

# Title IX 2024 Final Rule Enjoined at Certain Colleges and Universities in all 50 States

July 17, 2024

On July 2, 2024, a federal judge in the District of Kansas (the “Court”) granted a preliminary injunction prohibiting the Department of Education (the “Department”) from enforcing the Title IX 2024 Final Rule (the “Final Rule”), following the lead of several other federal court decisions this summer. However, unlike the other recent injunctions, this order was not limited to enjoining implementation and enforcement of the Final Rule in the Plaintiff States (Kansas, Alaska, Utah, and Wyoming) (“the Plaintiff States”). Rather, it has implications nationwide, as it bars the Department from enforcing the Final Rule at hundreds of colleges and universities throughout the country.

Similar to the other preliminary injunctions that have been ordered since the release of the Final Rule in April, the Court held that the Final Rule - which significantly expands protections for transgender students and requires institutions utilize specific grievance procedures for all sex discrimination claims - unlawfully expanded the definition of sex under Title IX. The Court reasoned that the Department altered the original intent behind Title IX, specifically, by relying on the Supreme Court’s decision in *Bostock*, which provided that sex discrimination - as prohibited by Title VII of the Civil Rights Act of 1964 - encompasses discrimination based on sexual orientation and gender identity.[1]

The far-reaching implications of the Order stem from the fact that, in addition to the Plaintiff States and minor Plaintiff bringing the action, three organizations were joined as plaintiffs: Moms for Liberty, Young America’s Foundation, and Female Athletes United (“FAU”) (collectively, the “Plaintiff Organizations”). All three Plaintiff Organizations have members throughout the country.

The Court found that the Plaintiff Organizations had standing[2] to bring the suit because their individual members had standing, the members’ interests at stake were relevant to the organizations’ purpose, and the claim and relief asserted by the Plaintiff Organizations would not require all of the members themselves to participate in the lawsuit.[3]

Several members of Moms for Liberty submitted declarations that they and their minor children hold religious beliefs that individuals should use the bathroom that aligns with their biological sex, and that using pronouns that do not align with another’s biological sex violates their freedom of religious expression.[4] Young America’s Foundation raised similar concerns and expressed fear that, if the Final Rule were implemented, their members would be deterred from bringing speakers who share their views on gender and sexual identity to their respective

college campuses.[5] Finally, FAU is a national organization that was formed to “defend equal opportunity, fairness, and safety in women’s and girls’ sports.”[6] FAU’s members expressed concern that, if the Final Rule were implemented, they would not be able to voice their opinions about women’s sports and issues related to gender identity, and that they would have to share bathrooms and locker rooms with people assigned male at birth.[7]

The Court found that implementation of the Final Rule would harm the missions and purposes of each of the Plaintiff Organizations and, therefore, enjoined the Department and Department of Justice from “implementing, enacting, enforcing or taking any action to enforce” the Final Rule “at any school attended by a member of Young America’s Foundation or Female Athletes United, as well as any school attended by a minor child of a member of Moms for Liberty.”[8] Further, the Court suggested that the Department might want to impose a “voluntary stay” of the Final Rule until judicial review is complete, rather than engage in “patchwork enforcement of the Final Rule” and risk “exposing Defendants and their representatives to sanctions for contempt.”[9]

Following the Order, the Plaintiff Organizations were required to file with the Court a list of all schools attended by members of Young America’s Foundation, FAU, and minor children of Moms for Liberty by July 15. The Plaintiff Organizations submitted one list of K-12 schools and another for higher education institutions which are attended by members of the Plaintiff Organizations. [The higher education list](#) is 26 pages long and contains hundreds of institutions across the country.

It is imperative that institutions impacted by the preliminary injunction work closely with legal counsel to determine next steps, including whether to continue their fervent work on revising institutional policies to ensure compliance with the Final Rule, and whether to implement said policies on August 1, 2024 or postpone implementation while litigation continues.

Should you have any questions about the impact of this preliminary injunction on your institution or the Final Rule on your institution’s Title IX policies and practices more generally, please contact Jennifer McLaughlin ([jmclaughlin@cullenllp.com](mailto:jmclaughlin@cullenllp.com)), Dina Vespia ([dvespia@cullenllp.com](mailto:dvespia@cullenllp.com)), or Nicole Donatich ([ndonatich@cullenllp.com](mailto:ndonatich@cullenllp.com)).

This advisory provides a brief overview of the most significant changes in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

## Footnotes

[1] *Kansas, et al. v. Department of Education et al.*, 5:24-cv-04041 (July 2, 2024), Memorandum and Order Granting Motion for Stay/Preliminary Injunction (“Memorandum and Order”) at 5 (referencing *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1734 (2020)).

[2] The three constitutional requirements for standing are that (1) that the plaintiff suffers an injury in fact that is concrete, particularized, and actual or imminent, (2) the injury was likely caused by the defendant, and (3) that the injury can be redressed by a court. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

[3] Memorandum and Order at 15 (citing *Friends of the Earth v. Laidlaw Envtl. Serv.*, 528 U.S. 167, 181 (2000)).

[4] Memorandum and Order at 8.

[5] *Id.* at 9.

[6] *Id.* at 9-10.

[7] *Id.*

[8] Memorandum and Order at 45.

[9] *Id.* at 43.

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