



New Title IX Regulations



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Abstract

Title IX is a Federal Law that was created in the 1970s to protect students from sex-based discrimination. As views on gender and sex equality continue to change, Title IX has seen significant changes and will continue to see them. Under the Biden administration new regulations were created to better safeguard members of the LGBTQIA+ community, and continue to protect victims of sexual abuse. These new regulations have been met with harsh criticism and lawsuits. This policy memo will explore what Title IX is, what the existing legislation is, how the new regulations would change Title IX, and how these lawsuits halt the implementation of new regulations.



Problem Definition

Title IX is a Federal Law passed by President Richard Nixon on June 23, 1972. The law prohibits gender-based discrimination and sexual harassment in educational settings. New regulations were created under the Biden Administration to Title IX were created to better protect LGBTQIA+ and pregnant students. The new regulations were set to go into effect on August 1, 2024, but a string of lawsuits has complicated this. Twenty-six states are challenging the expansion of Title IX, putting the new regulations on hold. There are currently eight lawsuits against the new regulations. These lawsuits state that the Department of Education's expansion to include "gender identity" into what is within the scope of sex discrimination is too vague of a term. The injunctions create long strangling legal battles for the Universities pulled into them (Stanford, 2024). The new regulations also required staff to get new training on how to handle situations, however the legal battles have halted staff from implementing the new strategies.



What Falls under Title IX Regulations

What institutions do and do not fall under Title IX

Title IX applies to all schools that receive public funding, including private universities, local school districts, for profit schools, libraries, museums, charter schools, vocational rehabilitation agencies, head start educational programs and more.



Recruitment

No federally funded educational programs or activities that receive federal funding are allowed to be discriminated on the basis of sex.



Athletics

Athletic programs that receive federal funding are not to discriminate on the basis of sex. Athletic programs must offer equal opportunities for students to participate in athletic programs, provide equal benefits/treatments, equal scholarship, there must be equality in: facilities, equipment, scheduling, publicity, coaching, travel and daily allowances, support services, and tutoring.



Sexual Harassment

Title IX protects students from sexual assault, relationship violence, gender discrimination, stalking, gender expression discrimination, gender identity discrimination, sexual orientation discrimination and pregnancy discrimination.



Discipline

Title IX has set penalties that can be taken against a student that violates Title IX. These disciplinary actions are: a verbal or written warning, probation, suspension, expulsion, residence hall change, job position change, criminal charges, loss of scholarship, required counseling, restitution, loss of credits, loss of tuition, suspension from athletics, and more.



Pregnancy and Parenting

Title IX protects pregnant students and students with children; students should be able to continue classes, extracurricular activities, and other school programs; pregnant students are entitled to reasonable schedule and coursework adjustments; schools must provide clean, safe, and private spaces for breastfeeding; schools must provide makeup work to pregnant students when class is missed due to the pregnancy, and students can return to their previous academic and extracurricular activities after being absent due to a pregnancy.



Single Sex Education

While Title IX requires that institutions do not discriminate in the admissions process on the basis of sex, single sex institutions are allowed. There are requirements for these institutions, these institutions must have a justification, voluntary, an opportunity for coeducational alternatives, and there must be a comparable institution for the opposite gender.



Retaliation

Title IX also prohibits retaliatory actions against anyone who reports sexual misconduct, gender discrimination, witnesses, or people participating in the investigation process. Retaliation includes: intimidation, coercion, discrimination, giving a student a failing grade, threatening suspension or expulsion, and verbal/physical threats.



Existing Legislation



On June 23, 1972, Title IX of the Education Amendments of 1972 was enacted by Congress and signed into law by President Richard Nixon (History of Title IX, 2019). In July 1975, congress reviewed and approved Title IX regulations, rejecting several resolutions and bills that attempted to limit its application to athletics (History of Title IX, 2019). On February 17, 1976, the NCAA filed a lawsuit challenging the legality of Title IX, which was dismissed in 1978 (History of Title IX, 2019).

Expansion and clarifications have happened ever since the implementation. On March 22, 1988, the Civil Rights Restoration Act of 1987 was enacted, overriding President Reagan's veto. This act restored Title IX's institution-wide coverage after it had been limited by the *Grove City v. Bell* Supreme Court decision (History of Title IX, 2019). Then, on February 26, 1992, *Franklin v. Gwinnett County Public Schools*, the Supreme Court ruled that monetary damages are available under Title IX (History of Title IX, 2019). In 1992, Title IX's protections were interpreted to encompass sexual harassment, including sexual assault (Rura, 2024).

More recently the Department of Education has issued significant changes to guidance and regulations in 2011 (Rura, 2024). In 2020, the Supreme Court ruled in *Bostock v. Clayton County* which ensures that discrimination based on sexual orientation or gender identity is included under Title IX. Also, this year the Department of Education issued another set of significant changes to the regulations (Rura, 2024). As of 2020 schools must respond promptly and effectively to reports; they must also establish time frames for investigation. In order to respect the grievance process, these regulations also eliminated the requirement for live hearings with cross-examination. Along those lines, regulations also expanded the scope of potential wrongdoing, the reporting requirements, and the supportive measures.

Finally, the Biden administration released new Title IX regulations in April 2024, which were set to be implemented in August 2024.

Current Policy Context

Title IX is a civil rights law passed in 1972 that prohibits sex-based discrimination in educational programs and activities that receive federal funding, it applies to schools, colleges, universities, and other academic institutions.

The Biden administration released new Title IX regulations in April 2024 that significantly changed how institutions must handle sexual harassment and discrimination claims. These new rules were supposed to take effect on August 1, 2024 (Abron et al., 2024). The first change expanded the definition of sexual harassment: the definition has been broadened from conduct that is “severe, pervasive, and objectively” to conduct that is “severe or pervasive” and limits a student’s equal access to education (Title IX Regulations Update, 2024). Secondly, there is now a broader scope, the new rules expand Title IX’s jurisdiction to cover conduct that impacts educational programs and activities regardless of where it occurs, including off-campus and international incidents (Abron et al., 2024). Thirdly, grievance procedures were revised, and the requirement for live hearings with cross-examination was eliminated, giving institutions more flexibility in designing their procedures (Abron et al., 2024). Fourthly, there was a push for quicker resolutions: institutions are required to establish and enforce “prompt time frames” for investigating cases of sex discrimination (Abron et al., 2024). Finally, these regulations established increased protections: the regulations expand protections for LGBTQI+ students, pregnant students, and parenting students (Woody & Connolly, 2024).

While the new regulations aim to provide greater protections and flexibility, they also introduce new issues, smaller, under-resourced institutions may face challenges in meeting the deadline (Title IX regulations update, 2024). There have been legal challenges to the new regulations, with some federal judges temporarily blocking their implementation in certain states (Woody & Connolly, 2024).

Twenty-six states are blocking the new Title IX protections. Some of the states that are blocking the new protections state that the expanded protections for LGBTQIA+ are vague and use “overbroad language.” Groups such as the Moms for Liberty and Young America Foundation are fighting against the new protections, stating that these new protections would allow transgender athletes to compete on a team that matches their chosen gender identity (Knott, 2024). The new regulations do not expressly state that schools have to allow transgender athletes to compete on a team that aligns with the gender that they present with; the new rules prohibit discrimination based on gender identity.



What changes will be made to Title IX

Title IX will continue to go through changes, some of the potential future changes could include transgender athletes. Transgender athletes in sports are not included under Title IX protections. This could lead to legal challenges and adjustments, refinement of implementation, technological considerations, and evolving societal norms. The current regulations do not address the issue of transgender athletes' participation in sports. This topic has been separated from the recent changes and its implementation has been delayed (Abron et al., 2024). Rules regarding sports eligibility for transgender athletes will likely be addressed after the November 2024 election (Woody & Connolly, 2024). Given the contentious nature of Title IX regulations, legal challenges may arise, potentially leading to further adjustments or clarification (U.S. Department of Education Releases Final Title IX Regulations, 2024). Some federal judges have already temporarily blocked the new regulations from taking effect in certain states (Title IX regulations update, 2024). While the current focus is on implementing the new regulations, it's important to note that Title IX has historically been subject to changes with different administrations. Therefore, future modifications to Title IX regulations remain a possibility, particularly in response to emerging issues, legal challenges, or shifts in political leadership.



Conclusion

Title IX has undergone many changes and updates since its creation and will see many more as society evolves. While society continues to grow and develop it is important that Title IX reflects these changes. There is a delicate balance between protecting people and the government overstepping its boundaries, as new regulations emerge more lawsuits will arise. Despite the challenges to the new regulations Title IX continues to protect a wide variety of students from discrimination to sexual assault, it's important for the integrity of all institutions to protect their constituents.



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