



U.S. Department of Education's Title IX Notice Gives Insight into LGBTQ+ Discrimination Claims

Jul 12, 2021

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In a ["Notice of Interpretation" published June 16](#), the U.S. Department of Education Office for Civil Rights (OCR) clarified its interpretation of Title IX in light of the Supreme Court's 2020 decision in *Bostock v. Clayton County*. While this Notice does not create binding legal authority, it does provide a preview of how OCR will investigate and enforce claims of discrimination based on LGBTQ+ status under Title IX.

Title IX prohibits discrimination "on the basis of sex" in educational programs receiving federal funds. In the new Notice of Interpretation, OCR interprets this basis to include sexual orientation and gender identity. In *Bostock*, the Supreme Court held that similar language in Title VII, which prohibits sex discrimination in employment, encompassed discrimination based on sexual orientation and gender identity. At the end of the Trump Administration, the Department of Education (DOE) had published a memorandum that argued the Court's decision in *Bostock* was not applicable to the DOE's enforcement of Title IX. The Biden administration rescinded this guidance in light of President Biden's executive orders on preventing discrimination on the basis of gender identity and sexual orientation and on guaranteeing education environments free from discrimination on the basis of sex, including sexual orientation and gender identity.

While this Notice of Interpretation does not reinstate Obama-era guidance regarding the rights of transgender students in schools, it does provide clarity for how OCR will seek to enforce Title IX moving forward. The Notice makes clear that OCR will investigate allegations of discrimination based on sexual orientation or gender identity. The Notice states that these allegations may include individuals being harassed, disciplined in a discriminatory manner, excluded from, denied equal access to, or subjected to sex stereotyping in academic or extracurricular opportunities and other education programs or activities, denied the benefits of such

programs or activities, or otherwise treated differently because of their sexual orientation or gender identities.

Importantly, OCR's interpretation of Title IX as encompassing both sexual orientation and gender identity discrimination applies to both academic and extracurricular opportunities. This would appear to encompass discrimination in school athletics based on transgender status, though the Notice of Interpretation is silent on this issue. Currently, lawmakers in over 20 states—including [Ohio](#)—have introduced bills purporting to maintain fair competition in male and female athletics by determining participation on the basis of an individual's biological sex. Opponents of these bills claim they are discriminatory because they prevent transgender individuals from participating in athletic competitions consistent with their gender identity. The Notice aligns with a recent court filing on behalf of the U.S. Department of Justice that takes the position that West Virginia's bill regarding transgender student athletes violates Title IX and the Equal Protection Clause.

Given this new guidance from OCR, school leaders should continue to tread carefully when addressing issues related to the sexual orientation or gender identity of students. If you have any questions about this Notice of Interpretation or about navigating this complex and evolving area of law, please contact [Dr. Christopher Thomas](#), [Joe Scholler](#), [Alex Ewing](#), or any member of Frost Brown Todd's [Government Services](#) practice group.

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