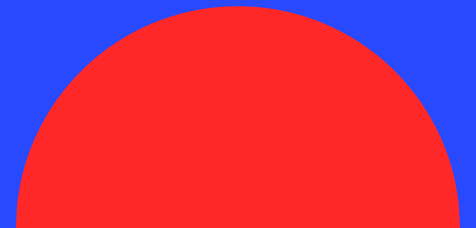
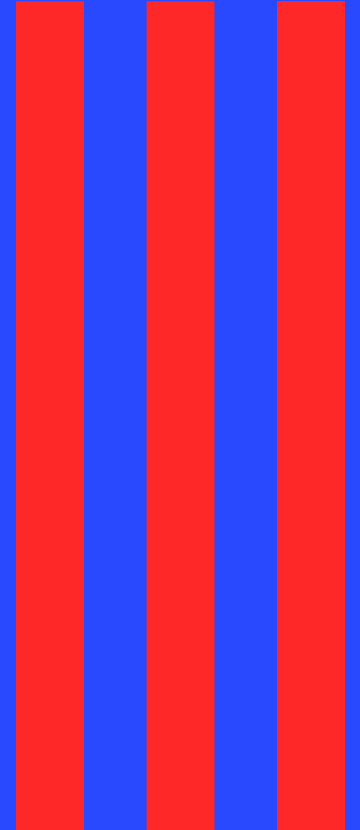


Title IX

**Presentation to Coaches
Northwest ISD
July 25, 2024**

**Cindy Bauter
Title IX Coordinator**



Agenda

Introduction

Title IX since 1972

Definition/Scope

- Athletics

Identifying

Reporting

Remediating

Final tips & takeaways



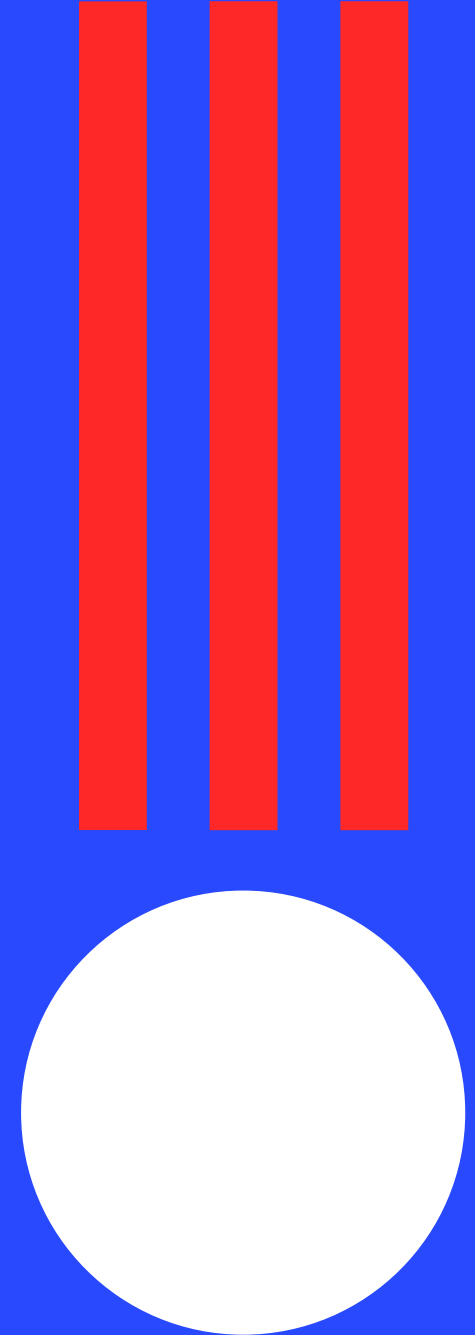
Introduction

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District Administrative Legal Counsel Office



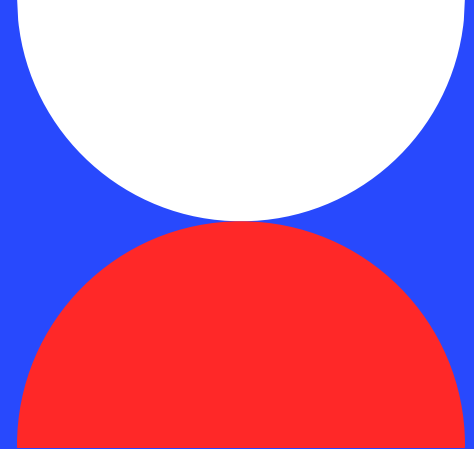
Title IX History

Civil Rights Act of 1972



Civil Rights Division
U.S. Department of Justice

20 USCS §1681



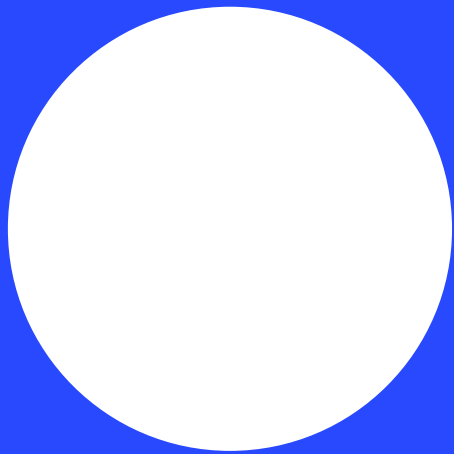
No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Law: 20 USCS 1681

Federal Regulations: 34 CFR 106

Amendments: Federal Register Vol. 80 No. 83 April 29, 2024

How we got here



1972-2010 Focus was on discriminatory practices in admissions and exclusionary practices (eg using gender to decide who could take a class or pursue a particular vocation).

Sexual harassment wasn't mentioned.

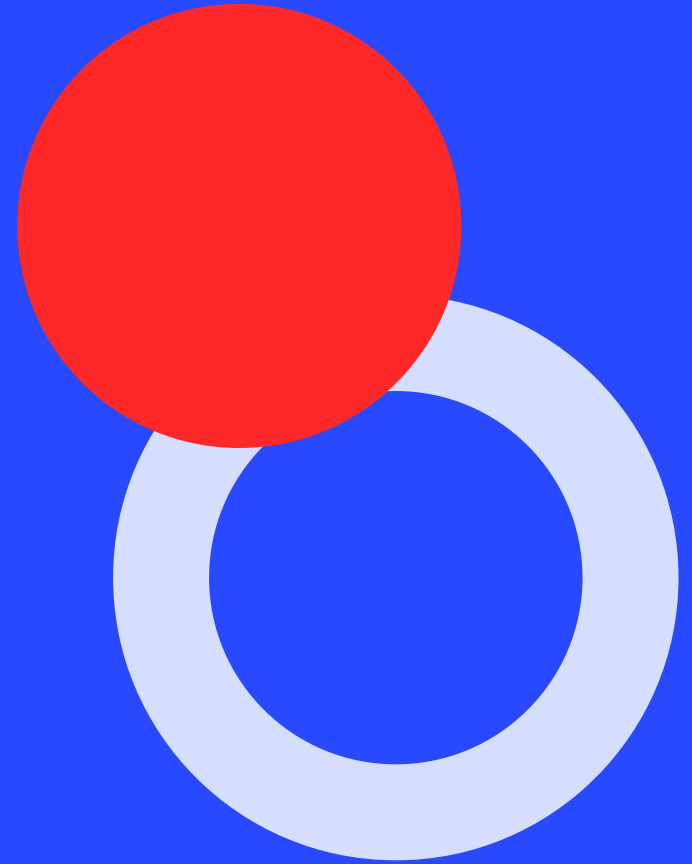
2000-2020 US Dept of Ed issued informal guidance and letters on how to address.

Court recognized that schools could be legally liable for deliberate indifference to student-on-student sexual harassment.

2020 defined sexual harassment, prescribed grievance procedures, required structured trainings, did not differentiate college from K-12

2024 Expanded definition of sex-based discrimination, expanded scope, revised grievance process requirements

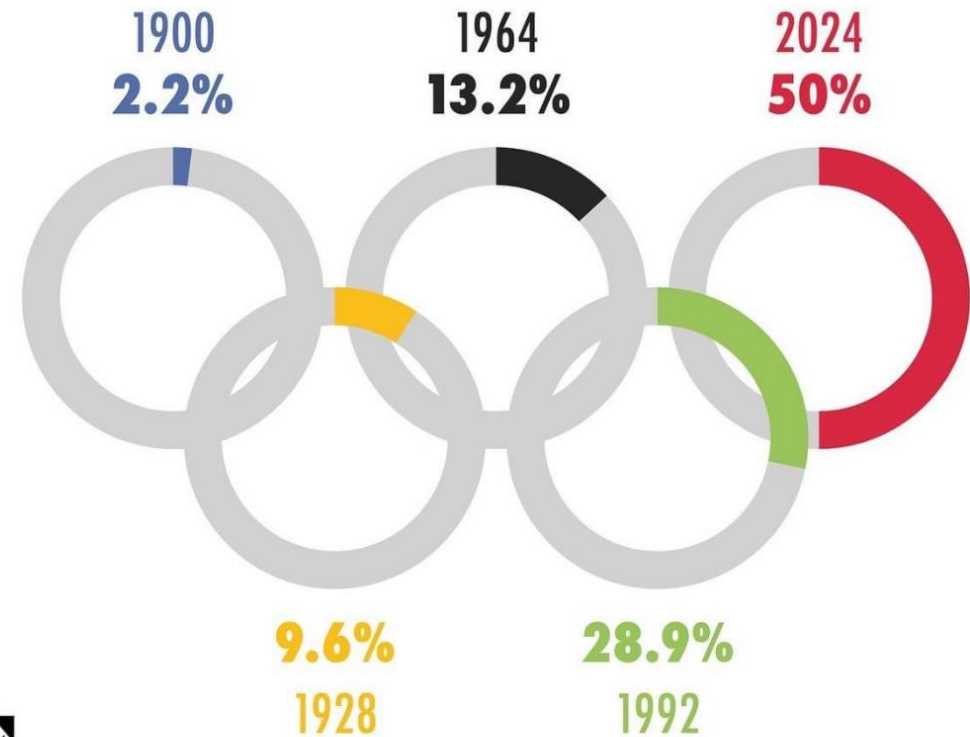
Athletics



Title IX Impact?

Equality at the Olympics

Share of female athletes



Source: IOC

34 CFR 106.41

106.41 Athletics.(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)



What's New—2024 regs

Scope

Grievance / Investigation Procedure

Definition of Hostile Environment Harassment

Pregnant Students - reporting

Consulting with the IEP team on Title IX responses

**INJUNCTION
ISSUED
7/11/24**

**The new federal
regulations are
on hold until
further court
action.**

Scope of Sex Disc tion

1972: Athletics

2020: Specifically prohibited
and defined sexual
harassment

2024:

INJUNCTION
ISSUED
7/11/24

The new federal
regulations are
on hold until
further court
action.





Equity in access

Teams Equity – specific guidance from 34 CFR 106.41

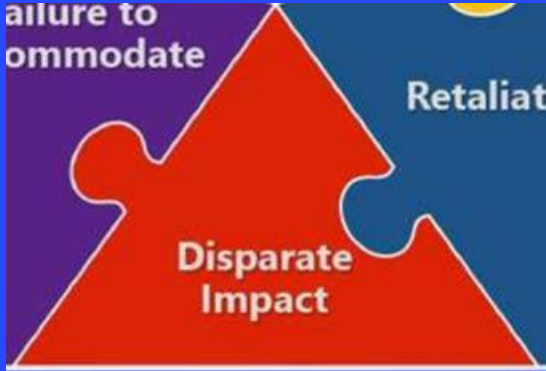
example: boys' volleyball? Hockey?

Facilities – quality and size

If you know about violations here, there needs to be a discussion. We endeavor to remain compliant. For example, construction takes all this into account.

Violations require investigation but there is no “respondent”; the “harm” is caused by a policy, not a person.





Equity in access

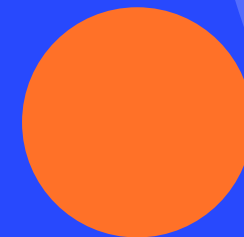
Activities conditioned on height and weight may have disparate impact on one sex

Teams by sex—when do we include, make exceptions?

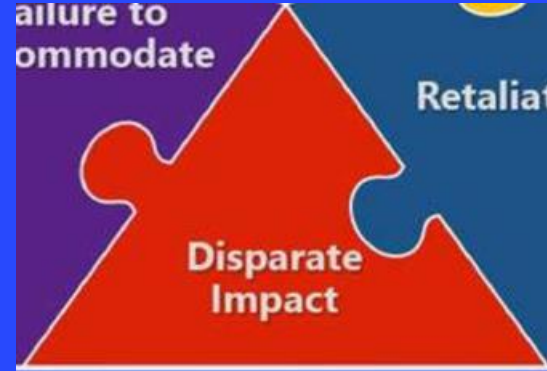
Pregnancy...more on this momentarily

Transgender—no new regulations on TEAMS yet—that was forthcoming; but the expansion of 2024 regulations defining “sex-based” to include transgender is in part what led to the injunction. Still sorting out.

Disparate Treatment is usually unintentional.



More on **disparate impact** discrimination



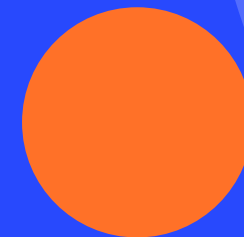
School district must have substantial and legitimate justification for using a policy, rule, or practice that differentiates based on sex.

There can be instances in which a teacher or coach is accused of imposing a classroom rule or team rule that causes a disparate impact.

Failure to Accommodate



Based on sex, what accommodations might be included in failure to accommodate?



Pregnancy

- Expanded scope of 2024 regulations are currently enjoined. Guidance from court can change this at any moment.
- We will not discriminate based on sex.
- Under other, employment laws (eg PWFA) pregnancy is considered a sex-based matter.
- We will provide accommodations for students who are pregnant.



What to do if you learn a student is pregnant:

1. Contact me.
2. Give her my contact information and let her know I will help ensure she has accommodations, unless I've already been told and you know this.
3. Provide reasonable accommodations (restroom, elevator, eating, pumping)
4. Treat same as any other temporary medical condition (broken leg, surgery)
5. Give reasonable accommodations for makeup work etc; mandated supportive measures will come from Cynthia Elliott (from Title IX Coord). Egs: leave of absence, extensions for work, rescheduled exams, tryout accommodations
6. Do not exclude from activity.
7. Do not request a medical certification unless required of all students.
8. Do not impose an involuntary placement or leave of absence.
9. Do not request documentation to implement accommodations.
10. Do not ask intrusive questions.

Retaliation



Retaliation based on a Title IX matter should also be reported. Retaliation (for any matter) is prohibited.

Title IX retaliation, depending whether we are under the 2020 regulations or the 2024 regulations, is handled under specific (and different) policies and processes.

Sex-based Discrimination includes Hostile Environment



Definition of Hostile Environment Harassment*

1. Quid Pro Quo

2. Hostile Environment Harassment¹

(2) Hostile environment harassment. Unwelcome sex-objectively offensive and is so severe or pervasive that recipient's education program or activity (i.e., creates a specific inquiry that includes consideration of the following

(i) The degree to which the conduct affected the co

(ii) The type, frequency, and duration of the con

(iii) The parties' ages, roles within the recipient party that may be relevant to evaluating the effects of

(iv) The location of the conduct and the context in which t

(v) Other sex-based harassment in the recipient's education

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action.

the circumstances, is subjectively and participate in or benefit from the environment has been created is a fact-

education program or activity;

actions, and other factors about each

3. Specific Offenses (Sexual assault, domestic violence, dating violence, stalking)

Definition (2020)



- 1. Quid Pro Quo — *(something for something)* - conditions an educational benefit or service on individual's participation in unwelcome sexual conduct,
- 2. Hostile Environment- 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 recipients education program or activity; or
- 3. Sexual violence (Clary Act) – Sexual assault, domestic violence, dating violence, stalking.

1. Quid Pro Quo violations



- Faculty and Staff giving privileges for sexual relationship
- No assumptions about gender of victim or respondent
- Staff will be put on leave and, if determined to be responsible, will face termination.



2. Hostile harassment violations



- Student on student
- Derogatory, sex-based, or sexist remarks
- Offensive jokes
- Name-calling or slurs
- Rumors regarding a student's sexuality or sexual history
- Hazing/ganging up on student who doesn't conform to sex stereotypes
- Physical aggression, threats, intimidating conduct based on a person's actual or perceived sexual orientation or gender identity
- Obscene phone calls, texts, emails, social media posts

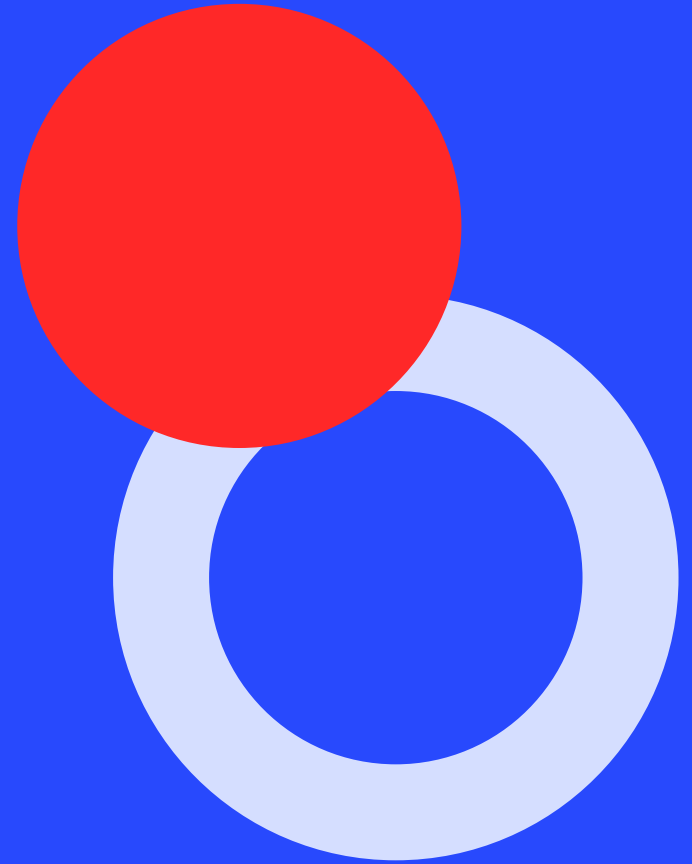


3. Sexual Violence violations

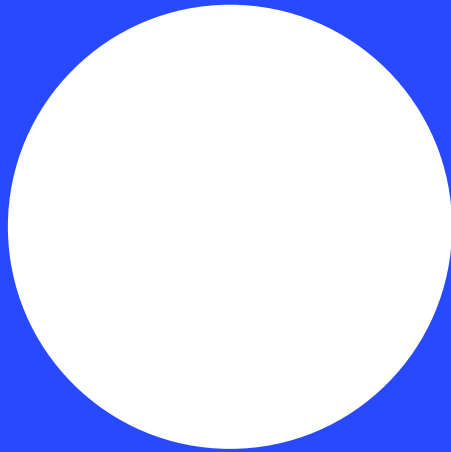


- Student on student
- Sexual assault (rape, fondling, any sexual act directed against another without consent, sexual assault with an object)
- Domestic Violence (intimate partner, cohabiting, and then commits violence)
- Dating Violence (is or has been in a romantic or intimate relationship and commits violence)
- Stalking

Mandated Reporting



How do you respond to a report of sex-based discrimination— regardless of the puzzle-piece category?



1. Listen to the complainant

Do not be dismissive. Do not presume boys can't be victims of sex-based discrimination. Do not make biased judgments on the truth of the report.

2. Validate

Affirm the student for reporting.

Classroom management, separation right away, whatever is appropriate.

3. Clarify

Ask enough questions, but not too many, to understand if it deals with sex in any way.

Do NOT overinvestigate.

4. Help Student

Get him/her to admin or counselor asap

Contact CPS/law enforcement as required or applicable

Reporting

To whom?

- Admin
- TIX Coordinator
- Directors
- HR
- CPS
- Law Enforcement

When?

- Asap
- Immediately
- 48 hours

How?

- Title IX Coordinator
 - Phone
 - Email
 - In person
 - Laserfiche
- Admin
 - Document
- Documentation Trail

Admin Response

Supportive Measures

- Must be in consultation with Title IX Coordinator (training, and reqs to include certain individuals).
- You'll know what measures have been mandated. You'll implement them.

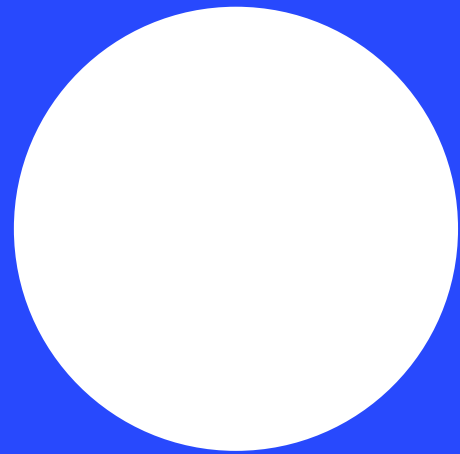
Hold on Discipline

- Protecting rights of Respondent (person alleged to be responsible for behavior)

Caution on overinvestigating

- Have to follow certain rules under formal complaint, different rules if no formal complaint. We don't know until Title IX Coordinator contacts parent.
- We shouldn't see witness statements and emails talking about investigation before I call the complainant's parent....

Cautionary Tale 1

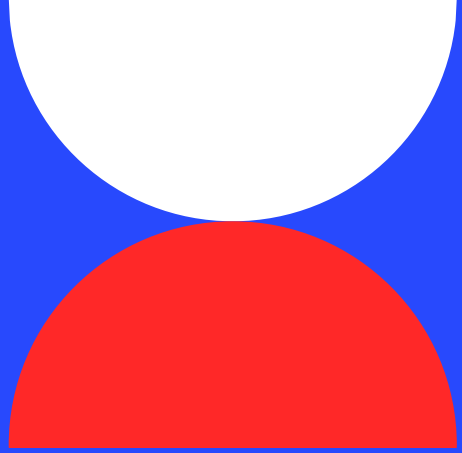


Discipline cannot be issued until the end of the investigation.

If you have a team and there is a Title IX violation, you will keep both players until the end of the investigation.

Implications to community

Prevention



Location Data:

**15/155=10% happen
in athletics
facility/area**

Cautionary Tale 2

If you are the recipient of a report of sex-based discrimination, you must report it to me and/or your campus admin. You do not decide whether it's factually accurate.

If you *witness* sex-based discrimination (you know it to be factually accurate), you must report it to me and/or your campus admin.

- Don't coverup.
- It's not yours to investigate if it falls under Title IX. Maybe under every other non-sex-based situation, but not Title IX.
- Old allegations may still be pursued.

Utah State firing football coach Blake Anderson, 2 other staffers after Title IX review

— FOX Sports

Published July 2, 2024 4:51pm EDT



Utah State announced Tuesday it's firing football coach Blake Anderson after an external review of allegations that he hadn't complied with Title IX policies regarding the reporting of sexual misconduct cases.

Nate Drilling, who had been Utah State's defensive coordinator and defensive ends coach, will be Utah State's interim coach during the upcoming season. Athletic director Diana Sabau met players and staff Tuesday to inform them of the move, the university said in a [news release](#).

Utah State also said associate vice president/deputy athletic director of external affairs Jerry Bovee and football director of player development and community Austin Albrecht were fired "for violations of university policies related to the reporting of sexual and domestic violence and failures of professional responsibilities."

Bovee was Utah State's interim athletic director in 2023. Utah State said Anderson was being fired for actions that took place in the spring of 2023.

Utah State noted that Title IX policies "require full and timely reporting of disclosures of sexual misconduct — including domestic violence — and prohibit employees from investigating disclosures of sexual misconduct themselves."

"As leaders, we are responsible for ensuring allegations of USU policy violations are investigated," Sabau and Utah State President Elizabeth Carlwell said in an email they sent to faculty and staff. "Today's actions are the result of a thorough external investigation, and we believe the evidence demands immediate action. Our job is to fearlessly hold ourselves and others accountable for their conduct and to make sure that, for the sake of our students and our community, we are living the values of our university."

"While recognizing the impact of these decisions on our student athletes and football program, we will continue to take the steps necessary to deliver a respectful, transparent and winning culture at Utah State University."

School officials noted that Anderson has 14 days to respond to the university's decision under terms of his employment agreement. School officials said they couldn't release any additional information until all opportunities to respond or appeal to the decision have expired.

Anderson posted a 23-17 record in three seasons at Utah State, with the [Aggies](#) reaching bowl games each of those years. He went 11-3 in 2021 before going 6-7 each of the last two years.

He came to Utah State after going 51-37 at [Arkansas State](#) from 2014-20. He took a leave of absence prior to the 2019 season just before his wife, Wendy Anderson, died after a two-year fight with breast cancer. He returned for the second game of that season and helped Arkansas State go 8-5.

Tips, takeaways, & questions

Prevention is so much better than remediation or supportive measures

- Unstructured
- Loosely supervise

Report (over-report if you are going to make a reporting error).

Support.

Do not be deliberately indifferent.

Questions?

I'm on your 9.

Title IX Coordinator: Cindy Bauter

817.215.0567

Cynthia.Bauter@nisdtx.org

District Administrative Legal Counsel Office

