

NEW 2024 TITLE IX RULE: SCHOOLS' OBLIGATION TO ENSURE FREEDOM FROM SEX DISCRIMINATION

August 2024

Title IX of the Education Amendments of 1972 (known as Title IX) prohibits sex discrimination in federally funded education programs. On April 19, 2024, the U.S. Department of Education issued new regulations to strengthen these vital protections for students.

The 2024 rule clarifies that Title IX prohibits discrimination and harassment based on sexual orientation, gender identity, and sex characteristics; reaffirms the rights of pregnant and parenting students; and broadens the protections for submitting complaints.

This fact sheet highlights important comparisons between the 2020 and 2024 Title IX rule and explains the implications of recent legal challenges to the 2024 Title IX rule for students in schools across Pennsylvania. While most Pennsylvania schools are subject to the 2024 Title IX rule, a recent district court decision in Kansas enjoins enforcement of the new regulations against some schools. Importantly, all students in Pennsylvania are protected by state anti-discrimination laws, including the Pennsylvania Human Relations Act (PHRA), which prohibits gender-based discrimination in education.¹ All schools are also subject to Title IX case law described in this fact sheet.

Title IX preempts or overrules conflicting state or local policies, and a school's failure to comply with Title IX could jeopardize its access to federal funding.

WHAT IS THE STATUS OF LEGAL CHALLENGES TO THE NEW TITLE IX RULES? WHAT IS THE IMPACT IN PENNSYLVANIA?

In summer 2024, a number of lawsuits were initiated by other states seeking to prevent the 2024 final regulations from taking effect.² Pennsylvania is not a party to any of these lawsuits challenging the 2024 final regulations. At this time, there are no "universal" injunctions that would enjoin the final regulations from taking effect nationally. Some Pennsylvania schools are subject to a preliminary injunction in the lawsuit *Kansas v. U.S. Department of Education*, which was brought by other states and the national organization Moms for Liberty. Preliminary injunction orders do not reflect the merits of the plaintiffs' arguments. Rather, they suspend the rule from taking effect while the lawsuits continue.

The *Kansas* district court judge issued an opinion on July 2, 2024, holding that the U.S. Department of Education cannot enforce the 2024 rule within the plaintiff states³ and any schools where the children

of members of the organizational plaintiffs (e.g. Moms for Liberty) attend school.⁴ The judge ordered plaintiffs to submit a list of impacted schools⁵ and noted that future members of Moms for Liberty are entitled to the injunction.⁶ Through multiple filings as of Aug. 26, 2024, plaintiffs have identified a total of 244 Pennsylvania schools in 85 school districts and three charter schools.⁷ The Department of Education has appealed the *Kansas* decision and similar injunctions in other states.

Schools in Pennsylvania that are enjoined from enforcement of the 2024 rule under the *Kansas* decision remain subject to Title IX case law, the 2020 Title IX rule (discussed below), and Pennsylvania’s anti-discrimination law. For more information, see ELC’s legal analysis, [2024 Title IX Regulations and State Anti-Discrimination Laws Continue to Protect Rights of Transgender Students](#).

Unless there is a court order directing Pennsylvania schools otherwise – and at this stage that is the case for only specific schools listed [here](#) – your school must comply with the 2024 federal regulations, which became effective on Aug. 1, 2024. After the court challenges and appeals conclude, there will not be a grace period for compliance so the time to prepare for implementation is now. Students and parents who are concerned that their school has not implemented the 2024 Title IX rule can contact ELC’s Helpline at 215-238-6970.

WHAT IS SEX DISCRIMINATION?

Sex discrimination includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.⁸ Federal courts have interpreted Title IX in this way, and the 2024 rule’s expanded definition acknowledges sex-based discrimination more broadly instead of a narrower focus on sexual harassment alone.

BLACK GIRLS ARE MORE IMPACTED BY SEXUAL HARASSMENT AND ASSAULT

Research shows that Black girls are more likely to experience sexual harassment and sexual assault and more likely to be ignored or punished when they report it.⁹ Racism and sexism are root causes of this issue. For example, studies about school dress codes reveal that “Black girls may be perceived as wearing more ‘revealing’ or ‘distracting’ clothing because research shows that Black girls are mistakenly perceived to be older or more mature.”¹⁰ These prejudices produce disparate disciplinary practices resulting in Black girls being suspended at a rate of 4.19 times that of white girls despite no difference in behavior.¹¹ The result is often a hostile school environment where Black girls are punished for *reporting* instances of sex discrimination when they should be supported. Black girls must be provided safe and affirming schools where they are supported and championed in their academic and personal growth. Read more in ELC’s report [We Need Supportive Spaces: Black Girls Speak Out About Public Schools](#).

HOW CAN STUDENTS AND FAMILIES REPORT SEX DISCRIMINATION?

The 2024 rule removed the requirement of a signed written complaint in the 2020 Title IX rule, so now informal verbal and written complaints also trigger a school’s obligation to investigate and respond.¹²

HOW MUST A SCHOOL RESPOND TO SEX DISCRIMINATION?

The comparison chart below highlights important changes under the 2024 Title IX rule, which expanded a school’s obligation to respond to sex discrimination.

2020 Rule	2024 Rule
<p>Schools must address unwelcome sex-based conduct if it is so severe <u>and</u> pervasive, and objectively offensive that it “<u>effectively denies</u>” a person equal access to a school program or activity.¹³</p>	<p>Schools must address unwelcome sex-based conduct that is so “severe <u>or</u> pervasive” that it “<u>denies or limits</u>” an individual’s ability to participate in a school program or activity.¹⁴</p>
<p>Schools must address harassment that occurs off-campus and inside the U.S. if it occurs in a school program or digital platform, in an official student group’s building, or under the school’s “substantial control.”¹⁵</p>	<p>Schools must address harassment (or other sex discrimination) if it occurs in school program or digital platform, in an official student group’s building, or under the school’s “<u>disciplinary authority</u>.”</p> <p>Regardless of where the underlying incident occurred, schools must address any resulting <u>hostile environment</u> that arises in contexts above.¹⁶</p>
<p>Schools must address complaint only if the complainant was participating in or trying to participate in school at the time the <u>complaint was filed</u>.¹⁷</p>	<p>Schools must address complaint if complainant was participating in or trying to participate in school at the time of the <u>incident</u>.¹⁸</p>
<p>Schools must respond when any employee has “actual knowledge” of allegations of “sexual harassment,” in a manner that is not “<u>deliberately indifferent</u>.”¹⁹</p>	<p>Schools must respond when any employee has knowledge of conduct that “reasonably may constitute sex discrimination” with <u>prompt and effective action</u>.²⁰</p>
<p>Only designated employees with actual knowledge of sexual harassment must report the conduct to the Title IX coordinator.²¹</p>	<p>Any non-confidential employees must notify the Title IX coordinator of possible sex discrimination.²²</p> <p>Schools must identify “confidential employee(s)” who will keep confidential any communications with a student alleging sex discrimination. Staff in this role must explain their obligations to students.²³</p>

<p>Schools must not retaliate against someone for exercising their Title IX rights.²⁴</p>	<p>Peer retaliation by other students is also included in the category of prohibited retaliation.²⁵</p>
<p>Schools must offer supportive measures to all students who report sexual harassment, even if there is no investigation.</p> <p>Supportive measures must be nonpunitive and not unreasonably burdensome on the respondent. The school can reasonably burden the respondent.²⁶</p>	<p>Same, also applying to those who report sex-based discrimination; and required even if the complaint is dismissed.²⁷</p>

WHAT ARE THE RIGHTS OF PREGNANT AND PARENTING STUDENTS?

The comparison chart highlights important differences between the 2020 Title IX rule and the 2024 Title IX rule regarding key protections for students who are pregnant and parenting.

2020 Rule	2024 Rule
<p>Prohibited discrimination on the basis of pregnancy, childbirth, termination of pregnancy (abortion, miscarriage, or stillbirth), and recovery from these conditions.²⁸</p>	<p>Prohibits discrimination on the basis of past, potential, or current pregnancy, childbirth, termination of pregnancy, lactation, recovery, and related medical conditions.</p> <p>Schools must also address pregnancy-related harassment.²⁹</p>
<p>Prohibited policies relating to students’ <u>actual</u> or <u>potential</u> parental, family, or marital status that treat students differently on the basis of sex.³⁰</p>	<p>Prohibits policies and practices relating to students’ <u>past, current, or potential</u> parental, family, or marital status that treat students differently on the basis of sex.³¹</p> <p>Defines “parental status” to include adoptive, (step)parents, or legal guardians.³²</p>
<p>No pregnancy-specific accommodation requirements.</p>	<p>Schools must consult with student to offer individualized and voluntary “reasonable modifications” unless that would fundamentally alter the school program.</p>

Schools must allow a leave of absence for as long as student’s doctor deems necessary.	Schools must provide reasonable modifications for students based on pregnancy or related conditions, including elevator access, larger desk, footrest, breaks from class, absences, online courses, extensions, reschedule exam, and counseling. ³³ Schools must allow a voluntary leave of absence for at least as long as student’s health-care provider deems medically necessary. ³⁴
No specific right to lactation breaks and spaces.	Schools must provide a private, clean, non-bathroom lactation space for students. ³⁵
None.	Students do not need to submit documentation to get a modification, leave of absence, alternative program, or lactation supports if the need is obvious or if documentation is not required of other students. ³⁶
See more detailed information in this fact sheet: Rights of Pregnant and Parenting Students .	

WHAT ARE THE RIGHTS OF LGBTQ+ STUDENTS UNDER THE 2024 RULE?

The 2024 Title IX regulations reflect the Department of Education’s Office of Civil Rights’ enforcement of Title IX that has included gender identity and sexual orientation for years³⁷ and the U.S. Supreme Court’s ruling in *Bostock v. Clayton County*,³⁸ where the court held that Title VII’s prohibition on discrimination “because of ... sex” covers discrimination on the basis of gender identity and sexual orientation. Applying *Bostock*’s reasoning, courts have held that Title IX also prohibits sex discrimination on the basis of gender identity or sexual orientation.³⁹

The 2024 rule clarifies and affirms protections for LGBTQ+ students, specifically in its explicit inclusion of discrimination on the basis of sexual orientation, gender identity, and sex characteristics as sex discrimination.⁴⁰ The redefinition of sexual harassment as sex-based discrimination encompasses the broader range of prohibited conduct that impacts LGBTQ+ youth.

The 2024 rule explicitly states that preventing a student from participating in an education program or activity consistent with their gender identity causes more than de minimis harm and is prohibited by Title IX.⁴¹ Schools are required to allow students to participate in classrooms and activities, use bathrooms and locker rooms, and dress and groom themselves consistent with their gender identity.⁴²

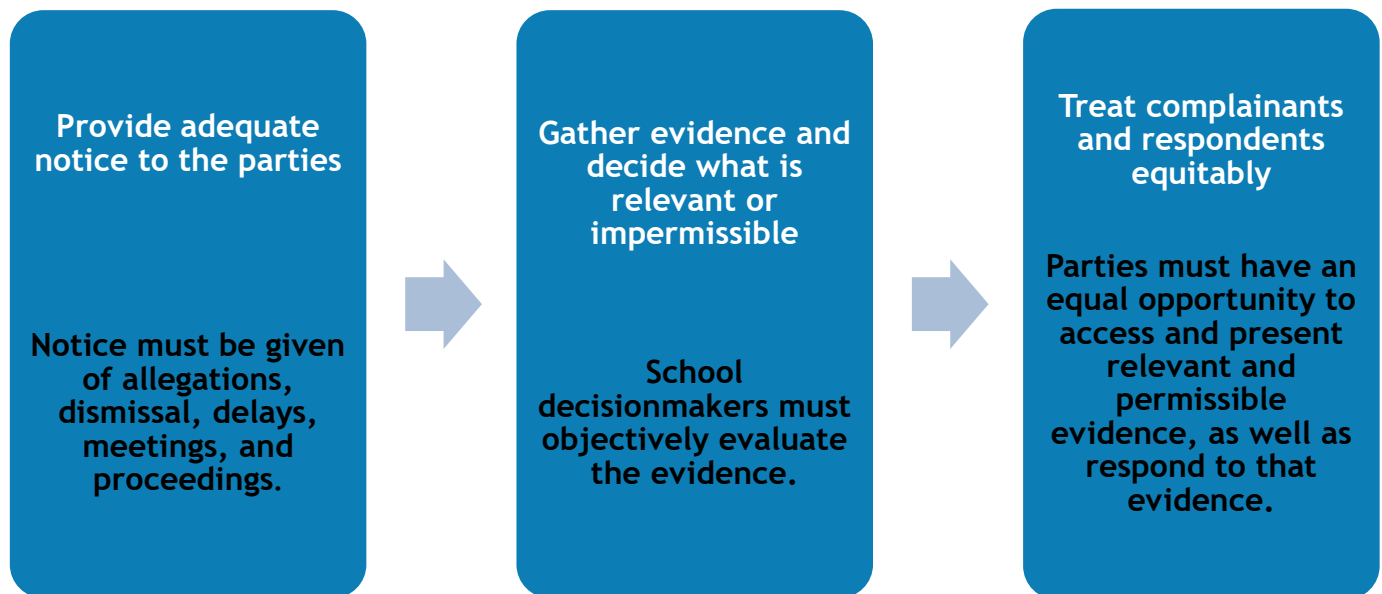
The 2024 rule does not specifically address a student’s pronoun and name use but the Department explained that whether verbal conduct is sex-based harassment is necessarily fact specific.⁴³ The Department confirmed that Title IX encompasses harassment based on sex stereotypes and “conduct directed at a student’s nonconformity with stereotypical notions of how boys or girls are expected to act and appear or that seeks to restrict students from participating in activities that

are not stereotypically associated with the students’ sex could constitute sex-based harassment that creates a hostile environment.⁴⁴

For more detailed information, see ELC’s [Rights of LGBTQ+ and Gender-Diverse Students](#). Information about legal challenges to the gender identity provisions of the 2024 rule is provided [here](#).

WHAT IS THE PROCEDURE FOR INVESTIGATING COMPLAINTS?

The 2024 rule strengthens requirements for schools to conduct robust and impartial investigations of all sex discrimination complaints. The 2024 rule maintains the presumption that the respondent is not responsible until the end of an investigation of sex discrimination.⁴⁵



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WHAT IS THE BURDEN OF PROOF TO ESTABLISH A VIOLATION, AND WHO MAKES THE DECISION?

2020 Rule	2024 Rule
<p>Schools must use <u>either</u> a <u>preponderance of the evidence</u> standard (evidence is more likely true than not true) or <u>clear and convincing</u> standard (evidence is highly and substantially more likely to be true) to determine whether sex discrimination occurred, as long as the school uses same standard for students and employees.⁴⁷</p>	<p>Schools must use a <u>preponderance of the evidence</u> standard to determine whether sex discrimination occurred, except the school may opt for a clear and convincing standard if the higher standard is used in all comparable proceedings (e.g., race and disability discrimination).⁴⁸</p>
<p>Requires a separate decisionmaker to determine responsibility and provides no guidance about conflicts of interest or bias of Title IX officials.</p>	<p>Title IX coordinators or investigators can serve as decisionmakers but they and all decisionmakers must not have a conflict with or bias against either party.⁴⁹</p>

This fact sheet has focused on some of the key provisions of the 2024 Title IX rule. The U.S. Department of Education has issued a [comprehensive summary](#) of new provisions.⁵⁰

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ Pa. Human Relations Act, 43 PA. STAT. ANN. § 955. See also *Wible v. School District of Philadelphia*, No. 15-043169 (Phila. Cty. Ct. of Comm. Pls. 2018) (awarding a settlement against a school district under the PHRA after the school failed to prevent severe gender-based harassment and violence).

² See *Which States Have Sued to Stop Biden's Title IX Rule?* EDWEEK, updated Aug. 01, 2024, <https://www.edweek.org/policy-politics/which-states-have-sued-to-stop-bidens-title-ix-rule/2024/07#:~:text=Legal%20challenges%20to%20Biden's%20Title%20IX%20rule%20and%20their%20status&text=The%20awsuits%20all%20take%20issue,to%20be%20included%20in%20regulation>.

³ *Kansas v. U.S. Dep't of Educ.*, --F.Supp. 3d--, 2024 WL 3273285, *20-21 (D.Kan. Jul. 2, 2024).

⁴ *Id.* at *21.

⁵ *Id.* at *21.

⁶ *Kansas v. U.S. Dep't of Educ.*, 2024 WL 3471331, *4 (D. Kans. July 19, 2024).

⁷ Only six Pennsylvania public schools were identified by the first deadline of July 15, but on July 19 the court extended the deadline for identifying schools. See Plaintiffs Notice of List of Schools, *Kansas v. U.S. Dep't of Educ.*, No. 5:24-cv-04041, ECF No. 67 (D. Kan. July 15, 2024) (identifying six Pa. public schools); *Kansas v. U.S. Dep't of Educ.*, 2024 WL 3471331, ** (D. Kans. July 19, 2024) (denying Ed. Dept.'s motion for stay pending appeal and extending deadline to July 24 for plaintiffs to submit names of member schools). After a deadline extension to July 26, 2024, plaintiffs identified 118 Pennsylvania schools from 49 school districts and 3 charter schools. See Plaintiffs Notice of List of Schools, *Kansas v. U.S. Dep't of Educ.*, No. 5:24-cv-04041, ECF No. 72 (D. Kan. July 26, 2024) (identifying 118 Pa. schools). Plaintiffs submitted a third supplemental list of schools on July 31, 2024, with 126 additional Pennsylvania schools from 45 school districts. See Plaintiffs Notice of Supplemental List of Schools, *Kansas v. U.S. Dep't of Educ.*, No. 5:24-cv-04041, ECF No. 74 (D. Kan. July 31, 2024) (identifying 126 additional Pa. schools).

⁸ 34 C.F.R. § 106.10 (effective Aug. 1, 2024).

⁹ See, e.g., Jodi Lipson, *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School* (2001), <https://eric.ed.gov/?id=ED454132> (67% of Black girls reported having been “touched, grabbed, or pinched in a sexual way” by someone in school; 50% of Black girls reported someone in school pulled at their clothing in a sexual way; and 28% of Black girls reported being forced to kiss someone.); Kimberlé S. Crenshaw with Priscilla Ocen and Jyoti Nanda, *Black girls matter: Pushed out, overpoliced, and underprotected* (2015), https://www.atlanticphilanthropies.org/wp-content/uploads/2015/09/BlackGirlsMatter_Report.pdf.

¹⁰ GOV'T ACCOUNTABILITY OFF., DEPARTMENT OF EDUCATION SHOULD PROVIDE INFORMATION ON EQUITY AND SAFETY IN SCHOOL DRESS CODES 44, 27 (2022), <https://www.gao.gov/assets/gao-23-105348.pdf>.

¹¹ See, e.g., Off. of Civil Rights, U.S. Dept. of Educ., *Civil Rights Data Collection: Student Discipline and School Climate in U.S. Public Schools 2020-2021*, <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-school-climate-report.pdf> (finding Black girls nearly 2 times more likely to receive one or more in-school suspensions, out-of-school suspensions, and expulsions than white girls); *Student Discipline and School Climate in U.S. Public Schools* (2020); *Civil rights data collection: School Violence Factors in the Educational Environment*, <https://www2.ed.gov/about/offices/list/ocr/docs/sexual-violence.pdf>; *Data Snapshot: 2017-2018 National Data on School Discipline by Race and Gender*, GEO. L. CTR. ON POVERTY AND INEQ., <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/12/National-Data-on-School-Discipline-by-Race-and-Gender.pdf> (finding Black girls have the highest rate of overrepresentation compared to white youth of any other race and gender group).

¹² 34 C.F.R. § 106.2 (effective Aug. 1, 2024) (defining complaint as “an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part”).

¹³ *Id.* § 106.30(a).

¹⁴ *Id.* § 106.2 (effective Aug. 1, 2024).

¹⁵ *Id.* §§ 106.44, 106.45(b)(3)(i).

¹⁶ *Id.* § 106.11 (effective Aug. 1, 2024).

¹⁷ *Id.* § 106.30(a).

¹⁸ *Id.* § 106.2 (effective Aug. 1, 2024).

¹⁹ *Id.* § 106.44(a).

²⁰ *Id.* § 106.44(a) (effective Aug. 1, 2024).

²¹ *Id.* § 106.44(a).

²² *Id.* § 106.44(c) (effective Aug. 1, 2024).

²³ *Id.* § 106.44(d)(2) (effective Aug. 1, 2024).

²⁴ *Id.* § 106.71.

²⁵ *Id.* § 106.71 (effective Aug. 1, 2024).

²⁶ *Id.* § 106.30(a).

²⁷ *Id.* § 106.2, 106.44(g)(2) (effective Aug. 1, 2024).

²⁸ *Id.* § 106.40(b)(1).

²⁹ *Id.* §§ 106.2, 106.10 (effective Aug. 1, 2024).

³⁰ *Id.* § 106.40.

³¹ *Id.* § 106.40 (effective Aug. 1, 2024).

³² *Id.* § 106.2 (effective Aug. 1, 2024).

³³ *Id.* § 106.40(b)(3)(ii) (effective Aug. 1, 2024).

³⁴ *Id.* § 106.40(b)(3)(iv) (effective Aug. 1, 2024).

³⁵ *Id.* § 106.40(b)(3)(v) (effective Aug. 1, 2024).

³⁶ *Id.* § 106.40(b)(3)(vi) (effective Aug. 1, 2024).

³⁷ See Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 20, 2021); see also C.R. Div., U.S. Dep’t of Just., *Application of Bostock v. Clayton County to Title IX of the Education Amendments of 1972* (Mar. 26, 2021),

<https://www.justice.gov/crt/page/file/1383026/download>; 34 C.F.R. Part 106; U.S. Dep’t of Ed., *Fact Sheet: U.S. Department of Education’s 2022 Proposed Amendments to its Title IX Regulations* (June 2022),

<https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm-factsheet.pdf>; U.S. Dep’t of Educ., *A Timing Update on Title IX Rulemaking* (May 26, 2023), <https://blog.ed.gov/2023/05/a-timing-update-on-title-ix-rulemaking/>.

For more detailed guidelines and resources on policies and practices to support LGBTQ+ youth in schools and a guide to hate crime threats, see *U.S. Department of Education Toolkit for Creating Inclusive and Nondiscriminatory School Environments for LGBTQ+ Students* (June 21, 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/lgbtqi-student-resources-toolkit-062023.pdf>.

³⁸ *Bostock v. Clayton Cnty.*, 590 U.S. 644, 140 S.Ct. 1731 (2020) (holding that dismissal of an employee for being gay or transgender is sex-based discrimination under Title VII).

³⁹ See, e.g., *B.P.J. by Jackson v. W. Virginia State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), as amended (Aug. 28, 2020); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018). See also *Parents for Privacy v. Barr*, 949 F.3d 1210, 1239-40 (9th Cir. 2020); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 535 (3d Cir. 2018).

⁴⁰ 34 C.F.R. § 106.10 (effective Aug. 1, 2024).

⁴¹ *Id.* § 106.31(a)(2) (effective Aug. 1, 2024).

⁴² *Id.* § 106.31 (effective Aug. 1, 2024); 89 F.R. 33474, 33818 (Apr. 29, 2024).

⁴³ 89 F.R. 33474, 33516 (Apr. 29, 2024).

⁴⁴ *Id.*

⁴⁵ 34 C.F.R. §§ 106.45(b)(3), 106.46(c)(2)(i) (effective Aug. 1, 2024).

⁴⁶ *Id.* §§ 106.45(c), 106.45(b)(6), 106.45(b)(1) (effective Aug. 1, 2024).

⁴⁷ *Id.* § 106.45(B)(1)(vii).

⁴⁸ *Id.* § 106.45(h)(1) (effective Aug. 1, 2024).

⁴⁹ *Id.* § 106.45(b)(2) (effective Aug. 1, 2024).

⁵⁰ *Brief Overview of Key Provisions of the Department of Education’s 2024 Title IX Final Rule*, U.S. DEP’T OF EDUC., <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-summary.pdf>.