

What Schools Need to Know After Court Vacates Title IX Regulations Nationally

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Takeaways

- The court ruling in *State of Tennessee v. Cardona* applies nationwide and returns Title IX to its 2020 regulations.
- The U.S. Supreme Court's *Bostock* decision holding that Title VII's protections against sex discrimination apply to gender identity and sexual orientation does not apply to Title IX.
- School policies should be compliant with the 2020 Title IX regulations and staff trained to follow and implement those regulations.

Related link

- [Department of Education Releases Long-Awaited Final Rule Amending Title IX Regulations](#)

Article

The Biden Administration's April 2024 changes to Title IX regulations were struck down in a court ruling that applies nationwide. *State of Tennessee v. Cardona*, No. 2: 24-072-DCR (E.D. Ky. Jan. 9, 2025).

The Kentucky federal court's ruling follows its June 17, 2024, decision granting an injunction preventing the changes in the Final Rule from going into effect on Aug. 1, 2024, as intended in several states.

Title IX of the Education Amendments of 1972 is a federal statute that prohibits sex discrimination in educational institutions receiving federal funds.

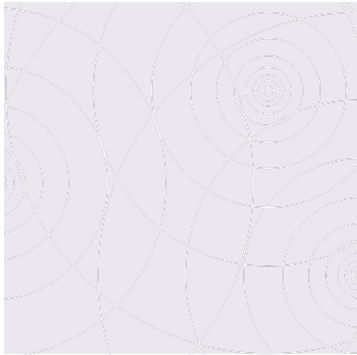
Background

The Biden Administration's Department of Education (DOE) issued the Title IX Final Rule on April 29, 2024. The Final Rule broadened Title IX protections by including "gender identity" as prohibited discrimination on the basis of sex, expanding the definition of sexual harassment to encompass sex stereotyping, gender identity and gender expression discrimination, and changing the procedural requirements for investigation and adjudication of complaints.

The plaintiffs, which included the states of Ohio, Tennessee, Indiana, West Virginia, and the Commonwealths of Kentucky and Virginia, argued that the Final Rule and its related regulations were unlawful because they were contrary to law and the DOE exceeded its authority in implementing them.

Court Ruling

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Chief Judge Danny Reeves vacated the Final Rule on three bases.

First, the court determined the DOE exceeded its authority in expanding the scope of prohibited discrimination to include “gender identity.” The court rejected the DOE’s argument that the U.S. Supreme Court decision in *Bostock v. Clayton County Ga.*, 590 U.S. 644 (2020), supported an expanded definition of discrimination “on the basis of sex.” It found the *Bostock* decision involving a transgender employee is limited to employment discrimination under Title VII of the Civil Rights Act and does not apply to Title IX. Relying on the “plain language of the statute,” the court determined:

when Title IX is viewed in its entirety, it is abundantly clear that discrimination on the basis of sex means discrimination on the basis of being a male or female. As this Court and others have explained, expanding the meaning of “on the basis of sex” to include “gender identity” turns Title IX on its head.

This places institutions in the unusual situation where their transgender faculty and staff are protected by federal law under *Bostock*, but their transgender students are not protected under federal law. Institutions must be conversant in both sets of laws and should seek legal assistance in navigating these issues.

Second, the court determined that the Final Rule was unconstitutional. The Final Rule expanded the definition of sex discrimination and sex-based harassment to include conduct that is both objectively *and subjectively* offensive and either *limits* or denies the ability to participate in or benefit from an educational program or activity. The court found the new definitions in the Final Rule would compel Title IX institutions, including teachers, to “use names and pronouns associated with a student’s asserted gender identity” in violation of the First Amendment. It also found the new definitions were “so vague that recipients of Title IX funds have no way of predicting what conduct would violate the law.”

Finally, the court found the Final Rule is arbitrary and capricious. The court reasoned the DOE had not provided a sufficient basis for its Title IX changes, reiterating that “*Bostock* is a very shaky place for the Department to hang its hat.”

Implications

The court’s vacatur of the Final Rule and its related regulations returns Title IX to its pre-existing 2020 regulations nationwide. Although the decision is subject to appeal, any appeal by the Biden Administration likely will be withdrawn by the Trump Administration.

Educational institutions should ensure their policies are compliant with the [2020 Title IX regulations](#) and staff is trained to follow and implement those regulations.

We expect to continue to see challenges to the *Bostock* decision under the Trump Administration in the employment context and beyond. We will continue to monitor these developments and provide updates.

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