Title IX Legal Update

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Dear Colleague (May 13, 2016)

Paraphrase: Gender identification is how we should read the term sex in Title IX.

- Documents (Names?), Pronouns
- Activities
- Restrooms and Locker Rooms(have optional additional privacy)
- Athletics (UIL?)
- Single Sex Classes/Schools/Overnight accommodations

The Metamorphous for Schools

- May 13, 2016 - Obama Administration Dear Colleague Letter (defined sex as "Gender Identity")
- Aug. 3, 2016 – Supreme Court grants cert. for *G.G. v. Gloucester County Sch. Bd.*
- Aug 21, 2016 - Texas v. U.S. (Harrold ISD) injunction to stop enforcement (Administrative Procedure Act argument)

The Metamorphous for Schools

- Feb. 22, 2017 - DeVos issues Dear Colleague letter – leave it to the states
- March 6, 2017 – Supreme Court remands *G.G. v. Gloucester County Sch. Bd.*
- June 5, 2020 – Supreme Court issues ***Bostock v. Clayton Cty.*** (Title VII – protects LGBTQ)

The Metamorphous for Schools

- Aug. 14, 2020 - OCR new regulations for sexual harassment for K-12 and colleges/universities take effect (first issued 5/22/2020)
- Sept 22, 2020 – 4th Circuit rules for Grimm in *Grimm v. Gloucester County Sch. Bd.*

The Metamorphous for Schools

- January 20, 2021 - Executive Order – cannot discriminate based upon gender identity or sexual orientation
- March 8, 2021 - Executive Order on Establishment of the White House Gender Policy Council
- June 28, 2021 - Supreme Court denies cert. in *Gloucester Cty Sch. Bd. v. Grimm*.

The proudest moments of the federal judiciary have been when we affirm the burgeoning values of our bright youth, rather than preserve the prejudices of the past. *Compare Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 15 L.Ed. 691 (1857), and *Bowers v. Hardwick*, 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), with *Brown v. Bd. of Educ. of Topeka*, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955), and *Obergefell v. Hodges*, 576 U.S. 644, 135 S. Ct. 2584, 192 L.Ed.2d 609 (2015). **How shallow a promise of equal protection that would not protect Grimm from the fantastical fears and unfounded prejudices of his adult community.**

Grimm v. Gloucester County Sch. Bd., 972 F.3d 586, 620 (4th Cir. 2020), as amended (Aug. 28, 2020), cert. denied, 20-1163, 2021 WL 2637992 (U.S. June 28, 2021)

The Metamorphous for Schools

- [Nov. Election – you may have heard about it]
- January 8, 2021 - OCR Memorandum on *Bostock* (Issued by Kimberly M. Richey, Acting Assistant Secretary of the Office of Civil Rights, not from the Secretary of Education)

Accordingly, unwelcome conduct on the basis of transgender status or homosexuality may, if so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity on the basis of their transgender status or homosexuality, constitute sexual harassment prohibited by Title IX. 34 C.F.R. § 106.30(a).

sex." Therefore, we believe the plain ordinary public meaning of the controlling statutory and regulatory text requires a recipient providing "separate toilet, locker room, and shower facilities on the basis of sex" to regulate access based on biological sex.

IX to mean biological sex, male or female.

Biden responds: Jan. 20 Exec Order

The head of each agency shall review all existing orders, regulations, guidance documents, policies, programs, or other agency actions ("agency actions") that:

- All Title VII and Title IX laws/rules and regs
- **"because of . . . sex" covers discrimination on the basis of gender identity and sexual orientation for all laws**.
- Use required administrative procedures (Administrative Procedure Act)
- Within 100 days

Executive Order on Preventing and Combating

It is the policy of my Administration to prevent and combat discrimination on the basis of gender identity or sexual orientation, and to fully enforce Title VII and other laws that prohibit discrimination on the basis of gender identity or sexual orientation. It is also the

(d) Within 100 days of the date of this order, the head of each agency shall develop, in consultation with the Attorney General, as appropriate, a plan to carry out actions that the agency has identified pursuant to subsections (b) and (c) of this section, as appropriate and consistent with applicable law.

March 8, 2021 - Executive Order on Establishment of the White House Gender Policy Council

100 days = September 25

Sec. 3. Government-Wide Strategy to Advance Ge Equity and Equality. (a) Within 200 days of the da this order, the Council, after coordination by the C Chairs, shall develop and submit to the President a Government-wide strategy for advancing gender e and equality in the United States and, when applic around the world (the "Strategy"). The Strategy s include recommendations on policies, programs, a initiatives that should be proposed, passed, or implemented to advance gender equity and equali the United States and around the world.

Sec. 6. Definitions. (a) The term "equity" means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as women and girls; Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)

Denial of Access to a School's Education Program or Activity. The guidance states that

Written Cross-Examination Questions. The Q&A also confirms that elementary and secondary schools must provide parties the opportunity to submit written, relevant questions that a party wants asked of any party or witness. In doing so, it notes that the 2020 amendments also permit a parent or legally authorized guardian to act on behalf of a party, and that any legal rights a parent has to act on the party's behalf apply throughout the grievance process, implying that this would extend to the exchange of written cross-examination questions and answers as well.

"dropped out of school, failed a class, had a panic attack, or otherwise reached a 'breaking point'" or exhibit other specific trauma symptoms to effectively be denied equal access.

Title IX and Sex Discrimination

U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1328
Revised August 2021

A recipient institution that receives Department funds must operate its education program or activity in a nondiscriminatory manner free of discrimination based on sex, including sexual orientation and gender identity.

Terminology Keeps Changing

- Victim
- Complainant
- Survivor

WOMEN				MEN			
Height	Frame Size			Height	Frame Size		
Ft. In.	Small	Med.	Large	Ft. In.	Small	Med.	Large
4'10"	102-111	109-121	118-131	5'2"	128-134	131-141	138-150
4'11"	103-113	111-123	120-134	5'3"	130-136	133-143	140-153
5'0"	104-115	113-126	122-137	5'4"	132-138	135-145	142-156
5'1"	106-118	115-129	125-140	5'5"	134-140	137-148	144-160
5'2"	108-121	118-132	128-143	5'6"	136-142	139-151	146-164
5'3"	111-124	121-135	131-147	5'7"	138-145	142-154	149-168
5'4"	114-127	124-138	134-151	5'8"	140-148	145-157	152-172
5'5"	117-130	127-141	137-155	5'9"	142-151	156-160	155-176
5'6"	120-133	130-144	140-159	5'10"	144-154	151-163	158-180
5'7"	123-136	133-144	143-163	5'11"	146-157	154-166	161-184
5'8"	126-139	136-150	146-167	6'0"	149-160	157-170	164-188
5'9"	129-142	139-153	149-170	6'1"	152-164	160-174	168-192
5'10"	132-145	142-156	152-173	6'2"	155-168	165-178	172-197
5'11"	135-148	145-159	155-176	6'3"	158-172	167-182	176-202
6'0"	138-151	148-162	158-176	6'4"	162-176	171-187	181-207

What's Next?

May 2022 – Possible New Regulations

New Case Law

- Doesn't this past year feel like it has been a year of Mondays…?

S.P. v. Northeast Indep. Sch. Dist. W.D. Tex. July 30, 2021

- S.P. claimed that her 37-year-old teacher Rey Trevino attempted to groom her
- He invited her and a few friends to eat lunch in his classroom, he invited her to be along in his classroom during lunch and after school, and began flirting with her telling her that she was pretty

S.P. v. Northeast Indep. Sch. Dist. W.D. Tex. July 30, 2021

- S.P. claims that on multiple occasions, her principal walked in on S.P. and Trevino alone in the classroom.
- On her last day in ninth grade Trevino kissed her, and a sexual relationship began.
- The district's motion to dismiss was granted for failure to state a claim.

S.P. v. Northeast Indep. Sch. Dist. W.D. Tex. July 30, 2021

- The Court determined that while there is no set definition of "grooming behavior" that provides actual knowledge for the district of possible sexual misconduct, the example given in this case of the principal seeing one-on-one interaction with the student and the teacher behind closed doors is not enough evidence for actual notice.

Roe v. Cypress-Fairbanks ISD S.D. Tex. Dec. 1, 2020

- Roe met her boyfriend, Doe when the two were both in seventh grade.
- The two began dating, and her mother disapproved of the relationship when the two began being disciplined in school for tardiness, truancy, and inappropriate physical contact.

Roe v. Cypress-Fairbanks ISD S.D. Tex. Dec. 1, 2020

- The relationship was unhealthy as the two argued in hallways and were sometimes physically violent.
- The two would often go under the stairwell in the middle school to have sex because they believed there were not cameras there.

Roe v. Cypress-Fairbanks ISD S.D. Tex. Dec. 1, 2020

- After breaking up and getting back together several times, in eleventh grade Roe worried she was pregnant.
- Roe and Doe went under the stairwell and Doe violently attempted to end the pregnancy.
- Roe reported the sexual assault at the hospital the next morning, and the CFISD police department were called to investigate.

Roe v. Cypress-Fairbanks ISD S.D. Tex. Dec. 1, 2020

- The Court found no deliberate indifference by the district when the principal reviewed the footage of a sexual assault, called the police immediately upon a report of sexual assault being made, and changed the victim's class schedule to no longer have the same classes as her then-boyfriend.
- This case is currently on appeal.

Doe I on Behalf of Doe II v. Huntington ISD E.D. Tex. Oct. 5, 2020

- Doe II played on the baseball team during his freshman year
- The seniors on the baseball team allegedly had a "tradition" of "initiation" whereby seniors would grab freshmen's testicles and/or put fingers in their anuses.

Doe I on Behalf of Doe II v. Huntington ISD E.D. Tex. Oct. 5, 2020

- A mother reported to the school that the baseball team has a hazing ritual, and the Principal said he would look into it.
- During his freshman year, a senior on the baseball team forced a broomstick up Doe II's anus against his will.

Doe I on Behalf of Doe II v. Huntington ISD E.D. Tex. Oct. 5, 2020

- This case addresses the heightened risk standard under Title IX.
- Neither SCOTUS nor the Fifth Circuit has ever explicitly recognized the heightened risk claim.
- The Court ruled that the Board of Trustees is not the official who must be aware of the heightened risk; the principal is enough.

Doe I on Behalf of Doe II v. Huntington ISD E.D. Tex. Oct. 5, 2020

- "Consistent with courts in the Western District of Texas and elsewhere, this court reads *Davis* to suggest that the victim need not report every instance of post-report bullying. Instead, if a funding recipient has actual notice of an initially reported incident and fails to adequately respond, the recipient can be held liable for making the victim "vulnerable" to ongoing harassment—whether that harassment occurs or not."

Doe I on Behalf of Doe II v. Huntington ISD
E.D. Tex. Oct. 5, 2020

- The coaches told students to report issues between them to the coaches first before going to the school, which amounts to a "code of silence."
- According to Doe I, after the incident his son left the baseball team, ate lunch alone, hid in teachers' rooms, received threats, received lower grades, withdrew from social activities, and transferred out of the high school altogether.
- This case was dismissed but gave Doe I a chance to replead.

I.M. by M.M. v. Houston ISD
S.D. Tex. June 3, 2021

- I.M., an intellectually-disabled high school student, was sexually assaulted by student O. while using the restroom.
- His teacher was told to escort and supervise him between classes and going to the restroom under his IEP.
- I.M. allegedly told his teacher about the assaults, and no action was taken.

I.M. by M.M. v. Houston ISD
S.D. Tex. June 3, 2021

- The assaults continued for several weeks until another teacher walked in on an assault. I.M. sued under Title IX, and his claim is allowed to continue.
- The Court held that a teacher is not precluded as a matter of law from being an "appropriate" employee with the authority to make HISD liable.
- This teacher was a SPED teacher who had authority over both I.M. and O.; controlled and supervised I.M.'s trips to the bathroom where the assaults took place; and "served on the committee that oversaw critical elements of I.M.'s education."

S.M. v. Sealy Indep. Sch. Dist.
S.D. Tex. Apr. 23, 2021

- S.M. transferred to Sealy High School and began to play basketball.
- She alleged that two members of the girls' basketball team harassed her, threw her personal belongings onto the locker room floor, and took her Airpods.
- She told the basketball coach, and no action was taken.
- Later, rumors began spreading that S.M. engaged in oral sex with a male student in the band hallway. The rumors were untrue, but continued to circulate at the school.

S.M. v. Sealy Indep. Sch. Dist.
S.D. Tex. Apr. 23, 2021

- S.M. told the band director about the rumors and harassment she received because of them, and he told her to speak with the assistant principal.
- The principal viewed the security tape of the band hallway, determined the oral sex rumors were false, and called S.M.'s parents to tell them the rumors were untrue.
- The harassment got worse, and S.M. complained to her basketball coach daily about the harassment she received due to the oral sex rumor.

S.M. v. Sealy Indep. Sch. Dist.
S.D. Tex. Apr. 23, 2021

- A different male student took S.M. into a classroom and sexually assaulted her by forcing her to perform oral sex on him.
- A few days later, a girl on the basketball team told the entire team, in front of a coach, about a new rumor that S.M. performed oral sex on the boy who assaulted her.

S.M. v. Sealy Indep. Sch. Dist. S.D. Tex. Apr. 23, 2021

- After hearing the rumors, the Assistant Principal brought S.M. into her office to ask about the second rumor, and S.M. told her it was forced contact.
- The Assistant Principal immediately contacted Sealy ISD police who investigated.
- Both S.M. and the boy were suspended for 3 days and placed into DAEP for participating in sexual acts on campus. S.M. sued under Title IX claiming the school was deliberately indifferent.

S.M. v. Sealy Indep. Sch. Dist. S.D. Tex. Apr. 23, 2021

- Courts generally hold that a school district is deliberately indifferent to complaints of sexual harassment when it fails to confront the alleged harassers or institute corrective action.
- S.M. alleges that Sealy ISD did not report the alleged sexual harassment to the district's Title IX coordinator, confront S.M.'s harassers, institute corrective measures, or investigate the allegations beyond viewing a videotape.

S.M. v. Sealy Indep. Sch. Dist.
S.D. Tex. Apr. 23, 2021

- Instead, after viewing the band-hallway videotape, Sealy ISD called S.M.'s parents and told them the rumors were false.
- These steps did not, and could not, remedy S.M.'s alleged harassment.
- Not reporting the incident to the Title IX coordinator, not confronting the harassers, no corrective measures, and no investigation into the allegations constitute deliberate indifference. Relying solely on law enforcement is not enough investigation.

M.E. v. Alvin Indep. Sch. Dist.
5th Cir. 2020

- J.E. suffered prolonged sexual abuse by her junior high school police officer.
- While the school knew that J.E. and Officer Tennard had a close relationship, nobody suspected abuse.
- J.E.'s mother, M.E., met with administration after her grades began to suffer, and requested that J.E. only confide in the school counselor or the assistant principal.

M.E. v. Alvin Indep. Sch. Dist. 5th Cir. 2020

- About a year after the first instance of rape, Graham discovered that J.E. had skipped class to visit Tennard.
- The assistant principal reminded J.E. that her mother did not want her spending time with Tennard and reported the incident to the principal.
- A few days later, M.E. found explicit text messages on J.E.'s phone, and contacted police.

M.E. v. Alvin Indep. Sch. Dist. 5th Cir. 2020

- Although M.E. expressed discomfort with the bond between her daughter and Tennard in her meeting with the assistant principal, there was no mention that anything of a sexual nature might be occurring.
- Rather, the meeting concerned J.E.'s struggles at school and her penchant for confiding personal matters in a school police officer and teacher instead of her school counselor or therapist.

M.E. v. Alvin Indep. Sch. Dist. 5th Cir. 2020

- All the meeting attendees other than Tennard testified that they did not suspect sexual abuse.
- Although the meeting put the district on notice that Tennard had become a trusted confidant for J.E., it did not provide notice of a substantial risk that sexual abuse was occurring.

M.E. v. Alvin Indep. Sch. Dist. 5th Cir. 2020

- M.E. sued the district under Title IX.
- The Court ruled that red flags such as skipping class to see the perpetrator and a close confidant relationship do not amount to notice of substantial risk for sexual abuse.
- J.E. testified that she did not tell anyone about the abuse—not her family, not her friends, and not her teachers or counselors.

J.T. v. Uplift Educ.
N.D. Tex. May 25, 2021

- M.L. was a kindergarten student at Grand Primary, an Uplift school, in 2019.
- M.L.'s teacher, Jamil Wazed routinely called certain children to his desk while showing movies to the class, asking them to perform sexual acts with him, kissing them, and rubbing his beard on their faces and necks.
- M.L. informed Uplift's Primary School Director about Wazed's acts on or by August 5, 2019.

J.T. v. Uplift Educ.
N.D. Tex. May 25, 2021

- Uplift then conducted interviews with at least four children in Wazed's class “days after learning of the teacher's sexual behavior,” and initially determined that Wazed should be allowed to continue teaching at Uplift.
- J.T. alleges that Uplift's investigative findings concluded that because Wazed's actions were not done out of malicious intent, he should be allowed to continue to work for Grand Primary after a formal meeting with the Leadership Team to layout clear and concise expectations regarding student and staff physical space and touch.

J.T. v. Uplift Educ.
N.D. Tex. May 25, 2021

- Wazed was later terminated for improper touching of students.
- J.T. failed to plausibly plead that Uplift's response was so unreasonable as to cause M.L. further harassment.
- A school may not be liable for damages under Title IX unless the deliberate indifference "cause[s] students to undergo harassment or make[s] them liable or vulnerable to it."

J.T. v. Uplift Educ.
N.D. Tex. May 25, 2021

- Regarding Uplift's training and supervision, the complaint does not allege any facts that enable the court to draw the reasonable inference that Uplift failed to adequately train and supervise its teachers.
- The complaint does not identify any training program, how it is insufficient, how Uplift failed to supervise its teachers, how the failure to train or supervise caused a violation of M.L.'s rights, or how the training and supervision amounted to Uplift's deliberate indifference to her rights.

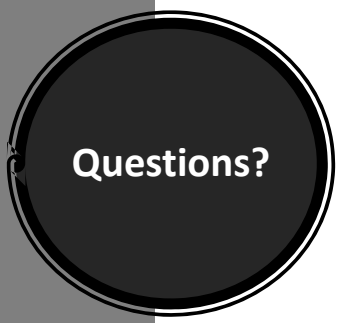
And this year's "glad it wasn't my district case" goes to….

Doe on Behalf of Doe v. Dallas ISD (N.D. Tex. Feb. 16, 2021)

- Sidney Bouvier Gilstrap-Portley was admitted to Hillcrest High School in DISD by claiming he was a seventeen-year-old homeless student.
- In reality, he was a twenty-five-year-old man. DISD did not conduct the mandatory home visit, which would have revealed Gilstrap-Portley living with his fiancée and their child.
- Gilstrap-Portley played basketball for the Hillcrest team, and began a relationship with Doe who was fourteen. Rumors are he was recruited to play basketball.

Doe on Behalf of Doe v. Dallas ISD (N.D. Tex. Feb. 16, 2021)

- As a result of Gilstrap-Portley's status as a winning basketball player, his relationship with Doe was well-known.
- Doe sued under Title IX, state-created danger, intentional infliction of emotional distress, and gross negligence against the principal in his individual capacity.
- Doe stated a claim under Title IX through her allegations that Hillcrest faculty and staff knew of Gilstrap-Portley's real identity, and therefore knew of the risk of sexual harassment of minors by an adult.
- Going to trial – survived MSJ.



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Title IX Legal Update: Caselaw

S.P. v. Northeast Indep. Sch. Dist., SA-21-CV-0388-JKP-RBF, 2021 WL 3272210 (W.D. Tex. July 30, 2021)

S.P. sued the district for discrimination under Title IX and violation of substantive due process because her 37-year-old teacher, Rey Trevino, attempted to groom her. He invited her and a few friends to eat lunch in his classroom, invited her to be along in his classroom during lunch and after school, and began flirting with her telling her that she was pretty. S.P. claims that on multiple occasions, her principal walked in on S.P. and Trevino alone in the classroom. On her last day in ninth grade Trevino kissed her, and a sexual relationship began.

The district's motion to dismiss was granted for failure to state a claim. The Court determined that while there is no set definition of "grooming behavior" that provides actual knowledge for the district of possible sexual misconduct, the example given in this case of the principal seeing one-on-one interaction with the student and the teacher behind closed doors is not enough evidence for actual notice.

Roe v. Cypress-Fairbanks Indep. Sch. Dist., CV H-18-2850, 2020 WL 7043944 (S.D. Tex. Dec. 1, 2020)

Roe met her boyfriend, Doe, when the two were both in seventh grade. The two began dating, and her mother disapproved of the relationship when the two began being disciplined in school for tardiness, truancy, and inappropriate physical contact. The relationship was unhealthy as the two argued in hallways and were sometimes physically violent. The two would often go under the stairwell in the middle school to have sex because they believed there were not cameras there. After breaking up and getting back together several times, in eleventh grade Roe worried she was pregnant. Roe and Doe went under the stairwell and Doe violently attempted to end the pregnancy. Roe reported the sexual assault at the hospital the next morning, and the CFISD police department was called to investigate.

The Court found no deliberate indifference by the district when the principal reviewed the footage of a sexual assault, called the police immediately upon a report of sexual assault being made, and changed the victim's class schedule to no longer have the same classes as her then-boyfriend. This case is currently on appeal.

Doe I on Behalf of Doe II v. Huntington Indep. Sch. Dist., 9:19-CV-00133-ZJH, 2020 WL 10317505 (E.D. Tex. Oct. 5, 2020)

Doe II played on the baseball team during his freshman year. The seniors on the baseball team allegedly had a "tradition" of "initiation" whereby seniors would grab freshmen's testicles and/or put fingers in their anuses. A mother reported to the school that the baseball team has a hazing ritual, and the principal said he would look into it. During his freshman year, a senior on the baseball team forced a broomstick up Doe II's anus against his will.

This case addresses the heightened risk standard under Title IX. Neither SCOTUS nor the Fifth Circuit has ever explicitly recognized the heightened risk claim. The Court ruled that the Board of Trustees is not the official who must be aware of the heightened risk; the principal is enough.
"Consistent with courts in the Western District of Texas and elsewhere, this court reads *Davis* to suggest that the victim need not report every instance of post-report bullying. Instead, if a funding recipient has actual notice of an initially reported incident and fails to adequately respond, the recipient can be held liable for making the victim "vulnerable" to ongoing harassment—whether that harassment occurs or not."

The coaches told students to report issues between them to the coaches first before going to the school, which amounts to a "code of silence." According to Doe I, after the incident his son left the baseball team, ate lunch alone, hid in teachers' rooms, received threats, received lower grades, withdrew from social activities, and transferred out of the high school altogether. This case was dismissed but gave Doe I a chance to replead.

I.M. by M.M. v. Houston Indep. Sch. Dist., H-20-3453, 2021 WL 2270271 (S.D. Tex. June 3, 2021)

I.M., an intellectually-disabled high school student, was sexually assaulted by student O. while using the restroom. His teacher was told to escort and supervise him between classes and going to the restroom under his IEP. I.M. allegedly told his teacher about the assaults, and no action was taken. The assaults continued for several weeks until another teacher walked in on an assault. I.M. sued under Title IX, and his claim is allowed to continue.

The Court held that a teacher is not precluded as a matter of law from being an "appropriate" employee with the authority to make HISD liable. This teacher was a SPED teacher who had authority over both I.M. and O.; controlled and supervised I.M.'s trips to the bathroom where the assaults took place; and "served on the committee that oversaw critical elements of I.M.'s education."

Doe on Behalf of Doe v. Dallas Indep. Sch. Dist., 3:19-CV-3081-S, 2021 WL 617000 (N.D. Tex. Feb. 16, 2021)

Sidney Bouvier Gilstrap-Portley was admitted to Hillcrest High School in DISD by claiming he was a seventeen-year-old homeless student. In reality, he was a twenty-five-year-old man. DISD did not conduct the mandatory home visit, which would have revealed Gilstrap-Portley living with his fiancée and their child. Gilstrap-Portley played basketball for the Hillcrest team, and began a relationship with Doe who was fourteen. As a result of Gilstrap-Portley's status as a winning basketball player, his relationship with Doe was well-known. Doe sued under Title IX, state-created danger, intentional infliction of emotional distress, and gross negligence against the principal in his individual capacity. Doe stated a claim under Title IX through her allegations that Hillcrest faculty and staff knew of Gilstrap-Portley's real identity, and therefore knew of the risk of sexual harassment of minors by an adult. Her Title IX claim was allowed to proceed and survived a motion for summary judgment.

S.M. v. Sealy Indep. Sch. Dist., CV H-20-705, 2021 WL 1599388 (S.D. Tex. Apr. 23, 2021)
S.M. transferred to Sealy High School and began to play basketball. She alleged that two members of the girls' basketball team harassed her, threw her personal belongings onto the locker room floor, and took her Airpods. She told the basketball coach, and no action was taken. Later, rumors began spreading that S.M. performed oral sex on a male student in the band hallway. The rumors were untrue, but continued to disturb the school. S.M. told the band director about the rumors and harassment she received because of them, and he told her to speak with the assistant principal. The harassment got worse, and S.M. complained to her basketball coach daily about the harassment she received due to the oral sex rumor. A different male student took S.M. into a classroom and sexually assaulted her by forcing her to perform oral sex on him. A few days later, a girl on the basketball team told the entire team, in front of a coach, about a new rumor that S.M. performed oral sex on the boy who assaulted her. After hearing the rumors, the Assistant Principal brought S.M. into her office to ask about the second rumor, and S.M. told her it was forced contact. The Assistant Principal immediately contacted Sealy ISD police who investigated. Both S.M. and the boy were suspended for three days and placed into DAEP for participating in sexual acts on campus. S.M. sued under Title IX claiming the school was deliberately indifferent.

Courts generally hold that a school district is deliberately indifferent to complaints of sexual harassment when it fails to confront the alleged harassers or institute corrective action. S.M. alleges that Sealy ISD did not report the alleged sexual harassment to the district's Title IX coordinator, confront S.M.'s harassers, institute corrective measures, or investigate the allegations beyond viewing a videotape. Instead, after viewing the band-hallway videotape, Sealy ISD called S.M.'s parents and told them the rumors were false. These steps did not, and could not, remedy S.M.'s alleged harassment. Not reporting the incident to the Title IX coordinator, not confronting the harassers, no corrective measures, and no investigation into the allegations constitute deliberate indifference. Relying solely on law enforcement is not enough investigation.

M.E. v. Alvin Indep. Sch. Dist., No. 20-20077, 840 Fed. Appx. 773, 776 (5th Cir. Dec. 18, 2020)
J.E. suffered prolonged sexual abuse by her junior high school police officer. While the school knew that J.E. and Officer Tennard had a close relationship, nobody suspected abuse. J.E.'s mother, M.E., met with administration after her grades began to suffer, and requested that J.E. only confide in the school counselor or the assistant principal. About a year after the first instance of rape, a district official discovered that J.E. had skipped class to visit Tennard. The assistant principal reminded J.E. that her mother did not want her spending time with Tennard and reported the incident to the principal. A few days later, M.E. found explicit text messages on J.E.'s phone, and contacted police.

M.E. sued the district under Title IX. The Court ruled that red flags such as skipping class to see the perpetrator and a close confidant relationship do not amount to notice of substantial risk for sexual abuse. J.E. testified that she did not tell anyone about the abuse—not her family, not her friends, and not her teachers or counselors. Although M.E. expressed discomfort with the bond between her daughter and Tennard in her meeting with the assistant principal, there was no mention that anything of a sexual nature might be occurring. Rather, the meeting concerned J.E.'s struggles at school and her penchant for confiding personal matters in a school police officer and teacher instead of her school counselor or therapist. All the meeting attendees other than Tennard testified that they did not suspect sexual abuse. Although the meeting put the district on notice that Tennard had become a trusted confidant for J.E., it did not provide notice of a substantial risk that sexual abuse was occurring.

J.T. v. Uplift Educ., 3:20-CV-3443-D, 2021 WL 2110897 (N.D. Tex. May 25, 2021)

M.L. was a kindergarten student at Grand Primary, an Uplift school, in 2019. M.L.'s teacher, Jamil Wazed routinely called certain children to his desk while showing movies to the class, asking them to perform sexual acts with him, kissing them, and rubbing his beard on their faces and necks. M.L. informed Uplift's Primary School Director about Wazed's acts on or by August 5, 2019. Uplift then conducted interviews with at least four children in Wazed's class "days after learning of the teacher's sexual behavior," and initially determined that Wazed should be allowed to continue teaching at Uplift. J.T. alleges that Uplift's investigative findings concluded that because Wazed's actions were not done out of malicious intent, he should be allowed to continue to work for Grand Primary after a formal meeting with the Leadership Team to "layout clear and concise expectations" regarding student and staff physical space and touch. Wazed was later terminated for improper touching of students.

J.T. failed to plausibly plead that Uplift's response was so unreasonable as to cause M.L. further harassment. A school may not be liable for damages under Title IX unless the deliberate indifference "cause[s] students to undergo harassment or make[s] them liable or vulnerable to it." Regarding Uplift's training and supervision, the complaint does not allege any facts that enable the court to draw the reasonable inference that Uplift failed to adequately train and supervise its teachers. The complaint does not identify any training program, how it is insufficient, how Uplift failed to supervise its teachers, how the failure to train or supervise caused a violation of M.L.'s rights, or how the training and supervision amounted to Uplift's deliberate indifference to her rights.