

Education Alert
January 14, 2025

COURT VACATES BIDEN TITLE IX REGULATIONS

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On January 10, 2025, the United States District Court located in the Eastern Division of Kentucky set aside the Title IX regulations promulgated by the Biden Administration in August 2024 (“The 2024 Final Rule”) in the decision State of Tennessee v. Miguel Cardona et al. (“The Decision”). The federal court judge Danny C. Reeves sided with four states (Tennessee, Kentucky, Virginia, Indiana, West Virginia) who sued the Department of Education asking the court to vacate the 2024 Final Rule, and to enjoin Secretary Miguel Cardona, the Department of Education, and other federal officials from enforcing the 2024 Final Rule. The federal court issued a *vacatur* setting aside the entire 2024 Final Rule declaring that the Department of Education exceeded its authority under Title IX and violated the Constitution of the United States.

The federal court stated that the 2024 Final Rule “turned Title IX on its head” by expanding the stated purpose of Title IX which is “discrimination on the basis of sex” (the definition of which has historically been limited to a biological difference between male and female) to include “basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.” The federal court also found that the 2024 Final Rule’s broader protections against *sexual harassment* to include “off campus” harassment including, for example, sexual harassment that occurs on social media that creates a hostile environment in the school setting exceeded the bounds of Title IX. The federal court further found that the 2024 Final Rule was overly broad and used a subjective test for harm that is “...so vague recipients of Title IX funds have no way of predicting what conduct will violate the law.”

The federal court found that the 2024 Final Rule could violate the First Amendment, referring to a specific example of an educator who fails to use a gender-specific pronoun for a student and/or uses speech “concerning gender issues,” which could constitute a form of sexual harassment under the 2024 Final Rule, and could have a chilling effect on the educator’s freedom of speech under the First Amendment.

The federal court noted that while there was at least one provision relative to parental, family or marital status and pregnancy or related conditions that was not involved in the litigation, the federal court could not “rewrite the regulations by excising the offending material, particularly when rulemaking is the exclusive duty of the Executive Branch.” As a result, it held that “the

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entire Final Rule and corresponding regulations are invalid and must be set aside.” (Emphasis added).

The Decision will have major impacts on the way in which Title IX is investigated and enforced within school districts. **However, Title IX remains in effect and prohibits discrimination based on sex in education programs or activities receiving federal financial assistance.** To remain in compliance with Title IX, we are advising districts to revert to their previous policies and procedures regarding Title IX enforcement that were enacted in 2020, and which do not contain the provisions that were found unlawful by the Decision. To the extent districts have ongoing investigations, they should convert those investigations to the 2020 procedures.

The Decision means that school districts will not handle discrimination based gender identity and sexual orientation pursuant to Title IX. However, discrimination based upon sexual orientation and gender identity remains prohibited under MA law (See in part M.G.L. c. 76, § 5 and M.G.L. c. 151B, §§ 3 & 4) and districts must still investigate and address these claims pursuant to procedures created under state law. Moreover, schools should still adhere to the guidance from the Massachusetts Department of Elementary and Secondary Education found here: [Guidance for MA Public Schools Creating a Safe and Supportive School Environment - Student and Family Support](#), relative to use of restrooms, names/pronouns, locker rooms, and all other areas.

Murphy, Hesse, Toomey & Lehane will be carefully following this development and will provide consistent communication over the next few weeks regarding the codification of the Decision, which we expect will occur with the change in federal administration.

This Client Alert was prepared by Ellen Crowley and was reviewed by Felicia Vasudevan, Sarah Spatafore, Alisia St. Florian, and Stacey Dedian. If you have any questions about this issue, please contact the attorney responsible for your account, or call (617) 479-5000.

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