



**Georgia Dept
of Early Care
and Learning**

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Area **Memo: Civil
Rights**
Programs **CACFP, SFSP**

Guidance on the Interpretation of Discrimination Based on “Sex” in USDA Child Nutrition Programs

Legal Authority

[USDA Memorandum dated July 7, 2025](#)

Background

The U.S. Department of Agriculture’s (USDA) Food and Nutrition Service (FNS) administers child nutrition programs that reduce hunger for vulnerable children including USDA’s National School Lunch Program. For each of several reasons set forth below, USDA has rescinded the Biden Administration’s May 2022 *Bostock* policy update that sought to require federally-funded food and nutrition service programs to redefine discrimination by reason of “sex” under Title IX of the Education Amendments of 1972 (Title IX) and the Food and Nutrition Act of 2008 (FNA) as not based on just male or female, but also “gender identity.” Today’s guidance eliminates the illegal threats issued under the Biden Administration that mandated compliance with ever-evolving concepts of gender ideology as a condition for participation in USDA school programs.

State agencies are reminded that, in 2024, the Supreme Court permitted injunctions to remain in place against the Biden Administration’s regulatory definition of sex discrimination under Title IX to include gender identity. *Department of Education v. Louisiana*, 603 U.S. 866 (2024). Likewise, the legal basis for the Biden Administration’s May 5, 2022, FNS *Bostock* Policy Update has been rejected by numerous recent federal court decisions. Courts have determined that discrimination based on “sex” does not, under Title IX, include discrimination on the basis of “gender identity.” *Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 812 (11th Cir. 2022) (en banc); *Tennessee v. Cardona*, 2025 WL 63795, at *3 (E.D. Ky. Jan. 9, 2025), as amended (Jan. 10, 2025) (“when Title IX is viewed in its entirety, it is abundantly clear that discrimination on the basis of sex means discrimination on the basis of being a male or female”); *Texas v. Cardona*, 743 F. Supp. 3d 824, 871 (N.D. Tex. 2024) (indicating that, in 1972, when Title IX was enacted, “ ‘sex’ carried an unambiguously binary meaning”), *appeal filed*, No. 24-10910 (5th Cir. Oct. 7,

2024); *Neese v. Becerra*, 640 F. Supp. 3d 668, 678 n.6 (N.D. Tex. 2022) (observing that, in 1972, “sex’ was commonly understood to refer to physiological differences between men and women – particularly with respect to reproductive functions”), *vacated*, 123 F.4th 751 (5th Cir. 2024), *reh’g denied*, 127 F.4th 601 (5th Cir. 2025). Accordingly, USDA concluded the Biden Administration’s May 5, 2022, FNS Bostock Policy Update was legally flawed. For this reason, USDA rescinds the May 2022 Bostock policy update and related guidance documents implementing that policy.¹

Program Requirements

USDA determined that its rescission was a reasonable exercise of its discretion to avoid the litigation risk it faced as a defendant in *Rapides Parish School Board v. HHS, USDA, et al.*, no. 8:23-cv-00889-CEH, in which a public school board sued USDA, challenging the legality of the May 2022 policy update and related provisions. On July 2, 2025, the Department of Justice, on behalf of USDA, executed an agreement securing plaintiff’s dismissal of its complaint against USDA, in exchange for USDA’s rescission of the Biden Administration’s May 2022 policy update and related documents and guidance.

USDA also concluded that its rescission of the May 2022 policy update and related documents and guidance will conserve resources by exercising its enforcement discretion to terminate pending compliance reviews and by avoiding the waste of resources on future reviews and potential litigation to the extent they would be based on the now-rescinded 2022 policy update.

USDA will therefore apply the interpretation under the binding principles and provisions of the Department of Education’s 2020 Title IX Rule and USDA’s longstanding Title IX regulations, which are themselves consistent with President Trump’s Executive Order *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*.

Each of the foregoing reasons provided USDA with an independently sufficient reason to rescind the May 2022 Bostock policy update and related documents and guidance.

FNS therefore interprets “on the basis of sex” in Title IX of the Education Amendments of 1972 and other relevant sex-nondiscrimination laws to protect sex-based equality, which is at odds with the concept of gender ideology. USDA therefore has rescinded its 2022 policy update, which advanced an incorrect interpretation of discrimination on the basis of “sex” under Title IX in conflict with controlling sex discrimination law. See, e.g., *Louisiana*, 603 U.S. 866. This now-cancelled policy resulted in harmful impacts on child nutrition programs. Because USDA’s 2022 policy update is rescinded in its entirety, state agencies, schools and other organizations administering FNS’s child nutrition programs should cease any reliance on this incorrect, and now-rescinded 2022 USDA/FNS *Bostock* policy update.

¹ A list of the rescinded policy update and related guidance documents is attached.

Rescinded Documents

The following documents are withdrawn based on a change in administration policy consistent with Executive Order 14168:

1. USDA Memorandum from Roberto Contreras, Director of Civil Rights Division, Food and Nutrition Service, to Regional and State Directors Regarding CRD 01-2022 Application of Bostock v. Clayton County to Program Discrimination Complaint Processing—Policy Update (May 5, 2022)
2. USDA Memorandum from Food and Nutrition Service to Regional and State Directors Regarding Questions and Answers Related to CRD 01-2022 Application of Bostock v. Clayton County to Program Discrimination Complaint Processing—Policy Update (May 5, 2022); and
3. USDA Cover Letter from Roberto Contreras, Director of Civil Rights Division, Food and Nutrition Service, to Regional Program Directors and State Agencies Regarding Application of Bostock v. Clayton County to Program Discrimination Complaint Processing—Policy Update (May 5, 2022).

Comments

For questions concerning this memorandum, please contact Policy Administrator at (404) 651-8193.

Attachments



[Guidance on the Interpretation of Discrimination Based on “Sex” in USDA Child Nutrition Programs.pdf](#)