

2024 Title IX Regulations and State Anti-Discrimination Laws Continue to Protect Rights of Transgender Students

July 18, 2024

While recently enacted Title IX regulations have been challenged in federal court, there is no nationwide injunction precluding enforcement of the regulations. Moreover, an injunction order issued by a federal court in *Kansas v. U.S. Department of Education* does not materially change schools' obligations to students. Pennsylvania public schools are still subject to prohibitions on sex discrimination that include gender identity and expression under Pennsylvania state law and applicable federal regulations.

Key Takeaways

- In April, the U.S. Department of Education issued [new regulations](#) strengthening protections against sex discrimination for students. The new rule – slated to go into effect on August 1 – makes clear that Title IX prohibits discrimination and harassment based on sexual orientation, gender identity, and sex characteristics.
- While a number of lawsuits have been filed by other states seeking to prevent these 2024 final regulations from taking effect, Pennsylvania is not a party to any of these lawsuits and there is no “universal” injunction enjoining the final regulations nationally.
- A recent decision in *Kansas v. U.S. Dept. of Education* includes a limited holding enjoining the U.S. Department of Education from enforcing the 2024 Title IX rule in six individual public schools in Pennsylvania due to their affiliations with “Moms for Liberty.” The *Kansas* decision prevents the U.S. Department of Education from enforcing the 2024 rule only in these six schools identified.
- The *Kansas* decision does not have any effect whatsoever on state laws. The Pennsylvania Human Relations Act (PHRA) and its regulations lawfully prohibit discrimination in schools based on gender identity and expression and sexual orientation, and all PA public schools, including charter schools, remain liable under these provisions to prevent discrimination against LGBTQ+ students.
- The *Kansas* decision does not require any school to stop or change policies or practices that affirm the rights of LGBTQ+ students and cannot bar compliance with applicable state or local laws. For Pennsylvania, the ruling simply prohibits the U.S. Department of Education from demanding compliance with the final regulations at the six schools affected by the order.

While the 2024 Title IX Rules Have Been Challenged, There Is No Nationwide Injunction

Title IX of the Education Amendments of 1972 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.¹ Among other things, the 2024 final regulations clarify that Title IX prohibits discrimination and harassment based on sexual orientation, gender identity, and sex characteristics; reaffirm the rights of pregnant and parenting students; and broaden the protections for submitting complaints.² The 2024 final regulations are slated to take effect on August 1, 2024.

A number of lawsuits have been initiated by other states seeking to prevent the 2024 final regulations from taking effect. 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.

The *Kansas v. Dept. of Education* Decision Has Very Limited Application to Pennsylvania

The plaintiffs in the lawsuit *Kansas v. U.S. Department of Education* include Kansas, Alaska, Utah and Wyoming and the national organizations Moms For Liberty, Young America’s Foundation and Female Athletes United. The district court judge in the *Kansas* case issued an opinion on July 2, 2024, holding that the U.S. Department of Education cannot enforce the 2024 rule within the plaintiff states.³ In addition, in a very unusual decision that is being challenged as overbroad, the judge held that the injunction would also apply to the school districts where the children of members of the organizational plaintiffs (e.g. Moms For Liberty) attend school.⁴ The judge ordered that plaintiffs submit by July 15 a list of those impacted school districts to be included in the court’s order. There were only six Pennsylvania public schools identified to the court.⁵ As of July 18, 2024, the court has yet to issue the expected final injunction order naming the schools enjoined, but the U.S.

¹ U.S. Department of Education Releases Final Title IX Regulations, Providing Vital Protections Against Sex Discrimination, U.S. Dep’t of Educ. (2024), <https://www.ed.gov/news/press-releases/us-department-education-releases-final-title-ix-regulations-providing-vital-protections-against-sex-discrimination> (last visited Jul 18, 2024).

² *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33, 474 (Apr. 29, 2024) codified at 34 C.F.R. § 106.

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. The Pennsylvania public schools identified by plaintiffs on July 15, 2024 are: Bethel Park High School (Bethel Park School District); Biglerville High School (Upper Adams School District); Boyertown Area Senior High School (Boyertown Area School District); Emmaus High School (East Penn School District); Octorara Intermediate School (Octorara Area School District); Reach Cyber Charter School. 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).

Department of Education has already filed a notice of appeal and motion for a partial stay of the injunction pending the appeal.⁶

Importantly, the *Kansas* decision explicitly states that **“nothing in this order limits the ability of any school to adopt or follow its own policies, or otherwise comply with applicable state or local laws or rules regarding the subjects addressed herein. Rather, it simply prohibits [the U.S. Department of Education] from demanding compliance with the Final Rule by the schools affected by this order or imposing any consequences for such schools’ failure to comply with the Final Rule.”**⁷ This means that the *Kansas* decision does not require any change to a school’s current or future policy or practice to affirm LGBTQ+ students’ rights. The decision only relates to the actions of the U.S. Department of Education, which, the *Kansas* court says, cannot require the identified schools to implement the 2024 final regulations.

Schools must still comply with their obligations under pre-existing federal caselaw precedent independent of the 2024 final regulations. The Third Circuit – the controlling federal court in Pennsylvania – and three other circuit courts have clearly affirmed students’ right to use school bathroom and locker room facilities aligned with their gender identity.⁸ In their 2018 decision in the *Boyertown* case, the Third Circuit held that there was no privacy violation in having transgender and cisgender students share facility space.⁹ Two other federal cases that arose in the Middle and Western district courts in Pennsylvania resulted in the same outcome, affirming the right of transgender students to access the school facility aligned with their gender identity.¹⁰ Likewise in 2020, the Ninth Circuit held

⁶ The Department of Education argues that the injunction is overbroad because it enjoins the entire updated 2024 Title IX rule even though plaintiffs’ argument focused on the rule’s treatment of gender identity discrimination and the court held the plaintiffs were likely to prevail in establishing that only one provision of the rule is unlawful. The plaintiffs also seek to clarify and limit the injunction only to schools attended by children of members who joined the organizational plaintiffs before the filing of the lawsuit. See Def. Mot. for Partial Stay Pending Appeal (ECF 59), *Kansas v. U.S. Dep’t of Educ.*, 5:24-cv-04041 (Dist. Kan. July 10, 2024). As of July 18, this motion was not yet ruled on.

⁷ *Kansas*, 2024 WL 3273285 at *21.

⁸ See *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 521 (3d Cir. 2018) (finding that a school policy barring transgender students from restrooms that align with their gender identity would pose a potential Title IX violation); *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th at 772 (granting preliminary injunction in favor of transgender student challenging denial of bathroom access based on findings of ongoing, debilitating, and irreparable harm); *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 593 (4th Cir. 2020) (holding that school policies that require transgender students to use bathrooms that correspond to their “biological sex” violate Title IX and the equal protection clause); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1240 (9th Cir. 2020); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017), *cert. dismissed*, 138 S. Ct. 1260 (Mar. 5, 2018).

⁹ *Boyertown*, 897 F.3d at 530-31.

¹⁰ See *Evancho v. Pine Richland Sch. Dist.*, 237 F. Supp.3d 267 (W.D. Pa. 2017) (holding that plaintiffs were likely to succeed on their Equal Protection challenge to a school board resolution limiting transgender students’ access to bathrooms); *A.H. v. Minersville Area Sch. Dist.*, 408 F. Supp.3d 536 (M.D. Pa. 2019)

that a school district's gender-inclusive bathroom and locker room policy that supports the rights of transgender students does not violate the rights of other students; the U.S. Supreme Court declined to review that case.¹¹

PA Public Schools Must Follow State and Local Laws Prohibiting Discrimination Based on Gender Identity & Expression

Moreover, in Pennsylvania, equitable policies for LGBTQ+ students are also required by the state antidiscrimination law, the Pennsylvania Human Relations Act (PHRA), and its regulations that define sex discrimination to include that based on gender identity, gender expression, and sexual orientation.¹² For example, a policy prohibiting a student's facilities access based on their gender identity would violate the PHRA. The Pennsylvania Human Relations Commission (PHRC), charged with enforcement of the act, has recognized that discrimination based on gender identity/expression constitutes sex discrimination, in guidance¹³ and with regulations that explicitly clarify sex discrimination includes gender identity or expression.¹⁴ State courts have held school districts responsible for discrimination against students based on gender identity under the PHRA. For example, in 2018, a Pennsylvania state court entered a \$500,000 damages award against a school district for violating the Human Relations Act by failing to intervene and address the bullying and harassment a student experienced from other students due to her gender presentation and not conforming to gender stereotypes.¹⁵ In addition, schools must also comply with local ordinances prohibiting sex-based discrimination.¹⁶

(denying summary judgment for the school district after reviewing similar cases because the policy prohibiting transgender students from using restrooms corresponding to their gender identity discriminated in violation of Title IX).

¹¹ See *Parents for Privacy v. Barr*, 949 F.3d 1210, 1240 (9th Cir. 2020) (rejecting arguments that a school policy protecting transgender students violated other students' rights, finding that there was not a Title IX violation because the policy treated all students the same), *cert. denied*, 141 S. Ct. 894 (Dec. 7, 2020).

¹² Protected Classes Under the PHRA and PFEPA, Regulation #52-13, at 2 (adopted Dec. 8, 2022) (codified at 16 Pa. Code § 41.201-207), <http://www.irrc.state.pa.us/regulations/RegSrchrslts.cfm?ID=3350>.

¹³ Pennsylvania Human Relations Commission, [Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act](#) 3 (Aug. 2, 2018) (describing the PHRA prohibitions against discrimination on the basis of sex include discrimination on the basis of sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and gender expression).

¹⁴ Regulation #52-13: Protected Classes Under the PHRA and PFEPA, <http://www.irrc.state.pa.us/regulations/RegSrchrslts.cfm?ID=3350> (creating new subchapter to define terms sex, race, religious creed).

¹⁵ *Wible v. School District of Philadelphia*, No. 15-043169, 1392 CD 2018 (Phila. Cty. Ct. of Comm. Pls. 2018)(judgment entered for student plaintiff in the amount of \$500,000 damages and an additional \$578,000 in attorney fees), <https://www.berneylaw.com/wp-content/uploads/2017/10/Opinion-Rule-1925.pdf>.

¹⁶ As of July 2024, at least 75 local and county governments in Pennsylvania have adopted an LGBTQ-inclusive nondiscrimination ordinance. See PA Youth Congress, Local Nondiscrimination, available at <https://payoutcongress.org/localnondiscrimination/> (last accessed July 18, 2024); See e.g., Allegheny Cnty, Pa, Code § 215-35; Pitt. Code § 651.04; Philadelphia Code § 9-1106 (2016).

Pennsylvania Public Schools Should Promptly Prepare to Implement the 2024 Title IX Rule

While the legal challenges will continue to progress through the courts, it is important for Pennsylvania school administrators to continue efforts to implement changes required by the 2024 final regulations. Unless there is a court order directing Pennsylvania schools otherwise, all schools must comply with the federal regulations by August 1 and will be subject to the U.S. Department of Education's enforcement authority. School policies, codes of conduct, and practices should be reviewed for compliance before students return to school. After the court challenges and appeals finally conclude, there will not be a grace period for compliance – the time to prepare for implementation is now. Look for forthcoming ELC resources about the specific changes required by the 2024 Title IX rule.

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Public schools have an obligation to ensure that all children, including LGBTQ+ students, have a safe and welcoming environment to learn and thrive free from discrimination.

Students and parents who are concerned that their school has not implemented the 2024 Title IX regulations or the requirements of the PHRA can contact ELC's Helpline at 215-238-6970. More information is available about filing complaints to the federal Department of Education's [Office of Civil Rights](#) or the [PHRC](#).

*This analysis will be updated as the related cases progress.
For questions, please contact ELC senior attorney Kristina Moon, kmoon@elc-pa.org.*

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, multilingual 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.