

VSBIT LEGAL ALERT: TITLE IX BIDEN ADMINISTRATION REGULATIONS

Court Challenges to the 2024 Administration's Title IX Regulations and Their Impact on Vermont Educational Institutions

Four years ago, in May 2020, the U.S. Department of Education issued Title IX Regulations (“2020 Regulations”). Those regulations mandated, among other things, that any conduct known to the school that may violate Title IX’s definition of sexual harassment be handled through a “Title IX Grievance Process” which aims, in part, to provide due process protections and equitable treatment alike to both the complainants and respondents. Since August 2020, Vermont school systems receiving federal funds have committed to the adoption of compliant policies, building systems of implementation, and engaging in countless hours of training to master the process mandated by the 2020 Regulations. In addition, Vermont schools, with the support of both the Vermont School Board’s Association (providing a *Model Policy for the Prevention of Sexual Harassment as Prohibited by Title IX*) and the Vermont School Board’s Insurance Trust (sponsoring 9 hours per semester of virtual interactive training seminars and “Title IX Tool Kits”) have tackled the hard work of adopting, mastering and implementing those regulations.

On April 29, 2024, the Biden Administration issued its long-awaited Title IX Regulations (“2024 Regulations”). The 2024 Regulations announce that Title IX’s protections against acts of harassment and discrimination “*on the basis of sex*” occurring within educational institutions receiving federal funds will apply to “*discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identity.*” 89 Fed. Reg. 33474, 33476 (April. 29, 2024). They also revise and expand the legal definition to be applied in any case of alleged Title IX ‘hostile environment’ harassment. These regulations came into effect, with the exception of current applicable court injunctions, August 1, 2024.

Since April, numerous states, individuals, and organizations¹ have sought to first enjoin and ultimately invalidate the 2024 Regulations, by filing federal lawsuits that claim, among other things, that the changes to scope and definitions violate the First Amendment and/or are beyond the scope of administrative authority. Numerous reviewing courts have granted their requests for immediate preliminary injunctions prohibiting the U.S. Dept. of Education from “*implementing, enacting, enforcing, and taking action in any matter to enforce the Final Rule*” with respect to the plaintiff states, and any school attended by pupils with parents who are members of the plaintiff organizations.² *See State of Kansas, et al. v. United States Dept. of Education*, (D. Ka. July 2, 2024). While a single Vermont school has thus far been identified in court filings as having pupils with parents who are members of *Moms for Liberty*, it is reasonable to expect that

¹ *Moms for Liberty* and *Young America’s Foundation*, among others.

² A Kansas federal court judge has required *Moms for Liberty* (a plaintiff organization suing to overturn the Final Rule) to submit and regularly update a list of those schools attended throughout the country by children of members of *Moms for Liberty*, thereby expanding the scope of the court’s injunction on a rolling basis.

number to grow. Nevertheless, at this time, only one Vermont school - and no other - is currently enjoined from implementing the Final Rule.

Vermont law directly provides for protection and remedies for acts of harassment and discrimination. 9 V.S.A. §§4500, et seq. Specifically, the Vermont Agency of Education's implementing Policy for the Prevention of Harassment, Hazing and Bullying ("HHB Policy") and Procedures ("HHB Procedures") require that all Vermont schools (and not just those receiving federal funds) respond to "notice" of such conduct with an investigation and to take reasonable remedial actions in the wake of any determinations of policy violations to prevent reoccurrences and restore nondiscriminatory access to education. Continued adherence to Vermont requirements and protections are not implicated in the legal challenges to the 2024 Title IX Regulations.

Conversely, an institution implementing the 2024 Regulations with respect to harassment and discrimination on the basis of sexual orientation or gender identity could be challenged either by a student claiming their parent is an as yet undisclosed member of *Moms for Liberty*, or a plaintiff student or employee claiming an infringement on their rights as result of the Final Rule. The ongoing legal debate regarding the 2024 Regulations warrants the conservative approach of continued implementation of the 2020 Regulations (and continued adherence to the 2020 Model Policy for the Prevention of Sexual Harassment as Prohibited by Title IX). Districts can continue to protect its LGBTQ students from acts of harassment and discrimination as already provided for under Vermont law and the 2015 Vermont Agency of Education's HHB Policies and Procedures

Summary: Vermont students and educators already enjoy largely analogous state law protections against discrimination and harassment for the categories of gender identity and sexual orientation, as that being attempted through the 2024 Regulations. Thus, a prudent course for Vermont schools will be to maintain the current status quo – abiding by the 2020 Title IX Regulations, enforcing the current 2020 Title IX Policy, and the 2015 Vermont Agency of Education's Model Policy for the Prevention of Harassment, Hazing and Bullying - until further notice. Individual schools are encouraged to contact their legal counsel directly with school specific inquiries.