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Federal District Court in Kentucky Strikes Down New Title IX Regulations

On January 9, 2025, the Federal District Court for the Eastern District of Kentucky issued a pivotal ruling in a case challenging the U.S. Department of Education's ("Department") recently promulgated Title IX regulations that were issued on April 19, 2024, and effective as of August 1, 2024. The Court granted summary judgment in favor of the Plaintiffs challenging the legality of the regulations, while denying the Department's competing motion. In doing so, the Court determined that the 2024 Title IX regulations were unconstitutional, exceeded the scope of the Department's statutory authority, and "arbitrary and capricious." As a result, the Court struck down the entirety of the Department's 2024 Final Rule and corresponding Title IX regulations rather than the specifically challenged regulations.

One of the challenged regulations concerned the interpretation of sex discrimination and sexual harassment. The Department sought to clarify that discrimination based on sex includes those actions taken against someone due to their gender identity or sexual orientation. The Department supported this interpretation by relying upon Justice Gorsuch's opinion in *Bostock v. Clayton County*, 590 U.S. 644 (2020), where the United States Supreme Court explained that discrimination because of one's gender identity or sexual orientation is necessarily based on sex, as it is an action taken against a person based on their non-conformity with one's sex. In this case, the District Court rejected this approach as an overbroad interpretation of *Bostock*, as the *Bostock* decision was limited to Title VII, while the present case concerned Title IX.

A second challenged regulation concerned the definition of sexual harassment encompassing sex-based harassment, which would include conduct deemed subjectively offensive. The District Court assessed this regulation in conjunction with an intersecting regulation related to the de minimis harm standard, which prohibited policies, practices, or actions on the basis of sex that cause more than "*de minimis* harm" on the affected persons. The District Court emphasized that under this standard, any action that has the effect of "limiting" participation in an educational program or activity would be sufficient for a cause of action. To this end, the District Court emphasized that the breadth and vagueness of the regulations diminished the ability of schools to predict what conduct would be unlawful.

These concerns regarding overbreadth and vagueness segued to the District Court's determination that the Department's 2024 Final Rule and corresponding Title IX regulations were unconstitutional, exceeded the scope of the Department's statutory authority, and "arbitrary and capricious." The District Court cited two constitutional issues. First, the Court indicated that the cumulative effect of the regulations would compel speech regarding student names and gender pronouns that conform with their gender identity—which the District Court determined would infringe upon individual free speech. Second, the 2024 Final Rule and regulations violated the Constitution's Spending Clause, because the regulations positioned the states to carry vague and unpredictable obligations to receive federal funding, and the condition of funding induced the aforementioned unconstitutional compelled speech.

Furthermore, the District Court determined the Department exceeded its authority under Title IX.

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Congress did not expressly authorize the inclusion of gender identity or sexual orientation to be included within the statutory understanding of "sex." The District Court dismissed the Department's argument that the *Bostock* decision guided their 2024 Final Rule and regulations, as not only was *Bostock* limited to Title VII, but Title IX use "materially different language." Specifically, Title VII prohibits discrimination "because of sex" while Title IX prohibits discrimination "on the basis of sex."

Finally, the Court determined the Department's 2024 Final Rule and regulations were "arbitrary and capricious," as the regulations were inconsistent with other related federal laws. The District Court illustrated this issue by explaining Congress has deemed sex separation permissible in numerous circumstances, such as living facilities.; however, the new regulations state "recipients cannot separate the sexes (thus inflicting more than de minimis harm) for purposes of other 'living facilities' such as bathrooms, toilets, or showers." The District Court determined the Department failed to explain or account for the existing statutory exceptions or draw a meaningful distinction in sex separability in the circumstances, which was a critical defect in the arbitrary and capricious analysis.

The District Court decided to strike down the Department's 2024 Final Rule and corresponding Title IX regulations in their entirety rather than sever the offending provision because "the three challenged provisions fatally taint the entire rule." The Court explained that the remaining regulations reference and cite the three unlawful provisions, which the District Court determined "necessitates jettisoning these provisions as well." The Court explained the purpose of striking down all the regulations returns Title IX to the status quo that existed prior to the Department's 2024 Final Rule.

Unlike the concurrent *Kansas v. Department of Education* case that halted the implementation of the Title IX regulations in the states that were parties to the case, as well as all qualifying districts where Moms of Liberty has a local chapter, this case strikes down the 2024 Title IX regulations across the entire United States.

Practical Note: While the 2024 Title IX regulations were in effect for all school districts except those otherwise excluded above, these regulations are no longer in effect—and the regulations that immediately preceded the now struck-down regulations (i.e. 2020 Title IX regulations) are now once again controlling law.

As President-elect Trump is set to return to office on January 20, 2025, it is highly unlikely that this decision will be appealed.

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The Pennsylvania School Study Council (PSSC), a partnership between the Pennsylvania State University and member educational organizations, is dedicated to improving education by providing research information, professional development activities, and technical assistance to enable its members to meet current and future challenges. PSSC offers professional development to the membership through colloquiums, workshops, study trips, consultation, publications, and customized services. For more information, visit PSSC website, *https://www.paschoolstudycouncil.org/* or contact Matthew M. Johnson, Ph.D at mmj125@psu.edu

Subsequent Issues

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