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 guidance\(^1\) 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.

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 Protections in the Classroom: Understanding Title IX

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### Federal Enforcement of Title IX for LGBT Students

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1972</td>
<td>Title IX signed into law by President Nixon.</td>
</tr>
<tr>
<td>2010</td>
<td>The Department of Education’s (DOE) ‘Dear Colleague’ letter offers Title IX guidance on bullying and harassment, inclusive of LGBT students.</td>
</tr>
<tr>
<td>2011</td>
<td>The DOE’s ‘Dear Colleague’ letter clarifies that Title IX includes sexual harassment and sexual violence as prohibited forms of sex discrimination.</td>
</tr>
<tr>
<td>2012</td>
<td>Arcadia Settlement marks a win for transgender students—it required a school district to implement nondiscrimination protections and policies based on gender identity. The case marks a turning point; faith-based schools continue seeking Title IX exemptions.</td>
</tr>
<tr>
<td>2013</td>
<td>The DOE confirms that, consistent with years of case law, Title IX prohibits discrimination based on gender identity.(^3)</td>
</tr>
<tr>
<td>2014</td>
<td>Arcadia Settlement marks a win for transgender students—it required a school district to implement nondiscrimination protections and policies based on gender identity. The case marks a turning point; faith-based schools continue seeking Title IX exemptions.</td>
</tr>
<tr>
<td>2015</td>
<td>The DOE’s Office of Civil Rights closes discrimination cases and delegates them to state- or local-level jurisdictions.</td>
</tr>
<tr>
<td>2016</td>
<td>Database of institutional religious exemptions remains out of date—it has not been updated since Dec. 2016.</td>
</tr>
<tr>
<td>2017</td>
<td>Trump administration rescinds the May 2016 guidance on nondiscrimination protections for transgender students.</td>
</tr>
<tr>
<td>2018</td>
<td>Doe officials announce a policy of refusing to investigate many forms of anti-transgender discrimination.(^4)</td>
</tr>
</tbody>
</table>

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\(^1\) Doe guidance on nondiscrimination protections for transgender students.\(^5\)

\(^2\) Doe guidance on nondiscrimination protections for transgender students.\(^6\)

\(^3\) Doe guidance on nondiscrimination protections for transgender students.\(^7\)

\(^4\) Doe guidance on nondiscrimination protections for transgender students.\(^8\)

\(^5\) Doe guidance on nondiscrimination protections for transgender students.\(^9\)

\(^6\) Doe guidance on nondiscrimination protections for transgender students.\(^10\)

\(^7\) Doe guidance on nondiscrimination protections for transgender students.\(^11\)

\(^8\) Doe guidance on nondiscrimination protections for transgender students.\(^12\)
TITLE IX ON CAMPUS: PROTECTIONS VS. EXEMPTIONS

The media’s focus on emerging Title IX cases and the proposed legislation that would undermine its protections generally focus on K-12 education. But LGBT nondiscrimination protections at the collegiate level—and more broadly, their impact on campus climate—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.

For religiously-affiliated institutions, acquiring an exemption from Title IX 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, or they are denied participation in extracurricular activities, and forced into conversion therapy or counseling. 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.

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

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.


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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.

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 Index\(^1\) 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.

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.\(^1\) 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: 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.

### RECENT EVENTS & NONDISCRIMINATION FOR LGBT STUDENTS

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### POTENTIAL SOLUTIONS FOR SECURING CAMPUS CLIMATE

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### CAMPUS CLIMATE CHECKLIST

- **Adopt new or revise existing nondiscrimination policies to include sexual orientation and gender identity**
- **Provide facilities access and equal housing opportunities for trans and LGB students**
- **Offer physical and mental health services that are LGBT competent and friendly**
- **Establish preferred names policies**
- **Include LGBTQ+ students or representatives in governing bodies, committees, and boards**
- **Support and prioritize the needs of LGBTQ student-led organizations**
- **Guarantee that campus security recognizes LGBTQ+ student needs**
ENDNOTES


