

TITLE IX

HELP SAVE IT

**What is
Title IX?**

**What is the
New Rule?**

**What can
you do?**



A guide to understanding Title IX on
America's college campuses



This is for your general informational purposes only. It is not legal advice and does not create an attorney-client relationship between you and Southeastern Legal Foundation.

We're here to help.

In April 2024, the Biden-Harris administration created a new rule that will strip women and girls of the protections and equality they have had for over 50 years. Under the new rule, female college students will be silenced for believing in biological reality that there are only two genders and for speaking up for their physical safety when forced to share a bathroom, locker room, or overnight sleeping accommodations with a male.

That's the bad news. The good news is that you have the power to fight back. Together, the Riley Gaines Center at the Leadership Institute and Southeastern Legal Foundation have created this guidebook and a series of modules that give you the tools you need to do so.

In our experience, many of you need an answer to your problems right now. That's why we've compiled this guidebook. In it you'll find an overview and history of Title IX, a discussion of the radical Biden-Harris Title IX Rule, and hypotheticals to help you fight for your rights.

The law can be a powerful weapon, offering hope for a lasting victory. Before you can successfully reclaim your rights, you must first understand them and lay out a strategy. Together we can create a movement that does not sit by while bureaucrats tell us what to believe and punish us for speaking the truth.



A handwritten signature in blue ink that reads "Riley Gaines".

Riley Gaines
Director, Riley
Gaines Center at the
Leadership Institute



A handwritten signature in blue ink that reads "Kimberly".

Kimberly Hermann
Executive Director,
Southeastern Legal
Foundation



WHAT IS TITLE IX?

It is a law passed by Congress in 1972 that requires schools receiving federal funding to provide equal educational opportunities to boys and girls

“

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

”

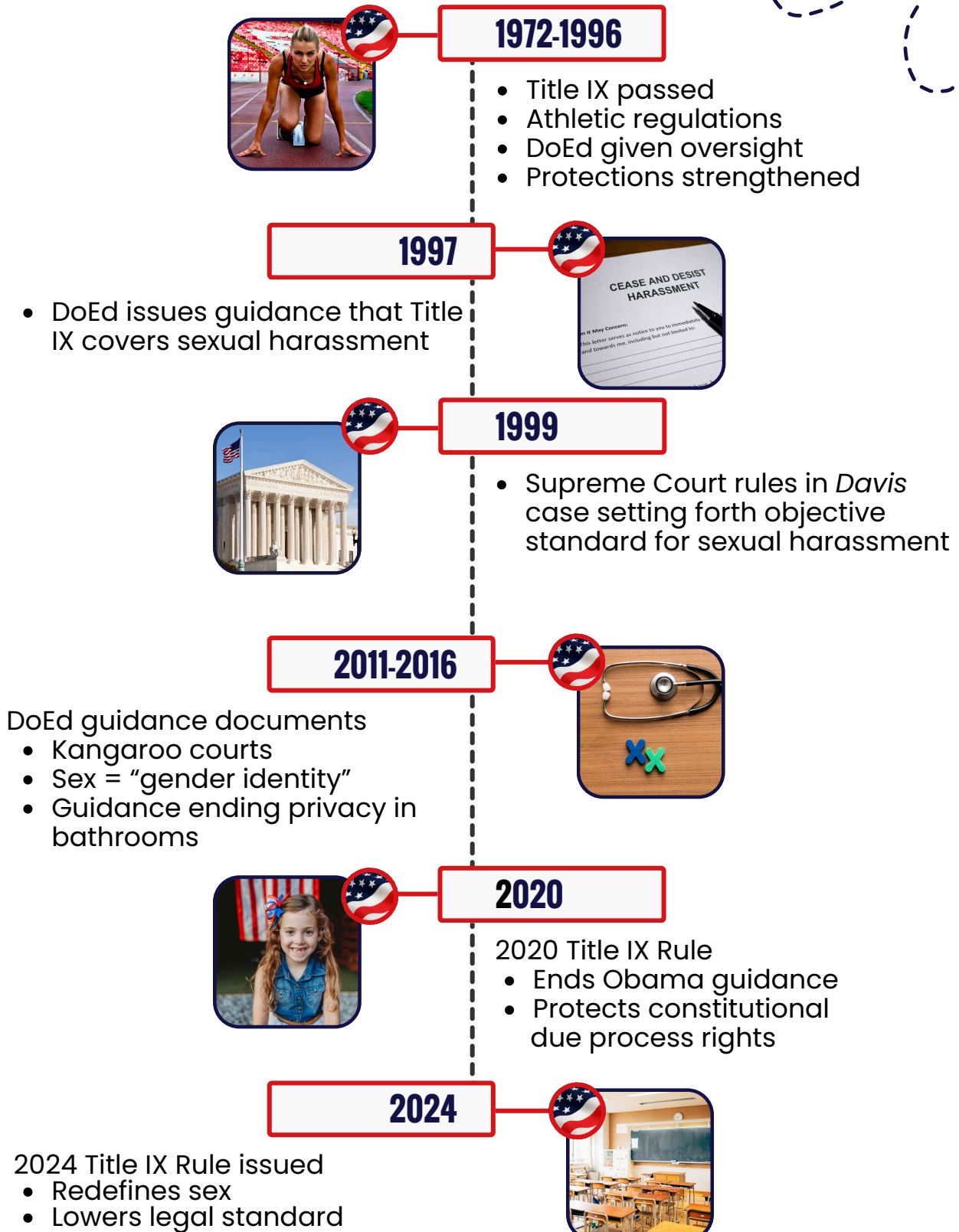
Because of Title IX, covered schools must treat all students equally regardless of their sex

Title IX protects the rights of girls and boys to have sex-separate private spaces like bathrooms, locker rooms, and overnight sleeping accommodations

Title IX protects the rights of girls and boys to have sex-separate athletic teams

TIMELINE

A brief history of Title IX



MAJOR TITLE IX RULE CHANGES

1 REDEFINING “SEX”

Title IX prohibits discrimination on the basis of sex. The term “sex” has always been understood to refer to biological sex – a man or a woman. In the 2024 Title IX Rule, the Department of Education redefines sex by expanding the scope of what constitutes “discrimination on the basis of sex.”

pre-August 2024

“Sex” means
biological sex



VS

August 2024

“Sex” means

- sex stereotypes
- sex characteristics
- pregnancy or related conditions
- sexual orientation
- gender identity



WHAT IS “GENDER IDENTITY”?

The DoEd never defines gender identity. Instead it explains that the term refers to “an individual’s sense of their gender, which may or may not be different from their sex assigned at birth.”

2

ELIMINATING SEX SEPARATE FACILITIES AND PROGRAMS

Title IX and its related regulations state that providing sex-separate facilities and programs for private spaces such as bathrooms, locker rooms, overnight sleeping accommodations, fraternities and sororities, and athletics does NOT constitute discrimination on the basis of sex.

pre-August 2024

Sex separate spaces allowed

VS

August 2024

Sex separate spaces
=
sex based discrimination

Under the 2024 Title IX Rule, a school violates Title IX if it prevents a person from participating in an education program or activity (such as a class, sport, or extracurricular) consistent with their gender identity.



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DOES THIS MEAN A COLLEGE HAS TO ALLOW A BOY TO USE A GIRL'S LOCKER ROOM?

Unfortunately, yes. For example, if a school requires students to change for gym and a boy who identifies as a girl wants to use the girl's locker room, the school now has to let him or risk its federal funding.

3 REDEFINING SEX-BASED HARASSMENT

In the 1990's, the DoEd expanded the scope of Title IX to include "hostile environment harassment" as a form of sex discrimination.

The 2024 Title IX Rule turns Title IX on its head by lowering the standard for what constitutes hostile educational environment in several ways:

Pre-August 2024

Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to education

- Objective standard based on a reasonable person
- Follows Supreme Court precedent established in *Davis* case
- Evaluated at educational opportunity level

VS

August 2024

Unwelcome sex-based conduct that is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from an educational program or activity

- Subjective standard based on accuser's feelings
- Rejects Supreme Court precedent in *Davis*
- Evaluated at a program or activity
- Has chilling effect on speech



DOES THE DEPARTMENT OF EDUCATION HAVE THE UNILATERAL POWER TO MAKE THESE CHANGES TO TITLE IX?

The DoEd is a federal administrative agency. That means it only has the authority that Congress has given it. This is especially true when the issues at hand have vast economic or political significance, also referred to as “major questions.”

Congress never authorized the DoEd to rewrite Title IX or turn the statute on its head, effectively rendering the statute meaningless. But that is exactly what the DoEd did.

The 2024 Title IX Rule decides major questions such as:

- whether to force schools, students, and teachers to accept a person’s subjective gender identity regardless of biological sex;
- whether biological males who identify as females are allowed in female bathrooms, locker rooms, and overnight sleeping accommodations; and
- whether a school can ask for documentation to substantiate a person’s subjective gender identity.

If a school fails to comply with the 2024 Title IX Rule, it puts its federal funding at risk. This amounts to hundreds of millions, or even billions, of dollars each year.



Execute Laws



Make Laws



Interpret Laws

The First Amendment

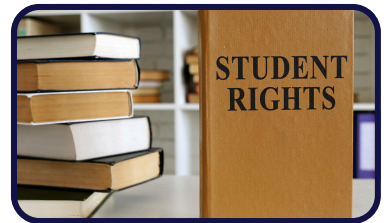
and your rights to speak and to not speak

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WHAT IS SPEECH?

Speech is anything that conveys a message. It includes art, signs, symbols, publications, clothing, social media posts, flyers, symbols, film, and even hate and offensive speech.

It does not include obscenity, imminent incitement of violence, true threats against safety, or defamation.



Q

WHEN CAN MY COLLEGE RESTRICT MY SPEECH?

NEVER OK

Viewpoint restrictions

- Treating speakers differently based on beliefs
- Showing favoritism

ALMOST NEVER OK

Content-based restrictions

- Banning entire subjects
- Must serve a compelling government interest and be narrowly drawn

SOMETIMES OK

Time, place, and manner restrictions

- Must be reasonable
- Must treat everyone the same
- Must provide alternative ways to convey message



CAN MY COLLEGE PUNISH ME FOR EXPRESSING MY BELIEF IN BIOLOGICAL SEX?

The 2024 Title IX Rule is vague and overbroad, making it difficult to know exactly what speech is permissible and what speech would constitute sex-based harassment.

For example, the DoEd hasn't been able to answer whether a student would be punished for stating his belief that sex and gender are the same, are immutable, and/or that a person's gender identity can't deviate from biological sex.

Because it is impossible to know what the limits of legal speech are on the topic of gender identity or sexual orientation under the 2024 Title IX Rule, America's college students will be forced to self-censor in violation of their First Amendment rights.



CAN MY COLLEGE REQUIRE ME TO USE INCORRECT PRONOUNS?

The First Amendment protects your right to speak and to not speak. Colleges cannot require students to attest or affirm a statement they don't believe in.

Unfortunately, many colleges will lean on the 2024 Title IX Rule to require students to use incorrect pronouns, to use incorrect names, to affirm or attest the idea that gender is fluid and subjective, or to denounce biological sex.

If you think your college has compelled your speech, you should consult an attorney to see if your school has violated your First Amendment rights.

Due Process Rights

and your right to a fair trial

The Constitution requires that schools must afford their students and employees due process of the law before they are disciplined, terminated, or expelled

“
No person shall . . . be deprived of life,
liberty, or property without due process
of the law.
”

Title IX regulations require schools to establish and publish grievance procedures to “promptly and equitably” resolve Title IX complaints

In 2020, the DoEd issued the 2020 Title IX Rule defining the basic standards of due process schools were required to include in their Title IX grievance procedures

The 2024 Title IX Rule overrides the 2020 Title IX Rule’s due process requirements, withholding constitutional due process from students and employees accused of sex-based discrimination



VS

2020 Title IX Rule

- All parties must be notified of alleged conduct when complaint filed
- All parties have right to present evidence and to question evidence to an unbiased decisionmaker
- All parties have the right to appeal
- The roles of investigator and decisionmaker are separate, reducing bias concerns

August 2024

- Accused not notified until formal proceeding
- No right to see all evidence
- No right to question complainant or witnesses
- No right to address allegations publicly
- No right to legal representation
- Eliminates requirement complaint be made in writing
- Only accuser has right to appeal
- Lowers burden of proof
- Investigator can also be the decisionmaker



WHAT CAN HAPPEN TO A PERSON OR ORGANIZATION ACCUSED OF SEX-BASED DISCRIMINATION?

A student accused of sex-based discrimination in violation of Title IX can lose campus privileges, scholarships, and the ability to participate in school programs, and may even be suspended or expelled from school.



HOW CAN I SUPPORT THE FIGHT TO STOP THE TITLE IX CHANGES?

You can help stop the radical changes to Title IX!

EDUCATE



- Contact Leadership Institute and educate your college community by planning an event about Title IX
- Provide your peers with resources on Title IX through events, tabling, and discussion



ACTIVATE

- Join a student organization that is taking action at every level to stop the 2024 Title IX Rule and protect America's women from radical gender ideology
- Be a leader on your college campus and start an organization dedicated to fighting to save Title IX and women's sports

SUPPORT



- Support Leadership Institute's efforts to educate and equip college students on their rights
- Support the legal fight to stop the Department of Education's new Title IX Rule by visiting SLFLiberty.org/donate

NOTES
to help you save Title IX

NOTES
to help you save Title IX

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at the Leadership Institute

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