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OCR Announces That LGBTQ+ Students Are Protected by Title IX, Providing Further Guidance to K-12 Schools, Colleges, and Universities Navigating a Shifting Title IX Landscape

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On June 16, 2021, the U.S. Department of Education's (the "Department") Office for Civil Rights ("OCR") issued a [Notice of Interpretation](#) explaining that it will enforce Title IX's prohibition of discrimination on the basis of sex to include: (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity.^[1] The move is the latest action by OCR in carrying out President Biden's *Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*,^[2] and follows an April 2021 letter from OCR that outlined plans to engage in a comprehensive review of the Department's existing regulations, orders, guidance, policies, and other similar agency actions in anticipation of publishing a notice of proposed rulemaking.^[3] We previously discussed the Department's approach to Title IX enforcement under the Biden Administration [here](#).

The Department's interpretation aligns with last year's Supreme Court decision in *Bostock v. Clayton County*, where the Court recognized that Title VII's prohibition against sex discrimination in employment includes discrimination on the basis of sexual orientation and gender identity. Crucial to education programs and activities that receive federal funding, as well as to the students they serve, the interpretation provides insight into how the federal government plans to enforce Title IX.

The interpretation presents new considerations bearing on a wave of bills that have been introduced (and in some instances, passed) at the state level aimed at banning transgender students from playing sports that correspond with their gender identity. While unclear exactly how the new interpretation will affect such laws, institutions should consider whether their existing policies may need revision in light of the OCR's interpretation of Title IX's scope.

While the Notice of Interpretation does not have the force of law, OCR's action suggests that protections for LGBTQ+ students are likely to be addressed if and when the Department publishes a notice of proposed rulemaking to amend its Title IX regulations.

Saul Ewing Arnstein & Lehr will continue to monitor these developments. If you have questions about the Notice of Interpretation, this alert, or other Title IX issues, please reach out to your regular Saul contact or the authors.

1. U.S. Dept. of Educ., Office for Civil Rights, *Federal Register Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, (June 16, 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf>.
2. *Exec. Order 14021*, 86 Fed. Reg. 13,803 (March 11, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-03-11/pdf/2021-05200.pdf>.
3. U.S. Dept. of Educ., Office for Civil Rights, Letter to Students, Educators, and other Stakeholders re Exec. Order 14021, (Apr. 6, 2021), <https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/20210406-titleix-eo-14021.pdf>.

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