

FEDERAL COURT BLOCKS SWEEPING TITLE IX RULE FOR SCHOOLS NATIONWIDE: HOW YOUR SCHOOL CAN APPROACH THE CHANGES

Insights
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A federal court just blocked the sweeping Title IX rule finalized by the Biden administration last year – effectively wiping the entire rule off the books for all schools nationwide. Prior to yesterday’s ruling, schools across the country faced a patchwork of Title IX obligations due to a series of courts halting the rule from taking effect in certain states. But now all schools can rest assured that they do not need to comply with the new rule – which included expanded protections for LGBTQ+ students – especially because the Biden administration has little chance of resurrecting the rule through an appeals court before a second Trump term begins. Here’s everything you need to know about the January 9 ruling and what’s next.

Quick Background

- The U.S. Department of Education (DOE) [released a new final rule](#) in April last year that made significant changes to the regulations that implement Title IX.
- Before [the rule](#) took effect on August 1, [many states challenged it](#), taking particular issue with how rule redefined sex-based discrimination to include discrimination on the basis of sexual orientation or gender identity.
- [Various court decisions](#), including a Supreme Court ruling, ultimately resulted in blocked application of the rule in 26 states while remaining intact for the rest of the country.

What’s the Latest?

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A federal district court in Kentucky [struck down the rule](#) on Thursday with nationwide effect based on three reasons:

- 1. The rule exceeds the DOE’s authority under Title IX.** While the DOE argued that the new Title IX regulations were supported by *Bostock v. Clayton County*, a [2020 SCOTUS ruling](#) that cemented LGBTQ protections under Title VII’s workplace discrimination rules, the court said that *Bostock* is limited to the Title VII context, and that “when Title IX is viewed in its entirety, it is abundantly clear that discrimination on the basis of sex means discrimination on the basis of being a male or female.” In interpreting Title IX and reaching this conclusion, the court exercised its “independent judgment” – the new standard established by the Supreme Court’s *Loper Bright* ruling last year that [stripped power from federal agencies](#).
- 2. The rule violates the Constitution.** The court held that the rule could cause teachers’ and others’ speech concerning gender issues (or their failure to use gender-identity-based pronouns) to constitute harassment under the rule, and that the First Amendment does not permit the government to chill speech in this manner. The court also held that the rule is vague and overbroad and violates the Constitution’s Spending Clause.
- 3. The rule is “arbitrary and capricious.”** The court, for example, said that the rule creates “glaring inconsistencies” within Title IX by acknowledging that Congress has deemed sex separation permissible in various circumstances, such as fraternities and sororities and living facilities, yet mandates that recipients cannot separate the sexes for purposes of other living facilities such as bathrooms, toilets, or showers.

Top Takeaway: Rule Now Blocked for All Schools Across the Country

Most importantly for schools that are subject to Title IX, the court vacated the 2024 final rule, meaning schools that were operating under the 2020 final rule due to court rulings need not update their current policies, and schools who were attempting to comply with the 2024 final rule no longer have to do so. However, many schools may feel more frustrated than relieved given the significant resources they likely devoted to rewriting their policies to comply with the new rule. Unfortunately, schools have been suffering serious



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whiplash from the constantly changing standards depending on who is in the White House.

What's Next?

The DOE could try to breathe new life into the rule by filing an appeal of this decision in the coming days or seeking an emergency order from the appellate court that would cause the rule to go back into effect. However, it is highly unlikely that this could happen within the 10-day timeframe left of the Biden administration, and we predict the 2024 rule will be dead once Trump takes office, as the president-elect promised during his 2024 campaign trail that he'd roll back this exact rule on his first day in the White House.

What Should You Do?

Now that a federal court has deemed the rule to be unlawful, schools should work with counsel to determine whether to adjust any policies, procedures, or training sessions that were previously updated for the new rule. In many areas, if your policy was updated to provide more resources (such as lactation space) because the rule required it, you are not required to remove those resources if you wish to keep them. But other areas (for example, if you had relied on the new rule to amend your disciplinary procedures to adopt a single investigator model, or to eliminate the right to cross-examination) may actually require an adjustment in order for your school to stay compliant. Our [Education](#) and [Higher Education](#) attorneys can help you navigate these complex decisions.

Make sure you give your compliance officials and leaders the resources they need to get up to speed on the latest development and current Title IX landscape. Also keep in mind that existing state laws may require you to meet obligations that go beyond those required by Title IX.

Conclusion

Your FP attorneys will continue to keep you updated on any Title IX developments, so make sure you are [signed up for the FP Insight System](#) to ensure you receive the latest news directly in your inbox. If you have any questions, please contact the authors of this article, your FP attorney, or any attorney in our [Education Practice Group](#) or [Higher Education Practice Group](#).

