

Title IX Update

2025-26 School Year



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Part 1 - Overview of Title IX 2020 Regs



- **Title IX**
 - Law and Regulation
 - Educational institution's legal obligations under Title IX
- **Enforcement of 2020 Final Rule on Title IX**
 - Key enforcement elements
 - Legal obligation and jurisdiction
 - Definitions of acts covered under 2020 Title IX Regulations
- **Title IX Administrators and Roles in Enforcement**
 - Administrators and Parties
 - Title IX Coordinator role
 - K12 employee obligations under Title IX
- **Title IX Grievance Process**
 - Title IX grievance process overview
 - Key stages in Title IX investigation process

Part 2 – Changes in Title IX Enforcement



- Other Changes that Impact Title IX Enforcement
- Hot Topics in Title IX
- Discussion with group about how districts comply

Title IX Law and Regulation



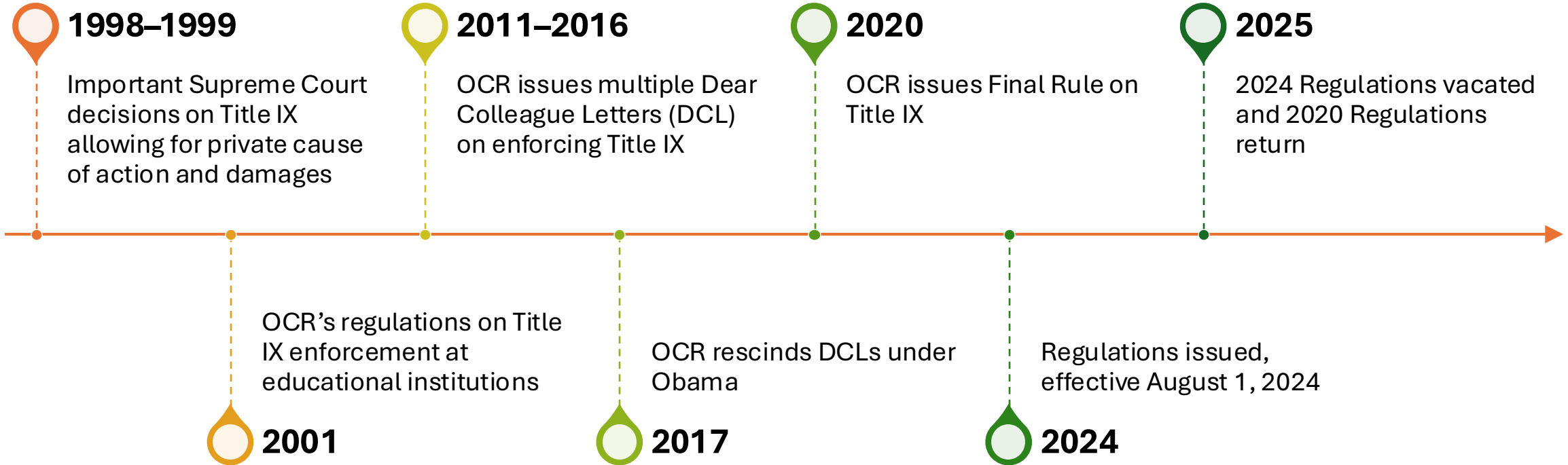


Title IX Law

- **No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.**
- **Enforced through the Department of Education, Office for Civil Rights (OCR)**



Title IX Regulatory Timeline



Title IX: 2024 Title IX Regulations Vacated

2024 Biden administration Title IX regulations set to take effect on 08/01/24.



- ❖ Litigation challenges throughout US
- ❖ State challenges
- ❖ Special interest challenges
- ❖ Biden administration proposed multiple revisions to Supreme Court that were rejected

Court case decided on 01/09/25 vacated 2024 regulations, finding that they were unlawful as enacted (*State of Tennessee v. Cardona*).



US Department of Education issues a Dear Colleague Letter in February 2025 explicitly stating that August 2020 regulations apply retrospectively and prospectively.

Title IX Covers and Includes

- Prohibition of Sex Discrimination
- Sexual Harassment
- Athletics
- Employment
- Pregnant Students
- Recruitment, Admission, Programs



Enforcement of the 2020 Final Rule on Title IX



2020 Final Rule on Title IX



- Defined and created the investigation process related to Sexual Harassment under Title IX
- Has the force and effect of law
- Set legal standard under Title IX for educational institutions
- Defined Title IX Coordinator's Role
- Clarified parties' and other administrative roles in Title IX enforcement at the district
- Described complaint grievance process
 - Supportive measures
 - Requirements for the process and informal resolution
 - Due process obligations

Legal Obligation



Educational institutions must respond in a manner that is not **deliberately indifferent** when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.



Failure to respond to a complaint following the Title IX process could be evidence of deliberate indifference.

TIXGP: Jurisdiction Defined

Occurring in the institution's education program or activity

Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

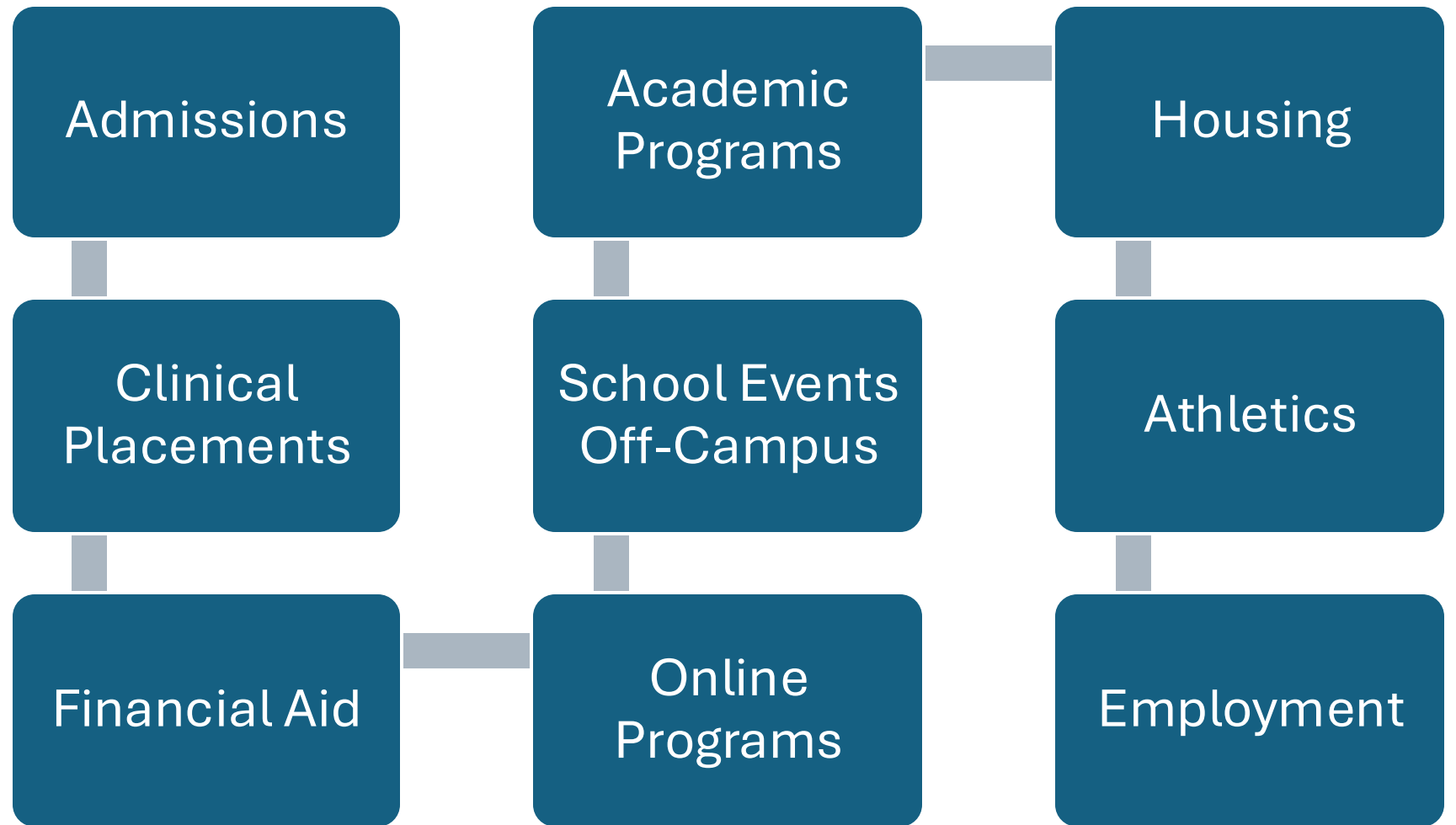
Off-campus activities covered if one (1) of three (3) requirements are met:

1. The off-campus incident occurs as part of the school's operations;
2. The school exercised substantial control over the respondent and the context of alleged sexual harassment that occurred; or
3. *The incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a college.*

Against a person in the United States.

Title IX

- Prohibits sex discrimination in educational programs and activities.



Title IX Grievance Process



- Under the 2020 Title IX regulations, acts that allege SEXUAL HARASSMENT must follow a specific Title IX grievance process, which will be reviewed.
- Other acts prohibited under Title IX, i.e. failure to provide access to scholarships or benefits to females, are not covered under the 2020 Title IX grievance process.
- Always report any and all potential sex discrimination/sexual harassment cases to the Title IX Coordinator for proper handling.

Dismissals from Title IX Process



Mandatory dismissal

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

Permissive dismissal

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complaint or allegations
- Respondent is no longer enrolled or employed by school district
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination

Title IX Definition of Sexual Harassment



Quid pro quo

Hostile Environment

Sexual Assault

Dating Violence

Domestic Violence

Stalking

Defines conduct “on the basis of sex” and includes:

- Quid pro quo - An employee of the school conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct.

Hostile Environment Harassment



Hostile Environment Sexual Harassment

Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school's education program or activity.

Specific Acts



Sexual Assault

Dating Violence

Domestic
Violence

Stalking

Sexual Assault

Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

- Any sexual act directed against Complainant, forcibly, against Complainant's will, or without consent, including
 - Rape
 - Sodomy
 - Sexual Assault with an object
 - Criminal Sexual Contact (formerly Fondling)
- Offenses that do not involve force where the Complainant is incapable of giving consent, including statutory rape and incest.

Dating/Domestic Violence

Dating violence meaning violence committed by a person:

(1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction between the persons involved in the relationship.

Domestic violence meaning felony or misdemeanor crimes committed by a person who:

(1) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the school, or a person similarly situated to a spouse of the victim;

(2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(3) Shares a child in common with the victim; or

(4) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

Stalking



Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's safety or the safety of others; or
- (2) Suffer substantial emotional distress.

Title IX Prohibits Retaliation



- Prohibition against retaliation for any participant in the Title IX reporting and investigation process.
- Retaliation may be part of a Title IX investigation or it may be a standalone complaint covered under a different process.
- Requires some level of school action for school to be responsible for the retaliation.

Title IX Administrators and Roles in Enforcement



Title IX Roles

Administration of Claims

- Title IX Coordinator
- Title IX Investigator
- Title IX Decision-Maker
- Title IX Appeal Officer
- Title IX Informal Resolution Officer

Training required for all of these administrators of Title IX matters.

Parties

- Complainant – alleged victim/survivor
- Respondent – responds to the allegation(s)
- Advisor to parties

Other Participants

- Fact Witnesses
- Expert Witnesses

Designate a Title IX Coordinator

Schools are **required** to designate at least one Title IX Coordinator for the school.



The Title IX Coordinator is responsible for compliance with Title IX for the school.

Title IX Coordinator's Role



- Title IX Coordinator is tasked with managing the Title IX response on behalf of the school.
- Information about the Title IX Coordinator should be available and widely distributed.
 - Name, office address, email address, phone number of “Title IX Coordinator” available.
 - Distributed to students, employees, applicants for admission and employment, parents and legal guardians, and unions.
 - Accepts reports of potential Title IX violations by telephone, email, and verbal reports.

Title IX Coordinator's Duties



Monitor
outcomes
and identify
patterns



Ensure
adoption of
Title IX
policy and
procedure



Access all
relevant data
(i.e.,
participation,
budgets)



Information
easily found
and in
designated
publications



Permitted to
conduct
investigations



Permitted to
oversee
investigations



Avoiding
conflicts of
interest,
including
exclusion
from serving
as the
Decision-
Maker

Title IX Coordinator's Management of the Title IX Grievance Process



- The 2020 Title IX regulations require that school districts follow a specific process to investigate allegations of Title IX sexual harassment.
- Title IX Coordinator may initiate an investigation, even if no formal complaint has been filed.

Title IX Obligations of K12 Employees



Non-Confidential Employees

All employees, except Confidential Employees, have an obligation to report to Title IX Coordinator upon notice about Title IX complaint

Confidential Employees

Mental Health professionals with a license

No duty to report to Title IX Coordinator

Title IX Grievance Process



Title IX Grievance Process

Initial Complaint Receipt

- Notice of sexual harassment
- Supportive measures
- Offer of formal complaint
- Emergency removal (optional)
- Notice of Allegations letter sent to parties
- Presumption that respondent did not violate policies

Investigation Process

- Interviews of parties and witnesses
- Gathering of other information
- Sharing of investigation file – 10-day review period
- Draft and final investigation report – 10-day review period

Decision-Maker Process

- Evaluate final investigation report
- Request input from parties
- Engage in necessary follow-up
- Issue outcome letter with policy violation and discipline decisions

Offer of Formal Process

- Complainant offered formal process
 - Offer should be made to parents of minors
 - Receipt of formal complaint
 - Title IX Coordinator may initiate an investigation without a formal complaint
- Investigation process should be explained to Complainant and parents
- Complainant must request an investigation
- Wishes of Complainant are to be respected

Title IX Coordinator's Role in Issuing Supportive Measures



Upon report of an incident, the Title IX Coordinator or designee must offer supportive measures to the alleged victim of Title IX Sexual Harassment.



A formal complaint is not required for the parties to gain access to supportive measures.



After the other party is notified of the allegations, the Title IX Coordinator or designee should offer supportive measures to the student who is alleged to have engaged in Title IX Sexual Harassment.



Meet with the parties to determine if the supportive measures are working and make revisions to the supports as necessary.

Emergency Removal Procedure (Optional)



Step 1

Conduct a prompt and individualized safety and risk analysis

Step 2

Immediate threat to physical health or safety of any student or other individual arising from the allegations of sexual harassment is identified

Step 3

Evaluate the applicability of disability laws to the removal decision

Step 4

Consider the appropriateness of supportive measures in lieu of an emergency removal

Step 5

Provide the respondent with notice and an “immediate” opportunity to challenge the emergency removal

Notice of Allegations



- Detailed allegations against Respondent.
- Supportive measures offered to Respondent.
- Keep in mind - no supportive measure can appear disciplinary or punitive in nature.

Separate Investigator and Decision-Makers



- The Title IX investigation process requires two distinct steps:
 - An investigation of the facts by a trained Title IX Investigator; and
 - A review of the investigation report by a separate trained Title IX Decision-Maker who issues a determination of policy violation and discipline.
- Title IX Coordinator may serve as Investigator.
- Title IX Coordinator may NOT serve as Decision-Maker to determine policy violation and discipline, or as the Appeal Officer.
- The Decision-Maker step is permitted to include a hearing panel, but K12 school districts are not required to hold hearings.
 - Hearing panels are required for colleges/universities.

Investigation



Investigator gathers relevant information about the allegations of sexual harassment.

All information must be shared with both parties, and both have the ability to respond (10-day review of full investigation file).

Parties have ability to review draft investigation report, provide response, before the Final Investigation Report is issued (10-day review of draft investigation report).

Decision-Maker



- Investigator forwards the Final Investigation Report to the Decision-Maker.
- Decision-Maker does outreach to the parties to see if additional questions exist or for questions posed by Decision-Maker.
- Decision-Maker must determine:
 - Policy violation
 - Discipline (if found in violation of policy)
- Decision-Maker issues an outcome letter to both parties, that includes:
 - Decision and reasoning
 - Discipline, if applicable
 - Continued supportive measures, if necessary
 - Grounds for Appeal

Title IX: Appeal Grounds

Procedural Review

Procedural irregularity in the Title IX grievance process that materially affected the outcome.

New Information

Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could materially affect the outcome.

Conflict of Interest or Bias

Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker that materially affected the outcome.

Title IX - Informal Resolution

- Informal resolution is a viable alternative to a formal investigation.
- Both parties must agree in writing to use the informal process.
- Informal resolution can only be used after a formal complaint has been filed.
- If a matter is not successful in the informal resolution process, it returns to the investigation.
- If matter reaches resolution and violation occurs, it does NOT return to investigation, but other consequences may occur.
- Informal resolution can never be used when the Complainant is a student and Respondent is an employee.

Title IX: Burden of Proof



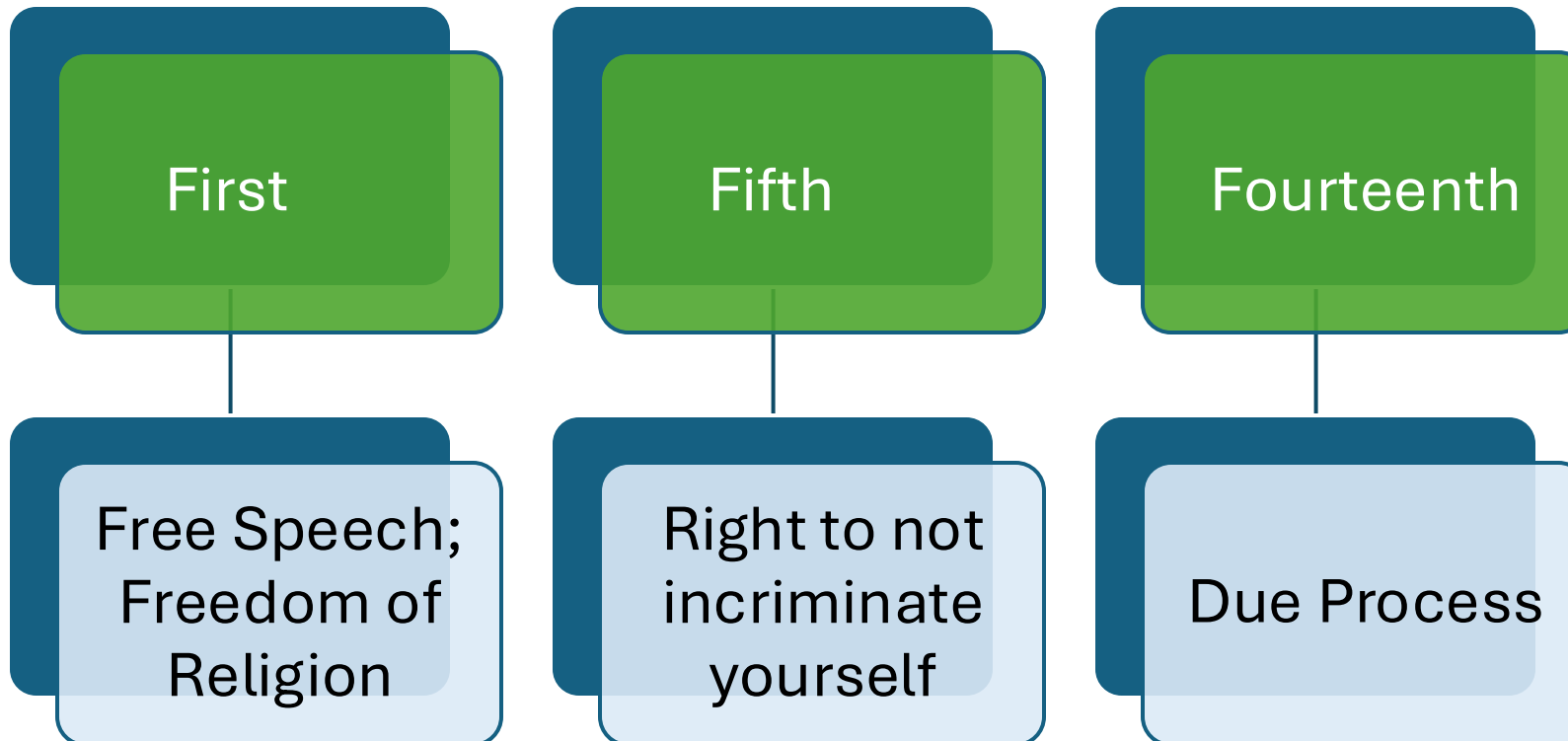
Preponderance of the evidence



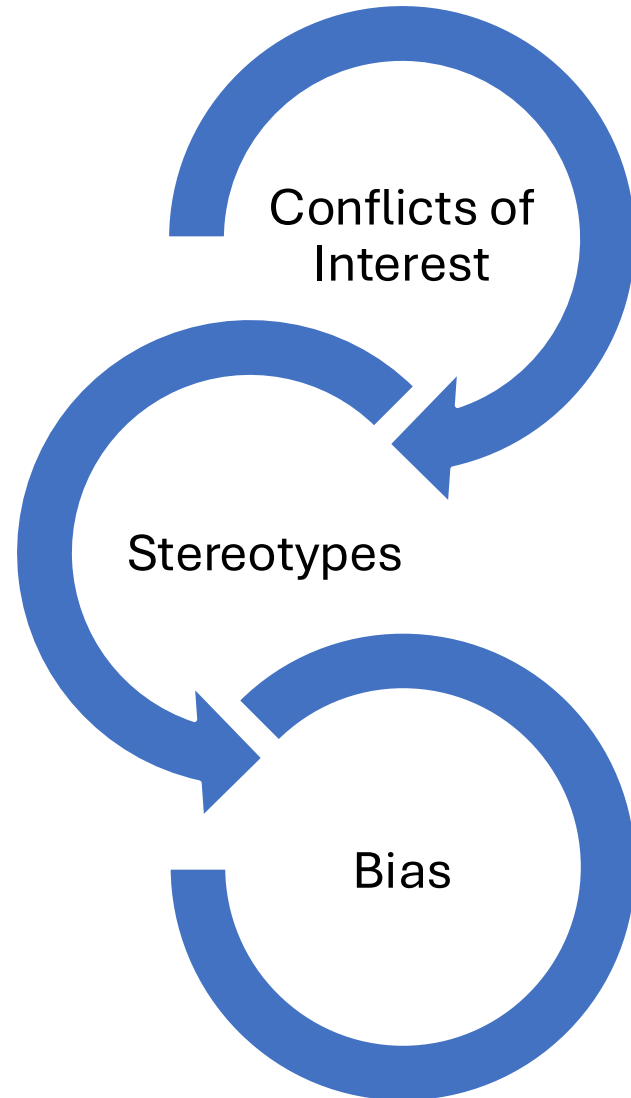
Clear and convincing

Title IX Enforcement and Federal Constitutional Protections

Title IX process may not limit or restrict constitutional protections



Title IX Grievance Process Must Avoid



Part 2 – Changes in Title IX Enforcement

- Other Changes that Impact Title IX Enforcement
- Hot Topics in Title IX
- Discussion with group about how districts comply



Changes that Impact Title IX Enforcement



Expansion of Title VI Enforcement



Dear Colleague Letter February 2025

- <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf>
- Warning educational institutions to stop using DEI efforts
- Refrain from using race as a deciding factor in admissions, hiring, or other programs

On April 24, 2025, a federal court enjoined the Department from "enforcing and/or implementing" this Dear Colleague Letter, and further stated:

- “Department of Education’s Office for Civil Rights will not take any enforcement action, or otherwise implement, the February 28, 2025, Dear Colleague Letter, associated FAQs, the End DEI Portal, or the certification requirement until further notice.”

Important Supreme Court Decisions for K12s



Mahmoud v. Taylor

- Maryland parents may opt their children out of LGBTQ-themed lessons that conflict with their religious beliefs.

A.J.T. v. Osseo Area Schools:

- ADA discrimination claims against schools are not required to prove “bad faith” or “gross misjudgment.”
- Denying reasonable accommodations alone may be sufficient to establish liability.

Department of Education v. California:

- Pause on over 100 federal education and teacher-training grants that support DEI efforts.

Oklahoma Statewide Charter School Board v. Drummond:

- Upheld Oklahoma’s ban on public funding for explicitly religious charter schools.



Investigations of Anti-Semitism

60 total universities received letters warning of potential enforcement actions, including Columbia, NYU, Cal Polytech, Scripps, and many others.

Investigations of race-based discrimination and DEI efforts, including Cal Poly Humboldt, Carnegie Mellon University, Clemson University, Cornell University, Duke University, University of Alabama, University of Michigan, University of Pennsylvania, and Yale University.



Investigations related to transgender student-athletes, restrooms, and anti-discrimination laws

- California Department of Education, California Interscholastic Federation, Denver Public Schools, Fairfax County Public Schools, Illinois State Board of Education, and Massachusetts Interscholastic Athletic Association. The Illinois State Board of Education investigation specifically involves allegations concerning Title IX and facility access based on gender identity. Other entities under investigation include Fulton County School District, Minisink Valley Central School District, Puyallup SD No. 3

Upcoming Supreme Court Arguments



2 Supreme Court cases addressing transgender students' participation in athletics

- **Little v. Hecox**

- This case challenges Idaho's law restricting transgender girls and women from participating in girls' sports.

- **West Virginia v. B.P.J.**

- This case challenges West Virginia's ban on transgender athletes in women's sports and also raises issues under Title IX, a federal civil rights law.
- <https://www.scotusblog.com/2025/07/supreme-court-agrees-to-hear-cases-on-transgender-athletes/>

CA State Law Tolling the Statute of Limitations



- **Assembly Bill 218 (2019):**
 - This law extended the statute of limitations for childhood sexual assault lawsuits to allow claims to be filed until a victim's 40th birthday or within five years of discovering the psychological injury. This also created a temporary "lookback window" where claims that had expired by January 1, 2020, could be filed until December 31, 2022.
- **Assembly Bill 452 (2024):**
 - This law passed in 2023 and went into effect on January 1, 2024. It eliminated the statute of limitations entirely for new civil lawsuits for childhood sexual assault.

Settlement Update on Sexual Misconduct – United Educator's Large Loss Report 2025

- ❖ 26 largest, publicly-reported claims settled and/or judgments rendered in by K12 schools/school districts nationally
- ❖ Ranged from \$2.5M-\$129M
- ❖ Types of claims in this group included:
 - 23 Allegations of Sexual Misconduct
 - 1 Allegation of Physical Abuse
 - 1 Allegation of Athletic Injury
 - 1 Allegation of Accidents and Crimes
- ❖ Sexual misconduct grew at 3 times the rate of other claims
- ❖ Defense costs for ELL and CGL claims are about 50% of the overall cost of a claim (settlement amount)
- ❖ Sexual misconduct claims comprised 44% of general liability losses incurred from 2019 through 2023

Title IX Hot Topics



TIx Definition of Sex



- Title IX's definition of “sex” has evolved over the years.
- Recent executive and regulatory guidance has specifically excluded gender identity from this definition.
- Allegations of discrimination/harassment related to non-binary, transgender, and gender non-conforming students and employees are not covered under Title IX.

Transgender Students in Sports



“Keeping Men Out of Women’s Sports”

<https://www.whitehouse.gov/presidential-actions/2025/02/keeping-men-out-of-womens-sports/>

Extensive press coverage related to transgender athletes

Special interest group support

High-profile cases drew attention of public

Key element of the political platform for Trump administration

Focus of Title IX enforcement in 2025

Gender Identity



- Prohibit discrimination based on gender identity in public schools and ensure access to facilities and activities aligned with their affirmed gender, while also safeguarding their privacy from unwanted disclosure to parents.
- Protections often include:
 - Nondiscrimination policies
 - Names and pronouns
 - Access to facilities and activities
 - Privacy rights
 - Anti-bullying
 - Intensive curriculum

Conflict Between Federal and State Law



Many states currently provide protections for transgender students

Bills banning protections for transgender youth have increased

Issue	2021	2023
Banning Gender-affirming care for youth	None	17 states with ban/partial ban
Banning bathroom use based on gender Identity	None	9 states
Banning participation in sports	None	19 states



OCR Investigation of Denver Public Schools

- OCR Findings: By converting a girl's restroom to a gender-neutral facility and allowing students to use bathrooms that correspond with their gender identity, the district is "creating a hostile environment for its students by endangering their safety, privacy, and dignity while denying them access to equal educational activities and opportunities," said Craig Trainor, the department's acting assistant secretary for civil rights.
- District's position:
 - The district explained that it had recently converted a boy's bathroom into an all-gender facility on the same floor where the girl's bathroom was converted "to help address the notion of any unfairness or lack of parity across facilities" as a result of the federal government's investigation earlier this year.
 - The district asserted that officials from the federal government office never visited East High nor interviewed any witnesses in their probe, and further, that requests for conversation, clarification, mediation, and discussion of remedies all went unanswered by the Department of Education's Office for Civil Rights.

OCR Designates 5 VA Districts as “High Risk”

- All federal funding flowing to these districts is done by reimbursement only.
- The Divisions refused to sign the Department’s proposed Resolution Agreement to voluntarily resolve their Title IX violations by the August 15th deadline, and have instead chosen to remain in violation of Title IX.
- As a result of the Divisions’ rejection of the Resolution Agreement, the Department is commencing administrative proceedings seeking suspension or termination of federal financial assistance to the Divisions.
- https://www.ed.gov/about/news/press-release/us-department-of-education-places-five-northern-virginia-school-districts-high-risk-status-and-reimbursement-payment-status-violating-title-ix?utm_source=chatgpt.com



University of Pennsylvania - Title IX Compliance in Athletics Statement **July 01, 2025**

The University of Pennsylvania will comply with Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681 *et seq.* (“Title IX”), as interpreted by the Department of Education, in all of its athletics programs.

As of February 5, 2025, all practices, policies, and procedures adopted and implemented by the University with respect to women’s athletics will comply with Executive Order 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (Jan. 20, 2025), in keeping with Executive Order 14201, Keeping Men Out of Women’s Sports (Feb. 5, 2025).

The University will not—on the basis of sex—exclude female students from participation in, deny female students the benefits of, or subject female students to discrimination under, any athletics programs. In addition, in providing to female student-athletes intimate facilities such as locker rooms and bathrooms in connection with Penn Athletics, such facilities shall be strictly separated on the basis of sex and comparably provided to each sex.

Title IX applies irrespective of current or future policies from sporting or scholastic governing bodies, such as the Ivy League or individual sporting bodies. The University will not delegate its obligation to comply with Title IX to an external association or other entity and it will not contract with, or arrange with any third party entity to provide benefits of the University’s athletics programs, if that third-party entity is acting in violation of Title IX.

San Jose State University (SJSU)

- Transgender volleyball player, with the team for 3 seasons.
- During the 2024-25 school year, athlete outed by roommate and team captain.
- Other league teams refuse to play against SJSU.
- February 2025 OCR sues SJSU awarded Fleming a scholarship over several female players and that SJSU retaliated against those, including the women's volleyball assistant coach, who defended female athletes.
- Information about a transgender player on the team began to spread at the start of the 2024-25 season.
- Associate head coach filed a Title IX complaint against the head coach and joined a lawsuit that says the team's wins should be vacated.

OCR Investigation of CA Schools

- OCR investigates California Department of Education and the California Interscholastic Federation and found in violation of Title IX for adhering to a state anti-discrimination law that conflicts with OCR's interpretation of Title IX protections for women and girls.
 - Consistent with State law
 - <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/10256902-a.pdf>
- OCR concluded that the CDE and CIF violated Title IX by adhering to a state antidiscrimination law that conflicts with the OCR's interpretation of protections afforded under Title IX.
- OCR has issued a proposed Resolution Agreement to CDE and CIF to address their claimed Title IX violations by voluntarily complying with six new action items within ten days or "risk imminent enforcement action, including referral to the [DOJ] for proceedings." Under the proposed Resolution Agreement and among other requirements, the CDE would be required to "issue a Notice to all recipients of federal funding . . . that operate interscholastic athletic programs in California requiring them to comply with Title IX," as interpreted by OCR and, accordingly, not permit transgender females to participate in female sports or occupy "female intimate facilities." CDE and CIF would be required to "rescind any guidance that advised local school districts or CIF members to permit [transgender female athletes] to participate in women's and girls' sports."

CA Response to Investigation

- On June 3, 2025, the State Superintendent of Public Instruction Tony Thurmond (“Superintendent Thurmond”) issued a response to the DOJ, in which he asserted that the Demand Letter did not “announce any new federal law,” and that California “will continue to follow the law and ensure the safety of all athletes.” On the same day, Superintendent Thurmond also issued a letter[4] to County and District Superintendents and Charter School Administrators in which he provided an update regarding compliance with the Equal Protection Clause of the U.S. Constitution (“Equal Protection Clause”) and further explained that “[t]he DOJ assertions are not themselves law, and the letter by itself cannot be an enforcement mechanism.”

CA Response to Investigation

- Office of the General Counsel replied via e-mail correspondence to the DOJ on behalf of the LEAs, in which it affirmed, in part, that California and its LEAs would continue to adhere to the CIF policy, which it asserted are consistent with both California law and the Equal Protection Clause.
- The same day, California Attorney General Rob Bonta filed a pre-enforcement lawsuit against the DOJ in anticipation of imminent legal retaliation for refusal to comply with the Demand Letter.

Questions?

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