Client Alert: Court Vacates 2024 Title IX Regulations—Next Steps for Higher Education Institutions

BY MEAGHAN E. BORYS • JANUARY 13, 2025

On January 9, 2025, the United States District Court for the Eastern District of Kentucky (the "Court") issued a decision and order in *Tennessee v. Cardona* (the "January 9 Order"). Plaintiffs had sued the Department of Education (the "Department") to challenge certain aspects of the Biden administration's 2024 Title IX regulations (the "Final Rule").

KEY ASPECTS OF THE JANUARY 9TH ORDER

The Court's ruling specifically analyzed three provisions of the Final Rule:

1. The definition of sex discrimination,
2. The *de minimus* harm standard for gender identity discrimination, and
3. The definition of sex-based harassment.

The Court concluded that these provisions variously "exceed[ed] the Department [of Education]'s authority under Title IX, violate[d] the Constitution, and [were] the result of arbitrary and capricious agency action[.]" The Court went on to find these provisions so inextricably interwoven throughout the Final Rule that it had no option but to vacate the entire set of regulations. In doing so, the Court effectively "set aside" the 2024 Title IX regulations, such that they are now completely "off the books."

IMMEDIATE IMPLICATIONS FOR HIGHER EDUCATION INSTITUTIONS

The Court's ruling is significant, particularly given the realities of the current political landscape. As of this writing, the Department of Education has not indicated whether it will appeal the Court's decision. However, it is highly unlikely that any kind of appeal would be supported by President-elect Trump's administration, given his previous administration's positions on the issues at stake.

In practical terms, this means that institutions that adopted the 2024 Title IX regulations into their policies and procedures are now faced with the likely reality of reverting to the Trump administration's 2020 Title IX regulations and enforcement.

IMPACT ON TITLE IX OFFICES – COMPLAINTS

Colleges and universities that revised their campus policies and procedures to incorporate the 2024 Title IX regulations are now grappling with how to handle Title IX complaints. Questions that may arise for such institutions include:

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- How should the Title IX Office proceed with ongoing investigations and/or adjudications involving alleged conduct that occurred on or after August 1, 2024, under the now-vacated 2024 Title IX regulations? For example, does the January 9th Order mean that all Title IX hearings must now include advisor-led cross-examination, even if not allowed under the school's current Title IX procedures?
- Which definitions of sex discrimination and sexual harassment are now applicable? For example, should an open case involving alleged discrimination based on gender identity be immediately referred out of the Title IX process?

IMPACT ON TITLE IX OFFICES – REVISIONS AND TRAININGS

Aside from immediate concerns regarding ongoing cases, colleges and universities that have updated their Title IX policies and procedures consistent with the 2024 Title IX regulations face significant operational challenges. Such institutions may need to:

- Revise their Title IX policies and procedures to align with the 2020 regulations.
- Survey all campus handbooks, websites, notices, and other publications for language that was revised in accordance with the 2024 Title IX regulations and edit the same for consistency with the 2020 regulations.
- Communicate any such changes to the campus community and potentially re-train students, staff, faculty, and external service providers on any new policies and/or procedures, as appropriate.

NEXT STEPS AND RECOMMENDATIONS

Despite the Court's statement in its January 9th Order that the ruling "is not likely to have a disruptive effect," colleges and universities that incorporated the 2024 Title IX regulations into their processes should be prepared for the practical realities of implementing any required changes to their policies and procedures, as well as rising confusion and uncertainty within the campus community.

As of now, the Department of Education has not released information regarding how institutions should proceed in light of the Court's decision. We anticipate that the Department's Office for Civil Rights (OCR) will issue further guidance in the near future, which could clarify next steps.

In the meantime, given the complexities of these issues, higher education institutions would be well advised to:

- **Consult legal counsel**: Every school's response to the January 9th Order should be carefully tailored to its specific circumstances, especially with respect to ongoing investigations and adjudications.
- **Prepare for policy revisions**: Institutions may need to amend their Title IX policies and procedures to ensure compliance with the 2020 regulations, as well as possibly conduct a campus-wide review of all policy language that may have been adjusted consistent with the 2024 Title IX regulations.
- **Stay informed**: Monitor developments closely, as the landscape remains fluid on these issues, particularly with potential administrative changes.

Our team is available to assist you as you navigate this evolving situation. Please reach out to your Bowditch higher education lawyer to discuss how this impacts your institution.

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