



**On August 1, 2024, the Department of Education’s Title IX Rule (the 2024 Rule) went into effect in states across the country. But courts in lawsuits challenging the 2024 Rule have temporarily blocked the Rule from taking effect in 26 states and a number of individual schools across the country. While these cases work their way through the courts, schools should understand their legal obligations, and students should know their rights.<sup>1</sup>**

### **Background on the 2024 Rule and litigation.**

**The 2024 Rule clarifies the protections under Title IX**, including for transgender and LGBTQIA+ students, pregnant and parenting students, and for all students facing sex-based harassment and assault. The Department recognized that the 2024 Rule was needed to provide schools with definitive guidance on a range of subjects because, without the Rule, non-compliance with Title IX’s obligations has been widespread. Some of the issues on which the Rule provides clarification include that Title IX protects LGBTQIA+ students from discrimination, that schools must provide reasonable accommodations for pregnant and postpartum students, and that schools must provide stronger protections for students from harassment and assault.

The 2024 Rule also restores the standard for sex-based harassment to “severe *or* pervasive” conduct, whereas the Department’s previous Title IX Rule, issued in 2020, required conduct to be “severe *and* pervasive” to qualify as harassment under Title IX.

**The 2024 Rule is now temporarily enjoined (blocked) in a number of states and individual schools.** Since the Department issued the 2024 Rule, ten lawsuits have sought to stop the Rule from going into effect. These lawsuits focus on the 2024 Rule’s protections for transgender students and use these baseless attacks on transgender students to attempt to prevent *all* of the 2024 Rule’s provisions from going into effect.

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<sup>1</sup> This document is not intended to constitute legal advice. It is intended to be general guidance only.

Most of the lawsuits requested a “preliminary injunction,” meaning a temporary pause on the 2024 Rule while the cases make their way through the courts. So far, courts have issued eight preliminary injunctions, covering 26 states as well as some additional schools in other states, meaning that the Department cannot implement or enforce the 2024 Rule in these places. The Supreme Court kept two of these preliminary injunctions in place while the courts below decide these cases. The Department is updating its [website](#) with information about where injunctions are in effect.

**In areas and schools not covered by an injunction, the 2024 Rule is in effect.**

Schools not covered by an injunction must comply with the new regulations. The Department’s Office for Civil Rights (OCR) has made clear that as of August 1, 2024, the 2024 Rule is in effect and OCR will enforce it, except where courts have enjoined it. OCR has released the following resources to assist with compliance with the 2024 Rule:

- [Brief Overview of Key Provisions of the Department of Education’s 2024 Title IX Final Rule](#), which summarizes key provisions that were amended in the 2024 Rule.
- [2024 Title IX Regulations: Pointers for Implementation](#), which assists schools with implementation by listing key components of the 2024 Rule.
- [Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures](#), which helps schools draft compliant policies and procedures.
- [Small Entity Compliance Guide, which explains the 2024 Title IX Regulations for small entities](#).

**In areas and schools where the 2024 Rule is enjoined:**

**These injunctions are temporary, and a higher court could reverse or modify them, requiring schools to come into compliance.** At that point, schools should not expect to receive a significant grace period for compliance. Schools should prepare for compliance now.

**Title IX remains the law.** Even without the clarifications that the 2024 Rule provides, students still have protections from sex-based discrimination directly under Title IX and may bring lawsuits to vindicate these rights. A federal court recently confirmed that the preliminary injunctions on the Rule apply only to the Department’s enforcement of its regulations and do not inhibit the ability of private plaintiffs to bring Title IX lawsuits—even

against schools where the Department’s enforcement has been enjoined.<sup>2</sup> Students and schools should know that:

- **Title IX prohibits discrimination against LGBTQIA+ students**, as several federal courts of appeal have confirmed. Courts in at least the Fourth, Seventh, and Ninth Circuits are bound by precedent in these jurisdictions finding that sex discrimination under Title IX includes discrimination on the basis of sexual orientation, gender identity, or both.<sup>3</sup> And the Supreme Court has recognized that discrimination based on sexual orientation or gender identity is a form of sex discrimination.<sup>4</sup>
- **Schools should comply with the 2024 Rule’s provisions regarding the rights of pregnant and postpartum students.** The preliminary injunctions do not affect the Department’s determination of how Title IX applies to pregnant and postpartum students. Schools are on notice that the Department has determined that Title IX requires schools to provide, among other things, reasonable accommodations to students who are pregnant or experiencing other pregnancy-related conditions, as well as clean, private lactation spaces. The 2024 Rule also continues to prohibit schools from discriminating against students who have miscarriages or abortions.

Nothing in the injunctions prevents the Department from finding that a school has violated Title IX where, for example, the school refuses to offer a reasonable accommodation for a pregnant student to reschedule an exam that they missed due to a doctor’s appointment or refuses to let a student take a leave of absence to recover from childbirth. Schools that do not follow these requirements thus risk losing their federal funding or other court-imposed repercussions for non-compliance with Title IX.

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<sup>2</sup> *Doe v. Elkhorn Area School Dist.*, No. 24-CV-354-JPS, 2024 WL 3617470, at \*17 (E.D. Wis. Aug. 1, 2024).

<sup>3</sup> *B.P.J. by Jackson v. W. Va. State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024), petition for cert. filed (July 16, 2024) (24-44); *Grabowski v. Ariz. Bd. of Regents*, 69 F. 4th 1110 (9th Cir. 2024); *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760 (7th Cir. 2023), cert. denied, 144 S. Ct. 683 (2024); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), cert. denied, 141 S. Ct. 2878 (2021); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd of Educ.*, 858 F.3d 1034 (7th Cir. 2017).

<sup>4</sup> *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644 (2020).

**Schools also must comply, at a minimum, with the Department’s previous Title IX Regulations, amended in 2020, which [remain effective](#) where the 2024 Rule is enjoined.** While the 2024 Rule makes important additions and corrections to the 2020 Rule, including restoring the longstanding “severe or pervasive” standard for sex-based harassment and explicitly requiring schools to address off-campus incidents that have an impact on students’ education, the baseline requirements of the 2020 Rule and previously promulgated regulations still apply in jurisdictions where the 2024 Rule is enjoined.

For example, the 2020 Rule required schools to protect students from sex-based stereotyping, to follow certain procedures in student disciplinary proceedings, and to respond promptly to reports of sexual harassment made to any employee of a K-12 school. The 2020 Rule also clarified important protections for survivors and requires schools to offer supportive measures and remedies to restore or preserve survivors’ access to educational opportunities. These measures can include retroactive withdrawals, extensions of deadlines, adjustments to transcripts, or tuition reimbursements to survivors. All of these provisions remain in effect.

**Schools can and, in some cases, must continue to provide greater protections against sex discrimination than Title IX regulations require, including for transgender and LGBTQIA+ students and survivors.** Title IX is a floor, not a ceiling. State and local laws can require schools to do more than Title IX or its regulations require—and nothing in the preliminary injunctions relieves schools of the need to comply with such state and local laws. Also, nothing in the preliminary injunctions prevents a school from voluntarily offering protections over and above what Title IX regulations require so long as they use fair procedures for all parties in a disciplinary proceeding. For example:

- Schools can and should continue to implement trans-inclusive policies and policies that explicitly prohibit anti-LGBTQIA+ harassment.
- Schools can adopt internal anti-harassment policies that address misconduct that does not constitute sexual harassment under the 2020 regulations, including a policy that uses a “severe or pervasive” standard or addresses conduct that occurs during study abroad programs.

More information on Title IX and how to file a complaint with the Department is available on [OCR's website](#).