

Frozen at the Starting Line: Biden's New Title IX Rules Blocked in Majority of States as Schools Torn Between Trump Initiatives and Biden's New Guidelines

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Twenty-six states filed litigation in courts nationwide to prevent the enactment of President Biden's April 2024 revisions to the Title IX statute aimed at increasing protections for LGBTQIA+ athletes, pregnant and parenting students, and victims of sexual misconduct. Primarily targeted at preventing sex-based discrimination against queer and transgendered students and staff, the revised Title IX regulations were scheduled to take effect on Aug. 1, 2024. Biden's efforts represent the first presidential initiative expanding the statute in this manner.

SCOTUS and the Title IX Disputes

As of Aug. 1, 2024, the U.S. Supreme Court failed to act on requests from President Biden to intervene in lawsuits filed by Louisiana, Mississippi, Montana and Idaho, and another one filed by Tennessee, Kentucky, Ohio, Virginia and West Virginia, alongside an association of Christian educators arguing to prevent the April 2024 Title IX expansion. The President asked SCOTUS to enforce a key clause of the statute clarifying that discrimination on the basis of sex includes sexual orientation and gender identity. The Biden administration scored a victory on July 31, 2024, when an 11th Circuit Court of Appeals Judge refused to block the enactment of the revisions in Alabama, Florida, South Carolina and Georgia, pending its review of the litigation. SCOTUS is currently reviewing decisions by U.S. District Judge Terry Doughty in Louisiana and U.S. District Judge Danny Reeves in Kentucky, holding that Title IX's reference to sex only refers to "biological" males and females.

Arguments Against Title IX Revisions by Plaintiff States

The Plaintiff states argue that interpretation of the Biden revisions forces schools to allow transgender students to use restrooms and locker rooms identifying with their desired pronouns and requires school faculty to address students according to their preferred pronouns. They also argue that Biden's liberal interpretation of the statute's purpose undermines the original conservative design.

The Historical Context of Title IX

Passed in 1972 to protect women and girls from sex-based discrimination in schools, Title IX is the flagship legislation used on K-12 and college campuses across the country to guarantee equal access to academic and athletic programs and prevent acts of sexual harassment and misconduct. The statute prohibits sex-based discrimination at any school that receives federal funding.

Implications of Title IX Enforcement Across States

This complex legal landscape means that as of Aug. 1, 2024, the Department of Education can only enforce the new rule in 24 of the 50 states. As back-to-school looms, students, teachers and Title IX administrators are experiencing angst due to the lack of clarity and consistency nationwide - a symptom of the larger political tug-o-war across the country. In the meantime, school officials are scrambling to understand which portions of the regulations apply in their states. Some schools are committed to Trump-era rules, while others are seeking to operate under the Biden-era revised regulation. Unfortunately, students are caught in the middle. Students in states with the new regulations may feel more empowered to file a complaint if they experienced sexual harassment or violence, whereas students in the banned states may be hesitant to raise a concern.

Perspectives on New Title IX Regulations

Catherine Lhamon, Assistant Secretary for Civil Rights in the Department of Education, told USA Today, "It's a very fluid legal environment. To be clear, we plan to enforce the 2024 regulations starting [Aug. 1, 2024], except where they are enjoined." Louisiana Attorney General Liz Murril commented, "[t]his is all for political agenda, ignoring the significant safety concerns for young women students in pre-schools, elementary schools, middle schools, high schools, colleges and universities across Louisiana and the entire country."

In states with pending litigation, the Department of Education plans to continue to enforce the 2020 version of the statute to avoid a patchwork implementation of the April 2024 rules. It remains unclear when SCOTUS will hand down a final ruling on the fate of Title IX regulations.

If your school district or university is struggling to understand the implications of the new Title IX revisions or would like to discuss policy enforcement surrounding Title IX, reach out to Benesch's [White Collar, Government Investigations & Regulatory Compliance](#) group for consultation. Now, as back-to-school looms, students, teachers and Title IX administrators are experiencing angst due to the lack of clarity and consistency nationwide - a symptom of the larger political tug-o-war across the country.

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