

2024 Revisions to Title IX: How They Impact AAUW Values and Public Policy Priorities

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October 26, 2024



What We Will Cover

- History and overview of Title IX
- Chart of Changes from Trump to Biden Administrations
- Future Challenges



What is Title IX?

Title IX of the Education Amendments Act of 1972 is Federal legislation passed by Congress to ensure equal opportunity in education for all students, from kindergarten through postgraduate school, as well as all employees, of educational institutions receiving federal money, regardless of sex.



What Does it Say?

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

30 U.S.C. Sect.1681



What Does it Do?

Title IX and related regulations provide guidelines, procedures, and tools for preventing and addressing inequities that can hinder students' and employees' ability to succeed in school and beyond.



Why Do We Need It?

- By prohibiting hostile, threatening, and discriminatory behavior, Title IX protects the rights of all students to learn in a healthy environment.
- These advantages extend beyond individual students to the nation itself, which stands to gain a well-prepared workforce in which the brightest minds are allowed to advance.



Who Benefits from Title IX?

Girls and Women...

... Boys and Men



Title IX offers no special benefits or advantages for girls and women



Rather it is gender-neutral, designed to ensure equality in education for *all* students by eliminating sex discrimination

Why Do We Care?

Equal Access to Quality Public Education for All Students

- Vigorous enforcement of Title IX

Social and Racial Justice for All Members of Society

- Freedom from violence in all its forms
- Guarantee of civil and constitutional rights for all, including all forms of gender identity and expression, and all family structures

Post-Enactment Changes

2017

- Donald Trump is elected as President
- President Trump appoints Betsy DeVos as Education Secretary
- Secretary DeVos significantly scales back Title IX protections
 - Sexual assault investigations
 - Including “gender identity” within meaning of “gender” protections

2024

- President Joe Biden seeks to reinstate previous protections
- Hearings elicit over 240,000 comments from the public
- New guidelines released April 19, 2024, become effective August 1
 - Sex-based Harassment
 - Anti-LGBTQ+ Discrimination
 - Discrimination against Pregnant and Parenting Students



Sex-Based Harassment (or other Sex Discrimination)

| Duty to Address | Trump Rule 2020 | Biden Rule 2024 |
|--------------------|--|---|
| Definition | Must address if so severe and pervasive that it effectively denies a person equal access to activity | ...so severe or pervasive that it denies or limits a person's ability to participate |
| Off-Campus | Must address if it occurs in a place under the school's substantial control | ... under the school's disciplinary authority, and any resulting hostile environment that arises |
| Complainant Status | Only applies if participating in school activity at time of filing | ... at time of the incident |
| Respondent Status | Can dismiss at any time if no longer student or employee | (Same) but must offer complainant supportive services |

| Duty to Address | Trump Rule 2020 | Biden Rule 2024 |
|----------------------|--|--|
| Notice | <p>K12 – must respond if any employee has actual knowledge</p> <p>Institutes of higher education (IHEs) - if a Title IX Coordinator or official with authority to take corrective measures has actual knowledge</p> | <p>All non-confidential K-12 must report possible conduct to Title IX Coordinator</p> <p>Same; or tell victim how to contact Title IX Coordinator</p> |
| Standard of Care | Must respond in a way that is not deliberately indifferent | Must respond with prompt and effective action |
| Informal Resolutions | Applies only to student-on-student complaints at all levels | Can be used for employee-on-student in IHEs |
| Retaliation | <p>Can't retaliate against a complainant based solely on conclusions, including by:</p> <ol style="list-style-type: none"> 1) Charging someone for misconduct 2) Charging someone for false statements | <p>...including by:</p> <ol style="list-style-type: none"> 1) Disciplining for misconduct 2) Disciplining for false statements |

| Investigation | Trump Rule 2020 | Biden Rule 2024 |
|--------------------|--|---|
| Time Frame | Schools can impose temporary delays for good cause | Schools can impose reasonable delays for good cause |
| Hearing Procedures | IHEs: must allow the parties' advisors to conduct cross-examination at a live hearing | IHEs: school must: 1) Interview each party and witness in individual meetings; 2) Have a decision-maker I/V all parties and witnesses at a live hearing 3) School also has option of allowing cross-examination |
| Standard of Proof | Must use either preponderance of evidence or clear and convincing evidence; must be same for students and employees | Must use preponderance of evidence , unless school uses "clear and convincing" standard in all other discrimination proceedings |
| Appeal Rights | Parties can appeal only upon limited bases | Parties must have the same appeal rights as in all "comparable" discrimination hearings |

| Prevention | Trump Rule 2020 | Biden Rule 2024 |
|-------------------------------------|--------------------|---|
| Training | No rule | Must train all employees on recognition and reporting, with additional training for Title IX officials |
| Monitoring of barriers to reporting | No rule | Must act to prevent discrimination, and monitor and address barriers to reporting |

Anti-LGBTQ+ Discrimination

| | Trump Rule 2020 | Biden Rule 2024 |
|-----------------------|--------------------|---|
| Definition | Not addressed | Sex discrimination includes discrimination based on sexual orientation, gender identity, sex characteristics (including intersex traits), and sex stereotypes . Schools must address |
| Transgender inclusion | Not addressed | Schools must allow individuals to participate in classes and activities, use bathrooms and locker rooms, and dress and groom themselves consistent with their gender identity |

Discrimination Against Pregnant and Parenting Students

| | Trump Rule 2020 | Biden Rule 2024 |
|------------------|--|--|
| Definition | Schools cannot discriminate against students based on pregnancy or related conditions, including childbirth, termination of pregnancy, and recovery from any of these conditions | ...based on past, current, or potential ... Adds lactation and medical conditions to list of “included conditions.” |
| Notice of Rights | Not addressed | Any employee who knows of a student’s pregnancy or related conditions must give them contact info for Title IX Coordinator, who must inform them of their rights |

| | Trump Rule 2020 | Biden Rule 2024 |
|-----------------------------|--|---|
| Participation and Exclusion | <p>A pregnant student may participate in an alternate program if it is:</p> <ol style="list-style-type: none"> 1) Voluntary, and 2) Comparable to those of their peers <p>School cannot require student to get a doctor's approval for program or activity unless it is required of students with other physical or emotional conditions</p> | <p>... adds or has a related condition</p> <p>... to get approval from a healthcare provider or anyone else unless it is required of all students</p> |
| Leaves of Absence | <p>Schools must allow a leave of absence for as long as a doctor deems medically necessary</p> <p>Upon return, student must be restored to their prior status</p> | <p>Adds “voluntary” leave; substitutes “healthcare provider” for “doctor”</p> <p>... to their prior academic status and, where practicable, prior extracurricular status</p> |

| | Trump Rule 2020 | Biden Rule 2024 |
|-------------------------------------|---|---|
| Accommodations | Must offer same services and benefits as offered to temporarily disabled students | Must consult with student to offer individualized and voluntary reasonable modifications , unless this would fundamentally alter the school's program or activity Reasonable modifications include: elevator access; a larger desk; a footrest; breaks from class; absences; online courses; schedule changes; extensions; rescheduled exams, and counseling |
| Lactation | Not addressed | Schools must provide a private, clean, non-bathroom space |
| Parental, family, or marital status | Cannot apply a rule about a student's actual or potential parental, family or marital status that treats them differently based on gender | Cannot apply a policy, practice or procedure about a student's past, current or potential ... |

Future Challenges:

Legislative, Executive, Judiciary

- Legislative – Passes, Amends and Repeals Laws, grants regulatory authority to respective departments
- Executive – Oversees Dept of Education; directs and approves proposed regulatory changes to programs
- Judiciary – Ensures Compliance with U.S. Constitution



Legislative

- Could repeal Title IX in its entirety
- Could reverse Biden Administration revisions
- Could pass laws to curtail authority of Department of Education
- Could adopt recommendations proposed by Project 2025
 - Reverse the change in the Title IX definition of “sex” to mean “sexual orientation and gender identity”
 - Enact legislation requiring schools to refer to students by their names on their birth certificates and pronouns with their sex assigned at birth
 - Restore “due process” rights to individuals accused of sexual assault and harassment including the requirement for live cross examination
 -



Executive

- Could order Dept of Ed to write new rules
- Could Adopt recommendations proposed by Project 2025
 - Dismantle the U.S. Dept. of Education
 - Move the Dept of Ed's Office of Civil Rights to the DOJ, and strip its power to investigate complaints of civil rights abuses
 - End all ongoing investigations into reported Title IX Violations



Judiciary

- Eight lawsuits have been filed challenging the new regulations, with 26 states signing on. The rule is on hold in 26 states (i.e., injunctions have been granted prohibiting implementation until the challenges can be given a full hearing). Primary challenge is including “gender identity” in definition of “sex.”
- One injunction, from the federal district court in Kansas, is also in force at any school in any state attended by students or members of three groups that joined the challenge—Moms for Liberty, Young America’s Foundation, and Female Athletes United. Those lists include schools in all 24 states not covered by a statewide injunction. All it takes is one child of a Moms for Liberty member for that child’s school to be added to the list.
- The U.S. Supreme Court on Aug. 16 denied a request by the Biden administration to partially curb the injunctions that are blocking the Title IX regulation in 26 states and the “list” schools in other states. *Department of Education v. Louisiana and Cardona v. Tennessee*



Impact of *Loper Bright Enterprises v. Raimondo*, 2024

- Sharply curtailed the power of federal agencies to interpret the laws they administer.
- Overruled a 40-yr precedent, *Chevron v. Natural Resources Defense Council*
 - Required courts to uphold agencies' interpretations of statutes they are responsible for implementing or enforcing.
- Holding: "Agencies have no special competence in resolving statutory ambiguities. Courts do."
- Implications:
 - Will courts accept the U.S. Dept of Ed's interpretation of Title IX?
 - Or will they use their new powers to radically reshape efforts to curb sex discrimination in schools?
- Factors:
 - Courts must respect when Congress has given a federal agency authority to enforce a statute
 - BUT – may not defer to agency simply because the statute is ambiguous



To Be Resolved

- Did Congress delegate authority to the U.S. Dept of Ed to implement and enforce Title IX?
 - *Davis v. Monroe County Board of Education* (1999) confirmed that “Congress entrusted federal agencies to promulgate rules, regulations, and orders to enforce the objectives of Title IX,” and to “rely on any means authorized by law to give effect to the statute’s restrictions.”
 - But, Title IX carries a provision making the agency’s actions “subject to judicial review.”
- Are the provisions of Title IX ambiguous?
 - What is sex?
 - Statute itself does not contain any reference to LGBTQ+, gender identity, characteristics or stereotypes
 - What constitutes “discrimination”?
 - What does it mean to “be excluded”?



Some Hope?

Bostock v. Clayton County, 2020

- Title VII of the Civil Rights Act of 1964
- Holding: Discrimination on the basis of sexual orientation or gender identity is necessarily also discrimination "because of sex" as prohibited by Title VII
- Significance: Title VII uses the same "because of sex" language as Title IX; therefore, discrimination in the school setting should be looked at in the same way as discrimination in the workplace



References

- National Women's Law Center (Comparison of new and previous regulations), [NWLC.ORG](https://www.nwlc.org)
- KAPPAN: Title IX and the SCOTUS Power Grab, Robert Kim, Aug 26, 2024 (Potential effect of *Loper Bright* on new regulations)
- Education Week: [Supreme Court Leaves Biden's Title IX Rule Fully Blocked in 26 States](#) (Update on Title IX in the courts)
- *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024)
- *Bostock v. Clayton County*, [590 U.S. 644](#) (2020)