

Dear NABITA Community,

We are writing to you to address a number of topics that may be impacted by the outcome of the election, because we know that your schools, colleges, and organizations are clamoring for information that will inform your future decisions, strategies, and choices.

At the outset, it is clear from the past few days that the work you all do will be needed more than ever. We can expect concerns about physical and emotional safety and identity-based harms to proliferate in the coming months and years. You bring unique expertise to your organizations about how to navigate through regulatory changes while staying true to the ideals of learning environments and workplaces that are free from discrimination, harassment, and violence.

ATIXA, NABITA, and TNG bring unique experience not only to advance compliance with federal and state laws, but also expertise in how to help organizations navigate through transitions as the legal landscape changes. We remain steadfast in our commitment to support you as professionals and the communities you serve.

We are going to address these concerns topic-by-topic, below.

### **Title IX Regulations**

We expect that the Trump Administration (TA) will be hostile to the Biden Administration's 2024 Title IX regulations, not just in part, but in toto. Thus, we expect the federal government will begin the process early in 2025 to reverse course. We are unclear on what path they will take, so we'll outline several possibilities:

- TA lets the lawsuits against the 2024 regs play out, with the likely result that some or all of those suits will result in permanent injunctions. That would leave some number of states permanently enjoined, with as many as half of the states still under 2024 regs, and the other half under the 2020 regs. For this reason, we don't expect this to be the path chosen by the TA.
- The TA could instruct the DOJ not to defend the lawsuits against the 2024 Title IX regulations. This is possible, even likely, but is still unlikely to result in a nationwide permanent injunction. This approach may be more viable, but we don't expect the TA to prefer any outcome that will not result in a full, nationwide, permanent injunction.
- Thus, we suspect that the TA may prefer to rescind some or all of the 2024 Title IX regulations. While it is a bit nebulous as to what authority ED has to do so absent a full Notice of Proposed Rulemaking (NPRM), it seems that rescission is possible, and would be fastest and broadest. TA may rescind, and then be willing to fight whatever lawsuits challenge their authority to do so. Perhaps they may only rescind the 2024 LGBTQIA+ protections, but we'd anticipate their preference for tanking the whole of the 2024 regs, if they can.
- The likely effect of these choices will be that the 2020 regulations will be the law in all states for all recipients by sometime in 2025. Live hearings and cross-examination would remain or return, depending on your vantage point. While the TA could opt to replace the regs, rather than rescind them, that's a 2-3 year process, and our educated guess is that they won't be that patient, given that they now have the 2020 regs to fall back on that they did not have in 2017. These are not mutually exclusive strategies, either. The TA could rescind the 2024 regs in early 2025 and also announce an NPRM for new regs or a revised version of the 2020 regs that might arrive around 2026-2027.
- The 2025 Title IX regs on gender identity and athletics are dead. We have no idea if the TA will decide to issue Title IX regulations that overtly allow the exclusion of trans athletes, but Congress may also be able to do so legislatively, if it can.

- If the federal government retreats in this way from a commitment to civil rights, expect many states to step in to legislate protections at the state level. However, as noted above, if the federal government comes out against trans female athletes, we expect that the federal action would intentionally attempt to pre-empt state laws to the contrary. If so, expect Equal Protection lawsuits from trans athletes that will take this issue to the Supreme Court during the TA term of office.
- What should you do about training? For now, if you are under an injunction, train on the 2020 regs. If you are not, train on the 2024 regs, until the plug is pulled on those regs (when and if that happens), at which point you'll need to make sure your team is certified in the 2020 standards. To make this easier for the field, ATIXA is pivoting to offering a more robust set of [trainings](#) in 2025, both in-person and virtually, for both sets of regulations. You're legally obligated to train on the rules in place, even if you expect them to change at some point.
- Finally, what should you do about policies and procedures (P&P)? Many schools and campuses have left their 2020 P&P in place. Others have implemented 2024 P&P. Assuming your approach currently aligns with prevailing law, we suggest that you keep your current status quo until the 2024 regs are no longer in force, and then switch to 2020 P&P. If you have a 2020 set of P&P on the shelf now, brush them off and have them ready. If you need a set of 2020 P&P, or want to update your 2020 set, ATIXA is preparing a 2020 updated set of our model P&Ps, both the 1P2P model and the AMPP model.
- More importantly, ATIXA's P&P Builder Tool will be freely available to all ATIXA members for 1P2P. Answer a set of questions, and our software will provide you with a fully customized version of our class-leading model for you to implement. Be ready, as the minute the 2024 regs are no longer in force, 2020 compliance will be expected.

### **Future of the Department of Education**

Trump has threatened to do away with ED, though this has been a Republican refrain since ED was created. Our team has talked this through at length, and we don't expect to see any actual dismantling of ED in the next four years of the TA. Instead, we anticipate that its leadership will be politicized and the agency will perhaps be starved of funding and resources. We have seen that happen before. At most, we might expect some programs to be transferred to other agencies, but not eliminated. Please remember that even if ED were dismantled, the federal government is still obligated to carry out the ED programs that have been authorized by Congress. Congress could eliminate those obligations, but that's an agenda far more sweeping than any mandate the TA may have. If ED were dismantled and the ED programs were not rescinded by Congress, they would have to be administered by other agencies. Thus, the programs would persist, and the only change would be in which agency administers them. Dismantling an entire agency is a great talking point, but the reality of doing so is far more complicated than Project 2025 may appreciate.

### **DEI Programs**

As many campuses are continuing to pivot following the Supreme Court's rulings on affirmative action, others are pivoting based on state legislation that is forcing institutions to close DEI offices, eliminate DEI-related positions, remove "woke" literature and books, and close identity centers. Based on the results of the election, we doubt this trend will change in the coming years ahead and expect that the bans on DEI spending and the elimination of race-conscious programming will continue and likely broaden. Some clients have inquired if their TRIO programs will be safe. Others have asked about DEI requirements around accreditation, while others are seeking answers about DEI requirements for federal research grants. As we move forward during this period of uncertainty, we must remember that we still have civil rights protections, including Title VI and Title VII. Title VI provides protections on the basis of race, color, and national origin in education, and Title VII provides protections based on race, color, religion, sex (including sexual orientation and gender identity), and national origin in employment. Both statutes provide protection from retaliation.

TNG has updated our consulting offerings with a [suite of Title VI topics and plans](#) to continue to offer this critically-important professional development. ATIXA is introducing [new certification courses](#) to ensure you have the comprehensive training you need, including Civil Rights Foundations, Title VI Compliance

Foundations for Educational Settings, and Free Speech and Responding to Protests and Activism in Education Settings.

### **Protests, Islamophobia, and Antisemitism**

With more robust backing from the TA, there is a risk that Israel will decide to truly decimate Gaza in an effort to rout Hamas and go after its sponsors in adjacent nations, thus expanding rather than contracting this war until its objectives are met. We should all anticipate that deepening the conflict in the Middle East in any way will exacerbate campus tensions between opposing factions. While things have been relatively peaceful for campuses and schools so far this academic year, if the war persists into 2025, we think campuses need to be prepared for protests to ramp up, for sustained campus conflict, and for more complaints under Title VI related to Antisemitism and Islamophobia.

As incidents of protests, Islamophobia, and Antisemitism increase, so too will hate-based communications, expressions of grievances, and threats. Behavioral Intervention Teams (BITs) are well-positioned to help assess risks associated with these concerns and to provide support to individuals impacted by the rise in hate-based incidents, including Islamophobia and Antisemitism. Campuses would benefit from educating their communities on how to recognize hate-based ideologies, expressions of grievances, and threats. Training students, faculty, and staff to identify signs of hate-fueled behavior and those impacted by such actions is crucial. By encouraging community members to make referrals to the BIT for assessment and intervention, campuses can create safer, more supportive environments. This proactive approach enables BITs to address potential threats early, provide appropriate support for affected individuals, and help to foster campus cultures that promote inclusion and safety.

### **LGBTQIA+ Rights**

Even if the commitment to civil rights falters at the federal level, we still have state civil rights laws on the books that provide protections on the basis of race, sex, religion, disability, and other protected characteristics. Some states' laws are more exhaustive and inclusive than others. In the absence of a federal imperative for inclusion, ATIXA, NABITA, and TNG bring unique experience not only in advancing those legal principles, but also in how to help organizations navigate through transitions when the legal landscape changes. Although we can surely anticipate that Title IX may no longer be the "source" of any non-discrimination mandate at the federal level, [dozens of state laws](#) provide some manner of protection for LGBTQIA+ individuals in employment, public accommodations, school bullying laws, and other realms. The courts have, so far, been fairly consistent in protecting LGBTQIA+ rights under both Titles IX and VII, though the Supreme Court will be the ultimate determiner of how far those protections extend.

A question was raised to us about whether the TA might try to stymie state-level protections for higher education by tying federal student aid funding to some commitments related to rolling back policy protections for LGBTQIA+ people. While we suppose this is possible, theoretically, we don't have any real sense of whether it is practically possible, strategically viable, or politically tenable. We'll keep an eye on it and keep you informed, of course.

In addition to the analysis of the legal landscape related to LGBTQIA+ community members, we need to consider the human impact of this election on LGBTQIA+ individuals and communities. The idea that these rights are even debated can have real and immediate consequences. LGBTQIA+ students are facing elevated rates of suicide, increased incidents of bullying and harassment, and a decline in emotional well-being, as they navigate a climate that feels increasingly uncertain and, at times, hostile. Schools must be prepared to foster a positive and inclusive environment, where all community members feel safe and valued. This requires a concerted effort to improve school climate, actively identify students who may be struggling, and connect them with the resources they need. Key players in these efforts include BITs (who assess and address risks and concerns), non-clinical case managers (who help students access resources and navigate their challenges), and clinical mental health counselors (who provide direct support for emotional and mental health needs). Together, these resources are essential in creating a supportive framework to address

the unique challenges LGBTQIA+ students and employees face, ensuring that they receive the care, respect, and validation they deserve.

### **School Safety and Violence Prevention** ★(see added footnote from DMI)

The TA is likely to embrace plans to harden schools and arm teachers rather than pursuing comprehensive gun reform and preventative measures and funding to improve school safety. NABITA does not endorse this approach and encourages administrators, staff, parents, and students to advocate for programs and policies focused on prevention and early intervention. At best, hardening schools is an inefficient use of resources. At worst, it creates significant challenges for students and negatively impacts school climate, safety, and academic achievement.

- **There is no evidence that hardening schools works.** Despite increased investments in school security personnel, weapon detectors, and active shooter drills, the frequency and lethality of school shootings continue to rise.
- **Increased school hardening often has negative consequences.** These consequences include emotional and psychological impacts, as well as higher rates of arrests, suspensions, and police referrals, particularly affecting students of color.
- **School hardening measures are costly and lack proven effectiveness.** Metal detectors, weapons detectors, lockdown technology, school resources officers or security staff, ballistic window film, and similar measures cost the U.S. billions each year without demonstrated impact on safety.

Instead, NABITA encourages an approach to school safety that relies on prevention and early intervention.

These efforts include:

- **Multi-disciplinary teams** dedicated to identifying individuals in distress or at risk (not just threats or threatening behaviors) and coordinating necessary support and resources to alleviate those concerns.
- **Increased emotional and mental health resources** such as non-clinical case managers, wellness coaches, and clinical mental health counselors.
- **Addressing root causes of violence** through efforts like anti-bullying initiatives, social-emotional learning strategies, and countering hate-based ideologies.
- **Promoting a healthy, supportive school climate** through school-wide educational campaigns that emphasize relationship-centered approaches, destigmatized access to care, and enhance bystander intervention for emotional and mental health concerns.

### **Emotional and Mental Health Impacts**

The election outcome could have a significant impact on the emotional and mental health of many Americans, particularly individuals with disabilities, people of color, LGBTQIA+ communities, women and individuals needing reproductive healthcare, immigrants, and indigenous communities. Many individuals may experience increased levels of anxiety, fear, and stress over concerns about discrimination, safety, and loss of rights. The increase in divisive rhetoric, publicized incidents of discrimination, and the rollback of certain rights and protections may leave many feeling vulnerable, anxious, and uncertain about the future.

The current political environment may contribute to heightened mental health challenges, as people face not only policy implications but also a broader social climate that feels less accepting and more hostile. Increased exposure to negative news, divisive rhetoric, and direct threats to personal rights can increase fears related to safety and security, taking a toll on individuals' emotional and mental well-being. This reality amplifies the need for accessible mental health resources and community support. By fostering an inclusive environment with clear support structures, educational institutions can help students manage stress, build resilience, and help community members to thrive both academically and personally, even in challenging times. Efforts at fostering student success, completion, and persistence should apply to all students, not just those whose identities and orientations are acceptable to the state legislature.

The following resources may offer increased support in schools:

- **Behavioral Intervention Teams:** BITs play a critical role in identifying students or employees who may be struggling with mental health issues or distress.
- **Non-Clinical Case Managers and Clinical Mental Health Counselors:** Case managers help students navigate complex issues, coordinate care, and ensure consistent support throughout their educational journey. Mental health counselors on campuses should be accessible, with training in culturally competent practices that respect and understand the unique experiences of students from all marginalized backgrounds.
- **Multicultural Resource Centers:** Multicultural resource centers in schools provide students with safe, supportive spaces where identities are affirmed, voices are valued, and students can access resources and community that help them navigate challenges and feel a greater sense of belonging.
- **LGBTQIA+ Support Groups and Resources:** LGBTQIA+ support groups and resources enhance student support and wellness by providing safe spaces for identity exploration, fostering community connection, and offering vital emotional support, which can reduce feelings of isolation and improve overall mental health.
- **Disability Support Services:** Disability support offices play a crucial role in supporting students by providing accessible accommodations and connection to appropriate resources, thus, fostering a more inclusive and affirming environment for individuals with disabilities.

## Resources

ATIXA, NABITA, and TNG provide resources to support your compliance and risk management efforts, training, and professional development. Please visit [www.tngconsulting.com](http://www.tngconsulting.com), [www.atixa.org](http://www.atixa.org), and [www.nabita.org](http://www.nabita.org) to learn more.



National Association for Behavioral Intervention and Threat Assessment, 475 Allendale Road, Suite 200, King of Prussia, PA 19406, USA, (484) 321-3651

<https://www.nabita.org/nabita-newsletter/>

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*\*While the NaBITA statement brings up valuable concerns, dismissing hardening measures altogether overlooks some potentially effective benefits for enhancing school security. Although school shootings are complex incidents rooted in various societal issues, there is evidence that some hardening measures, such as controlled access points and well-trained security officers, can play a meaningful role in deterring and responding to threats. In certain cases, physical security improvements have helped to limit the escalation of violent incidents within school environments.*

*It is also important to note that preventing violence often requires a multi-faceted approach that includes both physical and psychological measures. While it's true that some hardening tactics, like metal detectors and drills, may add stress, this effect can be mitigated by implementing them alongside mental health initiatives.*

*Furthermore, for communities and districts where funding for mental health programs is limited, physical security investments provide an immediate, tangible layer of protection that may deter or reduce the impact of potential threats. To focus solely on preventative and mental health resources without incorporating complementary security measures may overlook immediate safeguards that some schools need. Ultimately, creating a balanced approach, where physical security supports other proactive safety measures, could provide a more comprehensive solution.*