

Navigating the Dynamic Landscape of Title IX: Legal Updates and Considerations for Compliance

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Introductions

Holly E. Jacobs: Speaker
- *Attorney, Robbins Schwartz*



Stefanie L. Croix: Moderator
- *Director of Business Services, Lockport
Township High School District 205*



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Agenda

- The Evolution of Title IX
 - Origins & Mechanics
 - 2020 & 2024 Regulations
- Recent Updates
 - Executive Orders, Dear Colleague Letters, and Developments at the DOE
- OCR's Recent Enforcement Actions
 - Maine, Illinois, Oregon, UPenn
- Considerations for Compliance



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The Evolution of Title IX

1972 to 2024

Origins of Title IX

- Signed into law June 23, 1972
- “No person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”
- What does “receiving Federal financial assistance” mean?
- What is a “program or activity”?
- What does “sex” mean?

Mechanics of Title IX



- Regulations – 34 C.F.R. Part 106
 - Promulgated by the Department of Education
 - Typically changes from administration to administration
- Who enforces Title IX?
 - Department of Education’s Office of Civil Rights (“OCR”)
- What are the consequences for noncompliance?
 - Public statements of noncompliance, corrective action, loss of federal funding

Regulatory Changes since 2020

- 2020 Title IX regulations (Trump), effective 8/14/2020
- Notice of Proposed Rulemaking, June 23, 2022
 - Record-breaking 240,000+ comments
- Final regulations were expected in May 2023... then October 2023... then January 2023... then March 2023...
- 2024 Title IX regulations (Biden), issued April 19, 2024
 - Effective 8/1/2024
 - (note: no separate athletics rules released)
- 2024 regulations significantly expanded Title IX's protections, and in turn, institutions' obligations

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Comparing 2020 and 2024

	2020 Regulations	2024 Regulations
Definition of sex discrimination/scope of regulations	Not explicitly addressed	Sex discrimination includes discrimination based on sexual orientation, sex characteristics, sex stereotypes, pregnancy and related conditions, and gender identity
Definition of harassment	Sexual harassment = “severe, pervasive, and objectively offensive” that it “effectively denies” equal access	Sex-based harassment = “severe or pervasive, and subjectively and objectively offensive” that it “denies or limits” ability to participate
Off-campus conduct	Schools need only address sexual harassment that occurs in the U.S. and in the education program or activity	Schools must address conduct occurring outside the education program or activity where that conduct contributes to a hostile environment at school

Comparing 2020 and 2024

	2020 Regulations	2024 Regulations
Complainant status	Schools must only address a formal complaint of sexual harassment if the complainant was participating at the time of the filing of the complaint	Schools must address a complaint of sex-based harassment if the complainant was participating at the time of the incident
Response & notice requirements	Schools must only respond to alleged sexual harassment if they have actual knowledge of it	School employees must report sex-based harassment to TIXC when they know that conduct reasonably may constitute sex discrimination
Questioning parties & witnesses	Schools must allow the parties to submit written questions for the school to ask of the other party and witnesses	Schools must have a process to assess the credibility of parties and witnesses

Legal Challenges to the 2024 Regulations

- Injunctions in 26 states
- School-specific injunction
 - *Kansas v. Dept. of Educ.*, Case No. 5:24-cv-04041-JWB (E.D. Kan.)
 - Preliminary injunction affecting K-12 schools and institutions of higher education across the country, including Illinois
 - Schools attended by students enrolled in (or whose parents are enrolled in) Young America's Foundation, Female Athletes United, Moms for Liberty

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Recent Updates

Developments to Title IX in 2025

January 1 – January 20, 2025

- *State of Tennessee v. Cardona*, Case No. 2:24-cv-00072-DCR-CJS (N.D. Ky.)
 - Vacated the 2024 Title IX regulations
 - Three reasons:
 - Department of Education exceeded its authority
 - 2024 regulations violate the Constitution
 - 2024 regulations are arbitrary and capricious

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Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government

- Executive Order signed January 20, 2025
- Directs the federal government to recognize two distinct sexes—male and female—as defined by biological sex at conception
- Defines sex as an “immutable biological classification” that does not include a concept of gender identity
- Directs heads of federal agencies to rescind inconsistent guidance, align government-issued identification to the order, and “correct the misapplication” of *Bostock v. Clayton County*
- No modification to Title IX regulations



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Ending Radical Indoctrination in K-12 Schooling



- Executive Order signed January 29, 2025
- Directs the Secretary of Education, the Secretary of Defense, and the Secretary of Health and Human Services to develop an “Ending Indoctrination Strategy” for presentation to the President.
- The “Strategy” must contain recommendations and a plan for eliminating Federal funding “for illegal and discriminatory treatment and indoctrination in K-12 schools, including based on gender ideology and discriminatory equity ideology.”
- In education specifically, the “Strategy” must contain a summary and analysis of, as well as the proposed process to prevent funds from being provided to, K-12 curriculum, instruction, programs, activities, teacher education, certification, licensing, employment, and training that “directly or indirectly” supports the “instruction, advancement, or promotion of gender ideology or discriminatory equity ideology.”

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OCR Dear Colleague Letters

- January 31, 2025
 - OCR will enforce Title IX under the 2020 regulations
 - “sex” means “the objective, immutable characteristic of being born male or female as outlined in the 2020 Title IX rule”
 - *Note:* the 2020 Title IX rule does not define sex at all
 - Removed and replaced by February 4 Dear Colleague Letter
- February 4, 2025
 - Language defining “sex” removed
 - Clarified that OCR will enforce Title IX consistent with the Executive Order “Defending Women...”

Keeping Men Out of Women's Sports



- Executive Order signed February 5, 2025
- Requires the Secretary of Education to act to “protect all-female athletic opportunities and all-female locker rooms”
- Directs Secretary to prioritize Title IX enforcement against educational institutions and athletic associations that require female students “to compete with or against or to appear unclothed before males”
- Repeats the definitions of sex used in prior executive orders: there are only two distinct sexes, male and female, as defined by a person’s biological sex at conception, and does not include the concept of gender identity

End DEI Portal

Schools should be focused on learning.

The U.S. Department of Education is committed to ensuring all students have access to meaningful learning free of divisive ideologies and indoctrination. This submission form is an outlet for students, parents, teachers, and the broader community to report illegal discriminatory practices at institutions of learning. The Department of Education will utilize community submissions to identify potential areas for investigation.

Your email:

50 Character Limit

School or school district:

50 Character Limit

School or school district ZIP Code:

Please describe in as much detail as possible the discriminatory practice taking place:

450 Word Limit

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Reduction in Force at DOE

- March 11, 2025
- DOE initiated reduction in force impacting nearly 50% of employees
 - 4,133 to 2,183 employees
- Statement from Linda McMahon: “Today’s reduction in force reflects the Department of Education’s commitment to efficiency, accountability, and ensuring that resources are directed where they matter most: to students, parents, and teachers.”
- Will fewer employees mean less enforcement?

Improving Education Outcomes by Empowering Parents, States, and Communities

- Executive Order signed March 20, 2025
- Directs the Secretary of Education to take “all necessary steps to facilitate the closure of the Department of Education,” to the extent permitted by law
- Directs the Secretary to also ensure that DOE funds are compliant with Federal law and policy, including the requirement that “any program or activity receiving Federal assistance terminate illegal discrimination obscured under the label ‘diversity, equity, and inclusion’ or similar terms and programs promoting gender ideology”
- Currently unclear which agencies will take over various functions

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Title IX Special Investigations Team

- Announced March 28, 2025
- Department of Education and Department of Justice
- “Today, amid a staggering volume of Title IX complaints, the U.S Department of Education (ED) and the U.S. Department of Justice (DOJ) announce the “Title IX Special Investigations Team” (SIT) to ensure timely, consistent resolutions to protect students, and especially female athletes, from the pernicious effects of gender ideology in school programs and activities.”
- Enable “rapid resolution investigation process” to conduct investigations that are “fully prepared for ultimate DOJ enforcement”

OCR's Enforcement Actions

Clues for Compliance



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Maine Department of Education

- Investigation launched February 21, 2025
 - Allegations that the Maine DOE “continues to allow male athletes to compete in girls’ interscholastic athletics and that it has denied female athletes female-only intimate facilities”
- Investigation concluded February 25, 2025, finding Title IX violation by allowing transgender girls to compete on girls’ sports teams



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MDOE – Proposed Resolution Agreement

- Terms of proposed draft resolution agreement sent to Maine DOE on March 19, 2025:
 - Only students who are “female” are allowed to participate in girls’ athletics
 - Locker rooms and bathrooms must be separated by “biological sex”
 - “Eligibility procedure” based on long-standing school records
 - Take back past awards given to transgender students and give them to cisgender female students
 - Review websites and remove/revise statements inconsistent with Title IX
 - Establish complaint process for resolving disputes over eligibility determinations

MDOE – Referral to DOJ

- The Department of Education referred the MDOE case to the DOJ for litigation on April 11, 2025
- April 16, 2025: lawsuit filed
- Alleges that MDOE's policies have denied girls fair competition, recognition, and athletic opportunities in direct conflict with Title IX and its implementing regulations
- Core of the case: what is "sex" under Title IX?

Illinois DOE, Chicago Public Schools, Deerfield Public Schools

- Investigation launched March 20, 2025
- Based on the complaint filed March 18, 2025, by the Defense Freedom Institute and the Liberty Justice Center, requesting OCR investigation of alleged Title IX violations
 - Alleges CPS and ISBE are in violation of Title IX because they “force students to share intimate facilities with members of the opposite sex as a condition of participation in their education programs and activities”
- Also based on report from a Deerfield parent that there was a “male” present in the girls’ locker room while they were changing for gym, and students were reprimanded for refusing to undress in front of the “male” student
 - Allegations that the entities “violated Title IX by requiring girls in the school to share their locker room with a boy”

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Portland Public Schools and Oregon School Activities Association

- Investigation launched on March 25, 2025
- Allegation that a “male” track student was allowed to compete in a girls’ interscholastic track and field competition on March 19, 2025
- Additional allegation that the “male” student was permitted to use the girls’ locker room
- OSAA being investigated for its “gender identity participation” policy
 - Allows students to participate in the athletic or activity program of their consistently asserted gender identity

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University of Pennsylvania

- Found in violation of Title IX on April 28, 2025 by “denying women equal opportunities by permitting males to compete in women’s intercollegiate athletics and to occupy women-only intimate facilities”
- Proposed resolution agreement requires that UPenn:
 - (i) Issue a statement to the University community stating that the University will comply with Title IX in all of its athletic programs;
 - (ii) Restore to all female athletes all individual athletic records, titles, honors, awards or similar recognition for Division I swimming competitions misappropriated by male athletes competing in female categories; and
 - (iii) Send a letter to each female athlete whose individual recognition is restored expressing an apology on behalf of the University for allowing her educational experience in athletics to be marred by sex discrimination.

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Considerations for Compliance

Exploring the Practical Effects on Schools



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Takeaways from OCR's Enforcement Actions

- OCR enforcement priorities regarding Title IX are clear
 - Athletics and transgender students are the current focus
 - Title IX will be enforced to mandate that cisgender students not be required to share facilities with transgender students
 - Title IX will be enforced to require that transgender students not be permitted to compete consistent with their gender identity
- Draft resolution agreement for Maine DOE is highly instructive
 - Review the proposed terms and consider what steps your district might need to take in order to comply
- Careful consideration of state law conflicts is essential

Prioritizing Your Compliance Efforts



- Establish an Executive Order/OCR update task force
- Take stock of policies, procedures, grant programs, etc. that may conflict with the Title IX updates
- Assess risk posed by existing policies and weigh District and state priorities against federal enforcement priorities
- Re-train administrators who oversee Title IX grievance procedures, update employees
- Revise language used in publicly available policies, procedures, and other information
- Review pending complaints and investigations, ensure 2020 regulations used going forward

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Long-Term Considerations

- Be prepared for likely subjects of litigation (athletics, locker rooms, bathrooms, name/pronoun use)
- Conduct in-depth review/revision of any programs or activities that may conflict with Title IX updates
- Maintain documentation of all compliance activities in the event there is an OCR investigation
- Be ready for OCR investigations to move rapidly and prepare for effects of reduced staff at DOE and OCR
- Keep an eye on pending OCR investigations and their outcomes, as well on any legal challenges to these Title IX updates in the courts
- *Remember:* Title IX compliance is not just about avoiding liability, it is about protecting civil rights for your educational environment

Questions and Answers

Thank you for your time!

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