

TITLE IX WHIPLASH: COURTS, REGULATIONS, AND PENNSYLVANIA'S PATH FORWARD

Since 2020, the Title IX regulations, which prohibit sex-based discrimination in federally funded schools, have changed significantly. These changes have left schools wondering what they need to do to address sexual harassment, sexual violence, and gender equality.

The 2020 Title IX Regulations narrowed the definition of sexual harassment and instituted stricter procedural safeguards. The 2024 Title IX Regulations broadened the definition and explicitly protected LGBTQ+ students' gender identity and sexual orientation. The change marked a shift toward greater protection, accessibility, and inclusivity.

TENNESSEE V. CARDONA: A JUDICIAL TURNING POINT

On January 9, 2025, a Federal Court in Kentucky ruled that the 2024 Title IX Regulations were unconstitutional, vacating them nationwide. The court held that the Department of Education exceeded its authority in interpreting "sex" to include gender identity. It also deemed certain provisions, such as requiring teachers to use specific pronouns, were "arbitrary and capricious," and violated the First Amendment.

On January 31, 2025, the Department of Education issued a "Dear Colleague Letter" confirming its reversion to the 2020

Regulations. One recent Executive Order established a strict biological definition of gender, further limiting protections from transgender students. Another barred transgender women from competing in women's sports.

IMPLICATIONS FOR SCHOOLS POST-TENNESSEE V. CARDONA

The rescission of the 2024 Regulations presents complex challenges for K-12 districts:

- **Regulatory Uncertainty:** Schools must decide which Regulations apply to incidents occurring during the enforcement period of the 2024 rules.
- **Litigation Risks:** The 2024 Regulations' invalidation invites legal challenges to adverse findings made under their provisions by respondents.
- **Policy Alignments:** Districts should reinstate the 2020 standards for handling grievances but account for broader protections under state laws.

PENNSYLVANIA'S HUMAN RELATIONS ACT: A STATE-LEVEL SUPPLEMENT

In Pennsylvania, the Human Relations Act ("PHRA") complements Title IX by independently safeguarding gender identity and sexual orientation. The Human Relations Commission clarified that "sex discrimination" includes gender identity, sexual expression, pregnancy, and related conditions. This eliminates any uncertainty at the federal level and provides a robust framework for equity and inclusion within Pennsylvania schools.

The PHRA's proactive stance serves as a critical model in Pennsylvania, reinforcing protections beyond the narrower federal standards. Pennsylvania schools should adopt policies using PHRA definitions, such as:

- Sexual Orientation: Heterosexuality, homosexuality, bisexuality, or asexuality.
- Gender Identity/Expression: One's perceived or self-asserted identity, irrespective of biological gender.
- Pregnancy: Incorporating conditions related to gestation, childbirth, lactation, and assisted reproductive technology.

These expanded definitions compel schools to comprehensively enforce detailed policies addressing discrimination and bias.

PRACTICAL GUIDANCE FOR SCHOOL DISTRICTS

Schools should also take proactive measures to merge the 2020 Regulations with Pennsylvania's state law requirements:

1. Ensure Alignment with Federal & State Laws: Policies must integrate the 2020 Title IX framework while meeting broader PHRA protections.
2. Expand Training Programs: Provide comprehensive training on Title IX obligations, the PHRA, and emerging local policy requirements.
3. Enhance Reporting Mechanisms: Faculty should systematically document incidents, communicate clearly, and promptly involve Title IX coordinators.
4. Promote Inclusivity: Sustain an equitable educational environment by addressing gender-based and sexual harassment effectively, beyond procedural mandates.

About the Author:

LISA M. SIEFERT, ESQUIRE



An experienced litigator, Lisa advises and litigates on behalf of clients in the areas of labor and employment, public and private construction, personal injury, premises and product liability matters.

Lisa's employment counseling and litigation background is extensive. She works to proactively identify issues

before they become lawsuits, and routinely advises clients on best practices for discipline, termination, compliance, training, and other workplace issues. When litigation is unavoidable, she defends employers' claims of all kinds, including discrimination based upon age, race, gender, religion and national origin, along with issues involving disability and reasonable accommodations, harassment and retaliation.

Lisa assists companies in developing and implementing policies and procedures, drafts employment handbooks, and prepares and litigates various types of business contracts, including confidentiality and non-compete agreements.

She regularly appears in state and federal court, and has represented clients before the Equal Employment Opportunity, Pennsylvania Human Relations, and Civil Service Commissions. She also advises clients on matters related to unemployment compensation, OSHA investigations, and investigations by the Department of Labor's Wage and Hour Division.