



Schools Across the Country Face Patchwork of Various Title IX Rules Thanks to Ongoing Litigation: What Schools Need to Know

Insights

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Thanks to several court orders and an August Supreme Court ruling, schools across the country face varying Title IX obligations depending on the state in which they operate – and it doesn't appear that clarity will come anytime soon. A series of federal court rulings from earlier this summer means that schools in 26 states are not covered by the most recent Title IX rules that include expanded protections for LGBTQ+ students, while federal officials insist that they will enforce those rules in the remaining states. What do you need to know about this latest development and what might be in store down the road?

Quick Background on New Title IX Rules

The Department of Education released new Title IX regulations on April 19 that expanded the prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity, among other things. 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 took effect on August 1 – but not for everyone.

Title IX Rules Face Series of Court Defeats

That's because a series of courts blocked the new rules from taking effect for schools in certain states.

- First, federal trial courts in Louisiana and Kentucky blocked the Department of Education (DOE) from enforcing the 2024 Title IX regulations in the 26 states challenging their validity in June.
- On appeal, the Fifth and Sixth Circuit federal appeals courts denied the DOE's request to allow the remaining provisions of the rule to be temporarily enforced while the litigation played out.
- The Eleventh Circuit Court of Appeals then issued a decision joining its neighbor circuits in striking down the regulations.
- Meanwhile, a Kansas federal court issued an opinion halting the Title IX regulations from going into effect based on a lawsuit brought by Southeastern Legal Foundation (SLF) and Mountain States Legal Foundation (MSLF) on behalf of Moms for Liberty and Young America's Foundation.

The members of Moms for Liberty and Young America's Foundation are parents and students in K-12 schools and colleges who oppose the new regulations' expansion of the definition of sex to include "gender identity," amongst other issues.

- Finally, in an opinion released on August 13, SCOTUS blocked the Biden administration's request for a ruling allowing portions of the 2024 Title IX regulations to go into effect while several states and the DOE continue to litigate the merits of portions of the regulations surrounding the definition of sex discrimination. The Supreme Court unanimously agreed that preliminary injunctions blocking the challenged portions of the regulations were proper, but were split 5-4 on whether the remainder of the new regulations could still go into effect – with the majority finding that the challenged provisions were too intertwined with the rest of the regulations to be severed.

Schools in 26 States Not Bound by New Title IX Rules

As a result of the current litigation, the 2024 Title IX regulations are not currently in effect in Alaska, Montana, Idaho, Wyoming, North Dakota, South Dakota, Iowa, Nebraska, Utah, Oklahoma, Texas, Kansas, Louisiana, Missouri, Kentucky, Indiana, Tennessee, Mississippi, Arkansas, Alabama, Georgia, Florida, South Carolina, Virginia, West Virginia, and Ohio.

The DOE has said they will continue to enforce the 2020 Title IX regulations in those 26 states and the new 2024 regulations elsewhere, creating a patchwork of different regulatory requirements across the country while final rulings in these cases remain pending.

What's Next?

The current litigation over the 2024 Title IX regulations comes on the heels of the Supreme Court overturning the Chevron doctrine (as FP attorneys predicted) in late June, ripping away power from federal agencies like the Department of Education. Because courts will no longer be required to give deference to the DOE's definitions in determining whether it has exceeded its rulemaking authority, the DOE will find it much more difficult to defend its interpretation of sex discrimination and keep the 2024 Title IX rules alive.

For now, schools in the 24 states and D.C. not impacted by the rulings should continue to follow the 2024 Rules and review our list of practical suggestions found here. However, there is a chance that another court may extend the block nationwide, which might cause you to shift your practices and policies.

Conclusion

Your FP attorneys will continue to keep you updated regarding the pending litigation, so make sure you are signed up for the FP Insight System to ensure you receive the latest news directly in your inbox. Please contact the Higher Education Practice Group, the authors of this article, or your FP attorney for questions regarding enforcement of the new Title IX regulations.

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