



New Title IX Rules to go into effect today!

There have been a lot of twists and turns related to the implementation of the new Title IX rules adopted by the federal Department of Education (DOE) on April 29, including injunctions in several states that prohibit the implementation of the new rules. Much of that uncertainty has been resolved in the past several days, and **for the vast majority of schools in Arizona, the rules will be effective today, August 1, 2024**, and OCR will begin to enforce them in connection with any complaints that are filed with it alleging sex discrimination.

In addition to this reminder about the new rules, we have provided some additional background below.

Litigation Regarding the New Title IX Rules. Several lawsuits have been filed across the country challenging the new rules. The lawsuits have primarily challenged the rules' expanded definition of "sex" to include gender identity and sexual orientation. Courts in these lawsuits have issued statewide injunctions, prohibiting DOE from implementing, enacting, or enforcing the new rules in 21 states: Alaska, Arkansas, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming. DOE has asked the U.S. Supreme Court to allow portions of the new rules to take effect in these states as well, but that request has not yet been ruled upon.

Although there is no statewide injunction in Arizona, there is a complicating factor in one of the cases which affects some Arizona schools. Moms for Liberty is a party in one case, and they have asked for *and been granted* an injunction that prohibits DOE from enforcing the new rules at "any school attended by a minor child of a member of Moms for Liberty" – regardless of state. After some back-and-forth about the scope of the injunction, last Friday, Moms for Liberty filed an "initial list" of schools to which the injunction should apply. That list, **which contains 50 schools in Arizona**, can be found [here](#). A previous list filed by Moms for Liberty contained only 8 Arizona schools, most of which are not included on the current list. We have already notified clients if their schools appear on the current list. If Moms for Liberty updates this list, we will let you know.

OCR **acknowledged** in a July 19, 2024 Title IX Fact Sheet that it will not enforce the new rules at schools in the states where an injunction is in effect and at schools listed on the Moms for Liberty list, as updated.

Title IX Policies. Unless you are on the Moms for Liberty school list, you will need to update your Title IX policy to comply with the new Title IX rules, and you may need to update your nondiscrimination policy statement. In addition to expanding the definition of "sex," the new rules contain many other revisions, including:

- Expanding the scope of "sex discrimination" to include sex-based harassment and discrimination on the basis of pregnancy or related conditions.
- Expanding the definition of "sex-based harassment" to include more potential conduct than under the 2020 rules.
- Removing the need for a written and signed "formal complaint," and instead requiring schools to respond promptly to any information about conduct that might reasonably be sex discrimination.
- Prohibiting schools from separating or treating people differently based on their gender identity, including in the use school facilities, like bathrooms and locker rooms.
- Requiring schools to communicate their nondiscrimination policies.
- Requiring schools to train all staff at the time of hire and annually on the new rules, including staff reporting

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requiring schools to train all staff at the time of hire and annually on the new rules, including staff reporting requirements.

We have prepared a form policy to help you implement the new rules. That policy is available for purchase for a flat fee of \$1,200 for schools that did not previously purchase our Title IX policy in 2020 or for a flat fee of \$300 for schools that purchased our 2020 Title IX policy. We also have a Title IX pregnancy policy that augments the Title IX policy, available for purchase for \$200. If you would like a copy of the 2024 Title IX policy – either as a new policy, or as an update to your previously purchased 2020 Title IX policy – or the new Pregnancy policy, please email Lynne Adams at ladams@omlaw.com.

Finally, we are offering training for staff on the new Title IX rules. If you are interested, please reach out to Lynne Adams to discuss options and costs.

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