



Title IX Regulations Have Changed. Here's What You Need to Know.



Starting this month, K-12 educators may start seeing the impact of changes to the regulations associated with Title IX of the Education Amendments of 1972, which is the nation's main federal law governing gender discrimination in schools. The U.S. Department of Education last updated the regulations in 2020. The most recent changes do not currently apply in 14 states that are mounting a legal challenge (Alaska, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Montana, Ohio, Tennessee, Utah, Virginia, West Virginia, and Wyoming), as well as any school attended by children of members of the plaintiff group, *Moms for Liberty*. However, in the rest of the nation, the new regulations took effect August 1st. Here are seven ways in which these updated guidelines might change how K12 schools educate, prevent, and respond to forms of sex-based discrimination.

- 1. Clarifying the scope of sex discrimination:** The new rules explicitly include discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity (s. 106.10) by applying the rationale of *Bostock v. Clayton County*, a 2019 U.S. Supreme Court case that held that Title IX protects employees from being discriminated against on the basis of sexual orientation or gender identity. The Court reasoned that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”
- 2. Lowering the standard for responding to complaints:** Sometimes a small word change can make a big difference. Under the 2020 rules, the incidents that made up

a discrimination complaint had to be severe AND pervasive. Under the 2024 rules, the incident(s) need only be severe OR pervasive, making it easier for file a successful complaint.

- 3. Mandating reporting:** This new rule requires any “non-confidential employee” (those employees who are not defined as “confidential” in the contract) to notify the Title IX coordinator about conduct that MAY be considered sex discrimination. This is to ensure the school district has all the information needed to determine if a complaint, investigation, and/or response is necessary. The Title IX Coordinator is now also required to monitor the school district for obstacles to reporting and addressing such barriers.
- 4. Bestowing the right for students to file a complaint even after leaving the school:** This is a significant change from the 2020 rules, which prohibited students from making complaints after they left the school district where the alleged discrimination occurred. The objective of this change is to require districts to correct and address any issues that may still be harming currently enrolled students.
- 5. Offering and coordinating supportive measures:** This section adds steps that a coordinator must take in responding to sex-based discrimination, fleshing out the “supportive measures” that the coordinator must provide to the complainant. Under the new regulations, such supportive measures may include “counseling, extension of deadlines, restrictions on contact applied to one or more parties, and changes in class, work, or housing.”
- 6. Defining retaliation and peer retaliation:** While the 2020 regulations prohibited retaliation, they did not explicitly define what this meant. The 2024 rules describe retaliation as, “intimidation, threats, coercion, or discrimination . . . for the purpose of interfering with . . . or because the person has reported possible sex discrimination.” The new guidelines also define peer retaliation as being caused “by one student against another student.”
- 7. Preventing exclusion based on gender identity:** This section is one of the more contentious elements of the changes even though it does not apply to school sports, which have been the focus of much of the [controversy](#) in recent years related to transgender students in schools. The section clarifies that students can’t be prevented from participating in activities consistent with their gender identities. It is at the core of the complaint from the 14 states taking legal action related to the new guidelines. Yet it is consistent with prior case law interpretations of Title IX, including [Whitaker v. Kenosha](#) (2017) and [Grimm v. Gloucester](#) (2020).

Resources:

- U.S. Department of Education. (2024). *Fact sheet: U.S. Department of Education’s 2024 Title IX Final Rule Overview*. Washington D.C. Retrieved August 6, 2024, from <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf>
- U.S. Department of Education. (2024). *Brief overview of key provisions of the De-*

partment of Education's 2024 Title IX Final Rule. Washington D.C. Retrieved August 6, 2024, from <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-summary.pdf>

- Association of Title IX Administrators. (2024). *ATIXA's tool: Compare the 2022 proposed regulations with the 2024 final rule*. Retrieved August 6, 2024, from <https://www.atixa.org/resources/atixas-comparison-tool/>
- U.S. Department of Education. (2024). *Resource for drafting nondiscrimination policies, notices of nondiscrimination, and grievance procedures under 2024 Amendments to the U.S. Department of Education's Title IX Regulations*. Retrieved August 6, 2024, from <https://www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf>

NEPC Resources on Gender Issues

This newsletter is made possible in part by support provided by the Great Lakes Center for Education Research and Practice: <http://www.greatlakescenter.org>

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