations at §§ 75.500(b) and (c) and 76.500(b) and (c). The Department will determine if an IHE has violated the grant conditions in those provisions only if a State or Federal court issues a final, non-default judgment against a public IHE for violating the First Amendment or against a private IHE for violating stated institutional policies. Absent such a judgment, the Department presumes public IHEs to be in compliance with the First Amendment where the alleged violations concern matters other than denial of equal treatment to religious student organizations because of the organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs. Under the 2020 final regulations at §§ 75.500(b) and (c) and 76.500(b) and (c), the Department's role is not to investigate alleged violations of these grant conditions and is limited to deciding whether and to what extent to impose additional penalties where a State or Federal court has rendered a relevant final, non-default judgment.

**Accessible Format:** On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**,

<sup>3</sup> The Department notes that the 2020 final regulations do not impose conditions on participation in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). See 85 FR 59942. Any future rulemaking that would seek to impose conditions on participation in title IV programs would be subject to the negotiated rulemaking requirement in section 492 of the HEA, 20 U.S.C. 1098a.

individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

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**Miguel Cardona,**

*Secretary of Education.*

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## **DEPARTMENT OF EDUCATION**

### **34 CFR Part 106**

[Docket ID ED–2022–OCR–0143]

RIN 1870–AA19

#### **Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams; Withdrawal**

**AGENCY:** Office for Civil Rights, Department of Education.

**ACTION:** Notice of proposed rulemaking; withdrawal.

**SUMMARY:** The U.S. Department of Education (Department) is withdrawing the notice of proposed rulemaking entitled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams” published in the **Federal Register** on April 13, 2023. The proposed rule would have amended the regulations implementing Title IX of the Education Amendments of 1972 (Title IX).

**DATES:** The notice of proposed rulemaking published in the **Federal Register** on April 13, 2023, 88 FR 22860, is withdrawn as of December 20, 2024.

**FOR FURTHER INFORMATION CONTACT:** Bianca Costello, U.S. Department of Education, 400 Maryland Avenue SW, Fifth Floor, Washington, DC 20202. Telephone: (202) 219-2126. Email: [bianca.costello@ed.gov](mailto:bianca.costello@ed.gov).

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 13, 2023, the Department published a notice of proposed rulemaking titled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams” (Athletics NPRM) in the **Federal Register** that proposed amending 34 CFR 106.41 of the Department’s regulations implementing Title IX. 88 FR 22860. The intent of the Athletics NPRM was to “propose a regulatory standard under Title IX that would govern a recipient’s adoption or application of sex-related criteria that would limit or deny a student’s eligibility to participate on a male or female athletic team consistent with their gender identity.” *Id.* The Department’s proposed rule provided that, if a recipient adopts or applies sex-related criteria that would limit or deny a student’s eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition, and grade or educational level: (i) be substantially related to the achievement of an important educational objective, and (ii) minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied. 88 FR 22891.

The Department invited the public to comment on all aspects of the Athletics NPRM, as well as the Regulatory Impact Analysis. In response, the Department received more than 150,000 public comments on the Athletics NPRM during the 30-day comment period.

**Withdrawal of the Notice of Proposed Rulemaking and Termination of the Rulemaking Proceeding**

The Department reviewed and considered all comments submitted during the comment period and appreciates the time and effort spent by commenters in sharing their views with

the Department. Commenters offered a broad spectrum of opinions on the Athletics NPRM. Some commenters expressed general support for the proposed regulation, and some asked the Department to modify the proposed regulation to provide for more students to participate on a sex-separate athletic team consistent with their gender identity, particularly at the elementary and secondary school levels. Other commenters opposed the proposed regulation in its entirety and asked the Department to withdraw the Athletics NPRM. Numerous commenters expressed concerns about the application of the proposed regulation in practice, arguing that the proposed regulation was unclear or too complex for recipients to implement, and many commenters offered alternative regulatory text for the Department’s consideration to clarify, simplify, elaborate on, or substantively change the focus and impact of the proposed rule. Additionally, a significant number of commenters included discussions of case law, scientific studies and research papers, and existing athletic association policies and practices regarding athletic eligibility criteria that, according to the commenters, supported the adoption, modification, or withdrawal of the proposed regulation.

The Department recognizes that there are multiple pending lawsuits related to the application of Title IX in the context of gender identity, including lawsuits related to Title IX’s application to athletic eligibility criteria in a variety of factual contexts. In light of the comments received and those various pending court cases, the Department has determined not to regulate on this issue at this time. Therefore, the Department hereby withdraws the Athletics NPRM and terminates this rulemaking proceeding. We do not intend for a final rule to be issued on this NPRM. If, in the future, we decide it is appropriate to issue regulations on this topic, we will do so via a new notice of proposed rulemaking, subject to the requirements of the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*

To the extent the Department receives complaints of discrimination about a recipient’s obligation to provide equal opportunity to participate in athletics regardless of sex, it will continue to apply the longstanding legal standards reflected in the athletics regulations at 34 CFR 106.41 and in U.S. Dep’t of Health, Educ., and Welfare, Office for Civil Rights, A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 FR 71413 (Dec. 11, 1979), <https://www.govinfo.gov/content/pkg/FR-1979-12-11/pdf/FR-1979-12-11.pdf>.

The Athletics NPRM issued on April 13, 2023, is hereby withdrawn, and the rulemaking proceeding for that NPRM is terminated as of the date of publication of this notice in the **Federal Register**.

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**Miguel Cardona,**

*Secretary of Education.*

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**DEPARTMENT OF EDUCATION**

**34 CFR Parts 600, 602, and 668**

[Docket ID ED-2022-OPE-0050]

RIN 1840-AD82, 1840-AD83, 1840-AD86

**Program Integrity and Institutional Quality: State Authorization, Cash Management, Accreditation and Related Issues**

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Termination of negotiated rulemaking process for State Authorization, Cash Management, Accreditation and Related Issues.

**SUMMARY:** The U.S. Department of Education (Department) announces the termination of the negotiated rulemaking process for three Program Integrity and Institutional Quality issues that were undertaken as part of a larger negotiated rulemaking process for