

**Insights**

## **STATE OF TENNESSEE V. CARDONA: IMPLICATIONS OF THE VACATUR OF THE 2024 TITLE IX REGULATIONS**

Jan 15, 2025

On April 19, 2024, the Department of Education released its final Title IX regulations regarding sexual discrimination in federally-funded education (the “2024 Title IX Rules”). The 2024 Title IX Rules included significant new protections for pregnancy, changed processes for investigating and resolving claims of sexual harassment, and explaining that the Department of Education considered discrimination on the basis of sex to include discrimination on the basis of one’s gender identity or sexual orientation. These expanded protections quickly came under fire in numerous lawsuits around the country, with several courts issuing preliminary injunctions against enforcement of the 2024 Title IX Rules in particular states or K-12 schools or institutions of higher education attended by members of two conservative organizations. As a result of those piecemeal preliminary injunctions, the Department of Education was preliminarily enjoined from enforcing the 2024 Title IX Rules in at least 26 states and across more than 1,000 K-12 schools and institutions of higher education. As a result, many of the schools and institutions elected not to update their Title IX policies and procedures to comport with the 2024 Title IX Rules.

### **THE STATE OF TENNESSEE V. CARDONA DECISION**

On Thursday, January 9, 2025, the first of the courts with preliminary injunctions in force issued a final decision on the merits, holding that the 2024 Title IX Rules “exceed the Department[ of Education’s] authority under Title IX, violate the Constitution, and are the result of arbitrary and capricious agency action.” The court therefore vacated the 2024 Title IX Rules nationwide. In particular, the Eastern District of Kentucky held that the Department of Education exceeded its authority under Title IX by extending the definition of discrimination “on the basis of sex” to include discrimination on the basis of gender identity in addition to sex stereotypes, sex characteristics, pregnancy or related conditions, and sexual orientation. The court rejected the Department of Education’s reliance on *Bostock v. Clayton County, Ga.*, 590 U.S. 644 (2020), which found that an employer’s decision to terminate an employee based of her transgender status violated Title VII’s prohibition on discrimination “because of” sex. The court noted that *Bostock* was expressly limited to Title IX and even made clear that it did “not purport to address bathrooms, locker rooms, or anything else of the kind.” Instead, the court held, Title IX’s ban on “discrimination on the basis of sex means discrimination on the basis of being a male or female.” The court also found the 2024

Title IX Rules to infringe on the First Amendment by forcing teachers “to use names and pronouns associated with a student’s asserted gender identify” or risk being found responsible for sexual harassment. The court likewise found the 2024 Title IX Rules to be overly vague as it does not make clear what conduct will be considered to violate the law. Lastly, the court found that the expanded protections for gender identity were not clearly contemplated in the original text of Title IX, so, “[i]n the absence of a clear statement from Congress,” the 2024 Title IX Rules “cannot stand.”

With the impending change of administration, any appeal filed in the last week of the Biden administration is likely to be withdrawn quickly under President Trump, thus making it likely that the court’s decision will be final and the 2024 Title IX Rules permanently null and void. This means that the entire set of regulations are of no force and effect, whether related to the scope of “on the basis of sex” or not. The substantive and procedural protections against all types of sexual discrimination reflected in the 2024 Title IX Rules are no longer in effect.

## WHAT DOES THIS MEAN FOR THE SCOPE OF TITLE IX’S PROTECTIONS?

Based on the Eastern District of Kentucky’s vacatur, institutions that have implemented the 2024 Title IX Rules will need to revert to the 2020 Title IX Rules. Simply reinstating the policies in effect prior to August 1, 2024, will be the most efficient approach for most institutions needing to respond to the decision. As a result of the vacatur, the 2024 Title IX Rules should not be used for any purpose going forward. If your institution has Title IX cases involved misconduct allegedly occurring between August 1, 2024, and January 9, 2025, to which the 2024 Title IX Rules would have applied, consult legal counsel, but most likely your institution should be applying the 2020 Title IX Rules, including all investigation and adjudication procedures, to such cases.

For all K-12 schools and institutions of higher education, the *State of Tennessee* decision and a recent proposed house bill presage a more restrictive set of Title IX rules regarding sexual harassment and discrimination, as well as athletics. Three key ramifications of the decision are:

- **First**, the 2020 Title IX Rules do not expressly provide for protections based on gender identity, so Title IX coordinators will be unable to use Title IX to protect against discrimination based on gender identity, though other university anti-discrimination policies may still assist in providing support and protection to transgender students.
- **Second**, the decision may embolden states already leaning towards limiting anti-discrimination protections for transgender students to propose and pass new legislation. Given the proliferation of state legislation declining to provide protections against discrimination in athletics based on gender identity, institutions can expect more restrictive state legislation with regarding to transgender athletics participation in light of the decision.

- And **third**, while it remains to be determined if Congress will actually finalize an amendment to Title IX to clarify the scope of “on the basis of sex” for all sex discrimination under Title IX, 2025 already has seen an effort to limit the scope of “on the basis of sex” for purposes of athletics. On January 3, 2025, the House introduced H.R. 28 (“Protection of Women and Girls in Sports Act of 2025”), which would amend Title IX “to provide that *for purposes of determining compliance with Title IX of such Act in athletics*, sex shall be recognized based solely on a person’s reproductive biology and genetics at birth.” And on January 14, 2025, the House passed the Protection of Women and Girls in Sports Act of 2025 by a partisan vote of 218-206. A similar bill was introduced in 2023. Consistent with many state law efforts to exclude transgender athletes from women’s sport, the Protection of Women and Girls in Sports Act of 2025 would preclude any transgender athlete from participating in scholastic or intercollegiate athletics consistent with their gender identity. The Biden administration attempted to complete a rulemaking that would have provided for inclusive participation at many levels of sport, but that rulemaking was withdrawn on December 20, 2024. The Republican majority may now have the votes to pass the exclusionary bill proposed in the House where prior efforts failed, but, to date, no broader effort to amend Title IX to clarify “on the basis of sex” has been proposed.

We will be monitoring the legislative and regulatory developments around Title IX, and will provide further updates as the landscape changes. Institutions with questions about how the reversion to the 2020 Title IX Rules may impact your policies and procedures, or looking for assistance in conducting an internal audit of affected policies and procedures, can contact [sarah.hartley@bclplaw.com](mailto:sarah.hartley@bclplaw.com) or the BCLP Higher Education Team for guidance.

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