

Title IX Final Rule Vacated by Kentucky District Court

January 17, 2025 | Articles

On January 9, 2025, the U.S. District Court for the Eastern District of Kentucky [vacated](#) the Department of Education's April 29, 2024 [Final Rule](#) under Title IX on a nationwide basis. The Final Rule had served as part of the Biden Administration's efforts to expand protection for transgender and nonbinary individuals.

The 2024 Final Rule broadened the meaning of "discrimination on the basis of sex" under the statute to include discrimination based on sex stereotypes, sexual orientation, gender identity, and sex characteristics. It also introduced a "subjectively offensive" standard to its definition of sexual harassment, which was intended to be coupled with the existing objective standard. Harassment under the Final Rule included conduct occurring on social media as well as on school campuses. The Final Rule also modified the base standard for assessing discrimination to include anything more than "de minimis" harm, which the Court interpreted to mean any activity that separated students based on their sex. The Final Rule also modified the required investigative procedures to alleviate some of the burden on victims reporting their complaints that the 2020 Final Rule created.

The Court found the DOE exceeded its statutory authority under Title IX in enacting the Final Rule. It also held that the Final Rule was the result of "arbitrary and capricious" agency action in violation of the Administrative Procedure Act. Finally, the Court found that the Final Rule impermissibly interfered with the First Amendment rights of both teachers and students by mandating the use of students' preferred pronouns regardless of their personal beliefs on the matter. On all three bases, the Court vacated the Final Rule. Due to the sweeping nature of the challenged provisions, the Court decided to vacate the entire Final Rule,



Related Industries

Education

including provisions not directly addressed in the proceedings.

Although the Court's decision did not explicitly address this issue, it appears the Court intended that the 2020 Final Rule be followed going forward. Under the 2020 Final Rule, the prohibition of discrimination on the basis of sex was limited to discrimination based on sex assigned at birth. The procedures established by the 2020 Final Rule governing investigation of complaints and grievances should now be followed.

Importantly, the Court was clear that its holding should only be applied to Title IX – meaning that Title VII's prohibition on sex discrimination in the workplace *including* on the basis of gender identity remains intact. The U.S. Supreme Court, in its 2020 *Bostock v. Clayton County* decision, held that Title VII prohibits employment discrimination on the basis of sexual orientation or transgender status.

In addition, Massachusetts state law prohibiting discrimination on the basis of sexual orientation and gender identity remains in effect. As a result, schools must continue to prohibit discrimination on these bases. Complaints related to these protected classes, however, would no longer be covered by Title IX and its procedures. Accordingly, school districts should reinstate the Title IX policies they adopted to comply with the 2020 Final Rule.

We will continue to monitor any developments in this area, including any guidance issued by the U.S. Department of Education or other court actions, and provide updates as necessary.

Please contact any member of our Public Education Law Group if you have questions about the Final Rule's revocation or compliance with state or federal law regarding sex-based discrimination.

This client alert is intended to inform you of developments in the law and to provide information of general interest. It is not intended to constitute legal advice regarding a client's specific legal issues and should not be relied upon as such. This client alert may be considered advertising under the rules of the Massachusetts Supreme Judicial Court. This client alert is for informational purposes only. It is not intended to be a solicitation or offer to provide products or service to any individual or entity, including to a "data subject" as that term is defined by the European Union General Data Protection Regulations. ©2025 Mirick, O'Connell, DeMallie & Lougee, LLP. All Rights Reserved.