

LEGAL UPDATE FOR THE COLORADO LEAGUE OF CHARTER SCHOOLS

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Title: Update on Title IX

Title IX of the Education Amendments of 1972 prohibits sex discrimination in schools that receive federal financial assistance, which includes all K-12 charter schools in Colorado. The U.S. Department of Education has the authority to issue regulations to effectuate Title IX's prohibition on sex discrimination. The USDE issued Title IX regulations under the first Trump administration which took effect on August 14, 2020, and the Biden administration issued different Title IX regulations that took effect August 1, 2024.

The Biden regulations were challenged in numerous courts, and on January 9, 2025, a federal district court in Kentucky issued a ruling that vacated the Biden regulations across the country. *See Tennessee v. Cardona*, 2025 WL 63795 (E.D. Ky. Jan. 9, 2025). This decision was not appealed by the U.S. Department of Justice, so the 2024 Biden regulations are not effective anywhere in the United States. As a result, Colorado charter schools must return to using Title IX policies that follow the 2020 regulations, not the 2024 regulations. This was confirmed in a "Dear Colleague" letter sent by the USDE on February 4, 2025, which stated that the "judgment [from *Cardona*] was immediately effective and no portion of the 2024 Title IX Rule is now in effect in any jurisdiction."

One important difference between the two sets of regulations was how they interpreted discrimination "on the basis of sex." The 2024 regulations interpreted it to include discrimination based on sexual orientation, gender identity, and transgender status, while the 2020 regulations did not. While this legally-binding change in interpretation may have a practical effect in other states, it will not in Colorado because state law already prohibits discrimination on those

classifications for both employees and students. *See* C.R.S. § 24-34-402 (employees), -601 (students); C.R.S. § 22-1-143 (K-12 students); C.R.S. § 22-1-145 (student name change based on gender identity). Moreover, since 2008 Colorado regulations have prohibited as sexual orientation harassment “[d]eliberately misusing an individual’s preferred name, form of address, or gender-related pronoun.” 3 C.C.R. 708-1, Rule 81.6(A)(4). Similarly, they have required that transgender students and employees be allowed to use restrooms, locker rooms, and dressing rooms “that are consistent with their gender identity.” *Id.* Rule 81.9(B).

One potential flash point under the new Trump administration is transgender girls participating in high school sports in Colorado. President Trump has issued several executive orders that “recognize two sexes, male and female” and direct federal agencies, like OCR and the Attorney General, to “take all appropriate action” to prevent biological males from participating in female athletics. *See* Executive Orders 14168 & 14201. However, the Colorado High School Activities Association (CHSAA) currently has a policy on transgender inclusion that permits transgender girls to participate in girls high school sports.

In sum, despite the recent turmoil in this area of the law, it is clear that Colorado charter schools should (1) have a Title IX policy that is consistent with the 2020 regulations and (2) follow Colorado statutes and regulations that prohibit discrimination based on sexual orientation, gender identity, and transgender status.