



# Title IX and its Federal Regulations

WELCOME TO THE GREAT UNKNOWN...AGAIN

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# ***State of Tennessee, et al., v. Miguel Cardona, et al.***

- On April 29, 2024, the U.S. Department of Education issued a Final Rule entitled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance".
- Tennessee, Ohio, Indiana, West Virginia, Kentucky, and Virginia sued, along with Christian Educators Association International and a 15-year-old female student athlete.
- Three of the 2024 regulations were challenged in this specific lawsuit:
  - "Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity";
  - "De minimis harm" standard; and
  - Sex-based harassment that occurs on social media or "other platforms".

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- Federal district court in Kentucky ruled on January 9, 2025, that the U.S. Department of Education's 2024 Title IX regulations are invalid for various reasons and vacated them on a nationwide basis.
- This decision granted summary judgment against the Education Department, holding that the 2024 regulations:
  - Exceed its authority under Title IX by extending the definition of discrimination based on sex beyond "discrimination on the basis of being a male or female,"
  - Violate constitutional free speech protections by requiring schools and teachers to use "names and pronouns associated with a student's asserted gender identity" and a definition of sexual harassment that is too "vague and overbroad" for constitutional purposes, as well as violate the U.S. Constitution's Spending Clause by changing the definition of "sex discrimination" without sufficient warning to funding recipients; and
  - Are the result of arbitrary and capricious agency action.

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- In the court's view, the Education Department failed to "provide a reasoned explanation" for relying upon *Bostock v. Clayton County* to support its approaches to gender identity in the Title IX context.
- Pending further clarification from the Education Department or other court action, covered institutions should anticipate the 2020 Title IX regulations will apply going forward.

# Moving Forward

- Policies
- Current Complaints
- Training
- What's next?

# Policies and Procedures

- Rescind policies/procedures implemented to comply with 2024 regulations
- Revert to previous policies and procedures as soon as possible

# Active Complaints

- Generally, continue to use the 2024 Title IX procedures to process complaints filed between August 1, 2024 and January 9, 2025.
  - Our model policies have been sent out to all our policy clients; please let us know if you have questions on implementation.
- If a party requests the use of 2020 procedures, contact counsel to discuss how to address.

# Training

- No need to continue training under the 2024 regulations but continue to provide individual support for staff addressing ongoing complaints.
- Trainings for remainder of this academic year, if already scheduled, should focus on compliance with 2020 regulations.
- You may want to hold off on scheduling new trainings until the summer/fall, to see if there are any additional changes coming.
- Continue to post training outlines/presentations on-line (in compliance with 2020 regulations).



# Notice to Students and Staff?

- Consider whether this change requires a blanket notice to staff and students across campus:
  - Ensure they understand the college prohibits harassment/discrimination and will address these issues appropriately;
  - Provide a link to the policies/procedures;
  - Remind students and staff how to report allegations of sexual harassment; and
  - Remind staff they should report any allegation of sexual harassment.

# Transgender Students

- Two cases of importance in North Carolina:
  - *G.G. v. Gloucester County Schools*: School system liable under Title IX and the 14<sup>th</sup> Amendment when it refused to allow transgender male student use the male bathroom and refused to change his sex in official school documents after a legally changing birth certificate.
  - *BPJ v. W.Va. State Board of Educ.* (2024): School system liable under Title IX for prohibiting a transgender female student from participating on a women's athletic team, despite state law prohibiting transgender student participation.