



## Updated Guidance for Maine School Boards on Title IX Policies

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*This guidance does not constitute legal advice and is for informational purposes only. If you need advice specific to your school district, contact an attorney.*

The Title IX landscape has been rapidly changing over the last several months, creating legal uncertainty for schools and school board members. The purpose of this guidance is to help Maine school boards understand the recent changes surrounding Title IX and their implications for school district policies.

### **1. What is Title IX?**

Title IX of the Education Amendments of 1972 is a federal law that prohibits discrimination on the basis of sex in educational settings. It applies to every school that receives federal financial assistance, which includes virtually all public schools nationwide. Title IX was originally enacted to promote equal opportunities for women and girls in public schools. The law is enforced by the federal Department of Education (“DOE”), which passes rules to implement it.

### **2. What recent changes have been made to Title IX regulations?**

On August 1, 2024, the Biden administration’s Department of Education issued a new final rule reinterpreting Title IX. On January 9, 2025, a federal court issued an order vacating this final rule in its entirety. Now, President Trump has issued an executive order rescinding all Biden-era Title IX guidance and indicating that Title IX protects sex-based distinctions in education.

### **3. What did the Biden administration’s final rule change?**

The 2024 Biden administration rule would have made a number of controversial changes to Title IX. Many of these changes involved weakening due process protections for students who were accused of sexual misconduct. Most prominently, however, the new rule would have expanded the definition of sex discrimination to include



discrimination based on sexual orientation and gender identity.<sup>1</sup> DOE guidance made clear that this meant that schools must allow biological males who identify as female to use female bathrooms, locker rooms, and showers. The rules would also have prohibited teachers and students from using biological-sex-based names and pronouns for students who identified as transgender. In addition, they may have impacted girls' sports and overnight accommodations for field trips. Finally, they potentially would have put pressure on schools to hide students' gender transitions from parents.

#### **4. What did the January 9, 2025 federal court decision hold, and what does that mean for the Biden rule?**

This decision, issued by the federal district court for the Eastern District of Kentucky, vacated the Biden administration's final rule in its entirety.<sup>2</sup> The court held that the Biden Department of Education had exceeded its statutory authority when it interpreted Title IX's prohibition on sex discrimination to also prohibit discrimination on the basis of sexual orientation and gender identity. The court stated that this new interpretation would "eviscerate" Title IX and render its protections against sex-based discrimination "largely meaningless" by undermining the distinction between male and female.<sup>3</sup>

The court also held that the final rule was unconstitutional for a number of reasons. Most notably, it held that the rule violated the First Amendment's free speech protections because it would have forced schools to investigate and punish students and teachers who "misgendered" other students or staff by using their non-preferred name or pronouns.<sup>4</sup>

Although most of the court's decision dealt with the portions of the final rule that redefined sex to include gender identity, the court made clear that its decision vacated the rule in its entirety, including the portions dealing with investigation and enforcement procedures.<sup>5</sup>

**This decision means that the Biden final rule is no longer in effect anywhere in the nation and that the Trump-era 2020 Title IX rule is once again in effect. While**

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<sup>1</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, § 106.10, <https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

<sup>2</sup> *Tennessee v. Cardona*, 2025 U.S. Dist. LEXIS 6197 (E.D. Ky. January 9, 2025).

<sup>3</sup> *Id.* at \*11.

<sup>4</sup> *Id.* at \*13-14.

<sup>5</sup> *Id.* at 18-21.



the decision could technically be appealed, this is unlikely to happen and an appeal would likely produce the same result.

## 5. What effect does President Trump’s executive order have on Title IX?

President Trump’s executive order, entitled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”, has a number of implications for Title IX.<sup>6</sup>

First, Section 2(a) of the order requires all federal agencies to interpret the term “sex” to mean “an individual’s immutable biological classification as either male or female,” and to specifically exclude the concept of gender identity, when the term “sex” is used in federal law. Since the text of Title IX prohibits discrimination on the basis of sex, but does not mention gender identity, **this means that the Department of Education will no longer interpret Title IX to prohibit discrimination based on gender identity.** In other words, Title IX will not pose any barrier to schools that want to have sex-specific bathrooms and locker rooms, sports teams, or overnight accommodations, will not require the use of preferred names or pronouns, and will not require schools to withhold information about a student’s gender identity from his or her parents. Section 3(f) of the order specifically states that interpreting Title IX to require “gender identity-based access to single-sex spaces” is “legally untenable and has harmed women.”

In addition, the order rescinds all Biden-era Department of Education guidance regarding gender identity, including guidance on the interpretation of Title IX. Many schools had relied on this guidance to justify policies that allowed access to sex-specific spaces, accommodations, and sports teams based on gender identity, required the use of preferred names or pronouns, and so on.

The executive order may go further than this, however. **Schools may now not only be allowed to make sex-based distinctions; they will likely be required to do so.** Section 3(f) of the order directs the Attorney General to “issue guidance and assist agencies in protecting sex-based distinctions, which are explicitly permitted under Constitutional and statutory precedent.” **Section 4(d) requires agencies (including the Department of Education) to “effectuate this policy by taking appropriate action to ensure that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity.”** Based on these statements, we should expect that the Department of Education will interpret Title IX

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<sup>6</sup> Available at <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.



to require that schools make sex-based distinctions, such as separating bathrooms, locker rooms, accommodations, and sports teams based on sex.

Indeed, it appears that the Trump Department of Education is already interpreting the rule in this manner: its Office for Civil Rights recently announced a Title IX investigation into Denver Public Schools for providing a separate restroom for male students but only an “all gender” restroom for female students.<sup>7</sup> Given these developments, it appears highly likely that schools that fail to separate spaces based on sex will be subject to enforcement action by the Department of Education. If such schools are found to have violated Title IX, they could lose federal funding.

Finally, although not directly relevant to Title IX, it is important to note two other aspects of the executive order. First, Section 3(g) indicates that “federal funds shall not be used to promote gender ideology” and orders agencies to “assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology.” This could lead to a loss of funding for schools which instruct students about gender identity. Second, Section 5 of the order directs the attorney general to “issue guidance to ensure the freedom to express the binary nature of sex and the right to single-sex spaces in workplaces and federally funded entities covered by the Civil Rights Act of 1964.” This signals that Title VII, a federal law which prohibits employment discrimination, will now be interpreted to require single-sex bathrooms and other spaces for employees and to prohibit employers from forcing employees to use preferred names and pronouns. Title VII applies to any employer, including schools, with 15 or more employees.

## 6. How should Maine school boards respond?

How school boards should respond to this changed Title IX landscape depends on the policies they currently have in place.

For school boards that adopted new policies in 2024 to reflect the Biden administration’s final rule, **the safest course of action to avoid liability would be to rescind these policies and reinstitute their previous Title IX policies that existed before the Biden rule change.** To the extent that existing policies are based on the Biden rule and conflict with the 2020 Title IX regulations, school boards are likely to face liability for implementing them. For example, the Biden rule weakened due

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<sup>7</sup> U.S. Department of Education, “U.S. Department of Education Launches Investigation into Denver Public Schools for Converting Girl’s Restroom to All-Gender Facility,” (January 28, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-launches-investigation-denver-public-schools-converting-girls-restroom-all-gender-facility>.



process protections for students accused of sexual harassment. Implementing these weakened protections would now violate Title IX as interpreted by the Trump administration.

In addition, in light of the executive order and the January 9, 2025 federal court decision which held that forcing students and teachers to use preferred names and pronouns is unconstitutional, as well as other federal precedent on this issue, schools should rescind any policy that requires such name and pronoun usage. Implementing such a policy is likely to subject the school to liability under the First Amendment.<sup>8</sup>

Schools that did not implement new policies based on the Biden rule change are at less risk of liability but should closely watch developments in the Trump administration's interpretation of Title IX to ensure that none of their other policies or practices violate Title IX.

It is important to note that Maine law prohibits discrimination in education on the basis of gender identity, which may now conflict in some circumstances with the federal Department of Education's interpretation of Title IX.<sup>9</sup> In these cases, **Title IX would preempt these conflicting state laws and schools would be relieved of their obligation to comply with them.**<sup>10</sup> The Maine Department of Education recently advised schools that they must continue to comply with Maine laws that mandate nondiscrimination on the basis of gender identity, which have been interpreted to require, among other things, that schools open bathrooms to students of the opposite sex who have an established diagnosis of gender dysphoria.<sup>11</sup> But as discussed above, following these laws now seems likely to subject schools to liability at the federal level. As the federal Department of Education continues to clarify its stance on the requirements of Title IX, the Maine DOE's position on the enforceability of conflicting Maine laws may become untenable.

The Maine Education Initiative is committed to providing Maine school board members with the most accurate and up-to-date legal information on education law developments. If you have further questions on this topic or other education law issues, we would love to hear from you.

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<sup>8</sup> See, e.g., *Meriwether v. Hartop*, 992 F.3d 492, 505 (6th Cir. 2021).

<sup>9</sup> 5 M.R.S. §§ 4601-02.

<sup>10</sup> 34 CFR 106.6.

<sup>11</sup> Maine DOE Priority Notice, "Guidance for SAUs Pertaining to New Federal Executive Order," January 21, 2025, <https://mailchi.mp/maine/cu5lemq6y0-1593517?e=4f16ec1299>; *Doe v. RSU 26*, 86 A.3d 600, 607 (Me. 2014).