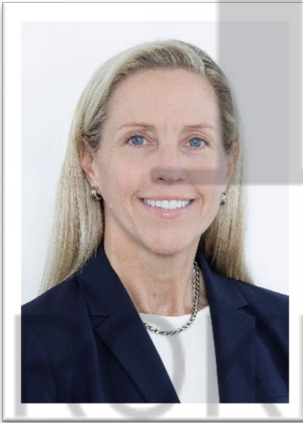


The 2024 Title IX Final Rule: Was it All a Dream?

**What Massachusetts Charter Public Schools Need to
Know about Recent Changes to Title IX**

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AGENDA

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- Introduction
- Title IX Background and Legal Landscape
 - Executive Orders and Other Federal Guidance
 - Federal/State Law Tension
 - Key Cases and Considerations
- Requirements for Title IX Compliance
- 2020 vs. 2024 Distinctions
- Recommendations and Action Steps
- Q&A

Historical and Present Legal Landscape

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What is Title IX?

PUBLIC LAW 92-318—JUNE 23, 1972

TITLE IX—PROHIBITION OF SEX DISCRIMINATION

SEX DISCRIMINATION PROHIBITED

SEC. 901. (a) 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, except that:

Federal Legal Landscape

- **August 14, 2020:** 2020 Title IX regulations effective
- **August 1, 2024:** 2024 Title IX regulations effective
- **January 9, 2025:** Federal District Court ruling effectively vacates 2024 Title IX regulations nationwide (*Tennessee v. Cardona*, E.D. Ky.)
- **January 20, 2025:** Executive Order 14168 by President Trump defines “sex” as “an individual’s immutable biological classification as either male or female” and prohibits the use of federal funds to promote gender ideology/gender identity
- **February 4, 2025:** U.S. Department of Education (“USDOE”) confirms in a Dear Colleague Letter that USDOE will enforce the 2020 Title IX rule, consistent with the January 9 ruling and the January 20 Executive Order.
- **February 5, 2025:** Executive Order 14201: Keeping Men Out of Women’s Sports

Massachusetts State Law

- ❑ Schools are prohibited under state law (G.L. c. 76, §5; c. 151B; and c. 151C) from discriminating on the basis of sex, including on the bases of sexual orientation and gender identity.
 - ❑ MA charter school statute and regulations (G.L. c. 71, 89; 603 CMR 1.00)
 - ❑ Equal Access to Educational Opportunity regulations (603 CMR 26.00)
- ❑ February 7, 2025 (updated on Feb. 11, 2025): the Massachusetts Department of Elementary and Secondary Education (“DESE”):
 - ❑ reiterated that MA state law prohibits discrimination in public schools based on, among other things, sex, gender identity, and sexual orientation; and
 - ❑ confirmed the continued application of DESE’s previous guidance on non-discrimination on the basis of gender identity. See: <https://www.doe.mass.edu/sfs/lgbtq/genderidentity.html>
 - ❑ Feb. 26, 2025: Governor Healey and MA AGO joint guidance regarding equal access to education.
- ❑ MA Pregnant Workers Fairness Act (PWFA)
- ❑ MA Bullying Statute (G.L. c. 71, § 37O)

Federal Law – State Law Tension

- Supremacy Clause
 - Preemption
 - Examples

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Massachusetts State Law Implications

- Massachusetts public schools and private schools that receive federal financial assistance should continue to implement anti-harassment and anti-discrimination policies that are compliant with state law (e.g., including policies that prohibit discrimination and harassment on the bases of sexual orientation and gender identity), while also revising and implementing Title IX policies and procedures to comply with the 2020 Title IX regulations.
 - **Non-Title IX anti-discrimination/anti-harassment policy should include means to address allegations of discrimination on basis of sex that do not meet the Title IX standard.**
- Again, Massachusetts law and DESE policies have included robust protections against sex-based discrimination for many years, including protections against discrimination/harassment based upon gender identity, sexual orientation, and pregnancy and related conditions. **DESE and the MA AGO have issued guidance reminding public schools that nothing has changed at the state level in this regard.**

Key Cases/Issues to Follow in the Title IX Arena

- ❑ EO 14168 - Only 2 sexes: M&F
- ❑ EO 14201 – Federal government will interpret Title IX using definition in EO 14168
- ❑ *Bostock v. Clayton County, Georgia* 590 US 644 (2020)
- ❑ EEOC: Has moved to dismiss pending transgender bias cases and paused processing of transgender bias charges.
 - ❑ Employees may still pursue discrimination claims based upon gender identity in MA state courts/MCAD

LGBTQ+ and Gender Identity

Gender Identity/Preferred Pronouns

- Recent First Circuit cases
 - *L.M. v. Town of Middleboro* (Petition for writ of cert. pending at SCOTUS)
 - *Foote v. Ludlow School Committee* (Petition for writ of cert. pending at SCOTUS)

Reminder to Charter Schools: Required by state charter school statute (G.L. c. 71, § 89(m)) and regulations (603 CMR 1.05(2)) to include nondiscrimination statement that prohibits discrimination on basis of gender identity.

Balance of Student and Employee Rights

- ❑ First Amendment Considerations
 - ❑ Free Speech
 - ❑ Religion
- ❑ Conflicts between employees and students can be tricky to navigate
 - ❑ Follow your discrimination/harassment and reasonable accommodation policies with fidelity
 - ❑ Consult with counsel
- ❑ Be clear in employee handbooks and staff trainings that any posts made outside of one's professional responsibilities must not reference the organization or suggest that views are that of the organization.

Current Title IX Framework

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Discrimination on the Basis of Sex

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2020 Title IX Regulations

- ❑ Prohibits discrimination on the basis of sex
- ❑ Including sexual harassment

2024 Title IX Regulations

- ❑ Prohibits discrimination on the basis of sex, including on the bases of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity
- ❑ Including sex-based harassment

- ❑ The 2020 Title IX Regulations do not expressly recognize sexual orientation and gender identity in the prohibition against discrimination on the basis of sex
 - ❑ **BUT** those categories have arguably always been included under the umbrella of discrimination based upon “sex”, particularly under Massachusetts (“MA”) law, and often are included in school policies as well.

Title IX Definitions

Title IX prohibits discrimination on the basis of sex, including sexual harassment (as defined in the 2020 Title IX regulations).

- **Sexual harassment** is conduct on the basis of sex that satisfies one or more of the following:
 - An employee of the school conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
 - Sexual assault, dating violence, domestic violence, or stalking (as defined by the regulations).
- **Complainant** means an alleged "victim" of sex discrimination.
- **Respondent** means an alleged "perpetrator" of sex discrimination.

**The definitions above reflect language from the 2020 Title IX Final Rule.*

Requirements for Title IX Compliance

- 1) **Respond promptly** in a manner that is **not deliberately indifferent** when the recipient has actual knowledge of sex discrimination
- 2) Designate **Title IX Coordinator**
- 3) Publish a **notice of nondiscrimination** (announcing prohibition against discrimination on the basis of sex)
- 4) Adopt, publish, and implement a **nondiscrimination policy** AND **grievance procedures**
- 5) Ensure that relevant people are **trained** on their Title IX duties
- 6) Maintain appropriate **records**

**The requirements above reflect language from the 2020 Title IX Final Rule.*

2020 vs 2024 Rules: Notable Distinctions

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	2020 Title IX Final Rule	2024 Title IX Final Rule
Scope of Sex Discrimination	Discrimination on the basis of sex is prohibited	Discrimination on the basis of sex is prohibited, including discrimination on the following bases: <ul style="list-style-type: none">• sex stereotypes• sex characteristics• pregnancy or related conditions• sexual orientation• gender identity
Gender Identity	Neither “gender” nor “gender identity” is referenced in the 2020 Final Rule	Gender identity recognized It is prohibited (i.e., more than de minimis harm) to prevent a person from participating in an education program or activity consistent with the person’s gender identity.
Pregnancy	Not referenced in the 2020 Final Rule	Discrimination prohibited; supports from Title IX Coordinator.

2020 vs 2024 Rules: Notable Distinctions

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	2020 Title IX Final Rule	2024 Title IX Final Rule
Definition of Hostile Environment Sexual Harassment	Unwelcome sex-based conduct determined by a reasonable person to be (1) so severe, pervasive, and objectively offensive that (2) it effectively denies a person equal access to the recipient's education program or activity.	Unwelcome sex-based conduct that, based on the totality of the circumstances, is (1) subjectively and objectively offensive and (2) is so severe or pervasive that (3) it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity
Duty to Respond	Recipient with "actual knowledge" of sexual harassment in its education program or activity must respond promptly and in a manner that is not "deliberately indifferent." Recipient has "actual knowledge" when the Title IX Coordinator, any official authorized to institute corrective measures, or any employee of an elementary or secondary school is notified of sexual harassment.	Recipient with knowledge of sex discrimination in its education program or activity must respond promptly and effectively. A recipient has "knowledge" when any non-"confidential employee" of the recipient has information about conduct that may reasonably constitute sex discrimination.

2020 vs 2024 Rules: Notable Distinctions

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	2020 Title IX Final Rule	2024 Title IX Final Rule
Jurisdiction	<p>Only conduct that occurred inside the U.S. may be opened for Title IX investigation.</p> <p>At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in an education program or activity of the recipient.</p>	<p>Conduct that occurred outside the U.S. may be opened for Title IX investigation when that conduct contributed to the alleged hostile environment.</p> <p>No requirement that a Complainant be participating in or attempting to participate in an education program or activity of the recipient at the timing of filing a complaint.</p> <p>Complainant must have been participating in or attempting to participate in an education program or activity of the recipient at the time of the conduct alleged in the complaint (i.e., school alumni can file complaints)</p>

2020 vs 2024 Rules: Notable Distinctions

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	2020 Title IX Final Rule	2024 Title IX Final Rule
Complaint	<p>“Formal complaint” – re sexual harassment</p> <p>Written and signed</p> <p>May be filed by a Complainant or a Title IX Coordinator, but not by a reporter.</p>	<p>“Complaint” – re sex discrimination</p> <p>Oral or written; no signature required</p> <p>May be filed by a Complainant, a Title IX Coordinator, or a reporter.</p>
Dismissal	<p>Mandatory dismissal of sexual harassment allegations (for the purposes of Title IX, but not other recipient policies) if the conduct</p> <p>(1) would not constitute sexual harassment even if proved,</p> <p>(2) did not occur in the recipient’s education program or activity, or</p> <p>(3) did not occur against a person in the U.S.</p>	<p>Dismissal of alleged conduct from a Title IX investigation is discretionary, but not mandatory.</p>

2020 vs 2024 Rules: Notable Distinctions

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	2020 Title IX Final Rule	2024 Title IX Final Rule
Supportive Measures	Must be offered to Complainants May be offered to Respondents	Must be offered to both Complainants and Respondents.
Notice	Notice to be given to Respondent(s) at the time a complaint is filed under Title IX.	Notice is given to Respondent(s) only when the alleged conduct is opened for investigation under Title IX.
Grievance Procedure Roles	Decisionmaker may NOT be the same person as the Title IX Coordinator or Investigator (i.e., single investigator model prohibited).	Decisionmaker may be the same person as the Title IX Coordinator or Investigator (i.e., single investigator model permitted).

2020 vs 2024 Rules: Notable Distinctions

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	2020 Title IX Final Rule	2024 Title IX Final Rule
Evidence	Recipient must send to the parties any evidence obtained as part of the investigation that is directly related to the allegation(s) opened for Title IX investigation and not otherwise impermissible.	Parties must be provided an equal opportunity to access the evidence (or an accurate description of the evidence) obtained as part of the investigation that is relevant to the allegation(s) opened for Title IX investigation and not otherwise impermissible.
Party Responses to Evidence	Parties have at least 10 days to submit a written response to the evidence, if they so choose.	Parties must have a reasonable amount of time to submit a written response to the evidence, if they so choose.
Investigative Report	Must fairly summarize the relevant evidence Must be sent to the parties and their respective advisors at least 10 days prior to determination of responsibility (i.e., hearing or written determination)	N/A

2020 vs 2024 Rules: Notable Distinctions

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	2020 Title IX Final Rule	2024 Title IX Final Rule
Party Questions	After the Investigative Report and before a determination regarding responsibility, parties may submit relevant questions for any party or witness, review the answers to those questions, and submit limited follow-up questions.	N/A
Hearing	Live hearings required for post-secondary institutions (optional for other recipients)	Live hearings are NOT required for any recipients
Training	Title IX training materials must be made publicly available on the recipient's website.	Title IX training materials must be made available for inspection upon request by members of the public.

Basic Requirements for Grievance Procedures

- ❑ **Equitable** treatment of complainants and respondents
- ❑ **Objective evaluation of all relevant evidence**, provided that
 - ❑ information protected under a legally recognized privilege may not be considered unless the privilege is waived, and
 - ❑ credibility determinations may not be based on a person's status as a party or witness
- ❑ **Training** for Title IX Coordinators, Investigators, Decisionmakers, and anyone designated to facilitate an informal resolution process, and **no conflicts of interest or bias** from any of them towards complainants and respondents
- ❑ **Presumption of non-responsibility** during grievance process
- ❑ Reasonably **prompt** timeframes
- ❑ Bases for **appeal**
- ❑ Prohibition against **retaliation**
 - ❑ A school must prohibit retaliation, including peer retaliation, and respond to allegations of retaliation in accordance with its Title IX policy and grievance procedures.

**The requirements above reflect language from the 2020 Title IX Final Rule.*

Grievance Procedures

1. Formal Complaint
2. Notice of Allegations
3. Party Responses to Notice of Allegations
4. Interviews and Evidence Collection
5. Distribution of Evidence
6. Party Responses to Evidence
7. Investigative Report
8. Questions and Answers
9. Live Hearing*
10. Written Determination
11. Appeal

**The procedures above reflect language from the 2020 Title IX Final Rule.*

Key Takeaways & Action Steps

- ❑ Review and Update Title IX Policy and Grievance Procedures and related forms
- ❑ Train/Retrain staff
- ❑ Conduct an internal compliance audit (e.g., training materials to website)
- ❑ Keep up-to-date with federal and state guidance related to Title IX and other protected classes
- ❑ Employee and Student Handbooks should make clear that discriminatory misconduct that does not meet the elements of Title IX may still violate school policies and be subject to employee or student discipline.
- ❑ Consult with counsel as needed – the balance of individual rights (students and staff) can be complex to navigate
- ❑ If you receive a notice from any federal agency – Don't sit on it!

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