

Senate Education Committee




Senator David G. Argall
Chairman

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TO: All Republican Senators

FROM: Senator David G. Argall, Education Committee Chairman 

DATE: September 5, 2024

SUBJECT: Biden Administration Changes to Title IX

Title IX was established in 1972 in an effort to protect women's rights and prevent sex discrimination in educational settings. The Biden administration has recently put forth significant regulatory changes to Title IX that completely undermine the intent of the law.

The final rule, effective August 1, 2024 for all elementary, secondary and postsecondary schools that receive federal funding, makes clear that treating anyone differently based on their gender, including their gender identity, is considered sex discrimination. It also once again changes the process and procedures for schools handling complaints, in addition to other changes.

It is worth noting that although the new rules are intended to protect students on the basis of gender identity, absent from the final rule are references to policies regarding transgender athletes. There is a separate effort underway to modify Title IX in this regard, and regulations on this issue have been in proposed form since July 12, 2022. It is unclear when or if those regulations will be adopted.

As of July 31, 2024, lawsuits have been filed by 26 states and Pennsylvania is not one of these states. For those 26 states under litigation, the Biden Administration's updated regulation has been put on hold, however these states are required to comply with the previous version of Title IX from 2020. The Biden Administration petitioned the U.S. Supreme Court (SCOTUS) to allow parts of the new regulation to be implemented while the rest was litigated, but in a 5-4 decision on August 16, 2024, SCOTUS ruled that the entire updated regulation would remain on hold in these states.

Additionally, in *Kansas v. U.S. Department of Education*, the court allowed for the schools attended by the members of Female Athletes United, Young America's Foundation, and Moms for Liberty to be included in the injunction. These schools may still choose to update their policies and comply with the updated Title IX regulation. However, the U.S. Department of Education is prohibited from requiring compliance or punishing these schools for failure to comply with the regulation. The most current list of these schools available to me can be found here.

With a new school year underway and these changes newly in effect, I suspect we will all receive constituent questions and feedback. A reminder that questions from school officials about interpreting the final rule should be directed to the school solicitor; the Caucus should not be providing legal advice on

this or any matter. Additionally, as this is a federal regulation, we are unable to legislatively intervene; it would be appropriate to point this out to constituents who call both in support of or opposition to the regulations. Potential responses for action by constituents who oppose the regulations include:

- Constituents can call their U.S. Senator and urge passage of a joint disapproval resolution pursuant to the Congressional Review Act. The U.S. House of Representatives passed H.J.Res.165 on July 11, 2024.
- Members and constituents can petition Governor Shapiro and Attorney General Michelle Henry to add Pennsylvania to the list of states who have filed suit against the Biden Administration.
- Provide constituents with available resources, including, but not limited to:
 - Final Rule: <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>
 - A summary of the Title IX regulations from the Congressional Research Service: <https://crsreports.congress.gov/product/pdf/LSB/LSB11200>
 - A “Brief Overview of Key Provisions of the Department of Education’s 2024 Title IX Final Rule” from the U.S. Department of Education: <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-summary.pdf>
 - U.S Department of Education Fact Sheet: <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf>
 - Proposed rule for athletics: <https://www.federalregister.gov/documents/2023/04/13/2023-07601/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal#addresses>

If you have any questions, please contact Cindy Urban at curban@pasen.gov.

CC: Chiefs of Staff