



KROKIDAS & BLUESTEIN LLP

**CLIENT ALERT**

## **Should Massachusetts Schools be Concerned about Title IX Litigation Elsewhere?**

While there has been a great deal of litigation in federal courts throughout the United States leading up to August 1, 2024, the date on which the 2024 amendments to Title IX's regulations (the "2024 Amendments") took effect, Massachusetts public schools and private schools that receive federal financial assistance remain free to adopt their own policies protecting students and staff against sex-based harassment and discrimination, including protections for LGBTQIA+ students.

On July 2, 2024, the United States District Court for the District of Kansas (the "District Court") granted a preliminary injunction against the U.S. Department of Education ("USDOE") and its authority to enforce school compliance with the 2024 Amendments. The preliminary injunction affects various schools across the country because the injunction applies to the states subject to the jurisdiction of that case (Alaska, Kansas, Utah, and Wyoming) as well as to any schools at which a child of a plaintiff to the lawsuit is enrolled. Specifically, schools attended by members of plaintiff groups Young America's Foundation and Female Athletes United, as well as any school attended by a minor child of a member of plaintiff group Moms for Liberty, are contemplated by the preliminary injunction. It is important to note that USDOE has filed an appeal of the District Court's preliminary injunction to the Tenth Circuit Court of Appeals, which is pending.

In terms of how any such affected school should proceed regarding Title IX, the District Court provided relevant language: "Finally, nothing in this order limits the ability of any school to adopt or follow its own policies, or otherwise comply with applicable state or local laws or rules regarding the subjects addressed herein. Rather, it simply prohibits Defendants [USDOE] from demanding compliance with the Final Rule by the schools affected by this order, or imposing any consequences for such schools' failure to comply with the Final Rule."<sup>1</sup>

Accordingly, Massachusetts public schools and private schools that receive federal financial assistance may adopt/maintain sex-based harassment and discrimination policies that are compliant with their state and local laws, including policies that align with the 2024 Amendments. However, for the duration of the preliminary injunction (which is unknown), USDOE itself cannot demand compliance with the 2024 Amendments from a school in Alaska, Kansas, Utah, or

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<sup>1</sup> Kansas v. United States Dep't of Educ., No. 24-4041-JWB, 2024 WL 3273285, at \*21 (D. Kan. July 2, 2024)

Wyoming, or a school in any other state at which a plaintiff family has an enrolled student, or penalize such a school for noncompliance with the 2024 Amendments.

For additional information regarding the 2024 Amendments, see K&B's April 24, 2024 client alert, "[United States Department of Education Releases Title IX Final Rule](#)." If you have questions about the 2024 Amendments or the impacts of the recent preliminary injunction on your school, or if you require assistance with updates to your school's Title IX policy and grievance procedures or staff Title IX training, please contact Bettina Toner ([btoner@kb-law.com](mailto:btoner@kb-law.com)) or Eric Jordan ([ejordan@kb-law.com](mailto:ejordan@kb-law.com)).