



Protections Against Sexual Orientation and Gender Identity Discrimination in Schools: The Federal Role



Between now and November 5th, we are running a series of 10 Q&As with NEPC Fellows about education issues relevant to the 2024 federal election. The goal of the series is to inform readers about the education-related stances of the nation's two major political parties, drawing upon the Republican and Democratic parties' national platforms and on Project 2025. Q&A participants were selected on the basis of their research expertise on the topics they have been asked to address. In addition to describing the parties' positions, each expert is providing background information, with a focus on summarizing research findings.

In today's installment, [Elizabeth Meyer](#) examines federal regulations related to discrimination on the basis of sexual orientation and gender identity in schools. Meyer is an education professor at the University of Colorado Boulder. She is a nationally recognized expert on gender identity and sexual orientation in schools and the author of two books: [Gender, Bullying, and Harassment: Strategies to End Sexism and Homophobia in Schools](#) and [Gender and Sexual Diversity in Schools](#).

1. *From a historical perspective, why has the federal government been engaged in this issue?*

The Federal Government got officially involved in this issue, in the realm of education, in 2010 when the Office for Civil Rights (OCR) issued Title IX guidance in the form of a [Dear Colleague Letter](#) that explicitly included LGBT students as entitled to protec-

tion from discrimination “on the basis of sex” under Title IX. The guidance prohibited forms of bullying and harassment that are “gender-based” or related to “stereotypical notions of masculinity and femininity.” In May of 2016, the Education Department (ED), published a [resource](#) about supporting transgender students alongside a [second Dear Colleague Letter](#) on that topic. Although the case law applying Title IX to these transgender-discrimination incidents dates back to 2000 ([Ray v. Antioch, 2000](#); [Montgomery v. ISD No. 709, 2000](#)), this was the first formal guidance issued by the federal government. The goal has been primarily to address anti-LGBTQ+ violence in schools and ensure sexual and gender minority youth are able to access educational opportunities, by explicitly protecting them under Title IX’s scope.

2. *From a research perspective, how has federal government involvement been helpful or harmful to preparing students of different genders and sexual orientations to succeed in college, career, and life?*

The federal government’s actions on this topic have been helpful for students through the year 2016. The OCR guidance issued in 2010 and again in 2016 was very powerful in helping to educate districts and improve the supports available for LGBTQ+ students around the country—particularly in states that didn’t have nondiscrimination protections for LGBTQ+ students. Starting in 2017, under the Trump administration, that approach changed, as the guidance documents mentioned above were [rescinded](#) and official statements were issued refusing to hear complaints about anti-transgender discrimination in schools. We also learned that under Education Secretary DeVos, the OCR [rapidly closed many open complaints](#) and was “less likely to find wrongdoing by school districts on issues ranging from racial and sexual harassment to meeting educational needs of disabled students.” This backslide in legal protections for LGBTQ+ people ended in 2021, when President Biden issued his [Executive Order](#), which was then followed by more extensive [Title IX updates](#) in 2024. Yet these protections are currently only symbolic in much of the country, since their implementation is being halted by injunctions affecting students in [26 states](#). Past research suggests that this political and highly public debate over what protections will be available for transgender youth is [harmful to the health and well-being of students](#) who are impacted.

3. *Based on your own research expertise, how (if at all) should the federal role on this issue shift? What is the justification for those recommendations?*

The shifts led by the Obama administration and then renewed by the Biden administration are in the direction needed to ensure LGBTQ+ students are able to access an education free from discrimination and violence. Federal judges’ interpretations and applications of Title IX over the past two decades have been relatively consistent, but states and districts have been slow to learn and improve their policies and practices accordingly. I want to encourage the OCR to continue fighting these injunctions. They should also continue offering guidance and corrective actions in cases that have impacted LGBTQ+ students who have experienced discrimination “on the basis of sex.” The case law has been powerful and generally clear, at least until recently. While some conservative groups are resistant to the new rules, these guidelines are very much in line with legal precedent, and they provide important and essential protections to

ensure all students—particularly LGBTQ+ and gender nonconforming students—can access the educational opportunities they are entitled to.

4. *Please briefly explain how Project 2025, the RNC national platform, and the DNC national platform address this issue. (If this issue is not addressed by Project 2025, the RNC platform, or the DNC platform, please note that.)*

This is a topic that clearly separates the RNC and Project 2025 from the DNC. The RNC platform and Project 2025 are fairly similar on this topic. In the top 20 priorities in the preamble to the [RNC platform](#), numbers 16 & 17 are as follows (with CAPS and **bolding** in the original): “16. CUT FEDERAL FUNDING FOR ANY SCHOOL PUSHING CRITICAL RACE THEORY, RADICAL GENDER IDEOLOGY, AND OTHER INAPPROPRIATE RACIAL, SEXUAL, OR POLITICAL CONTENT ON OUR CHILDREN” and “17. KEEP MEN OUT OF WOMEN’S SPORTS.” This gets elaborated on in Chapter 9:

5. Republicans Will End Left-wing Gender Insanity. We will keep men out of women’s sports, ban Taxpayer funding for sex change surgeries, and stop Taxpayer-funded Schools from promoting gender transition, reverse Biden’s radical rewrite of Title IX Education Regulations, and restore protections for women and girls.

[Project 2025](#) goes a bit further than the RNC platform and equates teaching about transgender people with child abuse and pornography and seeks to place strict limits on when and how students can change the name and pronoun they use at school. The term “LGBTQ” did not appear in any text searches of either document.

In contrast, the [DNC platform](#) includes a two-page (pp. 56-57) discussion of LGBTQI+ issues, setting forth accomplishments during the Biden presidency and asserting an intention to build on those accomplishments in a second term (note that the platform was written before Kamala Harris replaced Joe Biden as the presumptive nominee of the party). Regarding education specifically, the platform underlines the Democrats’ support of the new Title IX rules, “fighting book bans that censor LGBTQI+ content,” and “protecting LGBTQI+ children from bullying and discrimination; guaranteeing that transgender students are treated fairly and with respect at school” (p. 57).

5. *What is your response to the ways in which this issue is addressed by Project 2025, the RNC national platform and the DNC national platform, based on your knowledge of the research in this area?*

The ways the RNC and Project 2025 frame their approach to gender and sexuality diversity goes against what has been well-established in the research literature. They refuse to use widely recognized terminology, ignore decades of research, and use inflammatory terms like “left-wing gender insanity” and “radical gender ideology” to refer to the inclusive, affirming, and life-saving approaches advocated by the DNC and others that promote working with and supporting the LGBTQ+ community. The DNC platform builds on reliable and extensive research that shows the importance

of protecting civil rights and ensuring safe and affirming school environments for all students. It is not hyperbolic to say that the Republican platform would lead to more [harms, dangers, difficulties in school](#), and even deaths of LGBTQ+ youth. Under the Trump administration, [school climate declined for LGBTQ youth](#), and this is likely to recur during a second Trump presidency. On the other hand, if the DNC vision is implemented, this would help continue the trajectory of mostly steady growth (with the exception of 2017-2021) in improvements for LGBTQ+ people in schools. I am strongly in favor of expanding support for the OCR and giving the 2024 version of the Title IX rules a chance of being implemented and promoting more inclusive practices at schools around the country.

Additional resources on federal regulations related to discrimination on the basis of sexual orientation and gender identity in schools:

Ali, R. (2010). *Dear Colleague Letter: Harassment and bullying*. Washington, D. C.: Department of Education, Office for Civil Rights. Retrieved August 27, 2024, from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>

Battle, S, & Wheeler, T.E. (2017, February 22). *Dear Colleague Letter: Withdrawing statements of policy and guidance*. Washington, D.C. Retrieved August 27, 2024, from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf>

Biden, J.R. (2021). *Executive order on preventing and combating discrimination on the basis of gender identity or sexual orientation*. Retrieved August 27, 2024, from <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>

Montgomery v. Independent School District No. 709, 109 F. Supp. 2d 1081, 1092 (D. Minn. 2000) (2000). Retrieved August 27, 2024, from <https://law.justia.com/cases/federal/district-courts/FSupp2/109/1081/2522923/>

Ray v. Antioch Unified School District (107 F. Supp. 2d 1165 (N.D. Cal. 2000).

Lhamon, C. & Gupta, V. (2016). *Dear Colleague Letter on transgender students*. Washington, D.C.: U.S. Department of Education, Office for Civil Rights. Retrieved August 27, 2024, from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

U.S. Department of Education, Office of Elementary and Secondary Education, & Office of Safe and Healthy Students. (2016). *Examples of policies and emerging practices for supporting transgender students*. Retrieved August 27, 2024, from <https://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>

U.S. Department of Education. (2024). *Fact sheet: U.S. Department of Education's 2024*

Title IX final rule overview. Washington D.C. Retrieved August 27, 2024, from <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf>

U.S. Department of Education. (2024). *Fact sheet: U.S. Department of Education's 2024 Title IX final rule overview*. Washington D.C. Retrieved August 27, 2024, from <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf>

Waldman, A. (2018, June 21). DeVos has scuttled more than 1,200 civil rights probes inherited from Obama. *ProPublica*. Retrieved July 10, 2018, from <https://www.propublica.org/article/devos-has-scuttled-more-than-1-200-civil-rights-probes-inherited-from-obama>

Walsh, M. (2024). Biden's Title IX rule takes effect amid a confusing legal landscape. *Education Week*. Retrieved August 2, 2024, from <https://www.edweek.org/policy-politics/bidens-title-ix-rule-takes-effect-amid-a-confusing-legal-landscape/2024/07?utm>

NEPC Resources on LGBTQ Issues

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