



LOUISIANA DEPARTMENT OF EDUCATION

DATE: August 30, 2022

TO: System Leaders, Schools Boards, Athletic Association

FROM: Dr. Cade Brumley
State Superintendent of Education

SUBJECT: Response to Federal Title IX Guidance Documents

The U.S. Department of Education (USDOE) is considering changes to Title IX. These alterations are in response to President Biden’s Executive Order – Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity¹.

Over the past few months, I have received numerous inquiries about Title IX guidance documents that were prematurely issued by the USDOE² and the U.S. Department of Agriculture³ (USDA). These documents align to the Biden administration’s proposed Title IX changes.

LDOE does not agree with the proposed changes nor do we recognize the USDOE’s⁴ or the USDA’s⁵ guidance documents as binding or enforceable⁶ at this time. Therefore, school systems should not alter their local policies or procedures based solely on these overreaching guidance documents.

Moreover, in Louisiana, the Fairness in Women’s Sports Act became law on August 1, 2022. It was overwhelmingly passed by our legislature. It affirms school-sanctioned athletic participation must be divided by biological sex unless the configuration is co-ed in nature.

Should this topic be of interest to you and/or your organization, I suggest your engagement in the rulemaking process by offering comments into the Federal Registry⁷.

¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executive-order-on-guaranteeing-an-educational-environment-free-from-discrimination-on-the-basis-of-sex-including-sexual-orientation-or-gender-identity/>

² Federal Register / Vol. 86, No. 117 / Tuesday, June 22, 2021 / Rules and Regulations. Pursuant to a Federal court order, the Department has been preliminarily “enjoined and restrained from implementing” this document against the states of Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, Tennessee, South Carolina, South Dakota, and West Virginia. See *State of Tenn., et al. v. U.S. Dep’t of Educ.*, No. 3:21- cv-308 (E.D. Tenn.) (July 15, 2022).

³ Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update; CRD 01-2022, May 5, 2022

⁴ Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in light of *Bostock v. Clayton County*, 86 Fed. Reg. 32.637 (June 21, 2021).

⁵ Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update; Questions and Answers Related to CRD 02-2022; May 5, 2022

⁶ See *State of Tennessee v. U.S. Dep’t of Educ.*, No. 3:21-cv-308, at 26 (E.D. Tenn. July 15, 2022) (noting the USDOE’s contention that “the challenged guidance documents are non-binding interpretations that ‘simply inform the public of the agencies’ interpretation of Titles VII and IX, without purporting to alter obligations thereunder” and that “the guidance documents expressly state they do not have the force of law”).

⁷ <https://www.federalregister.gov/documents/2022/07/12/2022-13734/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>