

U.S. Department of Education Formally Reverts to Title IX Rules from 2020

On September 29, 2026, the U.S. Department of Education (the “ED”) published a Final Rule, [“Recodification of Title IX Rules,”](#) formally removing the **2024 Title IX Rule** from the Code of Federal Regulations (“CFR”) and restoring the provisions of the **2020 Title IX Rule**, with a few exceptions.¹ The **2026 Title IX Rule** took effect upon publication. For most schools, colleges, and other recipients of federal education funding, the 2026 Rule does not change day-to-day obligations, because the 2020 framework has governed since early 2025. It does, however, close a chapter of litigation and set the stage for further regulatory action.

As we reported in our [February 6, 2025 Alert](#), a federal district court vacated the entirety of the 2024 Rule nationwide. In the days following that decision, the Second Trump Administration made clear that it supported the departure from the Biden-era Title IX regulatory regime: on January 20, 2025, President Trump issued an [Executive Order](#) intended to “defend[] women from gender ideology,” and defining “sex” as an “immutable biological classification as either male or female.” Subsequently, the ED’s Office for Civil Rights (“OCR”) confirmed in a [Dear Colleague Letter](#) that the 2020 Rule is currently the binding regulatory framework for Title IX enforcement.

Since then, the 2024 Rule, though no longer enforced, has remained in the CFR. According to the ED, federal courts dismissed all remaining litigation concerning the 2024 regulations in August 2026.² The 2026 Rule is the next step, officially conforming the published regulations to the framework already in force.

The “Recodification” Rule

The 2026 Rule states that it “does not reopen debate on the 2020 Rule or the 2024 Rule” and simply returns the CFR to its pre-2024 text, with the following differences:

1. removal of a cross-reference to obsolete guidance;
2. removal of two decades-old phase-in deadlines; and
3. permitting decision-makers to (a) consider statements not subject to cross-examination, and (b) draw an adverse inference “based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.”³

The changes relating to the live hearing procedures are not straightforward. These procedures have been revised repeatedly in an attempt to carefully balance procedural safeguards for complainants and respondents. Originally, the 2020 Rule provided that if a party or witness did not submit to cross-examination at a postsecondary live hearing, the decision-maker “must not rely on any statement of that party or witness.” This “uncrossed” exclusion clause was challenged in court and ultimately vacated as arbitrary and capricious under the Administrative Procedure Act. *Victim Rights Law Center v. Cardona*, 552 F. Supp. 3d 104 (D. Mass. 2021). In *Victim Rights Law Center*, the court reasoned that the ED had not considered how the exclusion would interact with a respondent’s right not to attend the hearing. If a respondent stayed away, the exclusion would suppress police reports,

¹ *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 2020-10512, [85 FR 30026](#) (May 19, 2020) (“2020 Rule”); 2024-07915, [89 FR 33474](#) (Apr. 29, 2024) (“2024 Rule”); *Recodification of Title IX Rules*, 2026-19929, [91 FR 61308](#) (Sept. 29, 2026) (“2026 Rule”).

² See “Fact Sheet: Restoring Title IX Protections for Women and Girls,” ED, <https://www.ed.gov/media/document/fact-sheet-title-ix-rule-114646.pdf>.

³ 34 C.F.R. § 106.45(b)(6)(i).

medical records, the respondent's own admissions, and the statements of absent witnesses, leaving the hearing "a remarkably hollow gesture" and, in some cases, severely disadvantaging a complainant. In acknowledgment of the vacatur, the 2026 Rule omits the exclusion.

The 2020 Rule also provided that the decision-maker "cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions." Thus, the ED reasoned, "even if a party chooses not to appear at the hearing or answer cross-examination questions (whether out of concern about the party's position in a concurrent or potential civil lawsuit or criminal proceeding, or for any other reason), the party's mere absence from the hearing or refusal to answer questions does not affect the determination regarding responsibility in the Title IX grievance process." The ED explained that the adverse inference clause "provides protection to respondents exercising Fifth Amendment rights against self-incrimination (though it applies equally to protect complainants who choose not to appear or testify)."

The 2026 Rule now omits both the exclusion and the adverse inference clauses. As a result, the regulations now say nothing about either point. Decision-makers at postsecondary institutions may weigh uncrossed statements, but they must decide how much weight to give them and should explain those credibility judgments carefully. Whether a decision-maker may now draw an inference from a party's silence is an open question. The safer course, pending further guidance, is to continue not to base a finding solely on a party's absence or refusal to answer questions, particularly where a respondent faces parallel criminal exposure.

The ED issued the rule without notice and comment, stating that public comment would be "contrary to public interest." In its [September 28, 2026 press release](#), the ED said the action provides "clear guidance for parents, students, and educational institutions." The ED further restated its view that Title IX protects sex-separated "intimate facilities" (restrooms, locker rooms, and changing areas) and athletics based on biological sex. Its regulatory agenda signals further rulemaking that would clarify that Title IX implementation is to be based on sex, "which shall refer exclusively to an individual's immutable biological classification."

Key Takeaways for Educational Institutions

Institutions should continue to follow the 2020 framework, including the "severe, pervasive **and** objectively offensive" harassment standard, the "actual knowledge" requirement, formal complaints, 10-day evidence review and report periods, separation of investigator and decision-maker roles, a preponderance or clear-and-convincing evidentiary standard, and live hearings with cross-examination at postsecondary institutions. Notably, as described above, the recodified regulations do not reinstate the exclusion of statements from "uncrossed" witnesses. And as we noted previously, Title IX sets a floor—a legal baseline—not a ceiling; recipients may retain non-conflicting measures adopted under the 2024 Rule, such as supports for pregnant students.

Institutions should also expect continued OCR enforcement. The ED press release highlighted, among other actions:

- The creation of a [Title IX Special Investigations Team](#) formed with the U.S. Department of Justice ("DOJ"), consisting of expert attorneys and investigators tasked with ensuring consistent investigations and expeditious enforcement.
- Initiation of an [administrative proceeding against the Maine Department of Education](#) ("MED") to terminate MED's federal K-12 education funding. In 2025, the ED issued a noncompliance [finding](#) and [final warning letter](#) to MED on the grounds that MED has practices and policies that violate Title IX, including allowing males to compete in female sports and occupy women-only intimate spaces. In addition, the DOJ sued MED in federal court on the same Title IX noncompliance theory; that lawsuit is pending. See *United States v. Maine Dep't of Edu.*, 25-cv-00173 (D. Maine).

- [Placement of five Northern Virginia districts on “high-risk status”](#) within the federal grant system after the ED found the districts in violation of Title IX for their policies allowing students to occupy intimate facilities based on “gender identity,” not biological sex. The districts rejected the ED’s proposed Resolution Agreement, and so the ED placed the districts on “reimbursement status” for all ED funds including formula funding, discretionary grants, and impact aid grants, totaling more than \$50 million. The districts are now being required to pay their education expenses up front and then request reimbursement for expenditures to access federal funds.

Additional enforcement actions, coupled with the preamble to the 2026 Rule, suggest that OCR’s focus on athletics and intimate facilities will likely continue.

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