

U.S. Department of Education Will Protect LGBTQ+ Students

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It will fully enforce Title IX of the Education Amendments of 1972 to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive federal financial assistance from it, the U.S. Department of Education has clarified in a [Notice of Interpretation](#).

This would include allegations of individuals:

- Being harassed;
- Disciplined in a discriminatory manner;
- Excluded from, denied equal access to, or subjected to sex stereotyping in academic or extracurricular opportunities and other education programs or activities;
- Being denied the benefits of academic or extracurricular opportunities and other education program or activities; or
- Otherwise being treated differently because of their sexual orientation or gender identity

The Department's Office for Civil Rights (OCR) will carefully review allegations from anyone who files a complaint, including students who identify as male, female, or nonbinary; transgender or cisgender; intersex; lesbian, gay, bisexual, queer, heterosexual, or in other ways.

Based on the U.S. Supreme Court's [2020 ruling in *Bostock v. Clayton County, Georgia*](#), 140 S. Ct. 1731 (2020), the Department has concluded Title IX prohibits discrimination based on sexual orientation and gender identity. In *Bostock*, the Court held that Title VII of the Civil Rights Act protects individuals from discrimination based on sexual orientation and gender identity. The Department noted that Title VII and Title IX use similar language to describe discrimination based on sex, protect individuals against discrimination, and contain no exception for sex discrimination that is associated with an individual's sexual orientation or gender identity.

According to the Department, OCR has long recognized that Title IX protects all students (including students who are lesbian, gay, bisexual, and transgender) from harassment and other forms of sex discrimination, including prohibiting harassment and other forms of discrimination against all students for not conforming to stereotypical notions of masculinity and femininity.

The Department also acknowledged that OCR, at times, has stated that Title IX's prohibition on sex discrimination does not encompass discrimination based on sexual orientation and gender identity. The Department issued the Notice to clarify Title IX's coverage of discrimination based on sexual orientation and gender identity in light of *Bostock*.

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The Department highlighted that its Notice is part of the Biden-Harris Administration's commitment to advance the rights of the LGBTQ+ community. *See* President Joe Biden's "[Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity](#)" and his "[Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation](#)." OCR also stressed the importance of protections for the LGBTQ+ community in its [June 2021 announcement](#) of public hearings on Title IX. The Notice marks a continued shift by the Biden Administration away from the previous administration's position that sex under Title IX is defined by a person's biological sex.

Educational institutions should review their policies and procedures and make appropriate changes to how personnel are trained in order to ensure compliance with the Notice. Please contact a Jackson Lewis attorney with any questions about the Notice or the Department.

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