



Title IX Compliance Training for M.S. & H.S. Staff

Daniel T. Farr, Ed.D.
DTF Educational Consulting
January 24, 2025

Welcome

The intent of today's Title IX training today will focus primarily on the 2020 regulations. Information presented is intended to develop knowledge and understanding, and compliance with local, state and federal law and policies while promoting an inclusive, supportive and caring climate for both students and staff.

Training materials and any subsequent discussions may engage examples that elicit an emotional response due to the nature of the topic, Title IX—Discrimination on the Basis of Sex, and please note that no offense is intended on the part of the presenter.

Lastly, persons should understand that material provided is for training purposes and is not a substitute for legal advice that should be sought from the District's legal counsel when specific situations arise.

Thank you for your attendance today.

Daniel T. Farr, Ed.D.
DTF Educational Consulting

Agenda

- Thirty-Seven Words
 - History
 - Foundational Legal Precedent
 - Tug of War 2020 v. 2024
- Title IX Basics
 - Key Terminology and Definitions
 - Title IX Major Provisions-Compliance
- Title IX Readiness and Response
 - Why we Train
 - Risk Complacency
 - ASM
 - Professional Safety and Boundaries

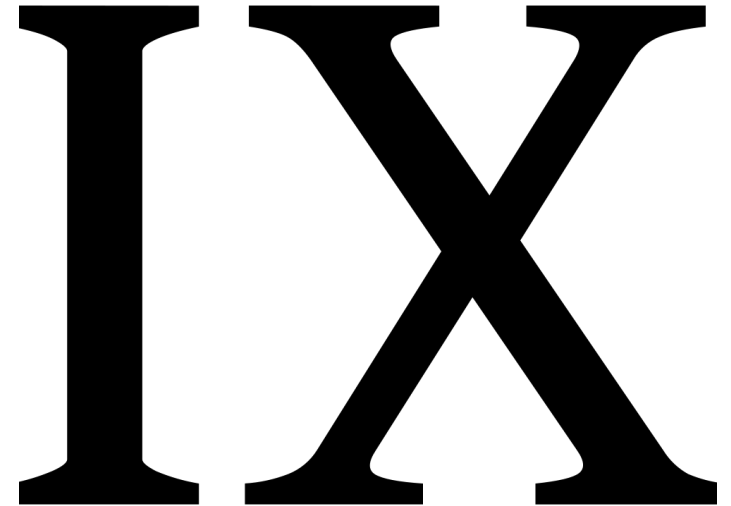


Title IX – 37 Words

- “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.”

20 U.S.C. § 1681 & § 34 C.F.R. Part 106 (1972)

- In short, recipients [Schools] of federal funding and who administer education programs/activities, are prohibited from discriminating on the basis of sex.
- Historically Title IX is thought of as addressing gender equity in **sports**, but Title IX is a mandate that extends to sex discrimination in hiring, admissions—to all aspects of the District’s educational programs and activities.

A large, bold, black Roman numeral 'IX' is centered on the right side of the slide. The 'I' is a simple vertical bar, and the 'X' is formed by two diagonal bars crossing at the center.

This Photo by Unknown Author is licensed under [CC BY-SA](#)

MONTANA



Montana Constitution

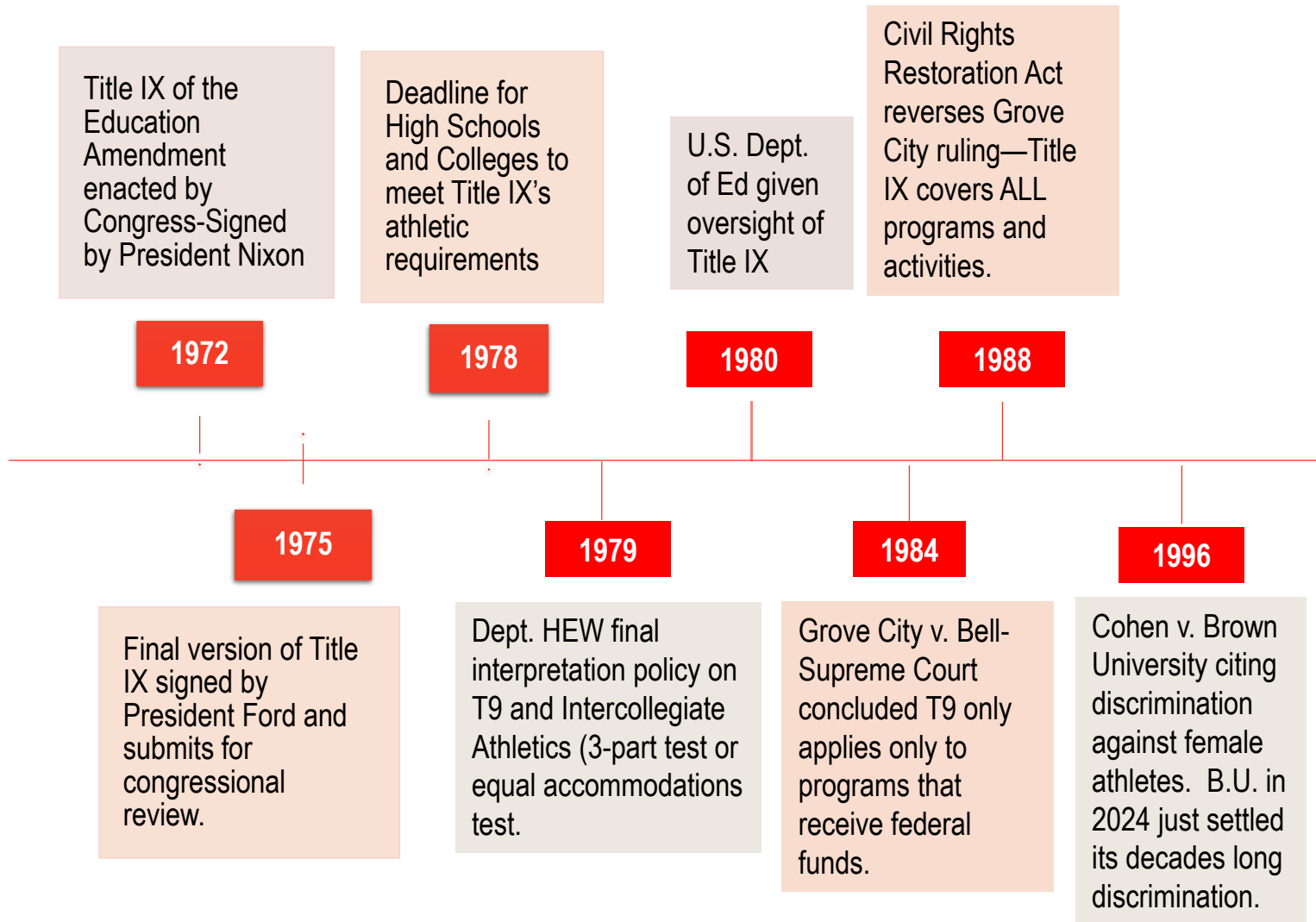
Article II, Section 4

Individual Rights

Section 4 . INDIVIDUAL DIGNITY.

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Timeline



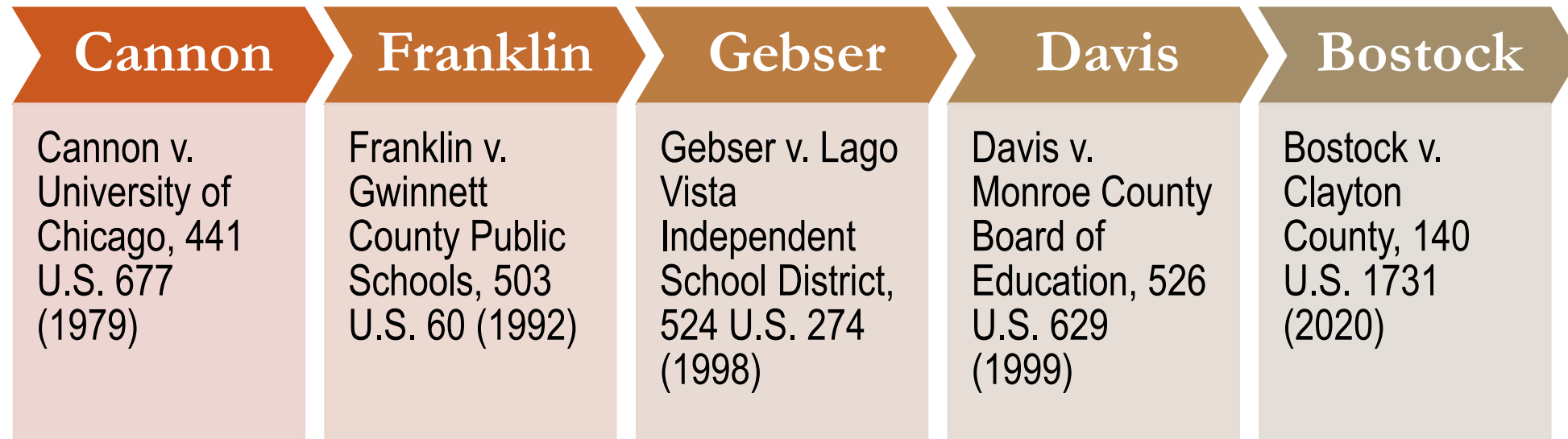
Three Part Title IX Compliance Test

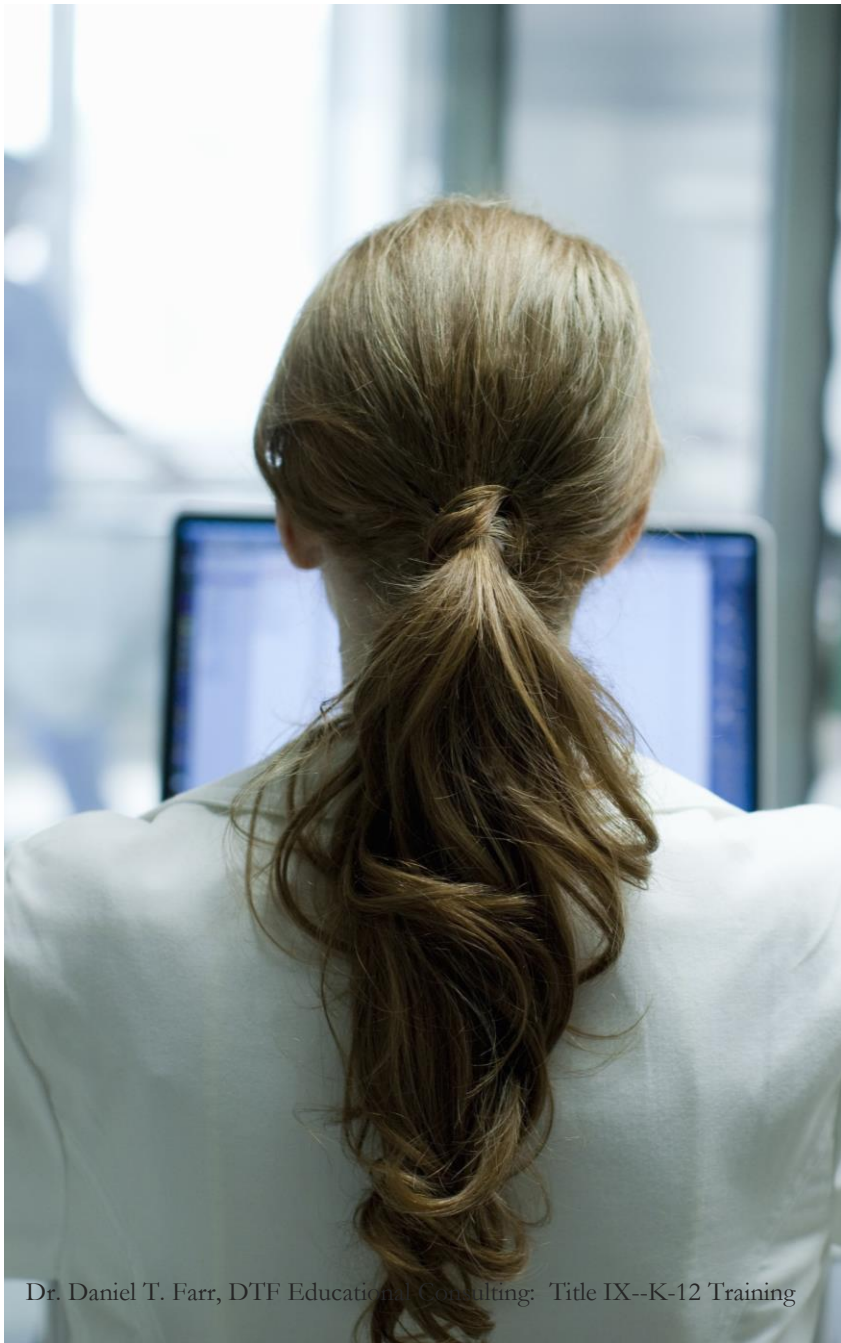
1. **Component 1:** Sports Participation Offering:
 - A. Opportunities – 3 Prong Test
 1. Substantial Proportionality-ratio of male to females based on enrollment
 2. History of Continuing Practice-expansion of offerings
 3. Full and Effective Accommodation
 - B. Competition – 2 Prong Test
 1. Substantial Proportionality
 2. History of Continuing Practice
 3. Full and Effective
2. **Component 2:** Financial Assistance-allocation of athletic dollars.
3. **Component 3:** Financial Assistance for student athlete—opportunities and benefits

Montana 1982 Ridgeway Settlement Agreement at:

<https://www.mhsa.org/genderequity>

Timeline-Significant Cases





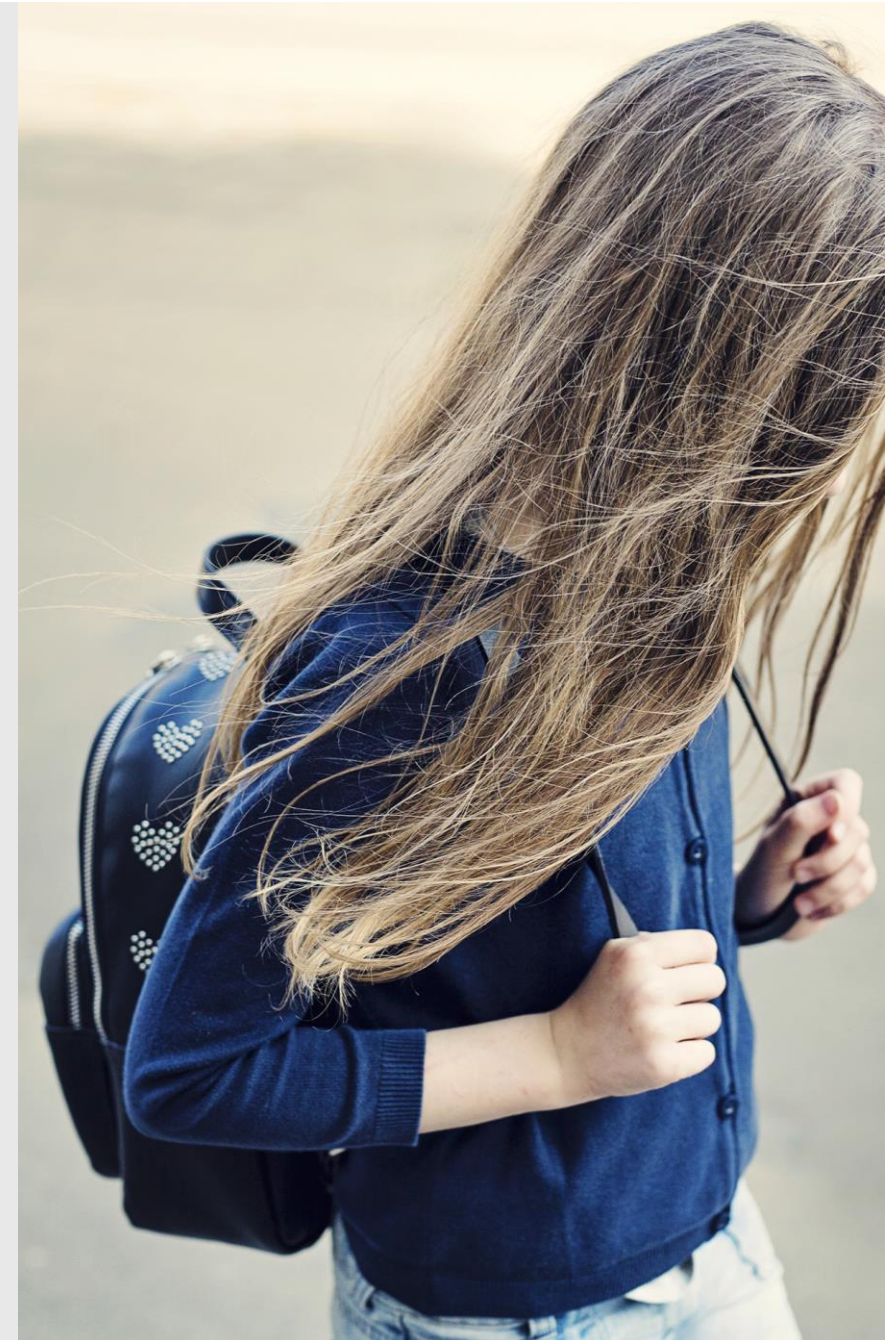
Cannon v. University of Chicago

- **Case:** Petitioner claimed she was denied entry to medical school because of her gender. Petitioner sued on the basis of gender and because the school received federal assistance. At the time Title IX did not have a private right of action.
- The U.S. Supreme Court applied a 4-part analysis on the claim:
 - (1) whether the statute was enacted for the benefit of a special class of which the plaintiff is a member,
 - (2) whether there is any indication of legislative intent to create a private remedy,
 - (3) whether implication of such a remedy is consistent with the underlying purposes of the legislative scheme, and
 - (4) whether implying a federal remedy is inappropriate because the subject matter involves an area basically of concern to the States. P. [441 U. S. 688](#).
- **Held:** Court stated “YES” to all 4 parts and in part used Title VI as a guide in their decision making, opening the door for a private right of action. Two points in the decision:
 - 1. Petitioner was excluded on basis of her sex, and
 - 2. The respondent’s educational programs were receiving federal assistance

Franklin v. Gwinnett County Public Schools

- **Case:** The petitioner sued her high school for money damages for a failure to stop her teacher and coach from sexually harassing and abusing her even after the school was made aware of it. The school began to investigate and closed the investigation when the teacher resigned. The U.S. Supreme Court overruled two lower courts, both affirming that Title IX did not provide for monetary damages.
- **Held:** In a unanimous decision, the U.S. Supreme Court held that a damages remedy is available under Title IX and enforceable through an implied right of action.
- The case was remanded for monetary damages but was settled before going to trial.
- In short, impacted students have the ability to seek monetary damages for a school's failure to stop sexual harassment.

Source: "Franklin v. Gwinnett County Public Schools." Oyez, www.oyez.org/cases/1991/90-918. Accessed 18 Dec. 2024.





Gebser v. Lago Vista Independent School District

- **Case:** In *Gebser*, a high school teacher was engaged in sexual relations with a student and did not stop until the two were caught having sex by a police officer.
- The relationship was secret, and the student had never reported to anyone at the school.
- The school was not in compliance with Title IX having NO harassment policy or grievance procedure. The parent sued.
- **Held:** "...liability attaches only if a plaintiff establishes that the funding recipient's response to its **"actual" knowledge** of the discrimination was **deliberately indifferent**" or liability is "based on the funding recipient's "own failure to act" adequately in response to known conduct, not the conduct itself."
- In *Gebser*, the district was not held liable as it never showed indifference as the district had no knowledge of the relationship.
- The significance is that *Gebser* put in place a 3-Part Standard: 1) Actual Notice, 2) must enact Corrective Measures to stop harassment, and 3) Failure to Adequately Respond and to have acted with Deliberate Indifference.

Source: *Gebser v. Lago Vista Independent School District.* Oyez, www.oyez.org/cases/1997/96-1866. Accessed 18 Dec. 2024.

Davis v. Monroe County Board of Education

- **Case:** The petitioner in this case was a 5th grade student who endured months of intimidation resulting in a hostile, offensive, and an abusive school environment by a male student in her class. The petitioner had made numerous reports to her teachers and the principal, and no action was taken.
- **Held:** “A private Title IX damages **action may lie** against a school board in cases of student-on-student harassment, but only **where the funding recipient is deliberately indifferent** to sexual harassment, of which the **recipient has actual knowledge**, and that **harassment is so severe, pervasive, and objectively offensive** that it can be said to **deprive the victims of access to the educational opportunities or benefits** provided by the school.”

Source: Davis v. Monroe County Bd. of Ed., 526 U.S. 629 (1999)

Dr. Daniel T. Farr, DTF Educational Consulting: Title IX--K-12 Training



Bostock v. Clayton County

- **Case:** Bostock worked for Clayton County for ten years and was fired for “conduct unbecoming of its employees” after joining a gay softball league. Bostock was terminated allegedly for “conduct unbecoming of its employees.” Bostock sued alleging Title VII protected workers “on the basis of sex orientation.”
- **Held:** “An employer who fires an individual employee merely for being gay or transgender violates Title VII of the Civil Rights Act of 1964. ”
- Title VII prohibits employers from discriminating against any individual “because of such individual’s race, color, religion, **sex**, or national origin.” Looking to the ordinary public meaning of each word and phrase comprising that provision, the Court interpreted to mean that an employer violates Title VII when it intentionally fires an individual employee based, at least in part, on sex.

Source: Bostock v. Clayton County." Oyez, www.oyez.org/cases/2019/17-1618. Accessed 18 Dec. 2024.

Bostock v. Clayton County and Department of Education Interpretation

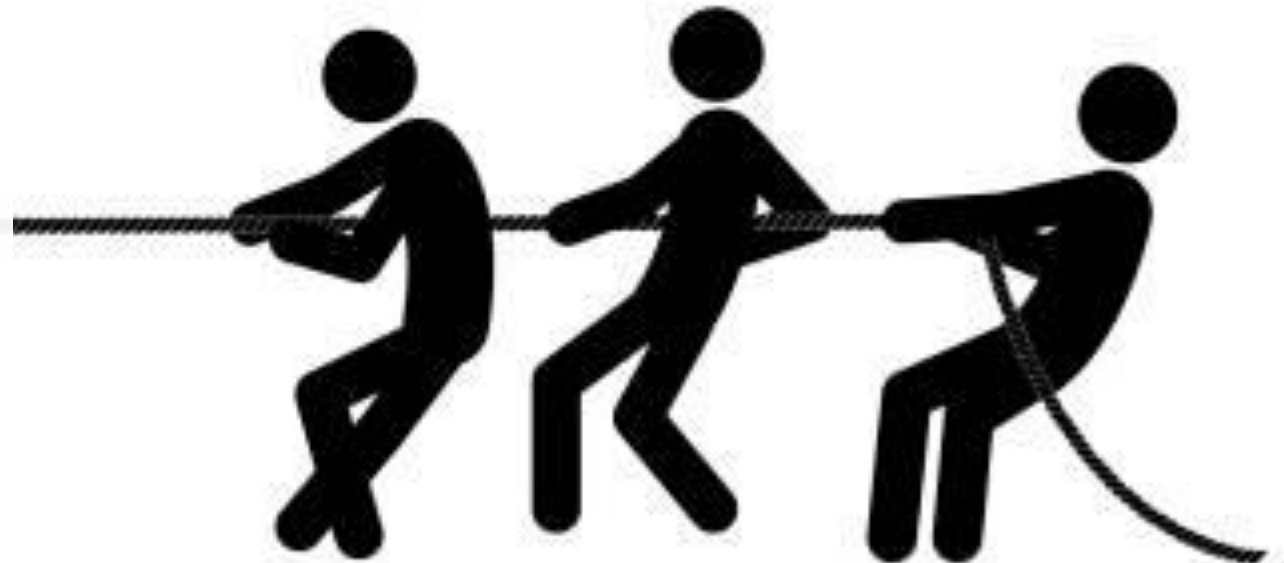
- **The U.S. Department of Education:** issued an interpretation on June 22, 2021, to state:
 - “After reviewing the text of Title IX and Federal court’s interpretation of Title IX, the Department has concluded that the same clarity exists for Title IX“(as it does for Title VII which prohibits discrimination based on race, color, religion, sex, and national origin).That is, Title IX prohibits recipients of Federal financial assistance from discriminating based on sexual orientation and gender identity in their education programs and activities.”
- **Implementation:** “This includes allegations of individuals being harassed, disciplined in a discriminatory manner, excluded from, denied equal access to, or subjected to sex stereotyping in academic or extracurricular opportunities and other education programs or activities, denied the benefits of such programs or activities, or otherwise treated differently because of the sexual orientation or gender identity.”
- **Status:** Federal court **vacated** this document and “enjoined” the Department from “implementing or enforcing” this document against the state of Texas (June 11, 2024). In a separate Federal court, several other states in a separate action also restrained from implementing the same on (July 15, 2024)

Source: Federal Register/Vol. 86, No.117/Tuesday, June 22, 2021/Rules and Regulation, 32637-32640.

Tug of War over Title IX

- Trump administration under Betsy DeVos revokes 2011 Obama-era guidance on the grounds that it threatens due-process rights of accused.
- Trump Administration issued new guidance effective August 14, 2020, “Final Rule.”
- In March of 2021, Biden issues E.O. on “Guaranteeing and Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity.”
- Biden Administration issues “2024 Final Rules” effective August 1, 2024.

Title IX will continue to be a prominent national political issue with schools squarely caught in the middle, and currently, Montana schools are under an injunction to NOT implement the 2024 Title IX Guidance.



Federal judge blocks Biden Title IX rule in 4 states: 'Abuse of power'

Federal judge in Louisiana calls President Biden's mandatory protections for 'gender identity' a 'threat to democracy'

By Timothy H.J. Nerozzi · Fox News

Published June 14, 2024 9:29am EDT


Doughty ruled that the changes were inadmissible because the term "gender discrimination" as used in the establishment of Title IX "only included discrimination against biological males and females at the time of enactment."

The ruling blocks implementation of the changes in Louisiana, Mississippi, Montana and Idaho.

Title IX is a longstanding civil rights law prohibiting sex-based discrimination in schools and other education centers that receive federal funding.

The 2024 Title IX Regulations

- **Broadens the definition of “sexual harassment”** to “Sex-based harassment: based on sex stereotypes, sex characteristics, pregnancy or related condition, sexual orientation, and gender identity.
- Must address any unwelcome conduct based on sex that is “subjectively and objectively” offensive and “*Severe or Pervasive*” enough to deny or limit participation.
- “De minimis” harm test: Major change for evaluating most separation of students based on sex.
 - The rule prohibits separation of a student based on sex if the separation results in more than minimal harm.
 - Test applies to sex separation with respect in intimate facilities, classes, and dress and grooming/appearance codes.
 - The rules states that refusing to allow a student to participate in sex-separate activities aligned with gender identify *always* causes more than a de minimis harm.
 - Athletics???



As of November 25, 2024, pursuant to Federal court orders, the Department is currently enjoined from enforcing the 2024 Final Rule in the states of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, **Montana**, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming; the Department is also currently enjoined from enforcing the 2024 Final Rule at the schools on the list located at:

<https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/list-of-schools-enjoined-from-2024-t9-rule.pdf>

Per Court order, this list of schools may be supplemented in the future. The Final Rule and this resource do not currently apply in those states and schools. Pending further court orders, the Department's Title IX Regulations, as amended in 2020 (2020 Title IX Final Rule) **remain in effect in those states and schools**

[Source: FACT SHEET: U.S. Department of Education's 2024 Title IX Final Rule Overview](#)

The Hill

Biden administration withdraws proposed regulations on transgender athletes, student debt

Brooke Migdon

Fri, December 20, 2024

“The Biden administration on Friday withdrew a pending regulation governing transgender athletes, abandoning an effort to provide some protections for transgender students that the incoming Trump administration has said it opposes.”

- § 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.
- So—The Tug of War will continue.
- To the extent the Department receives complaints of discrimination about a recipient’s obligation to provide equal opportunity to participate in athletics regardless of sex, it will continue to apply the longstanding legal standards reflected in the athletics regulations at 34 CFR 106.41



The Protection of Women and Girls in Sports Act

- The bill would maintain language in Title IX that treats gender as "recognized based solely on a person's reproductive biology and genetics at birth" and does not to apply to gender identity.
- The U.S. House of Representatives passed its first bill of the 119th Congress on Tuesday, Jan. 14, 2025, voting in favor of the Protection of Women and Girls in Sports Act.
- **Bill set to be placed on Senate calendar in 2025.**
- Democrats have endorsed several bills to allow for trans inclusion in women's sports including the Equality Act and the Transgender Bill of Rights.

January 9, 2025

Federal District Court in Kentucky ruled in *Tennessee v. Cardona* that the 2024 Title IX Regulations are unconstitutional and violated the Administrative Procedures Act by being arbitrary and capricious.

The Court further ordered *VACATUR*, meaning the 2024 Title IX regulation are vacated.

Montana Impact

None. All Montana Schools were blocked from implementing the 2024 Title IX Regulations.

Districts will need to continue to implement and comply with the 2020 regulations and train personnel.

69th Montana Legislative Session

- **HB 121: Provide Privacy in certain restrooms, changing rooms, and sleeping quarter.**
 - Reaffirms the definitions of “male” and “female” based on biological and genetic criteria, ensuring that individuals use facilities designated for their sex.
 - Bill allows individuals to pursue legal action against the covered entity when the individual encounters a person of the opposite sex in designated facilities.
- **SB 107: Provide for human trafficking prevention education in public schools**
- **Placeholder bills without a bill draft:**
 - LC 693: Provide for human trafficking awareness training for certain school workers
 - LC 1295: Revise laws on sexual orientation, gender identity, and sex education
 - LC 1316: Revise laws on bullying and self-defense in K-12 education
 - LC 2526: Secure equal opportunities for women in education institutions
 - LC 3566: Generally revise laws related to human sexuality instruction
 - LC 4093: Revise athletic laws

Where does all of the aforementioned leave us?

Summary of the Major Provisions or
Legal Obligations
of the
2020 Title IX Final Rule

1. Promptly respond to individuals who are alleged to be victims of sexual harassment by offering supportive measures;

2. Follow a fair grievance process to resolve sexual harassment allegations when a complainant requests an investigation or a Title IX Coordinator decides on the recipient's behalf that an investigation is necessary; and

3. Provide remedies to victims of sexual harassment.

A close-up photograph of a metal key. The bit of the key is shaped like a question mark. On the tail of the key, the number '9' is visible. The word 'Questions' is overlaid in a white serif font across the center of the image.

Questions



Title IX

Key Definitions

and

Terminology

Sexual Harassment (Board Policy 3230 and 3230P-1)

- **The final regulations [2020] define sexual harassment (3 prongs) in § 106.30 as follows:**
- Sexual harassment means **conduct on the basis of sex** that satisfies one or more of the following:
 - (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct [*quid pro quo*];
 - (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive [SPOO] that it effectively denies a person equal access to the recipient's education program or activity; or
 - (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Source: **Federal Register** / Vol. 85, No. 97 / Tuesday, May 19, 2020 / Rules and Regulations

Quid Pro Quo and Four Clery/VAWA Offenses (Board Policy 3230 and 3230P-1)

- **Quid Pro Quo (This for That):** An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.
- **Clery/VAWA Offenses:** “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).
- Under these final regulations, *quid pro quo* harassment, sexual assault, dating violence, domestic violence, and stalking **do not require a showing of alteration of the educational environment**. As previously stated, the Department **assumes that a victim of *quid pro quo* sexual harassment or the criminal sex offenses included in the Clery Act, as amended by VAWA, has been effectively denied equal access to education.**
- **Note: A single incident** requires recipients to respond to all reports without consideration to the ‘severity, pervasiveness, and objectively offensiveness’ of reported conduct.
 - **Clery Act of 1990** is a consumer protection law aimed at providing transparency around campus crime policy and statistics on an annual reporting basis, develop and implement campus safety and crime prevention policies.
 - Violence Against Women Act 2016 (VAWA) amendments of 2015 added requirements that institutions disclose statistics, policies and programs related to dating violence, domestic violence, sexual assault and requires a coordinated community response.

Source: Federal Register / Vol. 85, No. 97 / Tuesday, May 19, 2020 / Rules and Regulations

Clery and VAWA Offenses Defined

- **Sexual Assault:** 20 U.S.C. 1092(f)(6)(A)(v) (“The term ‘sexual assault’ means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.”)
- **Dating Violence: 34 U.S. Code § 12291 (a)(10)** committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
 - (i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - (ii) For the purposes of this definition—
 - (A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - (B) Dating violence does not include acts covered under the definition of domestic violence.
- **Teen Dating Violence:** ”Addressing teen dating violence, which includes physical, sexual, and psychological abuse, is a priority for health youth development. Teen dating violence is highly prevalent, with as many as 69% of youth reporting victimization. In addition, lesbian, gay, bisexual, and transgender youth are at higher risk for dating violence compared to heterosexual and cisgender youth. Teens who experience dating violence — particularly when their victimizations go untreated — may be at increased risk for a range of negative outcomes, including involvement in further intimate partner violence as adults.”

Source: [Five Things About Teen Dating Violence](#)

Clery and VAWA Offenses Defined

- **Domestic Violence:** The term “domestic violence” includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who:
 - A. is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
 - B. is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
 - C. shares a child in common with the victim; or
 - D. **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:** The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

Source: [34 U.S.C. 12291 - Definitions and grant provisions](#)

Severe, Pervasive, and Objectively Offensive (Board Policy 3230 and 3230P-1)

- **Unwelcome conduct** determined by a **reasonable person** to be so **severe, pervasive, and objectively offensive** [SPOO] that it **effectively denies** a person **equal access** to the recipient's education program or activity.
- Has the purpose or effect of:
 - a. Substantially interfering with a student's educational environment;
 - b. Creating an intimidating, hostile, or offensive educational environment;
 - c. Depriving a student of educational aid, benefits, services, or treatment; or
 - d. Making submission to or rejection of such conduct the basis for academic decisions affecting the student or making such conduct a condition of a student's ability to participate in the student's education.

◦ Source: Billings School District Board Policy 3230-1

SPOO

- **SEVERE:** Depends on the severity and nature of the unwelcome conduct. Prong 1 and Prong 3 conduct are severe-1x incident is enough. Other forms of conduct must be evaluated. (i.e., physical conduct of a sexual nature vs conduct of a bullying nature—rude, mean, threatening).
- **PERVASIVE:** considers how widespread, openly-practiced, well-known to students or staff, and frequency, intensity, and duration of conduct (i.e., graffiti in public spaces, online/social media postings and conduct).
- **Objectively Offensive:** actionable conduct is based both on the *subjectivity* (i.e., conduct is unwelcome according to complainant) and *objectivity* (i.e., elements determined under a “reasonable person” standard).

Actionable Sexual Harassment is Severe, Pervasive, and Objectively Offensive.



Unwelcome conduct determined by a reasonable person...

- "...in the shoes of the complainant, such that the ages, abilities, and relative positions of authority of the individuals involved in an incident will be taken into account."
- "Signs of enduring **unequal educational access** due to severe, pervasive, and objectively offensive sexual harassment may include, as commenters suggest, skipping class to avoid a harasser, a decline in a student's grade point average, or having difficulty concentrating in class; however, **no concrete injury is required** to conclude that serious harassment would deprive a reasonable person in the complainant's position of the ability to access the recipient's education program or activity on an equal basis with persons who are not suffering such harassment."

Source: Federal Register / Vol. 85, No. 97 / Tuesday, May 19, 2020 / Rules and Regulations

Knowledge of Sexual Harassment

Actual Knowledge 2020

- The final regulations define “actual knowledge” in § 106.30 as notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, **or to any employee of an elementary or secondary school.**

◦ Source: *Federal Register* / Vol. 85, No. 97 / Tuesday, May 19, 2020 / Rules and Regulations

Prior Guidance 2001/2017

- A school has notice if a responsible employee “knew, or in the exercise of reasonable care should have known,” about the harassment, or the school had constructive notice.

Source: *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (January 2001). Document Rescinded*

2020 regulations eliminates use of “responsible employee” to remove any barriers to reporting alleged violations of Title IX.

Notice and Deliberate Indifference

- **Deliberate indifference means**, “to have acted in a way that is “clearly unreasonable in light of known circumstances,”
- and in a manner that is not “the result of malice, incompetence, ignorance, or other mental state of the recipient’s officials, administrators, or employees.”
- **Point:** Actionable Sexual Harassment + Actual Knowledge + the Deliberate Indifference standard = Recipient’s obligation under Title IX to respond.

Source: Federal Register / Vol. 85, No. 97 / Tuesday, May 19, 2020 / Rules and Regulations

Education Program or Activity

Section 106.44(a) states that “education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs...”

Substantial control and context are not defined in the rules—no single factor is determinative. So, “Did the District...

Sponsor the event?

Own the facilities where the alleged sexual harassment occurred?

Provide supervision for the event?

Gray Areas: Online and Off Campus conduct

The Parties

Complainant

- Defined as an individual who alleges to have been the victim of conduct that could constitute sexual harassment.
- Any person can be a complainant
- Must be afforded supportive measures
- Treated equitably through grievance process

Respondent

- Defined as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- Any person can be a respondent
- Presumption of non-responsibility
- Presumed innocent and no disciplinary measures imposed prior to completion of grievance process
- Treated equitably through grievance process

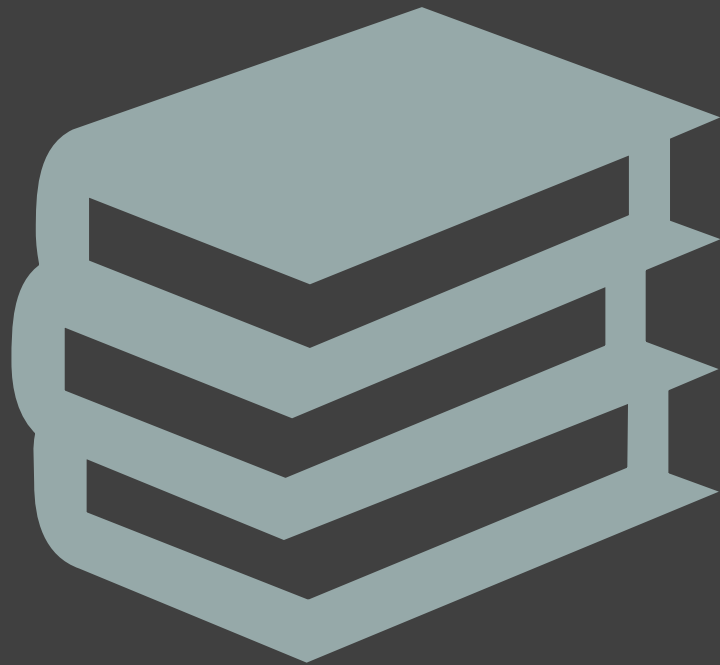
Title IX obligates *recipients*, not individual students or employees, to operate education programs or activities free from sex discrimination, so it is the recipient's burden to gather relevant evidence and carry the burden of proof.

Retaliation

- **The Department Prohibits:**

- "...any recipient or other person intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under regulations implementing Title IX."
- **Point:** "Retaliation for making a complaint about sex discrimination is, itself, intentional sex discrimination prohibited by Title IX, and may be filed under the district's grievance procedure."

Source: **Federal Register** / Vol. 85, No. 97 / Tuesday, May 19, 2020 / Rules and Regulations



Title IX
Major Compliance-
Legal Obligations and
Process Provisions

Legal Obligations

1. **Promptly respond** to individuals who are alleged victims and offer **supportive measures** when:
 1. The school has “**actual knowledge**” of the harassment;
 2. The harassment occurred within the school’s **education program or activity**; and
 3. The conduct is against a person in the United States.
2. Follow a **fair grievance process** that provides **due process** protections while working to resolve complaint.
3. Conduct and **investigation** if complainant requests or Title IX Coordinator decides on recipient’s behalf.

Note: Conduct that does not fall under Title IX may be addressed under the school's own code of conduct (i.e, Board Policy 3210-HIB or 3310)

Source: **Federal Register** / Vol. 85, No. 97 / Tuesday, May 19, 2020 / Rules and Regulations

Supportive Measures

- **Supportive measures** “are defined as non-disciplinary and nonpunitive individualized services offered as appropriated, as reasonably available, and without fee or charge to the Complainant and/or Respondent” (BP 3230 P-1).
- Supportive measures **must** be offered to every complainant as a part of a recipient’s response obligations under § 106.44(a).
- “Supportive measures **may include**, for example, mutual or unilateral restrictions on contact between parties or re-arranging class schedules or classroom seating assignments, so complainants need not remain in constant or daily contact with a respondent while an investigation is pending, or even where no grievance process is pending.”
- “**Supportive measures designed to restore or preserve a complainant’s equal access to education, protect parties’ safety, and/or deter sexual harassment, may be imposed even where such measures burden a respondent, so long as the burden is not unreasonable.**”

Source: **Federal Register** / Vol. 85, No. 97 / Tuesday, May 19, 2020 / Rules and Regulations

- **Title IX Coordinator:** Each school must designate and authorize at least one employee to coordinate its efforts to comply with Title IX and prominently display the Title IX Coordinator's contact information (office address, telephone number and an email address) on the school district's website. Responsibilities include:
 - Monitor recipient's compliance in education programs and activities and ensuring training of employees and key personnel.
 - Oversees grievance process by responding to formal complaints (sign formal complaints to initiate grievance process), contact complainant/respondent, coordinate supportive measures, coordinate the investigative process, responses, and resolution of all reports/cases under Title IX and board policy.
 - Maintain records for a period of seven years related to trainings, investigations, hearing, informal resolutions, supportive measures, and other information of relevance.
- **Note:** Title IX coordinator cannot serve as the decision-maker or appellate decision-maker. Can be the investigator but must avoid any conflict of interest or bias.

Key Personnel

Title IX Coordinator

Dr. Jeril Hehn

Director of Advanced
Academics

406-281-5994

TitleIX@billingschools.org

Building Level Liaisons

Key Personnel-Continued

Investigator

- Trained investigators gather evidence to determine if allegations meet T9 standards and then provides the decision-maker with the facts who then makes a written determination of responsibility at the end of the District's grievance process.
- **Note:** Investigator's role can be outsourced. Investigator cannot be the decision-maker or appellate decision maker, but must be trained.

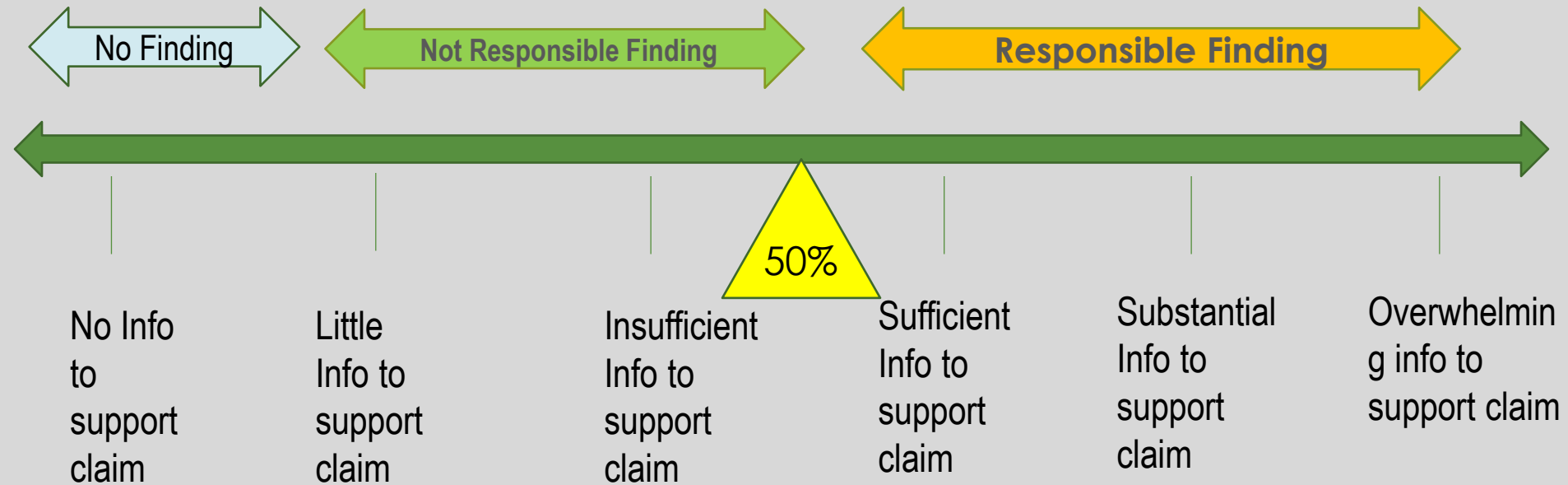
Decision-Maker

- Trained decision-makers adjudicate through objective evaluation of all evidence both inculpatory (guilt) and exculpatory (innocence) to render a written determination regarding responsibility based on a preponderance of the evidence.
- **Note:** Cannot be Title IX coordinator, appellate decision-maker, or investigator in case before them.

Informal Resolution Facilitator

- Trained facilitators serve as mediators in a voluntary resolution process to which both parties have agreed to and a process which seeks conflict resolution by both parties (either party may vacate the process prior to agreeing to a resolution).
- **Note:** Informal resolution is NOT used in allegations involving a student and employee.

Preponderance of evidence standard—a REQUIREMENT THAT MORE THAN 50% OF EVIDENCE POINTS TO SOMETHING



Light as a feather—requires demonstrating that the allegation is more likely true than not true. It is a less rigorous standard than clear and convincing evidence.

Grievance Process-General Requirements

- **1. Initiated by individual or Title IX Coordinator**
 - Formal complaint filed—must be signed and in writing (School District Form 3230-F1).
 - Formal complaints may be filed with the Title IX Coordinator 24/7 in person, by mail, or by electronic email.
 - Supportive Measures must be offered and must also comply with Section 504 and IDEA.
 - Emergency Removals—Respondent can be removed by school if they present an immediate threat to anyone's physical health, and in the case of an employee, the respondent can be placed on administrative leave.
- **2. Written Notice of Allegations to Parties**—must include grievance process, explanation of investigation process, notice of advisor of choice (not required), notice that no determination of responsibility is presumed, notice of opportunity for informal resolution (except employees), notice concerning the making of false statements.
- **3. Dismissal**
 - **Mandatory if:** conduct does not meet definition of sexual harassment, conduct did not occur in school's education program/activity, did not occur in the United States (*schools can still address complaint under separate policies)
 - **Discretionary Dismissal if:** 1) complainant provides written notification withdrawing complaint, 2) if respondent is no longer enrolled or employed at school, or 3) if specific circumstances prevent the school district from gathering sufficient evidence to reach a determination concerning the formal complaint.
 - **If Dismissed**—school must notify both parties of dismissal and reasons, and either party can appeal dismissal

Grievance Process-Investigative Reports & Hearing

- **4. During investigations, the burden of proof and burden of gathering of evidence resides with the district. The investigative process:**
 - Ensures equal opportunity to all parties to present witnesses and evidence,
 - Ensures the neither party is restricted in their ability to discuss allegations or to gather and present relevant evidence,
 - Ensures that each party knows they may have an advisor of choice,
 - Ensures written notification of any interviews or meetings,
 - Ensures equal access to all relevant evidence collected (review periods),
 - Ensures key personnel do not have a conflict of interest or bias,
 - Ensures NO credibility determinations will be made based on an individual's status as a complainant or respondent, and
 - Ensures NO questions or evidence will be used if it would involve privileged information unless waived by the party.
- **5. At the conclusion of an investigation, the school district/investigator submits a comprehensive report, and**
 - Both parties are provided 10 days for response before finalizing report, and following this review period,
 - Both parties are provided with a final report, and
 - Both parties are provided 10 additional days before any “determination of responsibility,” or 10 days before any hearing if one is to be held.

Decision Making-Written Decisions

- **Hearings: K-12 schools have the option of holding hearings but are not obligated.**
 - In the absence of a hearing, both parties must have opportunity to submit relevant, written questions to each other prior to the decision maker reaching a decision.
- **Written Decision must include:**
 - Identify the specific allegations constituting sexual harassment,
 - Describe the procedural steps including notifications to parties, persons interviewed, site visits, and methods used to gather evidence, and any hearing held if applicable,
 - A finding of facts section supporting the determinations,
 - A conclusion section based on application of school district policy and/or code of conduct rules to the facts
 - A determination addressing each allegation and a resolution of the complaint, and any recommendations concerning disciplinary actions(s) imposed on the respondent, and a statement as to whether remedies designed to restore or preserve access to the school's educational programs and activities will be provided by the district, and
 - A statement of right of appeal to parties and permissible basis for appeal

Final Notes on Grievance Process

- **Grounds for Appeals:** Either the complainant or respondent may appeal the decision-maker's determination of responsibility or dismissal of a final complaint if:
 - 1. procedural irregularity affecting outcome
 - 2. new evidence discovered, or
 - 3. conflicts of interests on part of Title IX Coordinator, investigator or decision-maker, or bias for or against the complainant/s or respondent/s, or an individual complainant or respondent affected the outcome.
- **Informal Resolution:** School can offer in cases not involving a district employee informal resolution. Each party must voluntarily agree to the informal process, the school must provide a trained facilitator free of bias/conflicts of interest, and the school must provide notice of allegations, rights, information about whether the process will be confidential, and ability to withdraw from process.
- **Record Keeping** (duty extends for 7 years): must maintain records of investigation, records of appeal, records of informal resolution, all materials used to train Title IX coordinator, investigators, decision-makers, and facilitators. Training materials must be posted on website or available for public review and maintain records of supportive measures presented/taken during complaint/resolution of complaint.

A close-up photograph of a metal key. The bit of the key is shaped like a question mark. On the tail of the key, the number '9' is visible. The word 'Questions' is overlaid in a white serif font across the center of the image.

Questions

Readiness & Response



ADULT SEXUAL
MISCONDUCT (ASM)

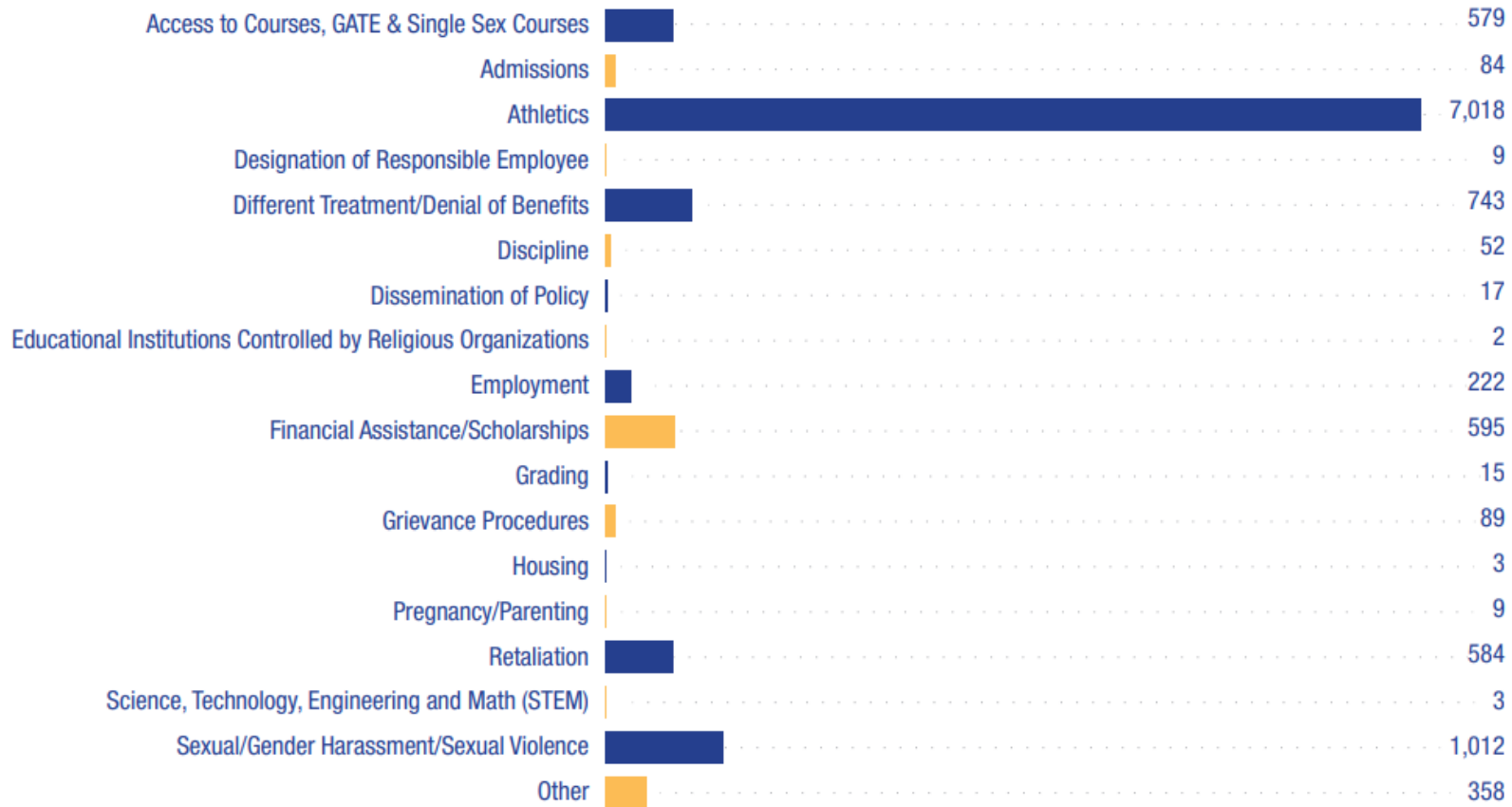


REPORTING &
TRAINING



TITLE IX AND RELATED
POLICY SAFEGUARDS

Figure 9: Title IX Complaint Allegations Received in FY 2024



Total Number of Complaints Raising Title IX Issues, **FY 2024 = 11,815**

Note: A single complaint can raise multiple issues; therefore, the total number of issues raised will exceed the number of complaints received.

Why do we Train in Schools—conduct drills?

- 8 safety drills—fire, lock down drills,
- In Loco Parentis
- [2024 Fiscal Year Report to the President and Secretary of Education](#)
 - 11,815 Complaints
 - 4,379 OCR resolved complaints

Examples of 2024 OCR Resolved Cases

District 1: Locker room incident involving 4 boys who held a teammate down while another team member placed his genitals on the restrained students face—Incident treated as hazing.

District 2: District allowed a teacher who was reported to have touched students inappropriately and allowed to resign w/o conducting an investigation among other things. In a second incident, a student w/disabilities was sexually assaulted by a teacher and the matter was reported to law enforcement.

District 3: OCR reviewed 253 complaints of student sexual harassment occurring over a 3-year period and found the district failed to meet Title IX regulatory requirements.

District 4: OCR reviewed a complaint on the basis of sex where the school failed to effectively accommodate the athletic interests and abilities of female students in the provision of facilities, proportionality, and other areas.

Why Train? We Train In Title IX and in other policy areas to promote each student's academic success and well-being while creating opportunity and access to our educational programs and activities.

In Loco Parentis

- Definition: Common law doctrine meaning “in place of a parent” or “instead of a parent.”
- MCA
 - [MCA 20-4-302](#) - Discipline and punishment of pupils
 - [MCA 45-3-107](#). Use of force by parent, guardian, or teacher—“reasonable & necessary”
 - [MCA 40-6-703](#). Parental involvement in education
- [Teacher Code of Ethics](#) – Commitment to Student and Families, the Profession, and the Community
- [ARM 10.55.722](#) – Family and Community Engagement



In Loco Parentis

- **What's changed?** In the past, schools had a good deal of latitude in exercising discretion over students.
- **Now.** “The single biggest message from the courts [currently] is that judicial deference no longer exists when the policies or practices of schools reflect deliberate indifference to student welfare, neglect of known conditions that place students at risk, or exploitation of victimized students by refusing to intervene.”
- **What does it mean for you?** School personnel have a duty to follow policy and procedures, to properly supervise students, and take reasonable actions to protect their safety.

[Source: Bernard James, Pepperdine University Law School, Spring 2022](#)

Dr. Daniel T. Farr, DTF Educational Consulting: Title IX--K-12 Training



First Amendment- Off Campus Speech

The is no litmus test when school policies must yield to 1st Amendment rules.

- ***Tinker v. Des Moines Community Schools***—students do not shed their constitutional rights at the schoolhouse doors (armbands-Vietnam War)
- ***Hazelwood School Dist. v. Kuhlmeier***—student publications sponsored by school
- ***Fraser v. Bethel Sch. Dist. No. 403***-student used lewd speech at a student assembly

- ***Griggs v. Fort Wayne School Board***-- student wore a shirt w/image of a rifle and logo of U.S. Marines
- ***Mahanoy Area School District vs B.L.*** – failed to make cheer squad
- ***The tipping point***—when student expression **substantially interferes with school operations or impinges on the rights of others.**
- Schools may regulate so long as actions are reasonably related to legitimate pedagogical concerns.

Problem of Off-Campus Speech- Mahoney

- The Court concluded," under circumstances where the school does not stand *in loco parentis*...there is no reason to believe the parents delegated to the school control of the off-campus behavior.
- Mahoney yielded two circumstances that justify school discipline for off-campus speech.
- 1. Speech that takes place during what amounts to temporal or special extension of the school's programs—online instruction, school trips, etc.
- 2. Off-campus speech that is directed at the school-bullying, harassment, threats

<https://www.nasro.org/membership/legal-updates-written-by-bernie-james/>

Online or Digital Harassment

”Forty percent of students and 29 percent of teachers say they know of a “deepfake” depicting individuals associated with their school being shared during the 2023-24 school year...”—L. Langreo, *Education Week*, Sept. 26, 2024

Online or Digital Sexual Harassment under the 2020 Title IX Regulations:
A Resource for Students, Families, and Educators

U.S. Department of Education
Office for Civil Rights

January 2025

- **“Unwelcome conduct on social media platforms, such as sexually demeaning or discriminatory slurs or threats of sexual violence;**
- **Nonconsensual texting, posting, or otherwise sharing naked or intimate images of a person— whether real, altered, or created through artificial intelligence (AI) technologies; or**
- **Stalking using technology, including sending multiple unwanted text messages, creating fake social media accounts, or using apps to work around a blocked number.”**



ASM



ADULT SEXUAL MISCONDUCT (ASM)

Risk Complacency

- **OSHA Definition:** "...complacency is a mindset where you become comfortable with an existing situation and stop looking for hazards.
- **Causes:**
 - **Autopilot:** As educators, the day-to-day routines and tasks become familiar.
 - **False sense of security:** We get comfortable when nothing has happened—you leave a student unsupervised, fail to lock your computer, prop a door as you run out to your car, or take a short cut with safety protocols
 - **Tendency to make excuses**—"Don't think it is bad...but I am in my own little world," "we are like family," "everyone knows everyone," or "they have grown up together and fight like siblings."
- The result is risk complacency, a belief that the organization is operating smoothly in all areas, but the opposite can exist in one or more areas of the organization.



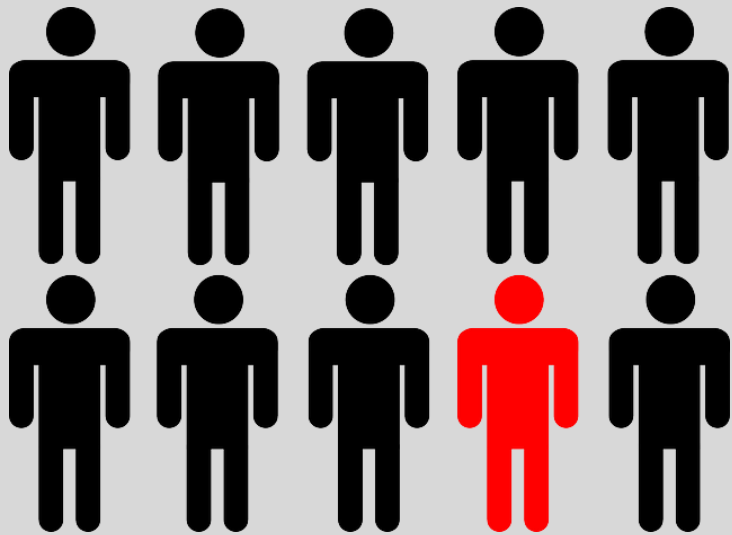
School Districts have a **duty to protect** students from reasonably foreseeable risks through **reasonable school precautions**—policy, training of students and staff, adequate supervision, established expectations for students and staff; schools can lessen exposure to risk for students and this will vary with the age of students, the nature of the activity, the degree of supervision required and other factors. **The standard of reasonable care for schools is not that of an absolute insurer or guarantor of safety but a standard of having taken reasonable precautions to provide for the safety and well-being of all students and staff.**

Adverse Childhood Experiences (ACEs)

- **What are ACEs?**
 - **Potentially traumatic events that occur in childhood (0-17 years of age)**
 - **Includes violence, abuse, neglect, ...**
- **ACEs can persist for Years**
 - **62% of Adults surveyed across 23 states reported 1 ACE during Childhood (2011-14 Behavioral Risk Factor Surveillance Report)**
- **ACEs are PREVENTABLE**
- **ACEs Long-Term Effects:**
 - **Disrupted Neurodevelopment**
 - **Social, Emotional, and Cognitive Impairment**
 - **Adoption of Health Risk Behaviors**
 - **Impacts on Life Potential**
 - **Disease, Disability, and Social Problems**
 - **Early Death**

Source: Division of Violence Prevention, National Center for Injury Prevention and Control, and Centers for Disease Control and Prevention, 2019

“In Loco Parentis”—
Schools are entrusted to
educate and keep
students safe on their
way to and from school.



- 1 in 10 students by the time they graduate—Subject to ASM by School Personnel. (GAO, 2014)
- 1 teacher offender can have as many as 73 victims. (2010 GAO report)
- On average, a teacher-offender will pass through three different districts before being stopped. (2010 GAO report)
- 2,570 teaching credentials revoked, denied, surrendered or sanctioned from 2001-05 in all 50 states due to ASM. (Irvine & Tanner, 2007)
 - 80 percent of victims were students
- Child Abuse & Neglect (Congressional findings 2008)
 - 772,000 Victims of Abuse & Neglect
 - 71% Maltreatment
 - 16% Physical Abuse
 - 9% Sexual Abuse
 - 7% psychological maltreatments
 - 11 % other

Child Sexual Abuse and Assault (CSAA)-Darkness to Light Statistics

- Youth who feel connected at school or at home are 66% less likely to experience violence (Steiner et al., 2019)
- Average age for disclosing CSAA is about 52 years of age (Sprober et al., 2014)
- 70 % of children who are sexually abused are abused by a peer (Gewirtz-Meydan, & Finklehor, 2020)
- Looking a peer-on-peer sexual assault, incidents occurred most commonly at schools-44% (Young et al., 2009)
- Victims of abuse were unsupervised in more than 70% of cases (Ginige et al., 2018)
- More than 29 million reports of on online suspected child sexual exploitation are received by the National Center for Missing and Exploited Children (NCMEC) or 564,461 reports per week (NCMEC, 2020)

“The most important action an adult can do when a child discloses is to believe them.”

Source: Darkness to Light @ <https://www.d2l.org/>

Dr. Daniel T. Farr, DTF Educational Consulting: Title IX--K-12 Training

TERMINOLOGY FOR TODAY

- **Adult Sexual Misconduct (ASM):** defined as a broad set of behaviors that take place in school settings, ranging from those that are inappropriate to those that are illegal (verbal, physical, and online predatory behaviors).
 - Any sexual activity (physical or not) directed to a child with the purpose of developing a romantic or sexual relationship.
 - **Inappropriate Conduct:** examples of verbal conduct including sexual comments/jokes, image sharing, taunting or teasing; whether in person, by phone or by electronic means.
 - **Illegal Conduct:** characterized by physical contact between an adult and a child under the age of 18; examples include sexual contact, inappropriate touching, exhibitionism, child pornography, sextortion and other forms of child exploitation

Related terms: child exploitation, child maltreatment, child sexual abuse

Sources: (U.S. Department of Justice, 2015, GAO, 2014)

ASM Terminology-3 Phases

- **Trolling and Testing:** In *Phase 1*, perpetrator is screening for candidates. Methodical testing for vulnerabilities in child's home environment, school environment, relationships at school and at home (lonely, low self-esteem, unsupervised/isolated).
- **Grooming:** Perpetrator in *Phase 2* develops a personal relationship with the child, a process of desensitizing child to inappropriate behaviors (verbal/physical), making the child feel special in sexual/nonsexual ways.
- **Exploiting and Lulling:** Perpetrator in *Phase 3* engages in aggressive manipulation using abusive behaviors (bribe, extort, isolate, intimidate, coerce, threat) with the child, with a goal of keeping a sexual relationship ongoing and secret.
- **Warning*:** exploitations extends to other staff, parents, the community—perpetrator wants to be seen as well-liked so if student discloses, less likely to be believed.

Sources: (U.S. Department of Education, 2013, GAO, 2014)

- ❖ **Whenever possible, do not be alone with students**
 - ❖ **No closed doors**
 - ❖ **No rides alone**
 - ❖ **No taking students on outings alone**
 - ❖ **No inviting a student to your home**
 - ❖ **No visiting a student's home unless for a prearranged educational purpose-inform supervisor**
- ❖ **Maintain a professional demeanor and distance**
 - ❖ **Keep a professional relationship—
Teacher/Student**
 - ❖ **Maintain like expectations for all students**

Sourced: National Education Guidance, Simpson, 2006

How to Maintain
Professional
Boundaries and
Avoid
Compromising
Situations



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- ❖ Refrain from touching students inappropriately
- ❖ Respect personal space and boundaries
- ❖ Avoid using physical force to enforce discipline
- ❖ Never allow a student to obsess over you—Inform administration
- ❖ Engage in professional communications
 - ❖ Transparent, accessible to supervisors/parents, and professional in content and tone.
- ❖ Be especially vigilant if you hold certain teaching positions--certain jobs are at increased risk of false allegations
 - ❖ Performing arts teachers
 - ❖ Coaches

Sourced: National Education Guidance, Simpson, 2006

How to Maintain Professional Boundaries and Avoid Compromising Situations



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Final Thoughts

Report

- Both under Title IX and MCA 41-3-201—*Reports and Investigations*, all school employees are mandatory reporters.

Train & Reflect

- Know district policy, train frequently, and reflect often.

The U.S. Military has a mantra, “Complacency Kills”

Document

DOCUMENT

DOCUMENT

DOCUMENT



Questions

Additional Resources

Title IX

- [Billings School District Board Policies](#)
- [2020 Title IX Regulations](#)
- [OPI-Title IX Resources](#)
- [OPI Teacher Learning Hub](#)
- [ATIXA-Association of Title IX Administrators](#)
- [TNG Consulting](#)

Safe Schools

- [Safe and Sound Schools](#)
- [Montana DPPHS](#)
- [OPI-Montana Safety and Security Guidelines](#)
- [OPI-Montana Compilation of School Discipline Laws and Regulations](#)
- [Montana Safe School Center](#)
- [National Association of School Resource Officers](#)

Resources-Other

- [Shifting Boundaries: Lessons on Relationships for Students in Middle School](#)
- [Darkness to Light](#)
- [Safe4Athletes](#)
- [Montana Code Annotated](#)
- [Online or Digital Sexual Harassment under the 2020 Title IX Regulations](#)

Thank you for what you do as educators and for your time and energy today

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