

# THE TRUTH ABOUT EXECUTIVE ORDERS AND PA SCHOOLS' CONTINUING OBLIGATIONS TO TRANSGENDER STUDENTS

APRIL 11, 2025

# AGENDA



Disclaimers

Why it matters

Federal Executive Actions

Continuing Legal Obligations

- Title 9
- PA Constitution and PA Human Relations Act

Issues presented in case law

- Bathrooms, athletics, pronouns, curricula & classroom
- Hostile environment

Action Items & Resources

Questions

# PRESENTERS



Kristina Moon  
Senior Attorney



Rich Ting  
Senior Attorney



Harper Seldin  
Senior Attorney

# WHY IT MATTERS

**The Pennsylvania Constitution entitles all students, including LGBTQ students, to “a meaningful opportunity to succeed academically, socially, and civically . . . .” Their success “requires” that they have “access to a comprehensive, effective, and contemporary system of public education.”**

*William Penn Sch. Dist. v. Pennsylvania Dep’t of Educ.*, 294 A.3d 537, 892 (Pa. Commw. Ct. 2023).



# SCHOOL EFFORTS TO AFFIRM & SUPPORT STUDENTS ARE LIFE-SAVING



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**PA schools are often hostile environments for LGBTQ students, with high rates of harassment & discrimination.**

Black students identifying as LGBTQ face combined racism & homophobia/transphobia.

Negative impacts on attendance, achievement, well-being

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**3d Circuit has expressly recognized that “transgender students face extraordinary social, psychological and medical risks and the school district clearly had a compelling state interest in shielding them from discrimination.”**

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**School-based supports save lives.**

LGBTQ young people reported having access to at least 1 space that was affirming reduced their odds of attempting to die by suicide by 35%

Using students' correct name and pronoun decreased thoughts of dying by suicide by 29% and attempts to die by suicide by 56%

## GENDER IDENTITY IS A DEEPLY ROOTED ELEMENT OF A PERSON'S IDENTITY.



The sincerity of one's gender identity, like one's religious belief, is not to be disputed and should be generally presumed or easily established.

School districts must accept and respect a student's assertion of their gender identity where the student expresses that identity at school or where there is other evidence that this is a sincerely held part of the student's core identity.

# FEDERAL EXECUTIVE ACTIONS



# WHAT IS AN EXECUTIVE ORDER?

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EOs are directives from the President which explain how that administration plans to interpret and enforce the law.

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Executive orders cannot override statutes or case law interpreting those laws.

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Agencies are bound by executive orders in how they enforce existing laws, like Title IX. Courts are not bound.

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Any action the President directs the federal government to take must be based on an existing statute or a constitutional power of the President.

**AN EXECUTIVE ORDER IS  
NOT LAW.**

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**An executive order that  
directs the  
executive/agency to act  
beyond what is allowed by  
those statutes and powers  
is unconstitutional.**

*The* WHITE HOUSE



↖ **PRESIDENTIAL ACTIONS**

**DEFENDING WOMEN FROM GENDER IDEOLOGY EXTREMISM AND  
RESTORING BIOLOGICAL TRUTH TO THE FEDERAL GOVERNMENT**

The White House

January 20, 2025

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

# EXEC ORDERS ABOUT GENDER IDENTITY

## \*RELATING TO SCHOOLS

### “Defending women from gender ideology extremism...”

**EMBOLDEN DISCRIMINATION & HATE TOWARD TRANSGENDER PEOPLE**

Directs fed agencies to implement narrow baseless definition of sex to rollback rights of trans, NB, intersex people

Rescinded affirming guidance; Directed AG: guidance limiting Bostock

Ed Dept DCL: 2 sexes

Directed OCR investigation: Denver bathrooms

**LAWSUITS CHALLENGING: military; prisons; passports; sports; healthcare**

### “Keeping men out of women’s sports”

**BAN TRANS GIRLS FROM GIRLS’ SPORTS TEAMS**

Withhold fed funding from schools allowing T/NB kids to play

Circuits with cases affirming T/NB kids play sports

No 3d Cir case; Magalengo

PIAA revision

**LAWSUIT CHALLENGING: Tirrell v. Edelblutt (ACLU-NH)**

# EXEC ORDER ABOUT SCHOOL CURRICULUM

## “Ending Radical Indoctrination in K-12 Schooling”

### CENSOR TEACHERS & AMERICAN HISTORY

Defines 6 divisive concepts as “discriminatory equity ideology” (racism, oppression, sexism)

Ed Dept to cut funding to school that supports concepts in curricula or teacher training, & “interference with parent info”

AG to criminalize teachers aiding in “social transition” of students

1776 Com’n for “patriotic education”

**NO LEGAL AUTHORITY FOR FED GOVT TO DICTATE K12 CURRICULUM**

# DEAR COLLEAGUE LETTER: FERPA & GENDER IDENTITY

## Letters from Ed Secretary & Student Privacy Policy Office

**PRIORITIZING PARENTS OVER CHILDREN; OUTING CHILDREN WITHOUT REGARD TO SAFETY**

Mischaracterizes schools as disrespecting & hiding info from parents;  
Highlights harmful “detransitioner” narrative

Admits FERPA does not require reporting

No acknowledgment of student privacy interest & educator duty to student privacy

Requests state depts submit assurance districts are complying (Apr 30)

**FERPA DOES NOT REQUIRE OUTING, COURTS BALANCE INTERESTS**

# TARGETED INVESTIGATIONS BY ED-OCR



- Abandoned obligation to investigate all discrimination under OCR authority
- Halted investigations of student/parent filed complaints
- Fired 40% Dept staff including most investigators & lawyers, closed OCR offices
- Directed investigations for administration's priorities
- Special Investigation Team for Title IX, OCR & DOJ

# FUNDING THREATS, PROCESS

Trump administration threatens “to take appropriate measures to assess compliance” and suggests that educational institutions that fail to comply with the Department’s misguided interpretation of the law “may, consistent with applicable law, face potential loss of federal funding.”

- **Appropriate measures** = review, investigation by OCR
- **Consistent with applicable law** = cannot withhold funds before exhausting statutorily required procedure
  - Due process before limiting federal funds = full administrative hearing, opportunity to challenge, determination that compliance with the law (not EO/DCL) cannot be reached voluntarily
- **Shift to federal court by DOJ or targeted school**

# CONTINUING LEGAL OBLIGATIONS



# CURRICULUM IS STATE & LOCAL, NOT FEDERAL

**Federal government has no role in development of local curricula or related policies.**

Multiple federal statutes prohibit the U.S. Dep't of Education from “exercis[ing] any direction, supervision or control over the curriculum, program of instruction, administration or personnel of any educational institution... or over the selection or content of library resources, textbooks or other instructional materials.”



**Pennsylvania Constitution requires the General Assembly to “provide for the maintenance and support of a thorough and efficient system of public education...”**

- Curricula is essential element of constitutional mandate (WmPenn SD v PDE, 2023)
- State Board of Ed adopts standards for subject areas
- PA School Code establishes the state requirements for school curricula
- Local school districts are authorized to implement state requirements
- PHRA prohibits discrimination in education

# TITLE IX PROVIDES STRONG PROTECTION AGAINST SEX DISCRIMINATION IN SCHOOLS

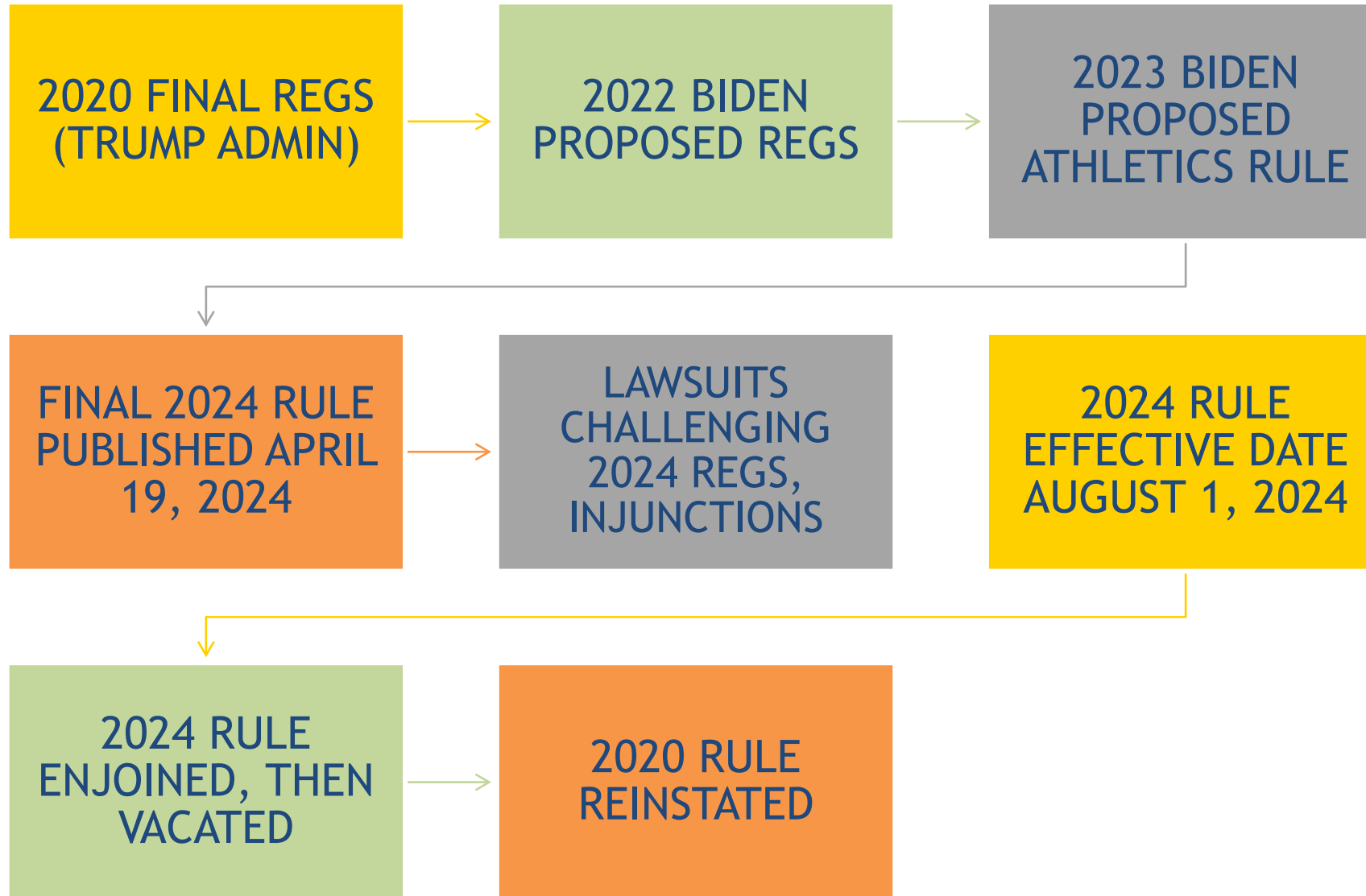
**Title IX of the Education Amendments of 1972** protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.

**Applies to public schools (including charters) and Approved Private School (APS) placements through an IEP process,** local and state educational agencies, and other institutions that receive federal financial assistance from ED

- Sexual harassment
- Failure to provide equal athletic opportunity
- Sex based discrimination in courses, programs
- Treatment of pregnant or parenting students
- Treatment of LGBTQ+ students (sex stereotypes)
- Discriminatory discipline
- Hostile environment



# TITLE IX REGULATIONS



# NOW APPLYING: 2020 TITLE IX RULE

Multiple lawsuits challenged 2024 rule

Under Kansas decision some PA schools with M4L were enjoined from 2024 rule

Jan 9, 2025: court in KY vacated 2024 regs entirely - reinstated 2020 regs nationwide

- ❖ Vacatur decision only relates to ED: can't require schools to implement 2024 rule.
- ❖ Does not impact state law;
- ❖ Does not require schools to move away from affirming policies.

## 2020 RULE

ED “will not tolerate sexual harassment ... against any student, including LGBTQ students.”

Brief discussion of sex stereotyping; does not define to include gender identity, sexual orientation

Court decisions interpret Title IX to include gender identity

# PENNSYLVANIA CONSTITUTION

**Equal Rights  
Amendment:**  
benefits and  
burdens cannot be  
conferred on the  
basis of sex.

*Art. I, sec. 28*





# PA HUMAN RELATIONS ACT: STATE ANTI-DISCRIMINATION LAW

**PHRA prohibits discrimination in public K-12 schools** (public accommodations) on the basis of:

- Race - includes hair texture and protective hairstyle e.g. braids, twists, and locs
- Color
- **Sex - includes gender identity/expression and sexual orientation**
- Religion
- Ancestry
- National origin
- Handicap or disability
  - record of a handicap or disability
  - relationship or association with an individual with a handicap or disability
  - use of a guide or support animal
  - and/or handling or training of support or guide animals.



PHRA has been expanded over the years to specifically name and capture more types of unlawful discriminatory conduct.

This law works to make sure “all people in Pennsylvania will live, work, and learn free from unlawful discrimination”

# PHRA & PHRC: SEX DISCRIMINATION

**PHRC Guidance 2018:** sex discrimination includes gender identity, transgender status

## Updated PHRC Regulations 2022:

Dec 2022 IRRC adopted final regs, 16 Pa Code 41.204, 41.206:

- ✓ **Discrimination based on sex includes sexual orientation and gender identity; pregnancy, childbirth and breastfeeding**

## PHRC statements

- Jan 2025, affirms gender identity included in PHRA protections
- July 2024, Limited application of *Kansas* decision: PHRA applies
- Jan 2023, monitoring Central Bucks policies, LGBT concerns

## In the courts:

- *Wible v. SDPhila* (2018) - PA court held school responsible under PHRA for indirect discrimination, failing to intervene with peer harassment due to gender presentation, entered \$500k damages award against school

# SOUTH SIDE AREA SCHOOL DIST. v. GOVERNOR, PHRC

## COMPLAINT

- Filed March 6, 2025 in Commonwealth Court
- Petitioners: South Side Area SD, Knoch SD, parents & children, PA Reps
- Non-delegation doctrine
- Equal Rights Amendment



Pennsylvania

Human Relations Commission

## PRELIMINARY OBJECTIONS

- Respondents: Governor Shapiro, PHRC
- Governor not a proper party
- Petitioners lack standing because no harm suffered
- PHRC has power from legislature to issue regulations
- Regulations don't deny rights based on sex, no violation of ERA



# TRANS & GENDER DIVERSE STUDENTS: ISSUES PRESENTED IN CASE LAW

# BATHROOM & LOCKER ROOM ACCESS

**Schools cannot discriminate against trans students by requiring them to use bathroom/locker room that does not match their gender identity.**

*May provide gender-neutral bathroom but cannot require they use a different facility based on their sex, gender/identity*



**3d Cir Boyertown (2018) : rejected arguments that a school policy protecting transgender students' equal access violated cisgender students' rights**

**Multiple other court approved trans students' right to bathroom access:**

- M.D.Pa., W.D.Pa.
- All circuits except 11<sup>th</sup> Circuit
- SCOTUS denied cert, *Parents for Privacy v. Dallas SD*, Oregon (Dec 2020)

# SPORTS PARTICIPATION

The many benefits of playing sports cannot be denied on the basis of sex.

No negative impact on participation of girls in school sports when policies are trans inclusive. Bans cause all girls' participation to decline.

Bans codify sexist stereotypes & promote body policing of all girls.

Closest case on point in 3d Circuit is *Boyertown* (discomfort is not acceptable reason to deny equitable access; no violation of cisgender students' rights to share space)

Every Circuit Court confronted with this issue has affirmed trans student's right to play. See e.g., *B.P.J.* (4th Cir. 2024); *Doe v Horne* (9th Cir. 2024); *Hecox v. Little* (9th Cir. 2024)



# PIAA

2014 policy - “where a student’s gender is questioned or uncertain,” the principal has the deciding vote on whether the student can play sports and with whom.

On February 19, 2025, the PIAA board voted to remove the “Transgender Policy” from its manual and to amend the “Mixed Gender Participation” provisions of its by-laws that address when a student’s sex is questioned (gender/sex; principal/school), adding a requirement that member schools “*consult with their school solicitors relative to compliance*” with Presidential Executive Order 14201.

PIAA assistant executive director Lyndsay Barna released a statement that the board’s “position is the Executive Order is binding to all PIAA Member Schools that accept federal funding.”

ELC and Women’s Law Project advocacy to PIAA





# PA DISTRICT COURT REFUSED TO BAN TRANS ATHLETE

## *Magalengo v. Quakertown Area SD, Colonial SD, PIAA*

U.S. District Court in Eastern District of PA,  
Judge Beetlestone

March 4, 2025 TRO hearing

- Cisgender student athlete plaintiff claims she is “forced” to compete track events against transgender student athlete
- Colonial SD defending affirming inclusive policy as required by *Boyertown*, PHRA
- PIAA no position on merits
- Judge:
  - EO says it doesn’t change the law
  - Plaintiff’s proposed relief too broad
  - Failed to show likelihood of success on the merits



# PRIVACY & SCHOOL RECORDS

- **Right to privacy**
- **FERPA - No requirement to notify parent; right to review existing educ records**
- **(DCL) Parent assertion school must notify for consent before using name/pronoun**
  - Some challenges in PA federal courts- standing problems
  - The weight of legal authority does not support a requirement that a school must obtain parent consent before upholding their nondiscrimination obligation and affirming students' gender identity in school
  - Courts look at balancing interest in parent information & individualized assessment of potential harm to student if parents are notified
  - 3d Cir: Right of parent is not absolute in school context
- **Schools may not require provision of documents to 'prove' a student's sex for enrollment or activities**

# NAME AND PRONOUN

- Schools cannot selectively deny trans students' preferred name while agreeing to cisgender student requests
- Intentionally & persistently misgendering constitutes sex-based harassment & creates hostile environment
  - See *Doe v. Triangle Doughnuts, LLC.*, 472 F. Supp. 3d 115 (E.D. Pa. 2020) (applying *Bostock*, the court held that, “in addition to being misgendered,” an employer deadnaming a transgender woman “was sufficiently severe or pervasive to support her [hostile work environment] claim”).
- 7<sup>th</sup> Circuit case, *Kluge v Brownsberg*, presents issue of teacher claiming religious exemption from affirming policy
- PDE PIMS [manual](#): allows for changing name and gender

# CURRICULUM, LIBRARY BOOKS & CLASS DISCUSSIONS

Research shows inclusive curriculum and policies are effective methods to promote safety & well-being of students

## Legal Issues around curriculum, library books, and classroom discussions

- Free Speech
  - Due Process (14th Amendment) - classroom censorship laws or policies are unconstitutional if so vague that people (e.g., teachers) cannot determine what is and is not prohibited.
  - Title IX and PHRA - non-inclusive curriculum and policies may promote or exacerbate a hostile environment
  - Free Exercise of Religion - *Mahmoud v. Taylor* (pending at U.S. Supreme Court)
  - "Parental Rights" - substantive due process right under 14th Amendment
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- ***Doe v. Boyertown Area School District* (3d Cir. 2018):** Schools have a compelling interest in preventing discrimination against transgender students



# BULLYING, HARASSMENT & HOSTILE ENVIRONMENT

Schools must ensure that any incident of discrimination, harassment, or bullying is immediately addressed, including investigating the incident, taking age- and developmentally-appropriate action, and providing students and staff with appropriate resources and supports.

Complaints alleging discrimination or harassment based on a student's actual or perceived status as LGBTQ or nonbinary are to be taken seriously and handled in the same manner as other discrimination or harassment complaints.

Hostile Environment = Severe, pervasive, persistent -> interfere or limit student's ability to participate & benefit

- Discriminatory policies
- Prohibiting pride flags
- Unaddressed peer harassment/bullying



# KEEP CALM & CARRY ON SUPPORTING STUDENTS

## SCHOOLS

Consult your legal counsel

Maintain nondiscrimination obligations

Explain state of issues; reassure students and families

Monitor trackers for status of lawsuits challenging EOs

## PARENTS, COMMUNITY

Letter to school board & Sup't (see sample)

Contact ELC & ACLU-PA with particular student concerns

PHRC complaint



# MORE QUESTIONS?

## EDUCATION LAW CENTER PA

215-238-6970 (Philadelphia) 412-258-2120 (Pittsburgh)  
intake@elc-pa.org

## ACLU OF PENNSYLVANIA

Intakes/Referrals (statewide): <https://complaints.aclupa.org/>

# ELC RESOURCES & CONTACT INFORMATION

Individual Requests For Assistance & Advice

Call: 215-238-6970 (Philadelphia) 412-258-2120 (Pittsburgh)

Email: [intake@elc-pa.org](mailto:intake@elc-pa.org)

ELC's webpage about Inclusive Schools & Honest Education

<https://www.elc-pa.org/advocating-for-inclusive-schools-and-honest-education/>

## Collection of Fact Sheets and Back to School Guide

- ☐ Affirming & Safe Schools
- ☐ Act 1: Accessing Supports
- ☐ Enrollment
- ☐ School Discipline
- ☐ Attendance & Truancy
- ☐ Bullying & Harassment
- ☐ Honest & Inclusive Schools
- ☐ Students with Disabilities
- ☐ Early Childhood Education
- ☐ KYR: Students in Care
- ☐ Juvenile Justice Involvement
- ☐ Students Experiencing Homelessness
- ☐ English Learners & Immigrant Students
- ☐ School Funding
- ☐ LGBTQ & Nonbinary Students