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Students Still Have Title IX Rights Even Without the 2024 Biden Title IX Rule

On January 9, 2025, a federal judge in Kentucky issued a nationwide order¹ invalidating the Biden administration's [2024 Title IX rules](#), which had strengthened regulatory protections for students against sex-based harassment, anti-LGBTQI+ discrimination, and discrimination based on pregnancy or related conditions. So, unless the court decision is successfully appealed, the Department of Education can no longer enforce the 2024 Title IX rules.

However, the Title IX statute, which was passed by Congress in 1972, remains in place, and many courts have recognized the broad scope of the statute's protections for students, regardless of what is in the Title IX rules.

Read this document to learn more about what schools still **must** do, as well as what they **can and should** do, to protect LGBTQI+ students, student survivors, and pregnant and parenting students from sex discrimination.

1. Schools must still protect LGBTQI+ students

Schools **must** still protect LGBTQI+ students from discrimination. Even without the explicit protections of the 2024 Title IX **rules**, the Title IX **statute** (passed in 1972) already protected—and still protects—students from anti-LGBTQI+ discrimination. Several federal appellate courts, including the Fourth, Seventh, and Ninth Circuits, have affirmed that sex discrimination under Title IX includes discrimination on the basis of sexual orientation, gender identity, or both.² The Supreme Court also affirmed in *Bostock v. Clayton County* that discrimination based on sex includes discrimination based on sexual orientation and gender identity.³ Furthermore, the Department of Education has resolved a number of Title IX complaints before the 2024 rules were issued, including under the 2020 sexual harassment rules, requiring schools to protect LGBTQI+ students from harassment and bullying, including anti-LGBTQI+ slurs and repeated misgendering.⁴ And, since at least 2011, the Department has recognized under both Democratic and Republican administrations that sex discrimination includes sex stereotyping.⁵

In addition, schools **can and should** create policies to address anti-LGBTQI+ discrimination. This is because the Title IX statute is a floor, not a ceiling: nothing prevents schools from providing greater protections for LGBTQI+ students than those required by federal courts under the Title IX statute. For example, schools should ensure that anti-bullying and anti-harassment policies provide specific examples of unacceptable behavior by students and staff and prohibited actions by the school against LGBTQI+ students, including transgender, nonbinary, and intersex students.

2. Schools must still protect student survivors

The Department of Education recently issued guidance stating that schools **must** comply with the 2020 Title IX rules prohibiting sexual harassment.⁶ For example, schools must respond to sexual harassment that is “severe and pervasive” and occurs during any school-sponsored activity within the United States (as well as some incidents that occur outside of a school-sponsored activity). In addition, schools must offer supportive measures to all students who report sexual harassment and conduct an investigation if requested by a formal complaint.

In addition, schools **can and should** create other “non-Title IX” policies to address sex-based harassment that falls outside of the 2020 rules’ purview. The 2020 rules explicitly allow schools to adopt “non-Title IX” policies, and many schools did in fact adopt such “non-Title IX” policies when the 2020 rules were first issued. For example, schools can adopt a “non-Title IX” policy to address sex-based harassment that is “severe or pervasive” (but does not rise to the level of “severe and pervasive”) or that occurs outside a school-sponsored activity or outside the United States. For these “non-Title IX” incidents, schools can follow procedures that are consistent with the 2024 rules.⁷ After all, Title IX is only a floor, not a ceiling, and nothing prevents schools from protecting survivors beyond what Title IX requires.

See this [fact sheet](#) on what schools **must** do to comply with the 2020 harassment rules while still protecting student survivors as much as possible.

See this [chart](#) for a list of protections from the 2024 rules that schools **can and should** offer to survivors under a separate “non-Title IX” policy.

3. Schools must still protect pregnant and parenting students.

Schools **must** comply with the 1975 Title IX rules prohibiting discrimination against pregnant and parenting students. For example, schools cannot force students to be involuntarily segregated from their peers in an alternate program based on pregnancy, childbirth, termination of pregnancy, or recovery from any of these conditions. In addition, schools must offer accommodations to students for pregnancy, childbirth, termination of pregnancy, or recovery from any of these conditions to the extent those accommodations are also offered to temporarily disabled students.

In addition, schools **can and should** still comply with the 2024 rules prohibiting discrimination against pregnant and parenting students. This is because Title IX is a floor—not a ceiling—for civil rights, and nothing prevents schools from going beyond what Title IX requires. For example, schools should offer reasonable accommodations to pregnant and parenting students even if the specific accommodations requested are not offered to temporarily disabled students who are not pregnant or parenting, such as providing a lactation room that is not a restroom. Schools should also allow students who are pregnant and parenting to access accommodations, a leave of absence, an alternate program, or a lactation space without requiring documentation if their need is obvious or documentation is not required of other students. In addition, schools should offer privacy protections for personally identifiable information—an especially important safeguard after the Supreme Court gutted the constitutional right to abortion in *Dobbs v. Jackson Women’s Health Organization* and as pregnancy criminalization increases.⁸

See this [chart](#) for a list of protections that schools **must** still offer to pregnant and parenting students under the 1975 rules and that schools **can and should** offer to pregnant and parenting students consistent with the 2024 rules.

4. Schools must still protect LGBTQI+ students

Because Title IX is a floor—not a ceiling—for protections against sex discrimination, many state and local laws require schools to do more than what Title IX requires. Nothing in the court decision vacating the 2024 rules allows schools to violate state and local laws. Furthermore, nothing in the court decision prevents a school from **voluntarily** offering protections over and above what Title IX requires.

5. Schools should stay prepared for compliance with the 2024 Rule.

While the 2024 rule has been vacated at this time, schools should prepare for the possibility that a higher court could reverse or narrow the scope of the vacatur at any time. For example, a higher court could rule that the 2024 rule is vacated only in specific states or that only specific provisions of the 2024 rule are vacated. Therefore, schools should stay prepared to return to complying with all or part of the 2024 rule.

FOOTNOTES

- ¹ *Tennessee v. Cardona*, No. CV 2:24-072-DCR, 2025 WL 63795 (E.D. Ky. Jan. 9, 2025), as amended (Jan. 10, 2025).
- ² See *B.P.J. by Jackson v. W. Va. State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024), petition for cert. filed (July 16, 2024) (24-44); *Grabowski v. Ariz. Bd. of Regents*, 69 F. 4th 1110 (9th Cir. 2024); *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760 (7th Cir. 2023), cert. denied, 144 S. Ct. 683 (2024); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), cert. denied, 141 S. Ct. 2878 (2021); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017).
- ³ *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644 (2020). While *Bostock* was a Title VII (employment nondiscrimination) case, the Supreme Court and other federal courts have relied on Title VII as a guidepost for interpreting Title IX since Title IX was passed in 1972. See, e.g., *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 75 (1992) (relying on Title VII precedent when stating Title IX imposes duty on schools not to discriminate on the basis of sex); *G.G. ex rel Grimm v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 718 (4th Cir. 2016) (“[W]e look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.”).
- ⁴ See, e.g., Dep’t of Educ., Office for Civil Rights, *U.S. Department of Education’s Office for Civil Rights Resolves Sex-Based Harassment Investigation in Rhinelander School District in Wisconsin* (July 6, 2023), <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/05221029-a.pdf>; Dep’t of Educ., Office for Civil Rights, *Office for Civil Rights Announces Resolution of Sex-Based Harassment Investigation of Tamalpais Union High School District* (June 24, 2022), <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09181466-a.pdf>.
- ⁵ Dep’t of Educ., Office for Civil Rights, *Office for Civil Rights Recent Resolution Search* (last visited Jan. 24, 2025), https://ocrcas.ed.gov/ocr-search?keywords=sex+stereotypes&sort_order=ASC&sort_by=field_resolved.
- ⁶ Dep’t of Educ., Office for Civil Rights, *Dear Colleague Letter at 1* (issued Jan. 31, 2025; revised Feb. 4, 2025), <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl>. The Department of Education is now enforcing the 2020 Title IX rule for all pending Title IX investigations that were originally initiated under the 2024 rule. *Id.* at 2.
- ⁷ A school’s “non-Title IX” sexual harassment policy must still be consistent with other federal, state, and local laws. For example, public colleges and universities in Kentucky, Michigan, Ohio, and Tennessee must allow cross-examination in any student disciplinary proceeding if expulsion or suspension is a possible sanction, and credibility is at issue. *Doe v. Baum*, 903 F.3d 575, 581 (6th Cir. 2018). Similarly, private colleges and universities in Delaware, New Jersey, and Pennsylvania must allow cross-examination in any student disciplinary proceeding if credibility is at issue. *Doe v. Univ. of Scis.*, 961 F.3d 203, 215 (3d Cir. 2020).
- ⁸ See Pregnancy Justice, *Pregnancy as a Crime: A Preliminary Report on the First Year After Dobbs* (Sept. 2024), <https://www.pregnancyjusticeus.org/wp-content/uploads/2024/09/Pregnancy-as-a-Crime.pdf>.