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DEPARTMENT OF LABOR

Office of the Secretary

Notification of Rescission of the 2022 Interpretation of Section 188 of the Workforce Innovation and Opportunity Act

AGENCY: Office of the Secretary, Labor.

ACTION: Notification of rescission.

SUMMARY: This notice rescinds guidance that defines the term "sex" for purposes of the Department of Labor's anti-discrimination provisions of its workforce funding and development programs. Specifically, the guidance that is the subject of this notice construed the term "because of . . . sex" to include transgender status and gender identity, based on the Supreme Court case *Bostock v. Clayton County*. The Department of Labor now rescinds this guidance because later court cases found that the term "sex", as it is used in the context of education funding in Title IX, does not include transgender status or gender identity, and that the holding in *Bostock v. Clayton County*, which was about Title VII, does not apply to Title IX. This rule is effective immediately and rescinds the former guidance in its entirety.

DATES: This rescission is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Naomi Barry-Pérez, Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–4123, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Section 188(a)(1) of the Workforce Innovation and Opportunity Act (WIOA) WIOA states that programs funded or otherwise financially assisted in whole or in part under WIOA are federal assistance programs subject to the prohibition against discrimination, *inter alia*, "on the basis of sex under title IX of the Education Amendments of

1972."[1] Separately, WIOA also provides at section 188(a)(2) that no individual "shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of . . . sex (except as otherwise permitted under title IX of the Education Amendments of 1972)[.]"[2] Finally, section 188(e) commands that the Department of Labor (DOL or the Department) "shall adopt standards for determining discrimination … that are consistent with the Acts referred to in subsection (a)(1)." For sex discrimination, this means the standards under Title IX.

On April 7, 2022, the Department published a "Notification of interpretation" construing section 188(a)(2) to encompass discrimination based on sexual orientation and gender identity.[3] The notice announced that the Department's Civil Rights Center would process complaints, conduct investigations, and carry out compliance reviews under section 188 on that basis. In reaching this interpretation, the Department relied principally on the Supreme Court's decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020), which held that Title VII's prohibition on discrimination "because of sex" necessarily encompasses sexual orientation and gender identity, and on the Fourth Circuit's decision in *Grimm v. Gloucester County School Board*, 972 F.3d 586, 616 (4th Cir. 2020), which extended *Bostock*'s reasoning to Title IX's prohibition on discrimination "on the basis of sex" in the context of access to school bathrooms.[4] DOL reasoned that, because section 188 of WIOA expressly incorporates Title IX's prohibition on sex discrimination, which is governed by *Bostock*'s reasoning, section 188 must also prohibit discrimination based on sexual orientation and gender identity.[5]

Since that time, however, additional courts have considered the issue and determined that *Bostock*'s reasoning does not extend to Title IX.

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[1] 29 U.S.C. 3248(a)(1).
[2] 29 U.S.C. 3248(a)(2).
[3] 87 FR 20321 (Apr. 7, 2022).
[4] *Id.* at 20321-22.
[5] 87 FR 20322.

Notably, on December 30, 2022, the Eleventh Circuit in *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791 (11th Cir. 2022) subjected the term "sex" as used in Title IX to a thorough statutory analysis. After clarifying that *Bostock* did not resolve how the term "sex" is defined under Title IX in light of Title IX's statutory and regulatory carveouts, the Eleventh Circuit found that the ordinary meaning of the term "sex" as of 1972 (when Title IX was enacted) was "biological sex," and reversed a judgment in favor of a transgender student regarding a high school's bathroom policy. In particular, the Eleventh Circuit explained that Title IX should be interpreted to give full effect to the statute's exceptions, which include "explicitly permit[ting] differentiating between the sexes in certain instances, including school bathrooms, locker rooms, and showers, under various carve-outs." *Adams*, 57 F.4th at 814. The Eleventh Circuit concluded that, based on these carveouts, as well as the dictionary definition of the term "sex" in existence at the time that Title IX was enacted, that extending the term "sex" under Title IX to gender identity "cannot comport with the plain meaning of 'sex' at the time of Title IX's enactment and the purpose of Title IX and its implementing regulations, as derived from their text." *Id*.

Then, in April 2024, the Department of Education promulgated a comprehensive Title IX rule redefining prohibited "discrimination on the basis of sex" to include "discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity."[6] The Department of Education relied principally on extending *Bostock* to Title IX for this rulemaking.[7]

That rule was promptly challenged. Every court presented with a challenge indicated that the rule was unlawful and enjoined it.[8] These courts found that the Department of Education's

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[6] 89 FR 33886 (Apr. 29, 2024).
[7] *Id*. at 33806–07.
[8] *Alabama v. U.S. Sec. of Educ.*, No. 24-12444, 2024 WL 3981994 (11th Cir. Aug. 22, 2024); *Tennessee v. Cardona*, No. 24-5588, 2024 WL 3453880, at *1 (6th Cir. July 17, 2024); *Oklahoma v. Cardona*, 743 F.Supp.3d 1314 (W.D. Okla. July 31, 2024); *Arkansas v. Dept. of Educ.*, 742 F.Supp.3d 919 (E.D. Mo. July 24, 2024); *Texas v. United States*, 740 F.Supp.3d 537 (N.D. Tex. July 11, 2024); *Kansas v. Dept of Educ.*, 739 F.Supp.3d 902 (D. Kan. July 2, 2024); *Louisiana v. Dept. of Educ.*, 737 F.Supp.3d 377 (W.D. La. 2024).

rule exceeded statutory authority because Title IX's text, history, and structure establish that "sex" refers to the biological distinction between male and female.[9] They also universally rejected the Federal government's position that *Bostock*'s reasoning applies to Title IX. As Sixth Circuit Chief Judge Sutton explained when affirming the preliminary injunction granted by the Eastern District of Kentucky, "Title VII's definition of sex discrimination under *Bostock* simply does not mean the same thing for other anti-discrimination mandates, whether under the Equal Protection Clause, Title VI, or Title IX."[10] Judge Sutton reasoned that Title VII and Title IX have "materially different language" and "serve different goals and have distinct defenses." Judge Sutton also observed that "Congress enacted Title IX as an exercise of its Spending Clause Power, which means that Congress must speak with a clear voice before it imposes new mandates on the states. The same is not true of Title VII." Based on these findings, Judge Sutton rejected the notion that "principles announced in the Title VII context automatically apply in the Title IX context" and concluded that, based on this statutory analysis, that courts should be "skeptical of attempts to export Title VII's expansive meaning of sex discrimination to other settings."[11]

The federal government sought emergency relief from the Supreme Court to stay injunctions issued by the district courts in Louisiana and Kentucky. In denying relief, "all Members of the Court … accept[ed] that the plaintiffs were entitled to preliminary injunctive relief as to … the central provision that newly defines sex discrimination to include discrimination on the basis of sexual orientation and gender identity."[12] The Eastern District of Kentucky thereafter vacated the Department of Education's Title IX rule.[13]

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[9] *See, e.g., Texas*, 743 F. Supp. at 872-74.
[10] *Tennessee*, 2024 WL 3453880, at *2-3 (internal citations and quotation marks omitted).
[11] *Id*.
[12] *Dep't of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024). Four Justices would have narrowed the injunctions to exclude other parts of the rule. *Louisiana*, 603 U.S. at 869 (Sotomayer, J., dissenting in part from the application for stays).
[13] *Tennessee v. Cardona*, 762 F. Supp. 3d 615 (E.D. Ky. 2025).

Taken together, these decisions do not support reliance on *Bostock* in cases arising under Title IX because it would extend Title IX beyond its statutory bounds. And because section 188(a)(2) of WIOA expressly incorporates Title IX's exceptions to sex discrimination, and section 188(e) further states the Department "shall adopt standards for determining [sex] discrimination" that are consistent with Title IX, it necessarily follows that sex discrimination prohibited under section 188(a)(2) should be construed consistently with Title IX not to encompass sexual orientation and gender identity. To interpret section 188(a)(2) otherwise would give it broader coverage than Title IX itself and exceed statutory authority. Accordingly, the Department rescinds the 2022 interpretation.

The Department further recognizes that its regulations implementing WIOA section 188's prohibition against sex discrimination currently state that "[t]he term sex includes, but is not limited to, pregnancy, childbirth, and related medical conditions, transgender status, and gender identity."[14] The Department will consider rulemaking and related subregulatory guidance to ensure its regulations and enforcement practices are aligned with recent judicial developments.

AUTHORITY: WIOA Section 188, 29 U.S.C. 3248; Secretary's Order 04-2000 (November 7, 2000).

Signed in Washington, DC, January 5, 2026.

Lori Chavez-DeRemer,
Secretary of Labor
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[14] 29 CFR 38.7(a).