



STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION

MEMORANDUM

TO: District Superintendents
South Carolina School Board Members

FROM: Office of General Counsel

DATE: July 2, 2024

RE: Update on Litigation Regarding Title IX Regulations

As you are aware, the U.S. Department of Education recently released a new Title IX rule which includes an effective date of August 1, 2024. In April, the SCDE issued a [memorandum](#) recommending Districts not implement the new rule at that time, stating “[i]t is possible— even likely—that a court will enjoin the rule prior to its effective date” and promising to consult with the Governor, State Attorney General, and legislative leaders to provide further guidance and analysis as legal challenges to this rule develop.

Since the issuance of that memorandum, the State of South Carolina joined with Alabama, Florida, and Georgia and [filed suit](#) against the U.S. Secretary of Education seeking the Court to grant relief from the new rule.¹ After filing suit in the Northern District of Alabama, the various Plaintiff States filed a motion to stay the effective date and seek injunctive relief against the new Title IX rule. Oral arguments occurred yesterday and while we cannot predict the exact date of a ruling from the Court, we do anticipate an order in the near future.

Therefore, we continue to recommend that Districts not implement the new rule at this time.

Other states also filed similar suits in different U.S. District Courts, and have successfully obtained preliminary injunctive relief for their jurisdictions. Louisiana, Mississippi, Montana, and Idaho received relief from the new rule in a case filed in Louisiana.² Additionally, Indiana, Kentucky,

¹ Case Number 7:24-cv-00533

² Case Number 3:24-cv-00563; see [Order Granting Preliminary Injunction](#).

Ohio, Tennessee, Virginia, and West Virginia have also received injunctive relief in a case filed in Kentucky.³

While we cannot guarantee successfully obtaining injunctive relief in South Carolina, we believe South Carolina is likely to receive similar relief as the ten other states listed above. And while the merits of these cases will continue to be litigated for some time, last week's U.S. Supreme Court decision in *Loper Bright Enterprises v. Raimondo* (6/28/2024) clarifies that federal agencies lack the authority to issue regulations outside of statutory bounds. To do so violates the federal Administrative Procedures Act:

Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the [Administrative Procedures Act] requires... But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.⁴

While the *Loper Bright Enterprises* case dealt with a federal agency operating under statutory ambiguity, we maintain the new rule from the U.S. Department of Education falls far outside of the clearly defined lines of Title IX statutory framework. Put simply, the U.S. Department of Education lacks the authority to speak where Congress has declined to speak.

As promised, we will continue to keep you apprised of any significant developments related to the implementation of the new rule under Title IX.

³ Case Number 2:24-cv-00072; see [Order Granting Preliminary Injunction](#).

⁴ [Loper Bright Enterprises v. Raimondo](#) at p. 35.