



States Sue Federal Government Over New Title IX Rules, Vow Not to Comply: What Schools Need to Know and Do Next

Insights

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At least 22 states are suing the Biden administration over new Title IX rules set to take effect this summer. The lawsuits claim that the U.S. Department of Education's new rules – which were released last month and include new protections for LGBTQ+ students – conflict with their state laws and exceed the agency's authority. Some state leaders are even directing state officials to defy the new rules, leaving federally funded K-12 and postsecondary schools in a difficult position. We'll explain it all and guide educational institutions on what to do next.

What's This About?

The Department of Education released new Title IX regulations on April 19 that, among other things, expand the prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity. The new rules, for example, prohibit federally funded schools from denying transgender students access to facilities, such as bathrooms or locker rooms, that align with the student's gender identity. They are slated to take effect on August 1 – unless a group of conservative state leaders have their way.

What's Happening?

Republican-led states are now asking courts to block the new rule, claiming, among other things, that the new protections for transgender students conflict with their state laws. The administration is facing at least five lawsuits from attorneys general in at least 22 states, including Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, and West Virginia.

Some states are even vowing not to comply with the new rule and directing schools to follow suit. For example, Texas Gov. Greg Abbott issued a public letter on May 8 instructing every public college and university in the state to ignore the new rule. Schools are stuck in the middle and in a seemingly lose-lose situation due to conflicting state and federal directives.

How Can This Get More Complicated?

Two cases currently pending before the Supreme Court could take away power from federal agencies and shake things up once again. Our [FP attorneys are predicting](#) that SCOTUS will replace the *Chevron* standard – which gives agencies an immense amount of deference – with a narrower test that will give courts wide latitude to put regulations under a microscope and second guess an agency’s wisdom. If these predictions come true, the states suing over the new Title IX regulations could have a much better chance of succeeding on their claims. Stay tuned for updates, as these cases could change everything.

What Should You Do?

With all of the above in mind, you might feel like you can’t win – whether you comply with the new Title IX rules or follow your state leaders directing you not to – you could face litigation or punishment in some form. While there is a chance that the rules could be delayed or blocked by court action, you need to assume they will take effect on August 1 as scheduled. If you’re in a Catch-22 situation and compliance with the new Title IX rules could result in uncertain consequences from state government officials while noncompliance could put significant federal funding at risk, we recommend you work with your counsel as you consider the next steps.

Conclusion

Please consult your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Education Practice Group](#) to obtain practical advice and guidance on how to adapt your policies and training to comply. We will continue to monitor the latest developments and provide updates as warranted, so you should ensure you are subscribed to [Fisher Phillips’ Insight System](#) to gather the most up-to-date information.

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