



# *New Mexico School Boards Association*

## **POLICY SERVICES *POLICY ALERT***

To: Superintendents and Board Members

Date: January 27, 2025

From: R. Daniel Castille, Policy Service Director

Re: 2024 Title IX regulations vacated

On January 9, 2025 a federal judge in Kentucky vacated the 2024 Title IX regulations issued by the U.S. Department of Education (USED). As stated by the judge in that case, the vacation of the regulations effectively takes the 2024 changes “off the books” nationwide. It seems safe to predict that USED, under the new Presidential administration, will not appeal the decision or otherwise attempt to revive the 2024 regulations. As a result, it appears that the 2024 regulations are void and the 2020 regulations which they sought to replace are back in effect in all states.

**Districts that changed their sex discrimination and harassment policies to comply with the 2024 regulations are likely not in compliance with the 2020 regulations.**

You may recall that the Policy Service issued a Policy Alert on the topic of the 2024 regulations on July 12 last year. ( <https://www.nmsba.org/wp-content/uploads/2024/07/NMSBA-Policy-Alert-July-2024.pdf> ). At the time, the Policy Service had drafted new Title IX policies to comply with the new regulations which were to take effect on August 1. To make a long story short, as stated in the July Policy Alert, litigation had made the enforceability of the 2024 regulations uncertain and Policy Services determined to wait to change the official NMSBA Title IX policies until the fate of those regulations became more clear. Accompanying the July Policy Alert were the newly drafted policies that *would have* been issued

but for the uncertainty. The Alert advised districts to discuss the Title IX issues with their attorneys and, if determined to be in the district's best interest, authorized districts to use those unofficial draft Title IX policies. **Numerous districts did adopt those “unofficial” policies and those districts will need to go back to their old policies, adopt the old/existing NMSBA Title IX policies, or otherwise bring their policies back into Title IX compliance. Districts who adopted those unofficial policies may also want to discuss any pending Title IX grievance procedures with their attorneys.**

Probably the easiest way to view the NMSBA's existing Title IX policies is to review the Policy Advisory issued by NMSBA in June 2020 when they were originally adopted. Those can be found on the NMSBA policy portal at: <https://www.nmsba.org/wp-content/uploads/2020/06/NMSBA-Policy-Service-Advisories-206-207-June-2020.pdf>.

Please note that some of the “unofficial policies” included with the July Policy Alert were not directly related to the (now defunct) 2024 regulations. Rather, they were an effort to improve the policy manual as a whole by consolidating various complaint procedures and non-discrimination statements. Districts can anticipate that the Policy Service will soon issue a new policy advisory that makes some of those unofficial policies official after modifying them to remove references to the 2024 regulations.

For people new to the discussion, Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq., is a federal statute passed by Congress that prohibits sex discrimination in educational programs that receive federal funding. USED is the executive department that enforces Title IX and it issues regulations, which have the force of law, and which provide greater detail on prohibited discriminatory conduct under Title IX. The Title IX statute and all of the USED regulations remain in effect with the exception of the 2024 regulations which modified the rules for addressing sex discrimination/sex harassment claims, and (would have) added provisions specific to pregnant/parenting student and gender identity.

If you have any questions, or requests call Policy Services at (505) 469-0193 or E-mail Dan Castille, Policy Services Director at [rdcpolicyservices@outlook.com]. This Material is written for information only and is not intended as legal advice. Please consult your attorney if legal explanations are needed.