

# US Department of Education Announces 18 Title IX Investigations Related to Transgender Athletes – What Should Your School Do?

Insights

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The US Department of Education recently launched a series of Title IX investigations of 18 different colleges and universities, state departments of education, and local public school systems that have policies allowing transgender athletes to compete on sports teams that align with their gender identity. The investigations, announced on January 14, should cause you to review your own school's approach to this controversial topic and consider following a series of practical steps outlined below.

## **The Context for These Investigations**

The Department of Education's announcement of these 18 investigations follows on the heels of oral argument at the U.S. Supreme Court in *West Virginia v. B.P.J* and *Little v. Hecox*, cases that address whether state bans on transgender athletes playing on teams that align with their gender identity are constitutional and whether they violate Title IX.

Assistant Secretary for Civil Rights Kimberly Richey's January 14 announcement linked the Department's investigations directly to the SCOTUS cases and emphasized that OCR is "aggressively pursuing allegations of discrimination against women and girls" and will "leave no stone unturned" in protecting equal access in education.

The investigations span both K-12 public school districts and colleges and universities around the country, including University of Nevada-Reno, Tacoma Public Schools in Washington, and the New York City Department of Education.

Several of the investigations are focused on school districts in Maine and California, where the Department of Education has already initiated investigations at the state level and threatened to withhold federal funding based on alleged violations of Title IX. In April, in fact, the Department sued Maine over these alleged violations, claiming that over \$860 million in federal funding to Maine could be at risk.

## **Steps that Universities and Schools Should Take to Prepare**

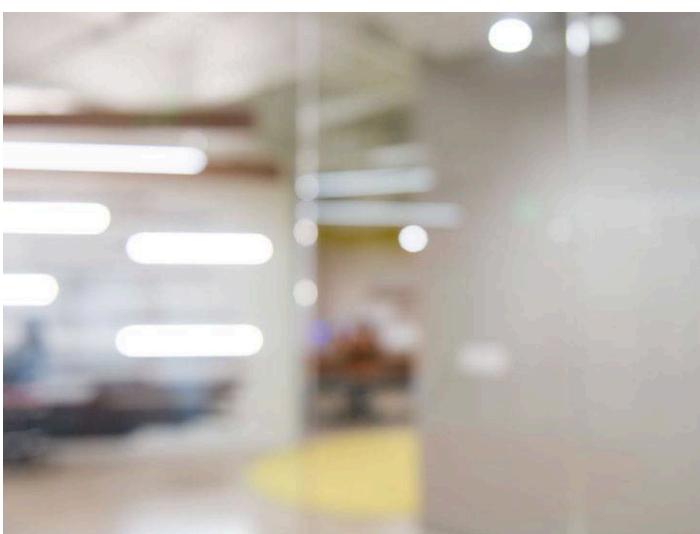
Given this announcement, it's more important than ever for universities and schools to be proactive to avoid government scrutiny and to be prepared if an investigation occurs. School leaders should consider taking the following steps to protect their school and minimize risk:

- **Evaluate Current Athletic Participation Policies:** Undertake a comprehensive review of existing athletic eligibility guidelines and policies, Title IX compliance frameworks, and any applicable state legal or league requirements, with a particular focus on how they address gender identity. Identify any policies or practices that could run afoul of potential legal developments, especially those relating to biological sex definitions and eligibility for sports. Keep in mind that Title IX only applies to those private schools receiving certain types of federal financial assistance.
- **Create a Compliance Team:** Consider establishing a multidisciplinary task force to stay current on legal developments, prepare for possible policy changes, and draft guidance for various stakeholder groups with your school community. Your school may consider including representatives from athletics, legal, student affairs, Offices of Equal Opportunity, diversity professionals, and HR.
- **Focus on Training and Communications:** Provide training to coaches, athletic directors, and HR professionals on the shifting legal landscape bearing in mind. Make sure to strike a balance between legal compliance and recognition of the impact on student-athletes and institutional values.
- **Assess Risk Regarding Federal Funding and Create an Action Plan:** Work with your FP legal counsel to determine how potential Title IX enforcement could affect federal grant eligibility or other existing federal funding. Establish an action plan to manage risk related to regulatory investigations or possible litigation.

## **Conclusion**

For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on the firm's [Sports Industry Team](#), [Higher Education Team](#), or [K-12 Institutions Team](#). Fisher Phillips will continue to monitor developments impacting employers, so make sure that you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information direct to your inbox.

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