

TITLE IX, RELIGIOUS EXEMPTIONS & CAMPUS CLIMATE: LGBT PROTECTIONS IN HIGHER EDUCATION



Nearly a half century has passed since the introduction of Title IX, the federal law that prohibits discrimination on the basis of sex in federally-funded educational institutions, including colleges and universities. Recently, a vast majority of courts have provided protections for LGBT people by finding that federal laws prohibiting discrimination based on sex, such as Title IX, also prohibit discrimination based on gender identity and/or sexual orientation. Thus, Title IX protections are understood as integral to the success and well-being of LGBT students.

The Trump administration’s 2017 decision to rescind Title IX guidance¹ clarifying the rights of transgender students has fostered confusion and emboldened discrimination in the United States. Despite this rescission, federal court rulings and the protections they afford transgender students remain in place. Most of the discussion about Title IX and LGBT students has focused on primary and secondary institutions; however, Title IX also provides important protections for students on college campuses around the country.

FEDERAL PROTECTIONS IN THE CLASSROOM: UNDERSTANDING TITLE IX

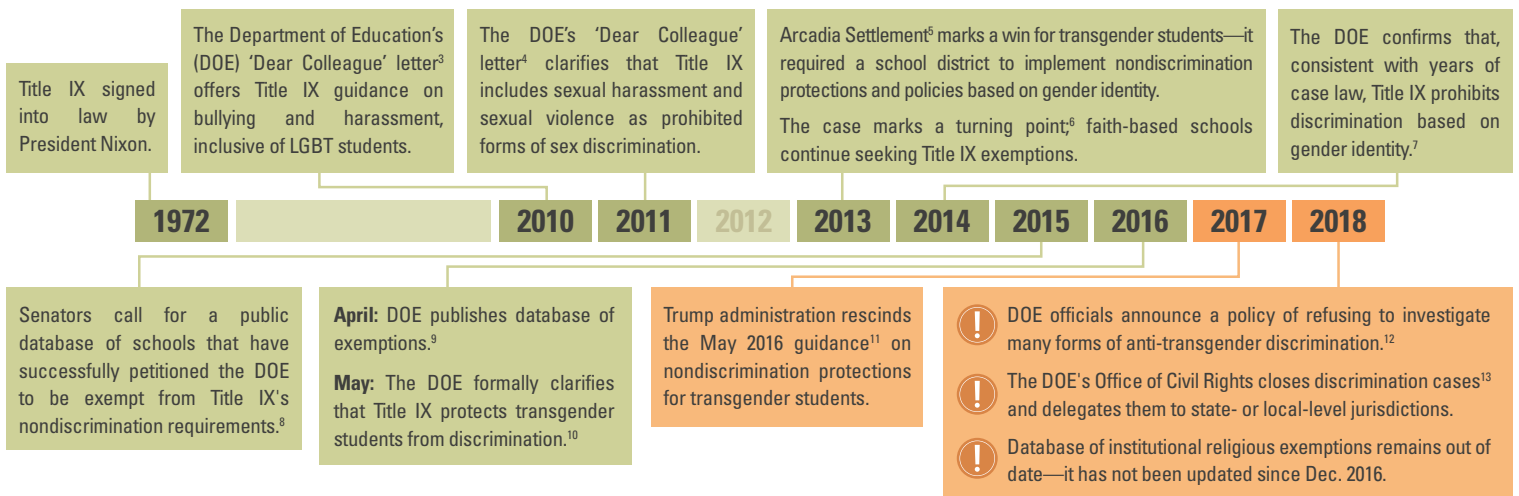
Expansive in scope, Title IX is enforced in most divisions and levels of education, **namely all public primary, secondary, and postsecondary institutions** (and the majority of private schools), including colleges and universities.

What is Title IX?

- A civil rights law in the Education Amendments of 1972
- Requires federally-funded institutions to guarantee nondiscrimination based on sex

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”²

FEDERAL ENFORCEMENT OF TITLE IX FOR LGBT STUDENTS



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TITLE IX ON CAMPUS: PROTECTIONS VS. EXEMPTIONS

The media's focus on emerging Title IX cases and the proposed legislation that would undermine its protections¹⁴ generally focus on K-12 education. But LGBT nondiscrimination protections at the collegiate level—and more broadly, their impact on campus climate¹⁵—remain relatively overlooked in the public eye.

Accredited colleges and universities often publicize their statements of affirmative action, equal opportunity, and non-discrimination—policies that can include protections for sexual orientation, gender identity, and gender expression. A transparent commitment to non-discrimination is highly important for prospective LGBT students and their families. However, an increasing number of faith-based institutions have requested an exemption from Title IX's protections for LGBT students.



Private Four Year



Public Four Year

1 in 4 transgender and gender nonconforming college students at private religious four-year colleges and universities had a student organization focused on the needs of transgender and gender nonconforming students, compared to **1 in 2** transgender students at public four-year institutions.

Source: Goldberg, A. E., Beemyn, G., & Smith, J. Z. (2018). What is needed, what is valued: Trans students' perspectives on trans-inclusive policies and practices in higher education. *Journal of Educational & Psychological Consultation*.

AVOIDING TITLE IX: HOW LACK OF PROTECTIONS AFFECT LGBT STUDENT LIFE

For **religiously-affiliated institutions**, acquiring an exemption from Title IX¹⁷ only requires a college or university to petition the Department of Education (DOE) for a waiver, noting how Title IX conflicts with the institution's religious faith. If approved, the DOE responds with a letter outlining the provisions to which the exemption applies.

Apart from this correspondence, faith-based institutions are subject to very little oversight in how they address LGBT students. **The consequences of this can be severe: reports indicate that LGBT students face threats of expulsion or increased disciplinary action simply for being LGBT,¹⁸ or they are denied participation in extracurricular activities, and forced into conversion therapy or counseling.¹⁹** With reduced federal guidance on Title IX cases, LGBT students often must advocate for their own civil rights on campus, despite the risks associated with doing so.

79 U.S. COLLEGES AND UNIVERSITIES¹⁶

have petitioned and successfully obtained exemptions from Title IX's guidance on sexual orientation and/or gender identity, on the grounds that it violates their institution's religious faith.

With an approved exemption, these schools can still benefit from federal funding and maintain a license to discriminate against LGBT students.



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RECENT EVENTS & NONDISCRIMINATION FOR LGBT STUDENTS

Under the Trump administration, the Department of Education’s Office for Civil Rights has demonstrated significant shifts in its review of Title IX cases related to LGBT students—most notably, the general dismissal or abdication of guidance on cases related to transgender youth’s access to facilities. This, paired with new developments from the administration expanding religious exemptions in various areas of law, including health care, education, and nondiscrimination, are cause for concern about the extent to which LGBT students will be able to pursue higher education without risk of harassment and discrimination.

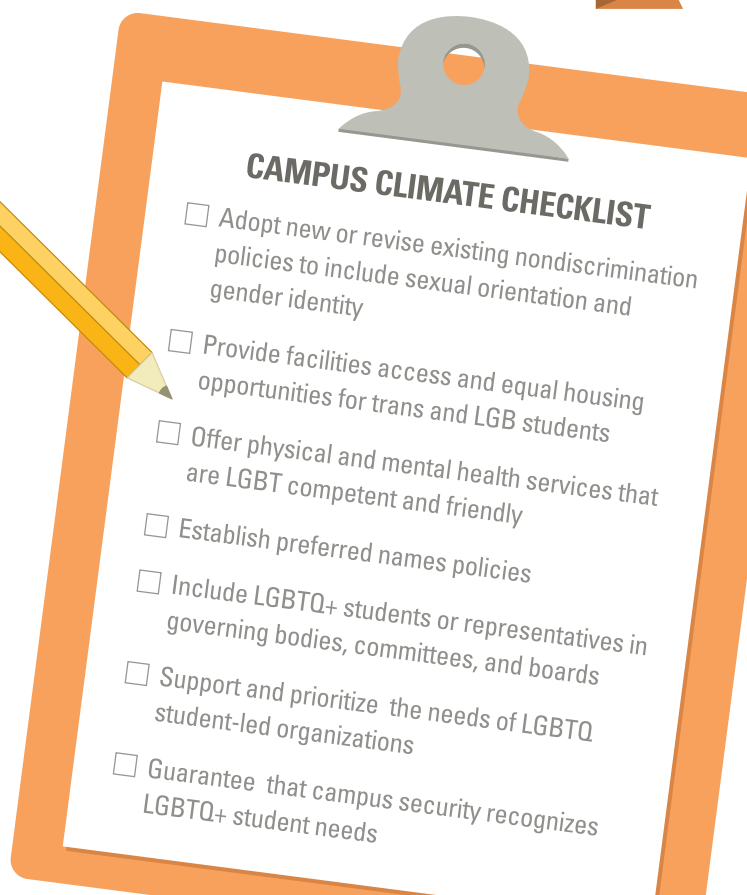
Something to consider—LGBT youth should be able to attend college or university without worrying about whether they will be discriminated against, disciplined, or even kicked out simply for being LGBT.¹⁸ Many LGBT students, like other college students, wish to attend faith-based schools. A recent study highlights why LGBT students *want to attend* religious institutions:²⁰

- ✓ to practice one’s religious faith
- ✓ to pursue strong academic programs
- ✓ to live in proximity to LGBTQ-friendly cities
- ✓ to maintain parental ties and potentially financial support
- ✓ to follow through on a positive recruitment experience with the institution

POTENTIAL SOLUTIONS FOR SECURING CAMPUS CLIMATE

With reduced federal oversight for Title IX and the expansion of religious exemptions by the current administration, it is likely that more universities will petition for religious exemptions related to LGBT students. If approved, these schools may be able to discriminate against or mistreat LGBT students on their campuses. The result would be incredibly detrimental to both campus climate and student well-being in U.S. higher education.

It is crucial to foster inclusion and tolerance on campus so that LGBT students have the same chance as other students to pursue an education and be prepared to support themselves. The Campus Pride Index²¹ is a useful resource for tracking LGBT-friendly colleges and universities and identifying pathways for establishing a positive environment that recognizes all students. The Index allows colleges and universities to identify key policies and practices that support LGBT students.



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ENDNOTES

- ¹ Ian Thompson, ACLU, "The Trump Administration Abandons Its Obligations to Trans Students," January 16, 2018, <https://www.aclu.org/blog/lgbt-rights/lgbt-youth/trump-administration-abandons-its-obligations-trans-students>.
- ² U.S. Department of Education, "Title 34 Education: Part 106 Nondiscrimination On The Basis Of Sex In Education Programs Or Activities Receiving Federal Financial Assistance," <https://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html#S12>.
- ³ U.S. Department of Education, Office for Civil Rights, "Dear Colleague," October 26, 2010, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.
- ⁴ U.S. Department of Education, Office for Civil Rights, "Dear Colleague," April 4, 2011, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.
- ⁵ U.S. Department of Education, Office for Civil Rights, and U.S. Department of Justice, Civil Rights Division, No. 09-12-1020, "Resolution Agreement Between the Arcadia Unified School District," August 24, 2013, <http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.
- ⁶ Human Rights Campaign, "Hidden Discrimination: Title IX Exemptions Putting LGBT Students at Risk," December 2015, http://assets2.hrc.org/files/assets/resources/Title_IX_Exemptions_Report.pdf.
- ⁷ U.S. Department of Education, Office for Civil Rights, "Questions and Answers on Title IX and Sexual Violence," April 29, 2014, <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.
- ⁸ United States Senate, "Title IX Waiver Letter," December 18, 2015, <https://www.wyden.senate.gov/imo/media/doc/2015-12-18%20Title%20IX%20Waiver%20letter.pdf>.
- ⁹ U.S. Department of Education, Office for Civil Rights, "Religious Exemptions Index," last updated December 31, 2016, <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/z-index-links-list-2009-2016.html>.
- ¹⁰ U.S. Department of Education, Office for Civil Rights, "Dear Colleague Letter on Transgender Students," May 13, 2016, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.
- ¹¹ ACLU, "ACLU Statement On Revoking Of Title IX Guidance For Transgender Students & Impact On Gavin Grimm Supreme Court Case," February 22, 2017, <https://www.aclu.org/news/aclu-statement-revoking-title-ix-guidance-transgender-students-impact-gavin-grimm-supreme-court>.
- ¹² Rebecca Klein, Huff Post, "Trump Admin To Transgender Kids: We Won't Deal With Your Civil Rights Complaints," January 16, 2018, https://www.huffingtonpost.com/entry/transgender-office-for-civil-rights-us_5a5688ade4b08a1f624b2144?ncid=engmodushpmg00000004.
- ¹³ Emma Brown, Washington Post, "Education Dept. Closes Transgender Student Cases As It Pushes To Scale Back Civil Rights Investigations," June 17, 2017, https://www.washingtonpost.com/local/education/education-dept-closes-transgender-student-cases-as-it-pushes-to-scale-back-civil-rights-investigations/2017/06/17/08e10de2-5367-11e7-91eb-9611861a988f_story.html?noredirect=on&utm_term=.74706d139fac.
- ¹⁴ BJ Colangelo, Cleveland Scene, "Ohio Republicans Introduce Bill That Would Allow Parents to Deny Transgender Children the Right to Transition," July 25, 2018, <https://www.clevescene.com/scene-and-heard/archives/2018/06/25/ohio-republicans-introduce-bill-that-would-allow-parents-to-deny-transgender-children-the-right-to-transition>.
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- ¹⁶ Campus Pride, "Shame List: The Absolute Worst Campuses for LGBTQ Youth," <https://www.campuspride.org/shamelist>.
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- ¹⁸ Samantha Allen, Daily Beast, "Under Trump and DeVos, Trans Students Face 'Spiritual Violence' at Religious Schools," August 17, 2018, <https://www.thedailybeast.com/under-trump-and-devos-trans-students-face-spiritual-violence-at-religious-schools>.
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- ²⁰ Jonathan S. Coley, *Gay on God's Campus: Mobilizing for LGBT Equality and Christian Colleges and Universities*, 2018, Chapel Hill: University of North Carolina Press.
- ²¹ Campus Pride, "Campus Pride Index: National Listing of LGBTQ-Friendly Colleges and Universities," <https://www.campusprideindex.org>.