

Title IX, “Gender Ideology,” and Recent Enforcement Activity: What Higher Education Institutions Need to Know

The First 100 Days: Higher Education

Client Alerts

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Recent executive orders, federal guidance, and enforcement activity have made clear that the Trump Administration plans to interpret and apply Title IX in new and different ways. This includes an understanding of sex as an “immutable biological classification as either male or female,” defined at conception, and a targeted approach toward addressing “gender ideology.” In this client alert, part of Jenner & Block’s “First 100 Days” Series, we unpack these developments at the federal level and suggest steps institutions should take now.

The Trump Administration Intends to Focus on Institutions with Gender-Inclusive Policies

Since his inauguration last month, President Trump has signed four executive orders signaling that his administration intends to focus on institutions with gender-inclusive policies, including policies that support transgender individuals.

- **“Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”** (“Gender Ideology Order”), released on January 20, 2025, requires “[e]ach agency and all Federal employees [to] enforce laws governing sex-based rights, protections, opportunities, and accommodations to protect men and women as biologically distinct sexes.”^[1] It rejects the Biden Administration’s understanding that Title IX proscribes discrimination not only based on “sex,” but also based on gender identity and sexual orientation, an interpretation grounded in the Supreme Court’s decision in *Bostock v. Clayton County* interpreting Title VII’s similar prohibition on sex-based discrimination.^[2] The Order thereby rescinds Biden-era executive orders on gender identity and sexual orientation and instructs federal agency heads to unwind any guidance documents inconsistent with the new order.^[3] Looking forward, the Order tasks the Attorney General with issuing 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.”^[4]

- **“Protecting Children From Chemical and Surgical Mutilation”** (“Gender-Affirming Care Ban Order”), released on January 28, 2025, threatens to withhold federal research and education funds for medical institutions, including medical schools, that provide chemical or surgical gender-affirming medical care to transgender individuals under the age of nineteen.^[5] It further directs the Department of Health and Human Services to take all appropriate actions to “end the chemical and surgical mutilation of children.”^[6]
- **“Ending Radical Indoctrination in K-12 Schooling”** (“K-12 Indoctrination Order”), released on January 29, 2025, prohibits K-12 schools that receive federal funding from advancing “radical gender ideology.”^[7] This Order suggests that Title IX will be used against schools with policies supporting gender diverse students, including schools that “steer” students toward “surgical and chemical mutilation” without parental consent or allow transgender women to access private women’s spaces.^[8]
- **“Keeping Men Out of Women’s Sports”** (“Women’s Sports Order”), released on February 5, 2025, directs all federal agencies to withhold federal funds to programs that allow the participation of transgender women and girls in women’s sports.^[9] The Order also directs the Department of Education to prioritize Title IX enforcement actions against educational institutions that allegedly deny female students an equal opportunity to participate in sports by requiring them to “compete with or against or to appear unclothed before males.”^[10]

Multiple of the executive orders are being challenged in litigation.^[11] Section 3(g) of the Gender Ideology Order and Section 4 of the Gender-Affirming Care Ban Order are currently subject to a nationwide temporary restraining order, preventing the government defendants from conditioning or withholding federal funding to an entity because it provides gender-affirming care to people under the age of nineteen.^[12] Additionally, Section 8(a) of the Gender-Affirming Care Ban Order, which redefine female genital mutilation to include gender-affirming medical care, as well as Section 4, are subject to a separate temporary restraining order within the states of Washington, Oregon, and Minnesota.^[13] Moreover, the entirety of the Gender Ideology Order and the Women’s Sports Order are being challenged in a case pending in the District of New Hampshire.^[14]

Recent Guidance and Enforcement Activity Reflect These Administration Priorities

Three of the executive orders direct the Department of Education to enforce Title IX to protect “biological women” from the inclusion of transgender women. Following this direction, on January 31, 2025 and February 5, 2025, the Department issued two “Dear Colleague” letters that directed institutions to apply Title IX consistent with President Trump’s “Gender Ideology” Executive Order, making it US policy to only recognize “two sexes, male and female,” and eliminating the recognition of transgender individuals.^[15] This guidance also rolls back protection under Title IX based on

sexual orientation or gender identity.^[16] Additionally, on February 7, 2025, the Department informed its employees that it will end all programs, contracts, and policies that “fail to affirm the reality of biological sex,” which will include terminating “Departmental programs, contracts, policies, outward-facing media, regulations, and internal practices.”^[17]

Since the release of this new guidance, the Office for Civil Rights launched several investigations into educational institutions and athletic associations with gender-inclusive policies, including:

- Denver Public Schools, alleging they violated Title IX by converting a female restroom into a multi-stall all-gender restroom in a high school.^[18] According to OCR, the school now has no female restrooms on the second floor.^[19]
- San Jose State University, the University of Pennsylvania, and the Massachusetts Interscholastic Athletic Association, regarding the past participation of transgender women in women’s sports.^[20] The Department further indicated that OCR is actively reviewing athletic participation policies at a number of schools to evaluate alignment with Title IX.^[21]
- Minnesota State High School League, alleging that a current bylaw allowing transgender student participation violates the Executive Order on Women’s Sports.^[22]
- California Interscholastic Federation, which publicly announced it would continue allowing students to compete in alignment with their gender identity in compliance with California state law.^[23]
- Five Virginia school districts, alleging that allowing transgender students to use their preferred names and pronouns and to access restrooms and locker rooms that correspond with their gender identity violates Title IX.^[24]
- The Maine Department of Education, claiming that Maine is violating Title IX by allowing transgender women to compete in women’s sports.^[25]

Further, enforcement may come from other agencies, in addition to the DOE. For example, the Department of Agriculture launched a Title IX-based compliance review of the University of Maine on February 22, 2025, threatening the University’s USDA funding if the University continues to refuse to comply with the Women’s Sports Executive Order.^[26]

In Addition, the 2020 Title IX Regulations are Back in Effect

On January 31, 2025, the Department issued a “Dear Colleague” letter, officially announcing that OCR would enforce President Trump’s 2020 Title IX regulations and directing that open Title IX investigations initiated under the 2024 rules be reevaluated against the 2020 regulations.^[27] The

Department revised this letter on February 4, 2025, seemingly in response to litigation challenging the Gender Ideology Executive Order, as the new letter clarified that the Department's authority to revert to the 2020 rules stems from the federal court's decision in *Tennessee v. Cardona*,^[28] not the Executive Order. In *Tennessee v. Cardona*, the court struck down President Biden's 2024 regulations as arbitrary and capricious, unconstitutional, and lacking statutory authority.^[29] Among other important differences between the two sets of regulations, the version now in effect does not interpret Title IX to protect against discrimination based on one's gender identity or sexual orientation.

What Now?

In this new regulatory and enforcement environment, here are five steps for institutions to consider:

- 1. Review and update policies related to Title IX:** Institutions should review their Title IX policies to ensure compliance with the 2020 regulations. Those regulations do not prevent an institution from providing their own non-Title IX policies for conduct that falls outside the scope of the 2020 rules. For example, an institution may choose to continue protections for pregnant and lactating students expanded under the 2024 rules. However, institutions should take care to evaluate the potential for such policies to conflict with executive orders and the policy behind them. For example, a policy protecting the ability of transgender students to enter single-sex spaces may be viewed by the Administration to conflict with the executive orders and the related guidance and interpretations.
- 2. Note overlap or conflicts between sources of federal law:** In reviewing these policies, institutions should also note any potential conflicts between different sources of federal law, including conflicts between Title IX and Title VII, which governs employment. For example, as applied to employees of educational institutions, Title IX no longer protects against discrimination on the basis of gender identity or gender expression, but Title VII does, as established by the Supreme Court in *Bostock v. Clayton County*.
- 3. Review state and local laws:** Institutions should also review state and local laws on issues like civil rights and human rights, which may mandate greater protections for campus community members than the 2020 regulations. As an example of this intersection, California Superintendent of Public Instruction, Tony Thurmond, responded to recent federal guidance by reminding schools that California law independently protects against discrimination based on gender identity and sexual orientation.^[30]
- 4. Track how agencies are interpreting the new rule:** Several of the Executive Orders include deadlines for agencies to take further action. Of particular note, the Gender Ideology Executive Order calls for 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,”^[31] which could address issues at the intersection of Title IX, Title VII, the First Amendment, and more. Further, in accordance with that guidance, agency heads have been directed to prioritize investigations and litigation to enforce the rights and freedoms identified.^[32]

Jenner & Block has one of the nation’s preeminent higher education practice groups. We have counseled and represented institutions in numerous areas of the law, including Title IX compliance and litigation. If you are interested in learning more about our work in this area, please contact practice group Co-Chairs Ishan Bhabha (ibhabha@jenner.com), Lauren Hartz (lhartz@jenner.com), and Terri Mascherin (tmascherin@jenner.com).

Footnotes

[1] Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, (Jan. 20, 2025). <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.

[2] *Id.*

[3] *Id.*

[4] *Id.* Sec. 3(f).

[5] Protecting Children From Chemical and Surgical Mutilation, (Jan. 28, 2025). <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-children-from-chemical-and-surgical-mutilation/>.

[6] *Id.* Sec. 5(a).

[7] Ending Radical Indoctrination in K-12 Schooling, Sec. 1 (Jan. 29, 2025). <https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-indoctrination-in-k-12-schooling/> Radical Indoctrination in K-12 Schooling – The White House.

[8] *Id.* Sec. 1.

[9] Keeping Men Out of Women’s Sports, Sec. 1 (Feb. 5, 2025). <https://www.whitehouse.gov/presidential-actions/2025/02/keeping-men-out-of-womens-sports/>.

[10] *Id.* Sec. 3(a)(iii).

[11] See *PFLAG, Inc. v. Trump* (D. Md.); *State of Washington v. Trump* (W.D. Wash); *Tirrell v. Edelblut* (D.N.H.); *Doctors for America v. Office of Personnel Management et al.* (D.D.C.); *National Urban League v. Trump* (D.D.C.); *San Francisco Aids Foundation v. Trump* (N.D. Cal).

[12] *PFLAG, Inc. v. Trump*, No. 25-337-BAH (D. Md. Feb. 13, 2025) (Order granting the TRO).

[13] *State of Washington v. Trump*, No. 2:25-cv-00244-LK (W.D. Wash. Feb. 14, 2025) (Order granting the TRO).

[14] *Tirrell v. Edelblut*, No. 1:24-cv-00251 (D.N.H. Feb 12, 2025) (Plaintiffs' Second Amended Complaint).

[15] Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, (Jan. 20, 2025). <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>

[16] *Id.*

[17] Jennifer Smith Richards and Jodi S. Cohen, "The Department of Education Told Employees to End Support for Transgender Students," ProPublica, (Feb. 8, 2025). <https://www.propublica.org/article/department-of-education-transgender-students-email>.

[18] United States Department of Education, Office for Civil Rights, Letter to Denver Public Schools, (Jan. 28, 2025). <https://ocras.ed.gov/sites/default/files/ocr-letters-and-agreements/08255901-a1.pdf>

[19] *Id.*

[20] United States Department of Education, "U.S. Department of Education to Investigate Title IX Violations in Athletics," (Feb. 6, 2025). <https://www.ed.gov/about/news/press-release/us-department-of-education-investigate-title-ix-violations-athletics>.

[21] *Id.*

[22] United States Department of Education, "U.S. Department of Education Launches Title IX investigations into Two Athletic Associations," (Feb. 12, 2025). <https://www.ed.gov/about/news/press-release/us-department-of-education-launches-title-ix-investigations-two-athletic-associations>.

[23] *Id.*

[24] Brooke Migdon, "Education Department investigating Northern Virginia school districts for transgender support policies," (Feb. 17, 2025). <https://thehill.com/homenews/lgbtq/5149578-education-department-northern-virginia-schools-transgender-students-trump-executive-order/>.

[25] United States Department of Education, "Office for Civil Rights Launches Title IX Violation Investigations into Maine Department of Education and Maine School District," (Feb. 21, 2025). <https://www.ed.gov/about/news/press-release/office-civil-rights-launches-title-ix-violation-investigations-maine-department-of-education-and-maine-school-district>.

[26] United States Department of Agriculture, "USDA Launches Compliance Review of University of Maine for Title IX Violations," (Feb. 22, 2025). <https://www.usda.gov/about-usda/news/press-releases/2025/02/22/usda-launches-compliance-review-university-maine-title-ix-violations>.

[27] United States Department of Education, Office for Civil Rights, "Dear Colleague" Letter, (Jan. 31, 2025). <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl>.

[28] United States Department of Education, Office for Civil Rights, "Dear Colleague" Letter, (Feb. 4, 2025). <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl>.

[29] *See Tennessee v. Cardona*, No. CV 2:24-072-DCR, 2025 WL 63795 (E.D. Ky. Jan. 9, 2025), *as amended* (Jan. 10, 2025).

[30] California Department of Education, “State Superintendent Thurmond Responds to United States Department of Education’s Backward Step on Title IX Protections,” (Jan. 31, 2025). <https://www.cde.ca.gov/nr/ne/yr25/yr25rel08.asp>.

[31] Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, (Jan. 20, 2025). <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.

[32] *Id.*

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