

Status of Education Department's Title IX Regulations

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Title IX of the Education Amendments of 1972 (Title IX) [prohibits](#) sex discrimination in education programs that receive federal financial assistance. The Department of Education (ED) enforces the law in education programs that ED funds, including all K-12 public school districts and most colleges and universities (recipient schools). ED's interpretation of what Title IX requires has shifted considerably across recent presidential administrations. In particular, ED's Title IX regulations have shifted on two significant issues: (1) obligations for recipient schools when addressing allegations of sexual harassment; and (2) application of the law to discrimination based on gender identity and sexual orientation.

ED has issued various guidance documents and regulatory requirements with respect to sexual harassment and Title IX's application to sexual orientation and gender identity. In 2020, ED issued [regulations](#) that imposed a number of specific requirements on recipient schools in cases of sexual harassment, but those regulations did not address sexual orientation or gender identity.

ED [updated](#) the regulations in 2024, including by changing obligations for recipient schools when addressing sexual harassment allegations and defining *sex discrimination* to include discrimination based on sexual orientation and gender identity. The latter change drew on the reasoning of a 2020 Supreme Court decision, *Bostock v. Clayton County*, that interpreted a different statute prohibiting sex discrimination in the workplace, [Title VII](#) of the Civil Rights Act of 1964 (Title VII). In *Bostock*, the Supreme Court ruled that Title VII's ban on sex discrimination extends to discrimination based on sexual orientation and gender identity. As described below, the 2024 regulations were [vacated](#) in full by a federal court in early 2025. Going forward, ED has [announced](#) it will once again enforce the 2020 regulations.

This Sidebar begins with a brief background on Title IX. It continues by examining how ED's Title IX regulations have addressed sexual harassment, followed by the agency's approach to sexual orientation and gender identity discrimination. After addressing the current status of ED's Title IX regulations and the Trump Administration's position on the law's application to gender identity, the Sidebar concludes with some considerations for Congress.

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Title IX Background

Title IX prohibits sex discrimination in federally funded education programs. Like several other [federal](#) civil [rights](#) statutes, Title IX makes compliance with its nondiscrimination requirements a condition of receiving federal financial assistance. The statute is primarily enforced through [private lawsuits](#) in federal court and by federal [agencies](#) that distribute funding to education programs. Given the substantial education funding ED distributes to schools, its Office for Civil Rights plays a [lead role](#) in enforcing the statute.

While Title IX does not specifically mention sexual harassment, the [Supreme Court](#) has determined that an insufficient response by a recipient educational institution to incidents of sexual harassment can constitute discrimination based on sex and thus violate the statute. The statute also does not explicitly mention sexual orientation or gender identity, although [some](#) federal [appellate](#) courts have [concluded](#) that the law covers those bases for discrimination. That [approach](#) has not been [uniform](#), however.

As explained below, ED has altered its approach on both issues across different presidential administrations. ED's 2020 regulations drew on the Supreme Court's Title IX sexual harassment cases to impose specific obligations on recipient schools when responding to sexual harassment; those obligations were altered in 2024. By contrast, the 2020 regulations did not address the law's application to sexual orientation and gender identity, while the 2024 regulations defined *sex discrimination* to include discrimination on both bases.

Response to Sexual Harassment

ED's 2020 Title IX Regulations

Prior to 2020, ED's expectations for recipient schools in cases of sexual harassment were largely [supplied](#) in [guidance](#) documents. The 2020 regulations focus primarily on how recipient schools must respond to allegations of sexual harassment (and also build on pre-existing Title IX regulations more broadly). The 2020 regulations [specify](#) that both a recipient school's treatment of someone who complains of sexual harassment (complainant) and its treatment of the person formally accused of misconduct (respondent) can violate Title IX. The regulations also [define](#) "education program or activity" as including buildings owned or controlled by student organizations recognized by a postsecondary institution (e.g., a school-recognized fraternity or sorority).

Definition: What *Conduct* Constitutes Sexual Harassment?

The 2020 regulations [define](#) *sexual harassment* as "conduct on the basis of sex" that meets one of three criteria. The first is when an employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (quid pro quo harassment). The second is when a student or employee commits *sexual assault*, *dating violence*, *domestic violence*, or *stalking* (the definitions for these terms are found in the [Clery Act](#) and the [Violence Against Women Act](#)).

The third criterion is when a student or employee suffers "[u]nwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity." This standard draws from the Supreme Court's decision in *Davis v. Monroe County Board of Education*, which crafted a standard for damages liability in Title IX lawsuits against recipient schools for student-to-student sexual harassment.

Notice: When Must a School Respond to Sexual Harassment Allegations?

The 2020 regulations also draw on *Davis* (as well as the related Supreme Court decision *Gebser v. Lago Vista Independent School District*) to define the circumstances in which a recipient school must respond to sexual harassment allegations. The Court in *Gebser* required, among other things, a recipient school to have actual knowledge of harassment for damages liability under Title IX. The Court rejected predicated liability on theories of [respondeat superior](#) or [constructive notice](#). The 2020 regulations similarly [provide](#) that recipient schools with “actual knowledge” of harassment (or allegations of sexual harassment) must respond consistently with the requirements discussed below. The regulations also note that “[i]mputation of knowledge based solely on vicarious liability or constructive notice is insufficient.”

The regulations [provide](#), however, that the notice provision operates differently for K-12 recipient schools than for recipient postsecondary institutions. At recipient postsecondary institutions, only notice to the school’s [Title IX coordinator](#) or any official with authority to institute corrective measures constitutes actual knowledge and triggers response obligations; this limitation allows a university to designate certain employees as confidential resources for postsecondary students, preserving [autonomy](#) for individuals subjected to harassment to decide whether or not to report it to school authorities. For K-12 recipient schools, notice to *any* school employee establishes actual knowledge and triggers response obligations.

Response: What Actions Must a School Take Once It Has Notice?

The 2020 regulations [provide](#) that if a recipient school has “actual knowledge” of sexual harassment in an education program or activity, it must respond “promptly in a manner that is not deliberately indifferent.” The regulations again draw upon *Davis* and *Gebser* in adopting this standard. In those cases, the Supreme Court ruled that recipient institutions would not be liable for damages under Title IX in cases of sexual harassment unless their response was “deliberately indifferent.” The Court [described](#) this standard as a “clearly unreasonable” response and observed that recipient schools are not liable simply for failing to “remedy” peer harassment.

Initial Response to Allegations. [Proving](#) that a recipient school responded with deliberate indifference can be [difficult](#) in a Title IX suit for damages. The regulations impose requirements on recipient schools that may go beyond what the deliberate indifference standard [requires](#) in the judicial context. In particular, the regulations [outline](#) specific steps recipient schools must take once they have notice of sexual harassment, including offering “supportive measures” to a complainant. In addition, recipient schools must explain to complainants the process for filing an optional formal complaint.

Grievance Procedures. When a formal complaint is filed (by a complainant, a school’s Title IX coordinator, or parent or guardian), a recipient school [must](#) investigate and follow specific grievance procedures. [Written notice](#) must be given to the parties of the allegations with enough details to allow them to prepare a response before any initial interview. A recipient school must presume that the accused is not responsible for the alleged misconduct. Throughout the [grievance process](#), recipient schools must

- ensure that the burdens of proof and evidence gathering rest with the school, not the parties;
- provide equal opportunity to present witnesses and inculpatory and exculpatory evidence;
- not restrict the parties from discussing the allegations or gathering evidence;
- provide the parties with equal opportunity to have an advisor present; and
- provide parties with an equal opportunity to review relevant evidence.

Recipient schools also must provide [training](#) for Title IX coordinators, investigators, the individual (or individuals) rendering decisions in the proceeding (decisionmaker), and anyone that facilitates informal resolution procedures. Training materials must be [published](#) on the recipient school’s website.

While recipient schools must investigate allegations in formal complaints, they must [dismiss](#) complaints if the alleged conduct (1) would not constitute sexual harassment under the definition articulated above; (2) did not occur in the recipient's educational program or activity; or (3) did not occur against a person in the United States. The recipient school must provide written notice to the parties when dismissing a case. Such a dismissal does not preclude a recipient school from applying its own code of conduct to a student.

Investigative Report. Recipient schools [must](#) create an investigative report summarizing the relevant evidence. Before completion, recipient schools must send copies of the report to each party. Parties then have 10 days to respond, and the investigator must consider that response before completing the report. The parties must receive the completed report 10 days before a hearing or other determination of responsibility for their review and response.

Hearings. For recipient [postsecondary institutions](#), the grievance process must provide for a live hearing. Each party's advisor shall "directly, orally, and in real time" ask the other party and any witness relevant questions. Upon request, this hearing can occur in separate rooms with the aid of technology. Decisionmakers must determine whether questions are relevant and may exclude nonrelevant questions. If a party does not have an advisor, recipients must provide one free of charge to conduct cross-examination. In determining responsibility, decisionmakers may not rely on any statement by a party or witness who does not submit to cross-examination (explained in more detail [here](#)), although absence from a hearing may not support an inference of responsibility.

The 2020 regulations do not require recipient [elementary and secondary schools](#) to conduct a hearing, although they may choose to do so. Whether or not they do, following delivery of the investigative report, and before a determination of responsibility, the decisionmaker(s) must afford each party a chance to submit written, relevant questions; provide parties with the answers to those questions; and allow for follow-up.

Determinations of Responsibility, Standard of Evidence, and Appeals. The person who determines responsibility in a Title IX proceeding [may not](#) be a recipient school's Title IX coordinator or the investigator in the case, thus prohibiting schools from using the same person to fill multiple roles. Recipient schools [may](#) apply either the *preponderance of the evidence* [standard](#) (more likely than not) or the more demanding *clear and convincing* [standard](#) (highly probable) for determining responsibility, but they must apply the same standard to formal complaints against students and employees, including faculty. (Faculty at some recipient schools may have already engaged in collective bargaining agreements that [adopt](#) a "clear and convincing standard" for employee disciplinary proceedings.)

Recipient schools must allow for [appeals](#) of decisions (and dismissals of a formal complaint) for both parties in cases of procedural irregularity, new evidence, or a conflict of interest or bias by a Title IX coordinator, investigator(s), or decisionmaker(s). Recipient schools may also offer appeals on additional grounds so long as they do so for both parties on an equal basis. The decisionmaker(s) in an appeal may not be the original decisionmaker(s), investigator(s), or Title IX coordinator. The regulations do not specify sanctions that recipient schools must apply in cases of misconduct.

Informal Resolution. In cases of student-to-student harassment in which a formal complaint is filed, recipient schools may facilitate [informal resolution procedures](#) such as mediation that lack the formal procedures described above. Recipient schools must first obtain the parties' voluntary, written consent to do so, and must permit parties, at any time before resolution, to withdraw and resume the formal grievance procedures.

Retaliation

The 2020 regulations [prohibit](#) retaliating against individuals for participating (or not participating) in Title IX procedures. Charging someone for a code of conduct violation that does not involve sexual harassment, but stems from the same circumstances in a complaint, can constitute retaliation.

Vacated 2024 Regulations

ED's now vacated 2024 regulations went into effect on August 1, 2024, and (before they were enjoined in some jurisdictions and subsequently vacated) [changed](#) several of the requirements for recipient schools found in the 2020 regulations. The 2024 regulations established grievance procedures that recipient schools had to implement for all sex discrimination complaints, not just for sexual harassment. The 2024 regulations also imposed further procedures for harassment complaints concerning students at postsecondary institutions and altered the definition of what conduct amounts to harassment. They additionally eliminated the deliberate indifference standard for responding to harassment complaints; instead, they imposed a modified standard in responding to sex discrimination generally, as well as new training and monitoring requirements that recipient schools had to implement. For more details on the 2024 regulations and a comparison between the 2024 and 2020 regulations, see this [Sidebar](#).

Sexual Orientation and Gender Identity Discrimination

As mentioned above, ED has also shifted its approach with respect to Title IX's application to sexual orientation and gender identity. During the Obama Administration, ED took the [position](#) in guidance [documents](#) that Title IX's sex discrimination ban extended to discrimination based on sexual orientation and gender identity. The first Trump Administration [withdrew](#) those [documents](#). ED's 2020 regulations do not address whether sex discrimination extends to discrimination based on sexual orientation or gender identity.

By contrast, ED's 2024 regulations defined the scope of sex discrimination under Title IX to include discrimination based on sexual orientation and gender identity. This definition had implications beyond how recipient schools respond to sexual harassment. For example, the regulations [provided](#) that, absent an exception, school policies violate Title IX when they prevent individuals from participating in education programs consistent with their gender identity, even in situations where differential treatment or separation based on sex is otherwise permitted.

ED's 2024 interpretation of sex discrimination under Title IX followed a Supreme Court decision, [Bostock v. Clayton County](#), that interpreted a different statute prohibiting sex discrimination in the workplace, [Title VII](#) of the Civil Rights Act of 1964. In *Bostock*, the Supreme Court ruled that Title VII's ban on sex discrimination in the workplace extends to discrimination based on sexual orientation and gender identity. The Court in *Bostock* reasoned that Title VII's provision barring discrimination "because of" sex [incorporates](#) a "but-for" standard of causation: if an outcome would not have occurred "but for" the purported cause, causation is established. Under this standard, the Court concluded that an employer cannot discriminate based on someone's sexual orientation or gender identity without considering their sex. The Court did not indicate how its reasoning would apply when a law prohibits sex discrimination but allows limited sex-based differential treatment (as in Title IX), as that question was not before the Court. The majority opinion [explained](#) that, even with respect to Title VII, it did "not purport to address bathrooms, locker rooms, or anything else of the kind." ED's 2024 regulations drew on the [reasoning](#) of this [decision](#) in determining the scope of Title IX's bar against sex discrimination.

Following numerous legal challenges that resulted in various preliminary [injunctions](#) against enforcement of the 2024 regulations, a federal district court [vacated](#) them in January 2025, concluding that, among other things, the regulations exceeded ED's statutory authority.

Current Status of ED's Title IX Regulations

With the 2024 regulations vacated, ED reverted to enforcing the 2020 regulations. That means the provisions concerning sexual harassment discussed above are in place. As mentioned, however, the 2020 regulations do not explicitly address Title IX's application to discrimination based on sexual orientation or gender identity. On January 20, 2025, the President issued an [executive order \(EO\)](#) announcing the Administration's policy "to recognize two sexes, male and female" and that "[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality." The EO defines the term *sex* as referring to someone's "immutable biological classification." It also directs the Attorney General to issue guidance to agencies to address the prior Administration's "misapplication of the Supreme Court's decision in *Bostock* . . . to sex-based distinctions in agency activities." On February 4, 2025, ED's Office for Civil Rights issued a [Dear Colleague Letter](#) explaining that the agency would enforce Title IX consistent with the EO.

Even so, while [various](#) federal courts did rule against ED's 2024 regulations, often focusing on the gender identity provisions and rejecting application of *Bostock*'s reasoning to Title IX, several [federal appellate courts](#) have nonetheless [applied](#) the reasoning of *Bostock* to Title IX in other contexts, particularly private lawsuits against colleges and school districts in situations such as bathroom access and harassment that *Bostock* did not address. Thus, while the 2024 regulations are no longer enforceable against recipient schools, depending on the jurisdiction an institution is in, there may nevertheless be controlling appellate decisions on Title IX that touch on issues such as gender identity and sexual orientation.

Considerations for Congress

The responsibilities of recipient schools under Title IX have shifted significantly in recent administrations. ED may update its Title IX regulations again, so long as it follows applicable rulemaking procedural [requirements](#), including a reasonable explanation for any changes. If Congress is dissatisfied with the regulations, options include amending the text of Title IX to provide a definition of *sexual harassment* or delineating more specifically a recipient school's obligations under the statute. Likewise, and subject to the parameters of the Equal Protection Clause, Congress can amend the text of Title IX to expressly address the meaning of sex discrimination, including by explicitly indicating whether and how it applies to discrimination based on gender identity and/or sexual orientation. Additionally, Congress may also seek to limit enforcement of aspects of the regulations it might disagree with through appropriations riders, though these provisions generally expire at the end of the relevant appropriations cycle.

Author Information

Jared P. Cole
Legislative Attorney

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