

# Title IX Updates: What Colleges and Universities Need to Know Now

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## SPEAKERS

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# What We'll Cover Today

- Executive Orders
  - 14168 – *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*
  - 14151 – *Ending Radical and Wasteful Government DEI Programs and Preferencing*
  - 14173 - *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*
- Conflicts with State and Local Laws
- Sample Policy Language
- 2020 Title IX Regulations – Investigations and Hearings

# EO 14168

What it does — *and what it does not do.*

## What it does

- Says federal policy: two sexes, male and female
- Tells every agency to revise its forms and trainings
- Tells the AG to issue Bostock guidance on single-sex spaces
- Conditions federal funding on biological-sex designations

## What it does not do

- Amend Title VII or Title IX (only Congress can)
- Overrule Bostock — still binding precedent
- Preempt your state or local anti-discrimination laws
- Change the 2020 Title IX regulations

The pressure point is **federal funding** — not preemption.

# EEOC Decision Feb. 26, 2026

*Selina S.* is a signal — **not a safe harbor.**

- **Who it binds:**
  - Federal-agency employers
- **Does not bind your institution:**
  - Public universities (Rutgers, Penn State)
  - Private universities
  - Federal courts (Third Circuit, etc.)
  - Your state law (NJLAD, PHRC regs, DDEA)
- **What it held:**
  - Federal-agency employers may keep transgender employees out of opposite-sex bathrooms.
- **What it overturned:**
  - *Lusardi* — but only on bathrooms. The misgendering-as-harassment holding stands.

*EEOC Appeal No. 2025003976 · 2-1 (Lucas/Panuccio; Kotagal dissenting)*

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# One Precedent, Three States

***Doe v. Boyertown*** · 3d Cir. 2018 · cert. denied 2019

- Inclusive bathroom and locker-room policy did not violate cisgender students' rights under the Constitution, Title IX, or PHRA.

**New Jersey (NJLAD):** Since 2006

- Statute

**Pennsylvania (PHRC Regulations):** Aug. 2023

- Reg — challenge pending

**Delaware (DDEA):** Since 2013

- Statute

*Boyertown is your binding circuit precedent — unaffected by the PHRC challenge in PA.*

# Your State Law Floor

Three states. *Same direction.*  
Different sources.

| S T A T E    | S O U R C E                      | S I N C E | S T A T U S                      |
|--------------|----------------------------------|-----------|----------------------------------|
| New Jersey   | Law Against Discrimination       | 2006      | ● In the statute                 |
| Delaware     | Discrimination in Employment Act | 2013      | ● In the statute                 |
| Pennsylvania | PHRC Regulations · PFEOA         | 2023      | ● Regulation · Challenge pending |

**PA is the outlier.** Only Mid-Atlantic state without statutory codification — but Boyertown still protects the bathroom analysis.

# Breaking News—May 4, 2026

## *Smith College*

## **Now admissions, too.**

### What Happened

- **OCR opened a Title IX investigation** into Smith College for admitting transgender women.
- **Complaint filed June 2025** by Defending Education. ED acted this week.
- **ED's theory:** Title IX's single-sex college exception applies on "biological sex difference, not subjective gender identity."
- **First admissions-focused** enforcement action under EO 14168.

### What it means for you

- **Investigation, not finding.** Don't pre-comply. Pre-compliance is the trap.
- **Inventory women-only programs** — admissions, scholarships, residential, fellowships, leadership.
- **Same legal theory** as the PA Thomas More challenge. Watching one tells you about the other.
- **Brief your President** before the press team does. This crosses your desk this week.

*U.S. Dep't of Education, Office for Civil Rights — Title IX Investigation announced May 4, 2026*

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# Hypothetical – Athletics

Five regimes.

*One person.*

You're GC at an NJ public university · D-I athletics · *trans woman on women's swim team* · *also a graduate teaching assistant*

**01**

## Federal Title IX

OCR letter. § 1682 funding process — many steps before any consequence.

**02**

## NCAA Eligibility

Feb. 6, 2025 rule already restricts competition. Apply it neutrally.

**03**

## NJLAD

Express gender-identity coverage. Aggressive state AG.

**04**

## Constitution

Public university = state actor. Boyertown is the closest 3d Cir. guidance.

**05**

## Title VII / Bostock

TA job triggers separate, independent employment-side rights.

**Apply the NCAA rule consistently.** *Don't go beyond it.* Use single-user options for facilities. Document the record.

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# Hypothetical Locker Rooms and Bathrooms

One footprint.

*Three architectures.*

## Tier 3

HIGHEST EXPOSURE

### **Sex-segregated by sex assigned at birth**

*Immediate state-law exposure in all three states. Conflicts with Boyertown. Don't recommend.*

## Tier 2

MIDDLE GROUND

### **Single policy permitting access by gender identity**

*Aligns with state law and Boyertown across all three states. Federal-funding exposure — write the rationale into the policy.*

## Tier 1

MOST DEFENSIBLE

### **Expand single-user, all-gender facilities**

*Neutral on its face under federal and state law. Capital cost; lowest legal exposure. Tell Capital Planning now.*

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# The Biggest Risk: Whiplash

The institutions that hold up are the ones whose GC built a clear governance process — counsel review of every public-facing change, documented decisional rationale, and one point of coordination across student affairs, HR, athletics, residence life, and external affairs.

- May 4, 2026 - Smith College—admissions
- June 2026 - Hecox + B.P.J. decisions
- Pending - PHRC regulatory challenge
- Ongoing - Title IX SIT enforcement

# Single-Sex Programs

- Executive Orders Nos. 14151 & 14173
  - EO 14151: “Ending Radical and Wasteful Government DEI Programs and Preferencing”
  - EO 14173: “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”
- Guidance from AG’s Office
  - Immediate Compliance:
    - “Eliminate Numerical Goals or Targets”
    - “Review Hiring and Promotion Criteria”
    - “Examine Contract Funding Requirements and Guidance”

# Single-Sex Programs

- Response from States
  - April 9, 2025 PA DOE Letter
  - Similar response from Delaware and Maryland while New York and New Jersey took more forceful approach
- Response from City of Philadelphia
  - Office of Diversity, Equity, and Inclusion maintained
  - Elimination of DEI contracting goals

# Single-Sex Programs

- Legal Challenges
  - Grounds: vagueness, First Amendment, Due Process, Ultra Vires
- Resolution Agreements
  - Brown – \$50 million in grants towards workforce development in Rhode Island over 10 years
  - Columbia – \$200 million fine to U.S. government
  - Northwestern – \$75 million fine to U.S. government over 3 years
  - UPenn – Ban on transgender female athletes participating in women's sports

# Single-Sex Programs

- Example No. 1: University Scholarship for Women in STEM
  - Is DEI implicated?
  - Can the university maintain the scholarship while complying with the EOs?
  - Potential Mitigation?
- Example No. 2: University Hospital Drug Treatment Program for Women
  - Is DEI implicated?
  - Can the university maintain the program while complying with the EOs?
  - Potential Mitigation?

# The Return to 2020 Regulations

- Is it Title IX?
- Mandatory Dismissal
- Voluntary Dismissal
- Witness issues
- Hypotheticals
  - Ongoing dating violence
  - Study abroad
  - Sexual harassment during a clinical experience

# Questions?



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