

## **U.S. Department of Education Confirms It Will Enforce 2020 Title IX Rule and Regulations Following District Court Ruling and Executive Order**

On January 9, 2025, a federal district court vacated a set of Title IX regulations and—at least for now—resolved the question of whether Title IX protects students from discrimination on the basis of gender identity and sexual orientation. According to the ruling, it does not.

The decision ended a period where different enforcement regimes applied across the country, as the previous 2020 Title IX regulations (the “2020 Rule”) now apply nationwide. Accordingly, recipients should promptly conduct a review of their Title IX policies to ensure that they are consistent with the 2020 Rule and regulations, key aspects of which are outlined below. At the same time, it should be noted that agency directives are in flux under the Trump administration, and further changes are expected from the Department of Education in the near term.

### **Background**

Title IX of the Education Amendments of 1972 is a federal law that prohibits discrimination “on the basis of sex” in federally funded education programs and activities. 20. U.S.C. § 1681 *et seq.*

On April 19, 2024, the Department of Education (“DOE”) released a final rule under Title IX (the “2024 Rule”), which altered key principles of the 2020 Rule promulgated by the Trump administration. Specifically, the 2024 Rule expanded the scope of discriminatory conduct prohibited by Title IX, increased schools’ responsibility to prevent and respond to Title IX complaints, and adopted a more complainant-friendly evaluation process. It became effective on August 1, 2024.

In response to these changes, dozens of states and private parties filed lawsuits seeking to block enforcement of the 2024 Rule. Federal courts granted these requests in 26 states, thereby enjoining enforcement of the 2024 Rule and reverting to the 2020 Rule in those jurisdictions.

### **Recent Ruling**

On January 9, 2025, the Hon. Danny C. Reeves, Chief Judge of the United States District Court for the Eastern District of Kentucky, held that the 2024 Rule was unlawful and vacated it in *Tennessee v. Cardona*, No. 24-cv-072, 2025 WL 63795 (E.D. Ky. Jan. 9, 2025), as amended (Jan. 10, 2025). The Court reasoned that the 2024 Rule:

- (1) Exceeded the DOE’s statutory authority by broadening the definition of discrimination “on the basis of sex” beyond “discrimination on the basis of being male or female”;
- (2) Violated (a) the First Amendment by potentially requiring educators to use names and pronouns associated with a student’s chosen gender, and (b) the Spending Clause by imposing ambiguous conditions and inducing unconstitutional action; and
- (3) Is arbitrary and capricious because the DOE does not provide a reasoned explanation for departing from its longstanding interpretation of Title IX.

Further, the Court held that while only three provisions were challenged, these provisions “fatally taint[ed] the entire rule.” Specifically, the court acknowledged that “[w]hile not directly challenged,” the 2024 Rule’s new requirements for handling grievances, training, recordkeeping, and processing complaints refer to and incorporate provisions the Court deemed invalid. This “necessitate[d] jettisoning these regulations as well.” The Court added that while at least one provision—that pertaining to parental, family, or marital status, and pregnancy or related conditions<sup>1</sup>—is not directly impacted by the challenge, it would not be proper for the court to rewrite the regulation by severing the offending material. As a result, the court vacated the entire 2024 Rule and its corresponding regulations.

The DOE did not lodge an appeal.<sup>2</sup> And on January 20, 2025, President Trump signed an [Executive Order](#) that: (1) defines “sex” as “an individual’s immutable biological classification as either male or female”; (2) echoes Judge Reeves’s conclusion that the Supreme Court’s decision in *Bostock v. Clayton County, Ga.*, 590 U.S. 644 (2020) does not extend to Title IX; (3) prohibits the use of federal funds to promote “gender ideology,” defined in the Executive Order as a “concept of self-assessed gender identity”; and (4) directs agencies to rescind all guidance documents that are “inconsistent” with the order, including several listed documents from the Department of Education.<sup>3</sup> The legal basis for this Executive Order is likely to face further scrutiny by the courts. For the time being, however, the DOE’s Office of Civil Rights clarified in its February 4, 2025 [Dear Colleague Letter](#) that in light of the recent ruling and President Trump’s Executive Order, the binding regulatory framework for Title IX enforcement includes the 2020 Title IX Rule and regulations, and accordingly, “open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reoriented to comport fully with the requirements of the 2020 Title IX Rule.”

## Implications

The effect of this ruling is a nationwide vacatur. As the DOE acknowledges,<sup>4</sup> this means that educational institutions receiving federal funding must only comply with the 2020 Rule and regulations. Nevertheless, because Title IX sets the floor for compliance, not the ceiling, recipients may, as a matter of policy, choose to incorporate elements of their 2024 policies that do not conflict with the 2020 Rule and regulations (or any other federal, state, or local law), such as policies affording additional support to pregnant students.

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<sup>1</sup> See 34 C.F.R. § 106.40 (2024).

<sup>2</sup> However, another possibility remains: Other parties may seek to intervene and defend the 2024 Rule on appeal.

<sup>3</sup> The Executive Order provides that within 120 days of January 20, 2025, i.e., by May 20, 2025, each agency head shall provide an update on implementation of this order to the President, which shall include changes to agency documents and agency-imposed requirements on federally funded entities. It is expected that the DOE will address changes to Title IX enforcement made to comply with the Executive Order. For more information on President Trump’s executive orders, see <https://www.pbwt.com/publications/trumps-january-2025-executive-orders-implications-for-employers>.

<sup>4</sup> See <https://www.ed.gov/laws-and-policy/civil-rights-laws/title-ix-and-sex-discrimination/sex-discrimination-overview-of-law> (last updated January 31, 2025).

Some key aspects of reversion to the 2020 Title IX Final Rule and regulations are as follows:

The 2020 Title IX Final Rule	
Narrowed Scope of Title IX Protections	<ul style="list-style-type: none"> <li>• Omits express definition of sex discrimination that includes discrimination based on sexual orientation, gender identity, sex characteristics, sex stereotypes, pregnancy, and pregnancy-related conditions;</li> <li>• Limits unwelcome conduct constituting sexual harassment to conduct that is (1) severe, (2) pervasive, <b>and</b> (3) objectively offensive such that it “effectively denies” a person equal access to a school program or activity; and</li> <li>• Omits transgender inclusion requirements, including those related to classes and activities, and use of bathrooms and locker rooms consistent with gender identity.</li> </ul>
Decreased Onus on Schools to Prevent and Respond to Complaints	<ul style="list-style-type: none"> <li>• Reduces a recipient’s obligation to respond to complaints, limiting that obligation only to circumstances where a school has “actual knowledge” of allegations;</li> <li>• Omits the requirement that certain school employees notify their Title IX Coordinator when they have information about conduct that reasonably may constitute sex discrimination; and</li> <li>• Omits the requirement that Title IX Coordinators monitor school education programs and activities for barriers to reporting potential sex discrimination, and take steps reasonably calculated to address such barriers.</li> </ul>
Decreased Flexibility in Procedures for Handling Potential Title IX Violations	<ul style="list-style-type: none"> <li>• Requires that the grievance process be initiated by a formal complaint—i.e., a document filed by the complainant or signed by the Title IX Coordinator—alleging sexual harassment against a</li> </ul>

	<p>respondent and requesting that the recipient investigate the allegation;</p> <ul style="list-style-type: none"> <li>• Requires that advanced written notice of any investigative interviews, meetings, or hearings (including the date, time, location, participants, and purpose) be provided to a party with sufficient time for them to prepare to participate;</li> <li>• Requires that, prior to the completion of an investigative report, evidence directly related to the allegations be provided to the parties (and their advisors, if any), and requires that the parties be given at least 10 days to submit a written response, which the investigator will consider before completing the report;</li> <li>• Requires that an investigative report summarizing the relevant evidence be provided to the parties at least 10 days prior to a hearing (or other time of determination regarding responsibility) for their review and written response; and</li> <li>• Prohibits a Decision Maker from also serving in the role of Title IX Coordinator or Investigator.</li> </ul>
<p>Less Complainant-Friendly Evaluation Process</p>	<ul style="list-style-type: none"> <li>• A recipient may choose between a “preponderance of the evidence” standard (where the evidence of a violation must be more likely than not) or “clear and convincing evidence” standard (where the evidence of a violation must be highly and substantially more likely to be true); and</li> <li>• At post-secondary institutions, Title IX hearings must be live and include an in-person cross examination requirement. The 2024 requirement that allowed complainants to request alternative arrangements to avoid direct confrontation with respondents, such as using separate rooms or screens, is no longer in effect.</li> </ul>

The above is a non-exhaustive list of significant changes to the Title IX rules and regulations. Certain special situations—such as grievance proceedings involving conduct that allegedly occurred between August 1, 2024 and January 9, 2025—may warrant further consultation regarding Title IX compliance.

Please contact the firm if you have specific questions about how this ruling, or President Trump’s Executive Order, may apply to your educational institution and its current policies and procedures.

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