

CLIENT ALERT

January 2025



The 2024 Title IX Sex Discrimination Rule is Gone - Now What?

The expanded Title IX sex discrimination regulations that went into effect on August 1, 2024, have been struck down. On January 9, 2025, a federal trial court judge in Kentucky vacated the 2024 Title IX Final Rule in the case of *State of Tennessee v. Cardona*. While the ‘vacatur’ remedy technically applies only to the five states that were plaintiffs in that lawsuit (Kentucky, Indiana, Ohio, Tennessee, Virginia, and West Virginia), a vacatur order is treated as a nationwide remedy. This signals the demise of the 2024 Title IX Final Rule everywhere. It is unlikely that an appellate judge will overturn the Kentucky court’s decision. This, coupled with the change in the federal administration, means that the 2024 Title IX Rule will not be implemented.

NOW WHAT?

Here’s where it gets complicated.

For those Illinois schools that were enjoined from adopting the 2024 Title IX Final Rule by a court order in the *State of Kansas v. U.S. Department of Education* lawsuit (a different lawsuit!) because they had a student or parent who was a member of the Young America’s Foundation, Female Athletes United, or Moms for Liberty, nothing has changed and they can continue to follow the 2020 Title IX Final Rule.

All other schools and school districts that were governed by the 2024 Title IX Final Rule during its five-month shelf life should apply the appropriate Rule and policies, depending on when an alleged violation of Title IX occurred:

- For incidents alleged to have occurred prior to August 14, 2020, apply pre-2020 Title IX policies;
- For incidents alleged to have occurred between August 14, 2020, and July 31, 2024, apply the 2020 Title IX Rule and policies;
- For incidents alleged to have occurred between August 1, 2024, and January 9, 2025, apply the 2024 Title IX Rules and policies;
- For incidents alleged to have occurred after January 10, 2025, apply the 2020 Title IX Rule and policies.

SHOULD YOU UPDATE YOUR POLICY MANUAL?

Yes, but not yet.

Implementing the 2020 Title IX Final Rule does not mean that your school board must immediately take action to revert to its pre-August 2024 Title IX policies. In fact, if your school board updated its Policy Manual to comply with the 2024 Title IX Final Rule this past fall, we recommend that you **NOT** take any official school board action at this time to revert to the 2020 policies. If you subscribe to the Illinois Association of School Boards' PRESS service, you may recall that there were numerous policies impacted by the 2024 Title IX Final Rule. The IASB plans to make comprehensive updates to all Title IX-related PRESS materials in the next few months.

It is best practice to maintain an archived copy of all board policies because you never know when you might need them. (Even if the 2024 Title IX Final Rule hadn't been vacated, you'd be required to follow the 2020 Title IX Final Rule for allegations that took place between August 14, 2020 and July 31, 2024.) Follow the archived copies of your 2020 Title IX policies and procedures, if necessary, for the next few months. We can assist if you cannot locate your archived 2020 policies and procedures.

If your current Board Policy Manual includes the updated 2024 Title IX policies, consider uploading the 2020 Title IX materials to your District website as an 'Interim Policy' with a notation that, effective January 10, 2025, the District is following those materials for claims of Title IX sexual harassment until further State or federal guidance is received.

WHAT TRAINING IS REQUIRED?

For now, focus on your Title IX Coordinator and other Title IX team members. They will need to be trained -- or retrained -- on the 2020 Title IX Final Rule. Gone will be the 2024 Rule's protection against discrimination and harassment based on sexual orientation, gender identity and sex characteristics. (Just remember that those classifications are still protected under the Illinois Human Rights Act). Returning will be the 2020 Rule's procedure-heavy and paperwork-heavy investigation requirements into allegations of sexual harassment. This includes returning to a two-person investigation model that requires the decision-maker to be separate from the investigator, and detailed written notices and summaries at every step of the investigation.

WHAT ABOUT THE PROPOSED TITLE IX RULES FOR SCHOOL ATHLETIC TEAMS?

They're gone, too!

You may recall that the U.S. Department of Education published a notice of proposed rulemaking in April 2023, regarding eligibility criteria for male and female athletic teams under Title IX. When the 2024 Title IX Final Rule was published in April 2024, it did not include the proposed rules for school athletic teams.

On December 26, 2024, the U.S. Department of Education withdrew its proposed Title IX rules for athletic teams, due to the multiple pending lawsuits related to the application of Title IX in the context of gender identity.

CONCLUSION

We don't yet know how the incoming Trump Administration may impact the 2020 Title IX Final Rule and can't guarantee that the Title IX whiplash felt by school administrators is completely over. Please know that we are here to assist you as you navigate between the 2024 and 2020 Title IX Final Rules. Our attorneys are available to provide the necessary individual or group training, either as brand-new information or as a refresher course. Additionally, we can assist you with acquiring / developing the Title IX Toolkit of form templates and notices needed to comply with the 2020 Final Rule. Finally, we're available to walk you through the process should an incident with Title IX implications arise.

If you have further questions about the recent Title IX changes, please contact Maureen Lemon at mlemon@ottosenlaw.com or call us at (630) 682-0085.

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