



BIDEN RULE TAKES LUNCH MONEY FROM SCHOOLS THAT REJECT PROGRESSIVE GENDER, SEXUALITY AGENDA - THE CENTER SQUARE

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A new Biden administration rule forces schools to comply with progressive ideology on gender and sexuality or risk losing the federal aid for free and reduced-price school lunches.

Legal observers say this is just the first in a slew of new rules on the horizon tying federal education funding to far-left policies on gender and sexuality.

The school lunch funding controversy began in May 2022, as The Center Square previously [reported](#), with an announcement from the U.S. Department of Agriculture, which handles federal help for school lunches.

The USDA said at the time it would change its longstanding interpretation of Title IX, the law broadly governing discrimination protections in education. USDA said it would expand its previous prohibition against discriminating based on sex “to include discrimination based on sexual orientation and gender identity.”

School lunch funding goes through the Food and Nutrition Service (FNS) of USDA.

“As a result, state and local agencies, program operators and sponsors that receive funds from FNS must investigate allegations of discrimination based on gender identity or sexual orientation,” USDA said in a statement. “Those organizations must also update their non-discrimination policies and signage to include prohibitions against discrimination based on gender identity and sexual orientation.”

That change has major legal and taxpayer dollar implications and is an unprecedented reinterpretation of the statute, according to experts. For instance, schools receiving Pell grants, FAFSA, or students who receive federally subsidized school lunch funding will be subject to the new Title IX interpretation or risk losing that funding.

“This is a significant departure from what Title IX has always been interpreted to be,” Sarah Perry, a lawyer at the Heritage Foundation and expert on this issue, told The Center Square.

With an ever-growing number of orientations and gender identities, and despite the political divide on the issue, schools will now be forced to comply on the complex and highly politicized gender and sexuality issue.

“This is no small change,” Perry said. “This is a significant interpretation to say that sex equals sexual orientation and gender identity when Title IX, we know, dates back to 1972 and the women’s liberation movement, and at the time there was an entire campaign by LGBTQ activists to be included in anti-discrimination law indicating that they themselves did not believe that they were protected in these particular contexts.”

Practically, that could lead to schools being forced to allow transgender girls use facilities reserved for biological girls or to toe the line on preferred pronoun usage, among other things.

Senate Republicans tried and failed 47-50 to overturn the USDA reinterpretation via the Congressional Review Act.

“Don’t be fooled here, the Biden Administration is the only player in this policy fight that is taking away lunches from children,” U.S. Sen. Roger Marshall, R-Kans., said after the effort failed. “There is real-world evidence that USDA’s policy has already taken away school lunch funding from low-income children.

“Weaponizing school lunch money in pursuit of their radical agenda and putting students in the crosshairs is unconscionable, and we will not stand for it,” he added.

Nearly two dozen states filed a joint legal challenge to the USDA reinterpretation and pointed out that Tennessee had success challenging a similar federal effort from the U.S. Department of Education and the Equal Employment Opportunity Commission in the past.

The court battle could become more complex when more schools challenges the new interpretation or a student or parent feels that a local school district has not complied sufficiently with USDA’s new interpretation.

A legal fight could end up at the U.S. Supreme Court, given the importance of Title IX and the nationwide implications of a potential ruling.

One Christian school in Florida filed a lawsuit of that kind and settled out of court in 2022, and the USDA announced in a memo more leeway and exemptions for religious schools on this policy.

However, another church and its preschool in California filed suit saying they lost school lunch funding for refusing to adhere to the gender identity doctrine in their employment practices.

Perry said, however, that enforcing a liberal regulatory plan on gender or sexuality in schools is far from reserved to the USDA. The Department of Education is formulating new rules of the same kind now that Perry said will come out likely in the spring 2024. Those rules, which were expected to already be finalized and may be combined into a single rule, have been delayed because of the pushback and concerns raised with the federal agency.

“I think was a little overwhelmed by criticism,” Perry said, referencing the delays.

Even beyond the new DOE rules, redefining sex to include sexuality and gender identity would have broad implications across the federal government.