



RETURNING TO THE 2020 TITLE IX RULE

February 4, 2025



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If you have any specific legal questions or require legal advice for specific situations, please contact or refer to your institutional, general, or outside counsel.



DISCUSSION ROADMAP

Tennessee v. Cardona – what happened?

Returning to 2020 from 2024

OCR Dear Colleague Letter: January 31, 2025

Considerations for Transitioning Cases

WHAT HAPPENED?

Tennessee v. Cardona

January 9, 2025 Decision

U.S. District Court – E.D. Kentucky

*TENNESSEE v.
CARDONA*

*U.S. District Court
E.D. Kentucky
January 9, 2025
Decision*

2024 RULE IS GONE.

- DoE cannot utilize Title IX to prohibit discrimination based on gender identity
 - “The entire point of Title IX is to prevent discrimination based on sex...Throwing gender identity into the mix eviscerates the statute and renders it largely meaningless.”

*TENNESSEE v.
CARDONA*

*U.S. District Court
E.D. Kentucky
January 9, 2025
Decision*

2024 RULE IS GONE.

- Rejected utilization of ***Bostock*** decision to apply Title VII employment law to Title IX
- Court stated that ***Bostock*** was applied too broadly, and that the Supreme Court limited its original holding only to the specific case
- Sixth Circuit has not traditionally read that Title VII and Title IX be considered similar in application.

*TENNESSEE v.
CARDONA*

*U.S. District Court
E.D. Kentucky
January 9, 2025
Decision*

2024 RULE IS GONE.

- Violated free speech rights of educators & students in mandating use of pronouns associated with others' gender identity (***Meriwether v. Hartop*** – Sixth Circuit precedent)
- Court states that it also violates the First Amendment because the Rule is vague and overbroad

*TENNESSEE v.
CARDONA*

*U.S. District Court
E.D. Kentucky
January 9, 2025
Decision*

2024 RULE IS GONE.

- DoE overstepped when it reinterpreted the law through federal rule-making (*Loper Bright* Supreme Court decision)

TENNESSEE v. CARDONA

*U.S. District Court
E.D. Kentucky*

January 9, 2025
Decision

What does “vacatur” mean?

- “In essence, a vacatur order ‘takes the unlawful agency action ‘off the books.’”
- Court determined the only appropriate remedy was to vacate the entire rule because it stated that “the three challenged provisions fatally taint the entire rule.”
- The U.S. Department of Education argued to “sever” those provisions to allow the rest of the rule to continue, but it was unsuccessful.

Highlighting Differences: 2024 v. 2020 Regulations

RETURN TO 2020 - SCOPE

2024	RETURN TO 2020
Sex-based harassment included harassment using “sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity”	Sexual harassment uses a binary understanding of sex by aligning it with sex assigned at birth
All sex discrimination in the program or activity in the US was covered by the Rule and grievance procedures	Other sex discrimination outside of sexual harassment is not covered in grievance procedures
<i>Subjectively and objectively offensive and severe or pervasive conduct</i> that limits access is considered hostile environment harassment	<i>“Severe, pervasive, and objectively offensive”</i> conduct effectively “denies or bars access”
Extensive section on discrimination related to parental, family, or marital status, pregnancy or related conditions	This is not addressed in the 2020 Rule.

RETURN TO 2020 - JURISDICTION

2024	RETURN TO 2020
<p>Conduct occurring in an institution's program or activity included conduct occurring in a building owned or controlled by a student organization that is officially recognized by the institution and conduct subject to the institution's disciplinary authority</p>	<p>Locations, events, or circumstances when institution exercised substantial control over the respondent and the context in which conduct occurred</p>
<p>Most conduct, including off-campus conduct, fell under the institution's disciplinary authority and Title IX</p>	<p>Other conduct may be subject to other policies, including 129-B, codes of conduct, and other policies as designed, but NOT Title IX</p>

RETURN TO 2020 – NOTICE & INTAKE

2024

Detailed guidelines for employee notification, including of confidential employees. Requirements for notification around public awareness events

An 8-factor analysis designed to assist TIXC in determining whether to initiate a complaint. *“Is there an imminent and serious threat?”*

Sex discrimination complaints other than sex-based harassment could also be filed by any student or employee or anyone else participating or attempting to participate in the program or activity

RETURN TO 2020

“Clearly unreasonable” when institutions have actual notice of sexual harassment & respond in a manner that was *deliberately indifferent*

There is no detailed analysis to assist TIXC determine whether to initiate a complaint

Complainants must participate or attempt to participate in program or activity of institution.

RETURN TO 2020 – SUPPORT & TIMEFRAME

2024	RETURN TO 2020
TWO PROCEDURES: one for sex-based harassment involving students, the other for all other covered sex discrimination	One singular procedure, applies to both student & employee respondents
Flexible timeframes: institutions could establish “reasonably prompt timeframes for the major stages”	Strict timeframes: parties have <i>10 days</i> to provide responses to evidence for an investigative report, and must be created at least <i>10 days</i> prior to hearing
CLEAR PROCESS for modification or termination of supportive measures	NO PROCESS detailed for modification or termination of supportive measures
Imminent and serious threat to health and safety was the parameter for an emergency removal (<i>included non-physical threats</i>)	<i>Immediate threat to the physical health or safety</i> of any individual is the parameter for emergency removals

RETURN TO 2020 – EVIDENCE, HEARINGS, & ROLES

2024	RETURN TO 2020
<p>Flexible process to review evidence – equal opportunity to access either the relevant permissible evidence, or an accurate description of evidence. Reasonable opportunity to respond</p>	<p>Relevant evidence must be sent to each party & advisor prior to completion of investigation report</p>
<p>No formal complaint requirement: complaint may be provided verbally or written</p>	<p>Formal complaint requirement: complaint must be written and signed by complainant or TIXC</p>
<p>Live hearing only required for sexual violence cases w/ student respondent; cross examination not required. Single investigator and live meeting(s) in other cases allowed. Complex rules for transcripts, proposed follow-up questions, etc.</p>	<p>Live hearing w/ cross-examination by advisor required in all covered Title IX cases. Institution must provide advisor if one not available</p>
<p><i>Flexible rules for the role of the decision-maker</i></p>	<p>Decision maker cannot be the same person as the TIXC or investigator</p>

January 31, 2025

OCR

Dear Colleague Letter



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ACTING ASSISTANT SECRETARY

January 31, 2025

Page 2

Dear Colleague:

This letter is to clarify that, effective immediately, the Education’s (ED) Office for Civil Rights (OCR) will enforce the [2020 Title IX Rule](#), rather than the recently vacated 2024 Title IX Rule. Accordingly, lawful Title IX enforcement includes, *inter alia*, harassment, the procedural protections owed to complainants, and the provision of supportive measures to complainants, which is the interpretation of “sex” to mean the objective, immutable characteristics of male or female as outlined in the 2020 Title IX Rule.

On January 9, 2025, the United States District Court for the Eastern District of Kentucky issued a [decision](#) vacating the 2024 Title IX Rule and enforcing it in any jurisdiction.¹ Prior to that decision, several federal courts in various jurisdictions enjoined the 2024 Title IX Rule, which prohibited its enforcement in 26 states.² Indeed, “every court precluding enforcement of the [2024 Title IX Rule] has indicated that it is unlawful.”³

In OCR’s view, the Eastern District of Kentucky’s decision is consistent with the original meaning of Title IX, and it correctly rejected the 2024 Rule’s expanded “meaning of ‘on the basis of sex’ to include ‘gender stereotypes, gender characteristics, and gender identity.’”⁴ Likewise, the 2024 Rule’s statement that discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, and sex identity is inconsistent with the original meaning of Title IX.

Equally fatal to the 2024 Title IX Rule, on January 20, 2025, President Trump issued an Executive Order, [Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government](#), that directly contradicts the vacated rule’s novel and expansive meaning of “on the basis of sex.” President Trump ordered all agencies and departments within the Executive Branch to “enforce all sex-protective laws to promote [the] reality” that there are “two sexes, male and female,” and that “[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality.” As a constitutional matter, the President’s interpretation of the law governs because he alone controls and supervises subordinate officers who exercise discretionary executive power on his behalf.⁶ That unified control extends to ED and OCR; therefore, Title IX must be enforced consistent with President Trump’s order.

In light of these federal court decisions and President Trump’s *Defending Women* Executive Order, the binding regulatory framework for Title IX enforcement includes the principles and provisions of the 2020 Title IX Rule and the longstanding Title IX Rule. [24 C.F.R. 100.1.100.1](#) (2024 Title IX Rule); [34 C.F.R. 100.1.100.1](#) (2020 Title IX Rule).

Accordingly, open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reoriented to comport fully with the requirements of the 2020 Title IX Rule.

Resources pertaining to Title IX and the 2020 Title IX Rule are available [here](#).

Sincerely,

/s/
Craig Trainor
Acting Assistant Secretary for Civil Rights
United States Department of Education

Dear Colleague Letter
January 31, 2025

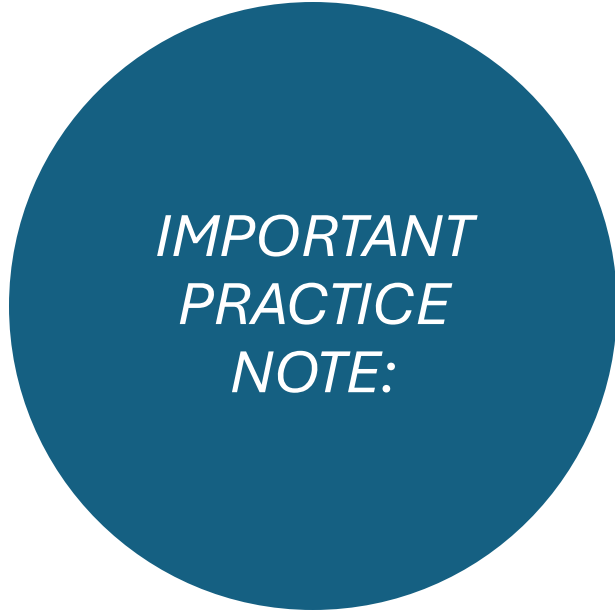
- Effective immediately, OCR will enforce Title IX under the 2020 Title IX Regulations
- “Accordingly, open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reoriented to comport fully with the requirements of the 2020 Title IX Rule.”

Transitioning 2024 Cases

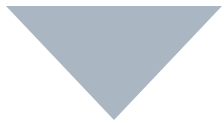
Transitioning 2024 Cases

For all cases currently open under your 2024 Procedures, you may want to ask the following questions:

- Does the case include sex discrimination outside of covered sexual harassment?
- Does the case allege harassment or discrimination based on sexual orientation, gender identity, sex stereotypes, sex characteristics, or pregnancy or related conditions?



*IMPORTANT
PRACTICE
NOTE:*



*DEFINITION OF
"SEXUAL
HARASSMENT"*

106.30: Definitions

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

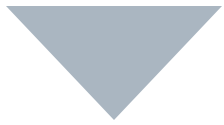
- (1) An employee of the recipient conditioning the provision of an aid, benefit or service of the recipient on an individual's participation in unwelcome sexual conduct (quid pro quo);
- (2) Unwelcome conduct determined by a reasonable person to be ***so severe, pervasive, and objectively offensive that it effectively denies a person equal access*** to the recipient's education program or activity (hostile environment harassment); or
- (3) Sexual assault, dating violence, domestic violence, or stalking (specific offenses).

Transitioning 2024 Cases

For all cases currently open under your 2024 Procedures, you may want to ask the following questions:

- Where did the alleged conduct occur?
- Did the alleged conduct occur off campus on property not owned or controlled by a recognized student organization?

*IMPORTANT
PRACTICE
NOTE:*



JURISDICTION

106.44(a): Recipient's response to sexual harassment.

- Occurred in the United States;
- In the recipient's education program or activity, which includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs; and
- Includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

Transitioning 2024 Cases

For all cases currently open under your 2024 Procedures, you may want to ask the following questions:

- Is there a written complaint signed by the Complainant?

**IMPORTANT
PRACTICE
NOTE:**

**FORMAL
COMPLAINT**

106.30: Formal Complaint

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.

...A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the recipient.

*IMPORTANT
PRACTICE NOTE:*

106.30: Formal Complaint

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

COMPLAINANTS

Transitioning 2024 Cases

For all cases currently open under your 2024 Procedures, you may want to ask the following questions:

- Where is this case in the process?

Transitioning 2024 Cases

Procedural Considerations for Open Cases

- Has a Notice of Allegations been issued in this case?
- Has there been an investigation in this case?
- Has an investigative report been issued?
- Has any part of the hearing started?
- Have advisors of choice been notified of the changes in hearing procedures if your institution had done away with cross-examination?
- Does the case need to be dismissed because it does not meet the definitions or jurisdiction under the 2020 Final Rule?

*IMPORTANT
PRACTICE
NOTE:*



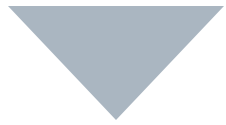
*REMINDER
ON RULES
FOR
DISMISSALS
UNDER 2020*

106.45(b)(3)(i): Mandatory Dismissals

An institution is required to dismiss a complaint if:

- The conduct alleged in the formal complaint would not constitute sexual harassment even if proved;
- The conduct did not occur in the institution's education program or activity; or
- The conduct did not occur against a person in the United States.

**IMPORTANT
PRACTICE
NOTE:**



**REMINDER
ON RULES
FOR
DISMISSALS
UNDER 2020**

106.45(b)(3)(ii): Discretionary Dismissals

An institution may dismiss a complaint or any allegations in a complaint, if *at any time during the investigation or hearing*:

- A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations in it;
- The Respondent is no longer enrolled or employed at the institution; or
- Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or the allegations in it.

*IMPORTANT
PRACTICE
NOTE:*



*OFFERING
APPEALS ON
DISMISSALS
OF
COMPLAINTS*

106.45(b)(8): Appeals

- A recipient must offer both parties an appeal from a determination regarding responsibility, **and from a recipient's dismissal of a formal complaint or any allegations therein...**

Transitioning 2024 Cases

For all cases currently open under your 2024 Procedures, you may want to ask the following questions:

- Are there other policies or procedures that would cover the elements that are no longer covered under Title IX due to the reversion to the 2020 Regulations?
- Are there other state laws that may apply to different types of complaints previously covered by 2024 Regulations?

...and consult with your campus counsel on any changes/updates you consider making to policies and procedures!

Other Action Items

Other Action Items

Campus Action Items

- Make sure your 2020 Title IX Procedure is posted.
- Consider taking down 2024 Procedures. If you keep it up, be sure to note that it was in effect from Aug. 1, 2024 - January 8, 2025 and is no longer in effect.
- Consider communicating the change to your campus.
- (Re)-familiarize yourself with the 2020 procedure.
- Ensure your staff is (re)-trained in the 2020 procedure.

SCI Resources

SCI Training and Resources

Featured



2024-2025: Title IX
Certificate (2020 Rule)
2024-2025 Certificates




2/4/2025 Title IX Update:
Return to 2020 Regulations
2024-2025 Live@Distance



2/11/2025 - Hearing Board
Re-Training: Building the
bridge from 2024 back to
2020 Final Rule
2024-2025 Live@Distance



2/11/2025, 2/12/2025 and
2/13/2025 Basic
Compliance Training (2020
Rule)
2024-2025 Live@Distance

SCI Toolkits (Click the image to access the toolkit.) 



SCI Training and Resources



Hearing Board Re-Training

Building the Bridge Between
the 2024 & 2020 Final Rule



February 11th

1:00 - 2:00 PM ET

The SUNY SCI is offering an opportunity for hearing and appeals board members to be re-trained for the 2020 Final Rule. This training is for those who already trained this year for the 2024 final rule by completing the 2024 Final Rule Decision-maker and Investigator Basic Compliance training.

This training will be approximately one hour. If you were trained on the 2024 Final Rule and need to receive updated training, please register for the one-hour *Hearing Board Re-Training: Building the bridge from 2024 back to 2020 Final Rule*.

Attendees will learn what definitions and procedures are different from their previous training so that they may adequately serve on hearing and appeals boards without having to repeat an entire basic compliance training.

If you need a full compliance training, please sign up for the Title IX Basic Compliance (2020 Rule) Live@Distance three-day training.

Thank you!