CLIENT ALERTS & INSIGHTS

Biden's 2024 Title IX Regulations Take a Blow - Federal District Court Rejects Re-Definition of "Sex" Under Title IX

JANUARY 13, 2025

Authors: Marisa T. Darden, Matthew David Ridings, Robert J. Kolansky, Bianca Smith

On January 9, 2025, a federal district court in Kentucky issued a decision that blocks the Biden administration's attempt to change the definition of "sex" in Title IX regulations and enforcement.

Chief Judge Danny C. Reeves of the Eastern District of Kentucky struck down President Biden's efforts to expand Title IX protections for transgender students and implement additional safeguards for LGBTQIA and pregnant students. His decision arrived just days before the expansion was likely to face additional blows from President-elect Trump, whose administration is expected to be hostile towards the proposed regulations.

In the *State of Tennessee v. Cardona* decision, Chief Judge Reeves reasoned that the Department of Education could not lawfully expand Title IX protections to prevent discrimination on the basis of gender-identity. "The entire point of Title IX is to prevent discrimination based on sex. Throwing gender identity into the mix eviscerates the statute and renders it largely meaningless," he wrote. Citing *Loper Bright Enterprises v. Raimondo*, Judge Reeves added that the Biden administration overstepped their authority by attempting to have their revised regulations enforced through federal rulemaking.

Of greater importance, the decision rejected Biden's proposed revisions on free-speech grounds, writing that it "offends the First Amendment" by requiring educators to address students by their preferred pronouns and names. He added, "[p]ut simply, the First Amendment does not permit the government to chill speech or compel affirmance of a belief with which the speaker disagrees in this manner."

Lastly, Judge Reeves dissected the *Bostock v. Clayton County, Georgia* decision that prohibited employment discrimination on the basis of race, religion, national origin and sex by failing to extend the same rights to transgender workers.

"The court here made it very clear that, at least in the context of Title IX, 'sex' means male or female, and there's no room for debate in that," said Kim Hermann, the Executive Director of the Southeastern Legal Foundation, a conservative public interest law firm.

The matter appeared before Judge Reeves with Plaintiffs seeking a permanent injunction preventing the Biden Title IX revisions from being enforced by the Department of Education. The Court issued a preliminary injunction in April 2024 and heard additional arguments on the merits of the case from

Plaintiff states Kentucky, Tennessee, Indiana, Virginia, and West Virginia. However, rather than making the temporary injunction permanent, the court ordered *vacatur*. As the Court noted, "[v]acatur operated on the rule itself and prevents the rule's application to all who would otherwise be subject to its operation."

In light of the Court's order, Brett A. Sokolow of ATIXA concluded that the decision is likely to take the "unlawful agency action off the books," thus stopping the regulatory expansion and implementation nationwide. This means that the 2024 Title IX regulations are *not* in effect for any school or college in any state. Although the decision is likely to face appeal, for the time being, schools and colleges will likely return to the 2020 regulatory scheme and the more conservative approach to Title IX enforcement.

If your school district or university is struggling to understand the implications of this decision or Title IX enforcement or would like to discuss policy design and implementation surrounding Title IX, reach out to Benesch's White-Collar, Investigations, and Antitrust group for consultation. We look forward to meeting the needs of schools seeking to navigate the world of antitrust, compliance, and student-athlete relationships in this ever-changing landscape.

Marisa T. Darden at mdarden@beneschlaw.com or 216.363.4440.

Matthew David Ridings at mridings@beneschlaw.com or 216.363.4512.

Robert J. Kolansky at rkolansky@beneschlaw.com or 216.363.4575.

Bianca Smith at bsmith@beneschlaw.com or 216.363.4503.