

2024 Title IX Regulations and State Anti-Discrimination Laws Continue to Protect Rights of Transgender Students

July 29, 2024

While recently enacted Title IX regulations have been challenged in federal court, there is no nationwide injunction precluding enforcement of the regulations. Moreover, an injunction order issued by a federal court in *Kansas v. U.S. Department of Education* does not materially change schools' obligations to students. Pennsylvania public schools are still subject to prohibitions on sex discrimination that include gender identity and expression under Pennsylvania state law and applicable federal regulations.

Key Takeaways

- In April, the U.S. Department of Education issued [new regulations](#) strengthening protections against sex discrimination for students. The new rule – slated to go into effect on August 1 – makes clear that Title IX prohibits discrimination and harassment based on sexual orientation, gender identity, and sex characteristics.
- While a number of lawsuits have been filed by other states seeking to prevent these 2024 final regulations from taking effect, Pennsylvania is not a party to any of these lawsuits, and there is no “universal” injunction enjoining the final regulations nationally.
- A recent decision in *Kansas v. U.S. Dept. of Education* includes a limited holding enjoining the U.S. Department of Education from enforcing the 2024 Title IX rule in individual public schools in Pennsylvania that have students attending with parents who are members of “Moms for Liberty.” The *Kansas* decision prevents the U.S. Department of Education from enforcing the 2024 rule only in the schools identified with a Moms for Liberty affiliation.
- The *Kansas* decision does not have any effect whatsoever on state laws. The Pennsylvania Human Relations Act (PHRA) and its regulations lawfully prohibit discrimination in schools based on gender identity and expression and sexual orientation, and all PA public schools, including charter schools, remain liable under these provisions to prevent discrimination against LGBTQ+ students.
- The *Kansas* decision does not require any school to stop or change policies or practices that affirm the rights of LGBTQ+ students and cannot bar compliance with applicable state or local laws. For Pennsylvania, the ruling simply prohibits the U.S. Department of Education from demanding compliance with the final regulations at the schools currently identified as affected by the order.

While the 2024 Title IX Rules Have Been Challenged, There Is No Nationwide Injunction

Title IX of the Education Amendments of 1972 prohibits sex discrimination in federally funded education programs. On April 19, 2024, the U.S. Department of Education issued [new regulations](#) to strengthen these vital protections for students.¹ Among other things, the 2024 final regulations clarify that Title IX prohibits discrimination and harassment based on sexual orientation, gender identity, and sex characteristics; reaffirm the rights of pregnant and parenting students; and broaden the protections for submitting complaints.² The 2024 final regulations are slated to take effect on August 1, 2024.

A number of lawsuits have been initiated by other states seeking to prevent the 2024 final regulations from taking effect.³ Pennsylvania is not a party to any of these lawsuits challenging the 2024 final regulations. At this time, there are no “universal” injunctions that would enjoin the final regulations from taking effect nationally.

The *Kansas v. Dept. of Education* Decision Has Limited Application to Pennsylvania

The plaintiffs in the lawsuit *Kansas v. U.S. Department of Education* include Kansas, Alaska, Utah, and Wyoming and the national organizations Moms For Liberty, Young America’s Foundation and Female Athletes United. The district court judge in the *Kansas* case issued an opinion on July 2, 2024, holding that the U.S. Department of Education cannot enforce the 2024 rule within the plaintiff states.⁴ In addition, in a very unusual decision, the judge held that the injunction would also apply to schools where the children of members of the organizational plaintiffs (e.g. Moms For Liberty) attend school.⁵ The judge ordered plaintiffs to submit a list of impacted schools⁶ and after a deadline extension to July 26, 2024,⁷ plaintiffs identified 118 Pennsylvania schools from 49 school districts and 3 charter schools.⁸

¹ U.S. Department of Education Releases Final Title IX Regulations, Providing Vital Protections Against Sex Discrimination, U.S. Dep’t of Educ. (2024), <https://www.ed.gov/news/press-releases/us-department-education-releases-final-title-ix-regulations-providing-vital-protections-against-sex-discrimination> (last visited Jul 18, 2024).

² *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33, 474 (Apr. 29, 2024) codified at 34 C.F.R. § 106.

³ See details and updates on the lawsuits in this [Education Week report](#).

⁴ *Kansas v. U.S. Dep’t of Educ.*, --F.Supp. 3d--, 2024 WL 3273285, *20-21 (D.Kan. Jul. 2, 2024).

⁵ *Id.* at *21.

⁶ *Id.* at *21.

⁷ Only six Pennsylvania public schools were identified by the first deadline of July 15, but on July 19 the court extended the deadline for identifying schools. See Plaintiffs Notice of List of Schools, *Kansas v. U.S. Dep’t of Educ.*, No. 5:24-cv-04041, ECF No. 67 (D. Kan. July 15, 2024)(identifying 6 PA public schools); *Kansas v. U.S. Dep’t of Educ.*, 2024 WL 3471331, ** (D. Kans. July 19, 2024)(denying Ed. Dept.’s motion for stay pending appeal and extending deadline to July 24 for plaintiffs to submit names of member schools).

⁸ See Plaintiffs Notice of List of Schools, *Kansas v. U.S. Dep’t of Educ.*, No. 5:24-cv-04041, ECF No. 72 (D. Kan. July 26, 2024)(identifying 118 PA schools).

The court also noted that future members of Moms for Liberty are entitled to the injunction.⁹ The full list of schools identified on July 26 is attached; this was identified by plaintiffs as an “initial list.” As of July 27, 2024, the court has yet to issue the expected final injunction order naming the schools enjoined, but the U.S. Department of Education has already filed a notice of appeal to the Tenth Circuit Court of Appeals.¹⁰

Importantly, the *Kansas* decision explicitly states that **“nothing in this order limits the ability of any school to adopt or follow its own policies, or otherwise comply with applicable state or local laws or rules regarding the subjects addressed herein. Rather, it simply prohibits [the U.S. Department of Education] from demanding compliance with the Final Rule by the schools affected by this order or imposing any consequences for such schools’ failure to comply with the Final Rule.”**¹¹ This means that the *Kansas* decision does not require any change to a school’s current or future policy or practice to affirm LGBTQ+ students’ rights. The decision only relates to the actions of the U.S. Department of Education, which, the *Kansas* court says, cannot require the identified schools to implement the 2024 final regulations.

Schools must still comply with their obligations under pre-existing federal caselaw precedent independent of the 2024 final regulations. The Third Circuit – the controlling federal court in Pennsylvania – and three other circuit courts have clearly affirmed students’ right to use school bathroom and locker room facilities aligned with their gender identity.¹² In their 2018 decision in the *Boyertown* case, the Third Circuit held that there was no privacy violation in having transgender and cisgender students share facility space.¹³ Two other federal cases that arose in the Middle and Western district courts in Pennsylvania resulted in the same outcome, affirming the right of transgender students to access the school facility aligned with their gender identity.¹⁴ Likewise in 2020, the Ninth Circuit held

⁹ *Kansas v. U.S. Dep’t of Educ.*, 2024 WL 3471331, *4 (D. Kans. July 19, 2024).

¹⁰ Notice of Interlocutory Appeal (ECF 58), *Kansas v. U.S. Dep’t of Educ.*, 5:24-cv-04041 (Dist. Kan. July 10, 2024).

¹¹ *Kansas*, 2024 WL 3273285 at *21.

¹² See *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 521 (3d Cir. 2018) (finding that a school policy barring transgender students from restrooms that align with their gender identity would pose a potential Title IX violation); *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th at 772 (granting preliminary injunction in favor of transgender student challenging denial of bathroom access based on findings of ongoing, debilitating, and irreparable harm); *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 593 (4th Cir. 2020) (holding that school policies that require transgender students to use bathrooms that correspond to their “biological sex” violate Title IX and the equal protection clause); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1240 (9th Cir. 2020); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017), *cert. dismissed*, 138 S. Ct. 1260 (Mar. 5, 2018).

¹³ *Boyertown*, 897 F.3d at 530-31.

¹⁴ See *Evancho v. Pine Richland Sch. Dist.*, 237 F. Supp.3d 267 (W.D. Pa. 2017) (holding that plaintiffs were likely to succeed on their Equal Protection challenge to a school board resolution limiting transgender students’ access to bathrooms); *A.H. v. Minersville Area Sch. Dist.*, 408 F. Supp.3d 536 (M.D. Pa. 2019)

that a school district's gender-inclusive bathroom and locker room policy that supports the rights of transgender students does not violate the rights of other students; the U.S. Supreme Court declined to review that case.¹⁵

PA Public Schools Must Follow State and Local Laws Prohibiting Discrimination Based on Gender Identity & Expression

Moreover, in Pennsylvania, equitable policies for LGBTQ+ students are also required by the state antidiscrimination law, the Pennsylvania Human Relations Act (PHRA), and its regulations that define sex discrimination to include that based on gender identity, gender expression, and sexual orientation.¹⁶ For example, a policy prohibiting a student's facilities access based on their gender identity would violate the PHRA. The Pennsylvania Human Relations Commission (PHRC), charged with enforcement of the act, has recognized (and [reiterated in July 2024](#)) that discrimination based on gender identity/expression constitutes sex discrimination, in guidance¹⁷ and with regulations that explicitly clarify sex discrimination includes gender identity or expression.¹⁸ State courts have held school districts responsible for discrimination against students based on gender identity under the PHRA. For example, in 2018, a Pennsylvania state court entered a \$500,000 damages award against a school district for violating the Human Relations Act by failing to intervene and address the bullying and harassment a student experienced from other students due to her gender presentation and not conforming to gender stereotypes.¹⁹ In addition, schools must also comply with local ordinances prohibiting sex-based discrimination.²⁰

(denying summary judgment for the school district after reviewing similar cases because the policy prohibiting transgender students from using restrooms corresponding to their gender identity discriminated in violation of Title IX).

¹⁵ See *Parents for Privacy v. Barr*, 949 F.3d 1210, 1240 (9th Cir. 2020) (rejecting arguments that a school policy protecting transgender students violated other students' rights, finding that there was not a Title IX violation because the policy treated all students the same), *cert. denied*, 141 S. Ct. 894 (Dec. 7, 2020).

¹⁶ Protected Classes Under the PHRA and PFEPA, Regulation #52-13, at 2 (adopted Dec. 8, 2022) (codified at 16 Pa. Code § 41.201-207), <http://www.irrc.state.pa.us/regulations/RegSrchrslts.cfm?ID=3350>.

¹⁷ Pennsylvania Human Relations Commission, [Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act](#) 3 (Aug. 2, 2018) (describing the PHRA prohibitions against discrimination on the basis of sex include discrimination on the basis of sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and gender expression).

¹⁸ Regulation #52-13: Protected Classes Under the PHRA and PFEPA, <http://www.irrc.state.pa.us/regulations/RegSrchrslts.cfm?ID=3350> (creating new subchapter to define terms sex, race, religious creed).

¹⁹ *Wible v. School District of Philadelphia*, No. 15-043169, 1392 CD 2018 (Phila. Cty. Ct. of Comm. Pls. 2018)(judgment entered for student plaintiff in the amount of \$500,000 damages and an additional \$578,000 in attorney fees), <https://www.berneylaw.com/wp-content/uploads/2017/10/Opinion-Rule-1925.pdf>.

²⁰ As of July 2024, at least 75 local and county governments in Pennsylvania have adopted an LGBTQ-inclusive nondiscrimination ordinance. See PA Youth Congress, Local Nondiscrimination, available at <https://payouthcongress.org/localnondiscrimination/> (last accessed July 18, 2024); See, e.g., Allegheny Cnty, Pa, Code § 215-35; Pitt. Code § 651.04; Philadelphia Code § 9-1106 (2016).

Pennsylvania Public Schools Should Promptly Prepare to Implement the 2024 Title IX Rule

While the legal challenges will continue to progress through the courts, it is important for Pennsylvania school administrators to continue efforts to implement changes required by the 2024 final regulations. Unless there is a court order directing Pennsylvania schools otherwise, all schools must comply with the federal regulations by August 1 and will be subject to the U.S. Department of Education's enforcement authority. School policies, codes of conduct, and practices should be reviewed for compliance before students return to school. After the court challenges and appeals finally conclude, there will not be a grace period for compliance – the time to prepare for implementation is now. Look for forthcoming ELC resources about the specific changes required by the 2024 Title IX rule.

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Public schools have an obligation to ensure that all children, including LGBTQ+ students, have a safe and welcoming environment to learn and thrive free from discrimination.

Students and parents who are concerned that their school has not implemented the 2024 Title IX regulations or the requirements of the PHRA can contact ELC's Helpline at 215-238-6970. More information is available about filing complaints to the federal Department of Education's [Office of Civil Rights](#) or the [PHRC](#).

*This analysis will be updated as the related cases progress.
For questions, please contact ELC senior attorney Kristina Moon, kmoon@elc-pa.org.*

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

Pennsylvania

School

Altoona Area High School
 Baldwin SHS
 J.E. Harrison Education Ctr
 McAnnulty Elementary School
 Whitehall Elementary School
 Bangor Area High School
 Five Points Elementary School
 Bermudian Springs Middle School
 Bradford Area High School
 Klinger Middle School
 McDonald Elementary School
 Central York High School
 Central York Middle School
 Hayshire Elementary School
 North Hills Elementary School
 Roundtown Elementary School
 Sinking Springs Elementary School
 Stony Brook Elementary School
 Commonwealth Charter Academy CS
 Conewago Twp Elementary School
 New Oxford Elementary School
 New Oxford Middle School
 Crestwood Secondary Campus
 Fairview Elementary School
 Cumberland Valley High School
 Mountain View Middle School
 Lehman Intermediate Sch
 Middle Smithfield Elementary School
 Fairfield Area Elementary School
 Dorseyville Middle School
 Fox Chapel Area High School
 OHara Elementary School
 Concord Elementary School
 Garnet Valley Elementary School
 Franklin Twp Elementary School
 Gettysburg Area High School
 Gettysburg Area Middle School
 James Gettys Elementary School
 Lincoln Elementary School
 Gettysburg Montessori CS
 Greencastle Antrim SHS
 Greencastle-Antrim SHS

School District

Altoona Area School District
 Baldwin-Whitehall School District
 Baldwin-Whitehall School District
 Baldwin-Whitehall School District
 Baldwin-Whitehall School District
 Bangor Area School District
 Bangor Area School District
 Bermudian Springs School District
 Bradford Area School District
 Centennial School District
 Centennial School District
 Central York School District
 Central York School District
 Central York School District
 Central York School District
 Central York School District
 Central York School District
 Central York School District
 Central York School District
 N/A
 Conewago Valley School District
 Conewago Valley School District
 Conewago Valley School District
 Crestwood School District
 Crestwood School District
 Cumberland Valley School District
 Cumberland Valley School District
 East Stroudsburg Area School District
 East Stroudsburg Area School District
 Fairfield Area School District
 Fox Chapel Area School District
 Fox Chapel Area School District
 Fox Chapel Area School District
 Garnet Valley School District
 Garnet Valley School District
 Gettysburg Area School District
 Gettysburg Area School District
 Gettysburg Area School District
 Gettysburg Area School District
 Gettysburg Area School District
 Gettysburg Area School District
 N/A
 Greencastle Antrim School District
 Greencastle-Antrim School District

Pennsylvania (Cont.)**School**

Haverford Middle School
Haverford SHS
West Hempfield Elementary School
Hollidaysburg Area SHS
Kennett High School
Lampeter Strasburg SHS
Martin Meylin Middle School
Alloway Creek Elementary School
Maple Avenue Middle School
Claysville Elementary School
Joe Walker Elementary School
McGuffey High School
McGuffey Middle School
Lower Nazareth Elementary School
Nazareth Area High School
Nazareth Area Intermediate Sch
Nazareth Area Middle School
New Foundations CS
Northampton Area High School
Otto Eldred Elementary School
Elk Ridge School
Hopewell Elementary School
Jordan Bank School
Nottingham School
Oxford Area High School
Penn's Grove School
Pen Argyl Area High School
Wind Gap Middle School
Northley Middle School
Pennell Elementary School
Patricia A Guth Elementary School
Pennridge South Middle School
West Rockhill Elementary School
Pittston City Intrmd Ctr
Pocono Mountain East High School
Pocono Mountain East Junior High Schoo
Pocono Mountain West High School
Swiftwater El Ctr
Swiftwater Intern Sch
Port Allegany JSHS
Haine Elementary School

School District

Haverford Township School District
Haverford Township School District
Hempfield Area School District
Hollidaysburg Area School District
Kennett Consolidated School District
Lampeter Strasburg School District
Lampeter Strasburg School District
Littlestown Area School District
Littlestown Area School District
McGuffey School District
McGuffey School District
McGuffey School District
McGuffey School District
Nazareth Area School District
Nazareth Area School District
Nazareth Area School District
Nazareth Area School District
N/A
Northampton Area School District
Otto Eldred School District
Oxford Area School District
Oxford Area School District
Oxford Area School District
Oxford Area School District
Oxford Area School District
Oxford Area School District
Oxford Area School District
Pen Argyl Area School District
Pen Argyl Area School District
Penn-Delco School District
Penn-Delco School District
Pennridge School District
Pennridge School District
Pennridge School District
Pittston Area School District
Pocono Mountain School District
Pocono Mountain School District
Pocono Mountain School District
Pocono Mountain School District
Pocono Mountain School District
Port Allegany School District
Seneca Valley School District

Pennsylvania

School

Haine Middle School
 Seneca Valley High School
 Marzolf Primary Sch
 Smethport Area JSHS
 Franconia Elementary School
 Indian Valley Middle School
 Souderton Area High School
 Hopewell Elementary School
 Liberty Bell Elementary School
 Southern Lehigh Intermediate School
 Southern Lehigh Middle School
 Southern Lehigh SHS
 Spring Ford Middle School 7th Grade Ctr
 Spring Ford SHS 9 12 Ctr
 B F Morey Elementary School
 Stroudsburg High School
 Stroudsburg JHS
 Stroudsburg Middle School
 Conestoga SHS
 New Eagle Elementary School
 Valley Forge Middle School
 Unionville High School
 Biglerville High School
 Upper Adams Intrmdt Sch
 Upper Adams Middle School
 Drexel Hill Middle School
 Upper Darby SHS
 Wallenpaupack North Intrmd Sch
 Greystone Elementary School
 Cedar Cliff High School
 Wilkes Barre Area High School
 Shady Grove Elementary School
 West Reading El Ctr
 Wyomissing Area JSHS
 Wyomissing Hills El Ctr

School District

Seneca Valley School District
 Seneca Valley School District
 Shaler Area School District
 Smethport Area School District
 Souderton Area School District
 Souderton Area School District
 Souderton Area School District
 Southern Lehigh School District
 Southern Lehigh School District
 Southern Lehigh School District
 Southern Lehigh School District
 Southern Lehigh School District
 Spring Ford Area School District
 Spring Ford Area School District
 Stroudsburg Area School District
 Stroudsburg Area School District
 Stroudsburg Area School District
 Stroudsburg Area School District
 Tredeffrin-Easttown School District
 Tredeffrin-Easttown School District
 Tredeffrin-Easttown School District
 Unionville-Chadds Ford School District
 Upper Adams School District
 Upper Adams School District
 Upper Adams School District
 Upper Darby School District
 Upper Darby School District
 Wallenpaupack Area School District
 West Chester Area School District
 West Shore School District
 Wilkes Barre Area School District
 Wissahickon School District
 Wyomissing Area School District
 Wyomissing Area School District
 Wyomissing Area School District