

***Krokidas & Bluestein LLP Presents Webinar “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”***

On March 25, 2025, Krokidas & Bluestein LLP presented a webinar entitled “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” in collaboration with the Massachusetts Charter Public School Association. Attendees of the webinar submitted questions on various Title IX topics before, during, and after the webinar that have been aggregated and addressed in this Frequently Asked Questions (“FAQ”) document. Consult the webinar slide deck and/or audiovisual recording for a more detailed discussion of the current status of Title IX. **Please note that this FAQ document is for informational purposes only and does not constitute legal advice. Consultation with legal counsel is recommended for specific questions and policy implementation.**

## **1 *What is required for Title IX compliance right now?***

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On January 9, 2025, the United States District Court for the Eastern District of Kentucky issued an order that had the effect of vacating the 2024 Title IX regulations nationwide. Shortly thereafter, the U.S. Department of Education’s Office for Civil Rights (“OCR”) confirmed in guidance documents that the 2024 Title IX regulations are no longer in effect and that the 2020 Title IX regulations are controlling once again. As a result, recipients of federal financial assistance (“recipients”), including Massachusetts public charter schools, must ensure compliance with the 2020 Title IX regulations in the recipient’s education programs and activities.

The now-effective 2020 Title IX regulations require in pertinent part that recipients:

- respond promptly in a manner that is not deliberately indifferent when the recipient has actual knowledge of sex discrimination in its education program or activity;
- designate a Title IX Coordinator;
- publish a notice of nondiscrimination announcing the recipient’s prohibition against discrimination on the basis of sex;
- adopt, publish, and implement a nondiscrimination policy and Title IX grievance procedures;
- ensure that people with roles in the Title IX grievance process are trained on their responsibilities; and
- maintain appropriate records for Title IX-related matters.

Title IX also requires that recipients adopt grievance procedures that include the following elements:

- equitable treatment of both complainants and respondents;
- objective evaluation of all relevant and not otherwise impermissible evidence;

- training for, and the absence of any conflict of interest or bias from, Title IX Coordinators, Investigators, Decisionmakers, and anyone else with a role in the Title IX grievance process;
- presumption of non-responsibility for respondents prior to the conclusion of the Title IX grievance process;
- reasonably prompt timeframes;
- bases for the parties to appeal; and
- prohibition against retaliation.

See Slides 14-25 for additional information on requirements for compliance with the 2020 Title IX regulations.

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**2    *When should Title IX policies and procedures compliant with the 2020 regulations be adopted? What if DESE has yet to offer sample policies and procedures?***

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Recipients should currently be using Title IX policies and grievance procedures compliant with the 2020 Title IX regulations. DESE has not issued Title IX guidance documents or model policies in the past.

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**3    *Is there any action that a Board of Trustees (a “Board”) needs to take a school to adopt a Title IX policy and procedures compliant with the 2020 Title IX regulations?***

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A charter school may have school-specific practices with respect to which school policies its Board must approve prior to the school’s adoption of the policies, so it is important to familiarize yourself with your charter school’s practices. Regardless, as indicated in FAQ #2 above, schools should currently be using Title IX policies and procedures compliant with the 2020 Title IX regulations – even if they have yet to be approved by the school’s Board. If your school requires Board approval for changes to your Title IX policy, please take immediate action to arrange for the adoption of a compliant Title IX policy.

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**4    *What obligation is there for the Board of Trustees to address Title IX complaints pursuant to the complaint process described in 603 CMR 1.09?***

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603 CMR 1.09 is a Massachusetts regulation that outlines procedures for a parent, guardian, or other individual or group who believes that a charter school has violated or is violating any provision of M.G.L. c. 71, § 89, or 603 CMR 1.00 to file a complaint with the charter school's Board. The Board is required to investigate and respond to such a complaint in writing no later than 45 days from receipt of the complaint. In general, the Board is not obligated to involve itself in the Title IX grievance process unless the school’s Title IX policy and procedures provide some role for the Board, such as serving as a Decisionmaker if the respondent is the Head of School. The complaint process described in 603 CMR 1.09 is distinct from (and lacks the full due process elements required by) the grievance procedures required by the Title IX regulations. That said, if a parent or guardian specifically filed a complaint with a school’s Board alleging that the school did not follow its Title IX policy and grievance procedures, then

the Board would be required to respond in compliance with 603 CMR 1.09 and the school's bylaws.

## **5 How are Massachusetts prohibitions against discrimination on the basis of sex impacted by Title IX, recent presidential executive orders, and other federal directives?**

As a general rule, federal law preempts state law in instances where the two are in conflict. However, while executive orders issued by the President of the United States may provide guidance to federal agencies on how to execute federal laws, those executive orders do not create, change, or otherwise carry the force of existing law.

Title IX is a federal civil rights law that prohibits discrimination on the basis of sex. In addition, Massachusetts has adopted civil rights laws prohibiting discrimination on the basis of sex, and those laws expressly include protections against discrimination on the bases of sexual orientation and gender identity. For example, Massachusetts public schools generally (see M.G.L. c. 76, § 5) and charter schools specifically (see M.G.L. c. 71, § 89(3) and 603 CMR 1.05(2)) are prohibited from discriminating on the bases of sex, sexual orientation, and gender identity. Though recent executive orders have declared that Title IX's discrimination protections do not extend to sexual orientation and gender identity, those executive orders do not carry the force of law and arguably they neither override controlling federal caselaw on the scope of sex discrimination (see *Bostock v. Clayton County, Georgia*, 590 US 644 (2000), which holds that discrimination on the basis of sex includes discrimination on the bases of sexual orientation and gender identity) nor Massachusetts laws prohibiting discrimination on the bases of sexual orientation and gender identity.

Massachusetts public schools are expected to comply both with federal Title IX regulations (which establish a floor for protections on the basis of sex) and with Massachusetts state law (which expressly include protections on the bases of sexual orientation and gender identity).

## **6 How does Title IX intersect with the possible prohibition against transgender girls participating in sports teams aligned with their gender identit(ies)?**

Title IX's prohibition against discrimination on the basis of sex extends to athletic programs. While OCR's Title IX enforcement actions are anticipated to align with the current administration's anti-transgender executive orders, Massachusetts law is clear that a student is permitted to participate on sports teams consistent with that student's gender identity. Most notably, 603 CMR 26.06 includes the following language:

- “No student shall be denied the opportunity in any implied or explicit manner to participate in an extra-curricular activity because of the race, color, sex, *gender identity*, religion, national origin or sexual orientation of the student” (emphasis added); and
- “A student shall have the opportunity to participate on the [school athletic] team *that is consistent with the student's gender identity.*” (Emphasis added)

## 7 ***What are the potential consequences of noncompliance with Title IX?***

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Recipients of federal funding that are determined by a federal agency such as OCR to be noncompliant with Title IX (i.e., the now-effective 2020 Title IX regulations) are subject to a variety of possible consequences, including loss of federal funding, monetary fines, increased supervision and/or monitoring by OCR, and negative publicity. While federal funding varies from district to district, with most school funding in Massachusetts flowing from state and local sources, the loss of federal funding, as well as each of the identified consequences, could have significant impacts on a sanctioned recipient. As a result, recipients should take steps to ensure compliance with Title IX.

Please reach out to webinar presenters and K&B attorneys Bettina Toner ([btoner@kb-law.com](mailto:btoner@kb-law.com)) and Eric Jordan ([ejordan@kb-law.com](mailto:ejordan@kb-law.com)) with any questions or requests you may have regarding the webinar, Title IX generally, or your school's Title IX policy and grievance procedures.