



## **Title IX prohibition extends to discrimination on the basis of sexual orientation and gender identity**

Schools should be prepared to respond to claims of discrimination on the basis of sexual orientation and gender identity as provided in the Title IX prohibition of discrimination "on the basis of sex."

This is the U.S. Education Department Office for Civil Rights interpretation, according to its recently released [Notice of Interpretation](#) explaining its enforcement of the prohibition.

"I think we are likely to see increased enforcement," said William Zee, attorney with Appel, Yost, & Zee LLP in Lancaster, Pa. "Schools should be sure to properly investigate and respond to allegations of discrimination on the basis of sexual orientation and gender identity and may need to update existing policies."

Students with disabilities are among subgroups most susceptible to discrimination based on their identities as lesbian, gay, bisexual, transgender, or questioning, according to *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth*. Moreover, the national report, released in 2016 by GLSEN Inc., revealed that LGBTQ students with disabilities are more likely to face school discipline, drop out, and become justice-involved when compared with their peers.

OCR's interpretation of the Title IX prohibition of discrimination on the basis of sex encompasses discrimination on the basis of sexual orientation and gender identity. It stems from the U.S. Supreme Court decision in *Bostock v. Clayton County, Georgia*, [120 LRP 18316](#), 140 S. Ct. 1731 (2020), which reasoned "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

The weight of OCR's notice of interpretation in litigation will depend on the courts, said Zee, adding that the interpretation is consistent with guidance issued by the U.S. Justice Department on March 26, 2021.

"This guidance is instructive but not binding," said Zee. "Some courts may adopt the departments interpretation. However, courts have chosen to disregard such guidance in the past."

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