Title IX, Sex Discrimination, and Trans Rights in Schools

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During the 2024 presidential election cycle, Donald Trump targeted the queer and trans community and vowed to restrict their legal rights and protections. The Trump campaign and its allies spent roughly $215 million dollars on ads attacking trans people and Trump promised to drive "transgender insanity" out of K-12 public schools on day one.[1] Since January 20, 2025, Trump has signed five executive orders directly targeting the LGBTQ+ community that implicate K-12 public schools and trans students.[2] In light of these actions, school leaders and community members may feel uncertain about legal obligations and protections for trans students. One of the main federal laws protecting K-12 students against sex-based discrimination, Title IX, has been the subject of measures taken by the Trump administration in its efforts to discriminate against, stigmatize, and erase queer and trans people. This brief provides an overview of Title IX, its role in today's political climate, and how school leaders and community members can access the law to protect the rights of queer and trans students in Wisconsin's K-12 public schools.

Title IX

Title IX of the Education Amendments Act of 1972 is a federal law that prohibits discrimination on the basis of sex in all aspects of educational programs or activities operated by recipients of federal funds.[3] Title IX has two general purposes: (1) to avoid government support of discriminatory practices in education programs and (2) to provide citizens with effective protection against discriminatory practices.

In exchange for federal funds, educational institutions, including public elementary and secondary schools, promise not to discriminate on the basis of sex and to provide equal educational opportunities in all aspects of education programs or activities operated by the school. This includes extracurricular offerings, such as athletics, and curricular offerings.

> 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.
>
> Title IX of the Education Amendments Act of 1972

Discrimination prohibited by Title IX can take one of two forms. *Disparate treatment*, meaning the differential treatment of a group is intentional, is one form of discrimination under Title IX. *Disparate impact*, meaning the differential treatment results from a neutral policy or action but has negative effects on a group, is another form of discrimination under Title IX.

Title IX requires the development of federal regulations to provide guidance for institutions administering educational programs or activities. Newly amended regulations were adopted in April 2024 under the Biden administration.[4] These regulations incorporated new requirements regarding sex-based harassment, pregnant and parenting students, and LGBTQ+ student protections. However, these regulations confronted many legal challenges and one federal district court ruled that the regulations were unconstitutional. A nationwide injunction was issued in January 2025, which prevented the regulations from being implemented or enforced across the country.[5]

- Avoid government support of discriminatory practices
- Provide effective protection against discriminatory practices
- Provide equal opportunities in all aspects of education programs

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The Trump Administration

The Trump administration has issued multiple executive orders that directly impact the LGBTQ+ community and explicitly target trans people. Two of these executive orders directly reference Title IX and force interpretations of the federal law that proscribe protections for trans students in K-12 schools. As an executive agency, the U.S. Department of Education (USEd) has looked to these executive orders to inform their policies and guidance for K-12 public schools related to trans students.

Executive Orders

Executive Order 14168, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" was signed on Trump's first day in office, January 20, 2025.[6] This order requires all federal executive agencies to recognize only two sexes, male and female. The provided definition of "sex" refers to one's "immutable biological classification as either male or female" and indicates that "sex" is "not a synonym for" and "does not include the concept of" gender identity. Base on these definitions, federal executive agencies are to remove any reference to "gender" from federal policies and documents. Further, the order instructs all federal executive agencies to enforce "sex-protective laws" based on the provided definitions of "male" and "female." All federal agencies are ordered to end the funding of "gender ideology" and rescind all guidance documents that do not align with this order, including all trans guidance documents published by the USEd for K-12 schools.

Executive Order 14201, "Keeping Men Out of Women's Sports" was signed on February 5, 2025.[7] This order indicates the policy priority of the Trump Administration to "oppose male competitive participation in women's sports" and requires all federal executive agencies to rescind funds from education programs that "deprive women and girls of fair athletic opportunities." Utilizing the definition of "sex" provided in Executive Order 14168, this order aims to exclude trans females from participating in school-sponsored athletics which includes access to locker rooms. The Order directs the USEd Office of Civil Rights (OCR) to prioritize Title IX enforcement actions against any educational institution that allows for trans girls and women to participate in sports and athletic events. Additionally, all federal executive agencies are instructed to rescind funding to any educational program or institution that does not comply with the executive order.

Enforcement of Title IX

The USEd houses OCR, which enforces Title IX. Such enforcement by OCR includes the evaluation, investigation, and resolution of complaints; proactive investigations to examine potential systemic acts of sex discrimination; and the provision of information and guidance to educational institutions to ensure compliance.[8]

On February 4, 2025, USEd issued a *Dear Colleague Letter* to K-12 schools and higher education institutions to clarify that OCR would revert to and enforce the 2020 Title IX regulations.[9] The letter also cited Executive Order 14168, which required all federal executive agencies to enforce laws protecting from discrimination on the basis of sex to recognize only two sexes, male and female, and to promote that "[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality." The reversion to 2020 Title IX regulations removed explicit protections for LGBTQ+ students in education programs and activities. Further, USEd has indicated that OCR's interpretation and enforcement of Title IX will not consider LGBTQ+ students to be covered by the anti-discrimination protections provided by the civil rights law.

The *Dear Colleague Letter* also indicated that any open Title IX investigations, including those initiated when the 2024 regulations were enacted, were to be "immediately reevaluated" using the 2020 regulations and aligning with Trump's executive orders. On April 4, 2025, USEd announced the creation of a Title IX "Special Investigations Team" (SIT) that will prioritize Title IX complaints against trans female athletes competing in women's sports.[10] Current Secretary of Education, Linda McMahon was quoted as saying, "To all the entities that continue to allow men to compete in women's sports and use women's intimate facilities: there's a new sheriff in town. We will not allow you to get away with denying women's civil rights any longer."

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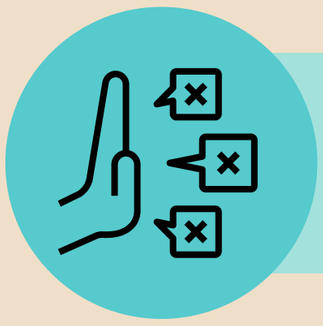
Navigating Title IX

School leaders and community members in Wisconsin may be discouraged by the current actions to limit and halt Title IX's protection of trans youth in K-12 public schools. While the current presidential administration is certainly focusing its efforts to sanction and encourage discriminatory conduct toward trans students, there are proactive steps that can be taken to thwart these actions.

The first step is to ensure that school boards do not pre-comply with any executive order or directive from federal government agencies that implicate the rights of trans youth. Both Executive Orders 14201 and 14168 are currently subject to constitutional challenges and under legal review by federal courts.[11] Next, it is important to advocate for trans rights at the local level. By raising your voice, local school boards are on notice that community members support trans youth and will fight to ensure the rights of trans students are protected. Such advocacy can help to establish gender-affirming policies and practices at your local school district, including anti-bullying and harassment policies, trans athlete participation policies, name and pronoun use policies, and bathroom/facilities access policies. Finally, if your local school district implements policies and practices that are actively hostile toward trans students, then legal action may be pursued. Given the current political climate, the filing of OCR complaints should be avoided. However, utilizing the courts through legal action can be an effective tool that is outside of the federal executive's control. Additionally, it is important to be aware of existing legal protections for trans students that have been upheld by courts (link/reference other policy brief).



Do not pre-comply with federal executive actions and orders

Advocate for queer and trans students at the local school district level

Know the law and pursue legal actions instead of filing OCR complaints

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