



Title IX and Transgender Student Rights: Where We Are and What To Expect Next

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Pronouns: they/them

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Learning Objectives

- Today's learning objectives include the following:
 - To understand what the Obama-era Title IX guidance meant for transgender students;
 - To recognize the changes implemented under the Trump administration;
 - To identify what the current guidance means for institutions of learning; and
 - To explore the potential changes we may expect under the incoming Biden administration

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A Brief Overview of What We'll Cover

- In today's session, we'll do the following:
 - Quickly review some key components of Title IX;
 - Briefly discuss how Title IX applies to transgender students;
 - Review the Obama-era Title IX guidance related to transgender students' rights;
 - Review the changes implemented during the Trump administration;
 - Identify what the current guidance means for educational institutions; and
 - Explore the potential changes that we can expect from the Biden administration.

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Audience Poll I

Which of the following best describes you?

- A. K-12 Administrator
- B. K-12 Educator
- C. Community College Administrator
- D. Community College Educator
- E. College or University Administrator
- F. College or University Educator



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A (Very) Quick Review of Title IX

- Title IX is a federal policy enacted by way of the Education Amendments of 1972.
- As a policy, it addresses issues of 'sex discrimination' in education settings, and it is applicable to educational institutions that receive federal funding.

9 THINGS TO KNOW ABOUT TITLE IX

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|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| 1. Title IX is a landmark federal civil right that prohibits sex discrimination in education. | 2. Title IX does not apply to female students only. | 3. Schools must be proactive in ensuring that your campus is free of sex discrimination. | 4. Schools must have an established procedure for handling complaints of sexual discrimination, harassment, or violence. | 5. Schools should ensure that a victim doesn't have to share spaces, such as dorms, classes and campus jobs, with his or her assailant. |
| 6. Schools may not retaliate against someone filing a complaint and must keep a complainant safe from other retaliatory harassment or behavior. | 7. Schools can issue a no-contact directive under Title IX to prevent the accused student from approaching or interacting with you. | 8. In cases of sexual violence, schools are prohibited from encouraging or allowing mediation (rather than a formal hearing) of the complaint. | 9. Schools cannot discourage you from continuing your education. | |

www.knowyourix.com 

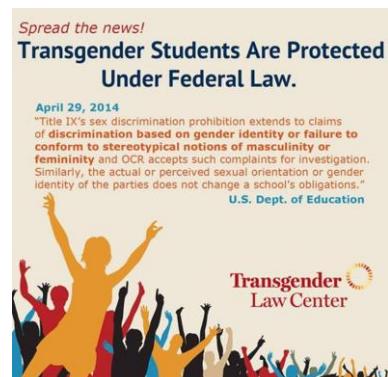
<http://knowyourix.org/title-ix/title-ix-the-basics/>

https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

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How Title IX Applies to Transgender Students

- In 2014, the Dept. of Education issued a statement indicating that complaints regarding gender identity in educational settings would be investigated as potential Title IX violations.
- In 2016, the Dept. of Education issued a formal 'Dear Colleague' letter outlining specific protocols for supporting transgender students in educational settings.
- Quick note: How does this law apply to this community?



<https://www.glsen.org/article/dept-ed-title-ix-protects-trans-students>

<https://transgenderlawcenter.org/archives/10249>

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Audience Poll 2

When thinking of the Obama-era Title IX guidance related to transgender students' rights. How much do you think you know?

- A. A great deal
- B. A fairly good amount
- C. Some information
- D. A fairly little amount
- E. Not much at all



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Obama-Era Title IX Guidance Related to Transgender Students' Rights



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

May 13, 2016

Dear Colleague:

Schools across the country strive to create and sustain inclusive, supportive, safe, and nondiscriminatory communities for all students. In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. After the issuance of Executive Order 13676, the Obama Administration prohibited discrimination based on gender identity, including discrimination in educational programs and activities operated by recipients of Federal financial assistance.¹ This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. This letter summarizes a school's Title IX obligations regarding transgender students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluate a school's compliance with these obligations.

ED and DOJ (the Departments) have determined that this letter is significant guidance.² This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact ED at ocr@ed.gov or 800-421-3481 (TDD 800-877-8399); or DOJ at education@usdoj.gov or 877-292-3804 (TTY: 800-514-0383).

Accompanying this letter is a separate document from ED's Office of Elementary and Secondary Education (OEE) Policies and Practices for Supporting Transgender Students. The examples in the document come from policies that school districts, state education agencies, and high school athletics associations around the country have adopted to help ensure that transgender students enjoy a supportive and nondiscriminatory school environment. Schools are encouraged to consult that document for practical ways to meet Title IX's requirements.³

Terminology

- Gender identity refers to an individual's internal sense of gender. A person's gender identity may be different from the same as the person's sex assigned at birth.
- Sex assigned at birth refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.
- Transgender describes those individuals whose gender identity is different from the sex they were assigned at birth. A transgender male is someone who identifies as male but was assigned the sex of female at birth; a transgender female is someone who identifies as female but was assigned the sex of male at birth.

<https://www2.ed.gov/about/offices/list/ocr/letter>

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Obama-Era Title IX Guidance Related to Transgender Students' Rights, cont.

- Areas of guidance in the 2016 ‘Dear Colleague’ letter included the following topics:
 - Safe and Nondiscriminatory Environments;
 - Identification Documents, Names, and Pronouns;
 - Sex-Segregated Activities and Facilities; and
 - Privacy and Education Records.
- Regarding names and pronouns, the big take-away was that:
 - “Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved...that school staff and contractors will use pronouns and names consistent with a transgender student’s gender identity.”

<https://www2.ed.gov/about/offices/list/ocr/letters/>

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Obama-Era Title IX Guidance Related to Transgender Students' Rights, cont.

- In that same “Dear Colleague” letter, the Obama administration’s Dept. of Education also addressed FERPA.
 - Under FERPA, any type of nonconsensual disclosure of personally identifiable information (PII) is a serious concern.
 - Specifically, they noted that a student’s birth name, sex assigned at birth, and gender identity are private information, and sharing such information without consent may violate FERPA.

4. Privacy and Education Records

Protecting transgender students’ privacy is critical to ensuring they are treated consistent with their gender identity. The Departments may find a Title IX violation when a school limits students’ educational rights or opportunities by failing to take reasonable steps to protect students’ privacy related to their transgender status, including their birth name or sex assigned at birth.²⁵ Nonconsensual disclosure of personally identifiable information (PII), such as a student’s birth name or sex assigned at birth, could be harmful to or invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA).²⁶ A school may maintain records with this information, but such records should be kept confidential.

<https://www2.ed.gov/about/offices/list/ocr/letters/>

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Audience Poll 3

When thinking of the Trump-era Title IX guidance related to transgender students' rights. How much do you think you know?

- A. A great deal
- B. A fairly good amount
- C. Some information
- D. A fairly little amount
- E. Not much at all



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Trump-Era Title IX Guidance Related to Transgender Students' Rights

- In February 2017, the Trump administration's Dept. of Education issued a "Dear Colleague" letter that rescinded the Obama-era guidance that indicated a trans inclusive view of Title IX regulations.
 - In doing so, they noted that more extensive legal analysis would be provided, given the rise in lawsuits related to bathrooms and sex-segregated facilities.
 - The letter concluded by noting the following: "All schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment."

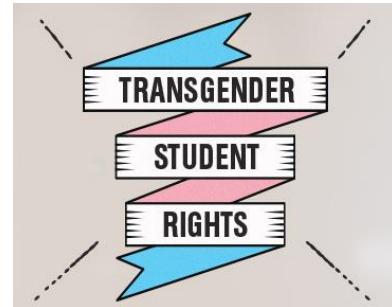


<https://www2.ed.gov/about/offices/list/ocr/letters>

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What This Means for the Current Guidance...

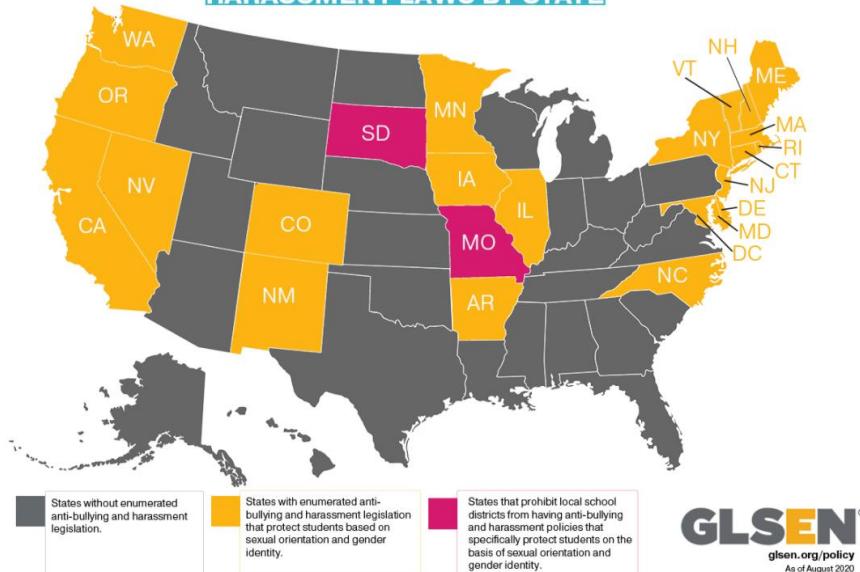
- The Trump administration “Dear Colleague” letter made a number of changes, and it essentially deferred the question of sex discrimination to the states, local school districts, individual educational facilities, and—in many ways—the courts.
 - The current guidance has been very context dependent, depending upon your education setting.
 - An example from Ohio...



<https://www2.ed.gov/about/offices/list/ocr/letters>

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ENUMERATED ANTI-BULLYING AND HARASSMENT LAWS BY STATE



<https://www.glsen.org/policy-maps>

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Audience Poll 4

When thinking of the Biden-era Title IX guidance related to transgender students' rights. How much do you think you know?

- A. A great deal
- B. A fairly good amount
- C. Some information
- D. A fairly little amount
- E. Not much at all



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What to Expect from the Biden Administration

- On his first day in office, Biden signed the most large-scale, LGBTQ+ focused Executive Order in history.
- This order did a number of things, including:
 - Affirming the Supreme Court's understanding of sex discrimination in *Bostock v. Clayton County, GA*;
 - Directing all agency heads to review any policies relating to Title VII and/or sex discrimination;
 - Directing all agency heads to determine any guidance revisions related to this; and
 - Directing all agencies to carry out such revisions in the first 100 days.



<https://www.whitehouse.gov/briefing-room/presidential->

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What to Expect from the Biden Administration, cont.

- Can we get a more simplified translation of what this might mean?
 - What might this mean for my K-12 school district?
 - What might this mean for my college or university?
 - What might this mean for bathroom access?
 - What might this mean for high school and/or college sports?



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Question and Answer Session

Please feel free to share any questions that you have via the chat!



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