

Title IX and LGBTQ+ Identity: Where We Are and Where We Came From

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What changed?

- Proposal prohibits all forms of sex discrimination, including sexual orientation and gender identity
 - Includes harassment
- Prohibits separating or treating any person differently based on sex in a manner that subjects person to more than minimal harm
 - Includes policies that prevent participating in programs/activities consistent with gender identity
- Regulations regarding athletics forthcoming



“Today, we send a loud message to these students, and all of our students: You belong in our schools. You have worthy dreams and incredible talents. You deserve the opportunity to shine authentically and unapologetically.”

“Just having such a clear and explicit statement of inclusion is extremely powerful, particularly in a time when we’re hearing a lot of statements of exclusion from other sources.”

- Elana Redfield



A Brief History Lesson...

- Obama administration provided guidance to schools in 2016 regarding transgender students
 - Bathrooms
 - Schools must recognize gender identity
 - Schools must respond to sexual harassment claims involving gender identity or transition



A Brief History Lesson...

- Federal judge in Texas prevented Obama guidance from implementation
- 13 states sued the federal government over guidance

A Brief History Lesson...

- 2017: Trump Administration rescinds previous guidance



Bostock v. Clayton County, GA

- 2020 SCOTUS decision focused on 3 employment cases:
 - An employee in GA fired after joining a gay softball league
 - An employee in NY fired from skydiving company after disclosing he is gay
 - An employee in MI fired from funeral home 2w after disclosing she is trans
- Ultimate decision: LGBTQ+ are protected from employment discrimination under Title VII of the Civil Rights Act of 1964
 - Discrimination based on sexual orientation/gender identity is discrimination based on sex



“An employer who fired an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguiseable role in the decision, exactly what Title VII forbids.”

- Majority Opinion, *Bostock v. Clayton County, GA*

Biden Administration Response

- Directed the Department of Education to apply this new decision to sex discrimination

Implications for Dental Education

- All forms of sex-based harassment
 - Including creating a hostile environment
 - Bullying
- Sex-based harassment must use “preponderance of evidence”
- Schools cannot retaliate, must protect against other student retaliation
- Recognize transgender identity and provide appropriate accommodation