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## **Memo: Title IX Final Rule Aims to Protect Queer Students**

The US Department of Education has issued its long-awaited final rule on Title IX, which prohibits sex discrimination by any educational institution or program that receives federal financial assistance. While the rule contains many points of interest, including detailed procedural requirements for how schools should respond to complaints of sexual harassment or sexual assault, it also creates ground-breaking protections for LGBTQ+ students, faculty, staff, and others affiliated with a school or other education program. These requirements should have important implications for public and private schools throughout Delaware. The effective date of the new rule is August 1, 2024.

With limited exceptions, the Final Rule declares that any denial or discriminatory treatment against an LGBTQ+ student, faculty, staff, or other person is unlawful sex discrimination.

This includes any denial or restriction to full access to bathrooms, locker rooms, classes, or any educational activity based on an individual's gender identity. This also includes appearance codes that discriminate based on gender identity, gender presentation, and inconsistency with sex stereotypes. The Final Rule discusses at length the extensive evidence of the traumatizing and health-harming effects of restrictions on bathrooms and locker rooms, and other discriminatory treatment of transgender persons.

However, the rule does not comment on housing for a specific sex nor participation in school athletic/sports teams. For the latter, the Education Department has a separate rulemaking proceeding, still pending, that proposes a rather nuanced approach to this issue.