LEGAL EXPLAINER #5

UNDERSTANDING TITLE IX

This document should not be construed as legal advice. It is provided by the Wisconsin Institute for Law & Liberty (WILL), a 501(c)(3) nonprofit organization, as a public resource for informational purposes.

What is Title IX?

Title IX of the Education Amendments of 1972 is a federal law that prohibits sex-based discrimination in educational settings. 20 U.S.C. § 1681(a). It states that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). It ensures equal access and opportunities in schools, regardless of sex, including in academic, athletic, and extracurricular activities.

Scope of Coverage

Title IX applies to all public and private K–12 schools and higher education institutions that receive federal funding. § 1681(a).

Recent Title IX Developments Impacting Its Enforcement

For decades, "sex" has meant male or female and has been based on biological sex. However, in 2024, the Biden Administration released new regulations that expanded discrimination on the basis of sex to include discrimination based on "sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity." 34 C.F.R. § 106.10 (2024).

Since then, *a federal judge has held* the Biden Administration's policy invalid, stopping its enforcement nationwide. *Tennessee v. Cardona*, 762 F. Supp. 3d 615, 628 (E.D. Ky. 2025). This means that the Biden regulations have been vacated and it is as if they were never in place. The decision returned Title IX enforcement to the previous (before the Biden changes) rules.

In January 2025, President Trump signed an executive order titled *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, that defined "sex" as *biological* sex.* The order reaffirmed that Title IX applies to biological sex only. President Trump's executive order clarifies that some distinctions based on biological sex are allowed even if they contradict a student's gender identity. For example, to ensure safety, separate housing, bathroom, locker, and shower facilities are permitted. 34 C.F.R. §§ 106.32(b) and 106.33. And to ensure fairness, athletic teams can be separated by sex. § 106.41(b).

Key Takeaways for Parents about Title IX

- Students must be treated equally, regardless of their sex, promoting equal opportunities for women and girls in academics, athletics, and other extracurricular activities.
- Because Title IX applies to biological sex only, schools may make some sex-based distinctions, ensuring safe and fair environments.

What if I Believe My District Violated Title IX?

- Schools receiving federal financial assistance must comply with federal laws as a condition of that federal funding. If they do not, their federal funds are at risk.
- Anyone can file a complaint with the Department of Education's Office for Civil Rights ("OCR") alleging that a school has violated Title IX. (OCR Complaint Form linked *here*).†
- OCR has 180 days to decide whether to launch an investigation.
- If there is a violation, OCR and the school district will work towards a solution.
- In the most extreme scenario, the school district may lose its federal funding.
- The U.S. Department of Justice may also bring enforcement actions for noncompliance.

What Can Parents Do at the Local Level?

- Every school district is required to have a Title IX policy and must identify and publicize the name and contact information of its Title IX Coordinator.

* The White House, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, *https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/*

† *https://www.ed.gov/laws-and-policy/civil-rights-laws/file-complaint/ocr-discrimination-complaint-form*

- If you believe your child's school is violating Title IX, start by reviewing the district's Title IX policy and contacting the Title IX Coordinator, school principal, or district administrator to raise your concerns. You may also escalate concerns to the school board.
- Keep detailed records of all communications and incidents. Document everything in writing, including emails, letters, meeting notes, and dates of conversations.
- While local remedies are being pursued, you may still submit a complaint to the OCR at any time.

Parents are not powerless. Districts must follow federal law, and transparency and accountability begin with informed families.

WILL's Work Defending Title IX

WILL defends the original meaning of Title IX – equal opportunities for all students, especially women and girls – through litigation and legal advocacy.

- In *Tennessee v. Cardona*, WILL filed an *amicus brief* on behalf of Jane Doe, a female student athlete, supporting the successful challenge to the Biden Administration's unlawful Title IX rewrite.
- In *Doe v. Elkhorn Area School District*, WILL filed an *amicus brief* to help parents defend a school district's policy that protects the safety and privacy of its female students.
- In *Doe v. Mukwonago*, WILL filed an *amicus brief* on behalf of parents supporting a Wisconsin school district's policy of maintaining sex-specific bathrooms.
- WILL also co-authored a joint report titled *Protecting Title IX: A Resource Guide for School Boards* with the Defense of Freedom Institute and Southeastern Legal Foundation, warning of the legal and practical consequences of the Biden regulations before they were vacated.

WILL has also hosted and co-hosted several webinars:

- *What Wisconsin Parents Should Know About Title IX and School Policies* (September 2024)
- *The New Title IX Rule: Virtual Town Hall on New Resource Guide for School Boards* (November 2024)
- *Executive Action: Analyzing the Trump Executive Orders* (February 2025)
- *Title IX in the Trump Era* (March 2025)

WILL is a legal resource for parents, students, and school districts. If you believe your rights have been violated, you can contact us at www.will-law.org/contact-a-lawyer. Depending on your situation, we may be able to help further.