

Advanced Title IX Training:

Informal Resolution, OCR Updates, PHRA Guidance, and Caselaw

September, 2025

SAXTON & STUMP
LAWYERS AND CONSULTANTS

A DIFFERENT
APPROACH
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Welcome!



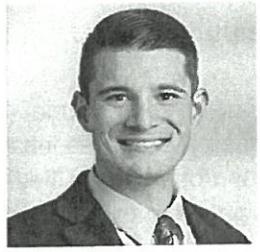
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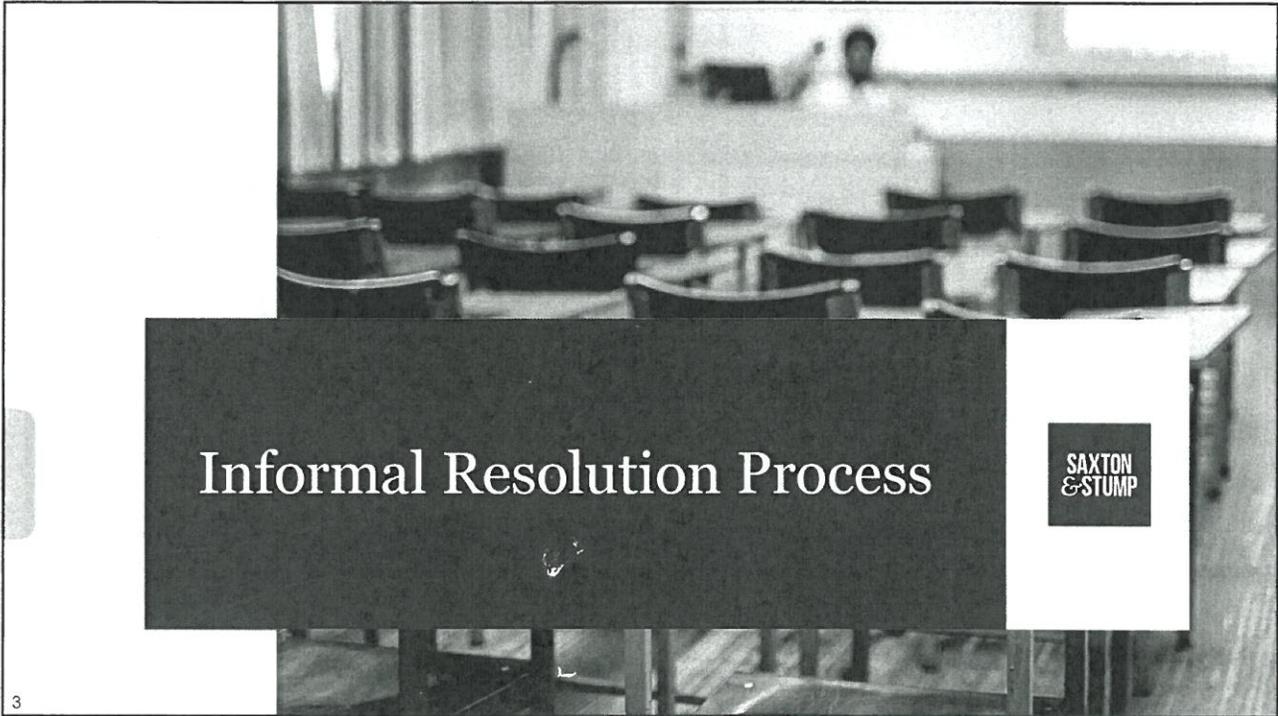


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Informal Resolution Process

PSBA Policy 103

- Any time after a Formal Complaint has been filed, but prior to reaching a determination of responsibility, if the Title IX Coordinator believes the circumstances are appropriate, the Title IX Coordinator may offer the parties the opportunity to participate in an informal resolution process, which does not involve a full investigation and adjudication of the Title IX sexual harassment complaint.

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Informal Resolution Process

Depending on the situation, a voluntary informal resolution with a Mediator may be appropriate.

- ▶ An Informal resolution is permissible in lieu of the investigatory process.
- ▶ After a formal complaint is filed.
- ▶ When the Title IX Coordinator deems informal resolution appropriate.
- ▶ When the parties give voluntary, informed, written consent to attempt informal resolution.

34 C.F.R. § 106.45(b)(9)

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Limitations to the Informal Resolution

- ▶ Not every Title IX issue can (or should) be resolved through the informal resolution process.
- ▶ Schools cannot offer or facilitate informal resolution to resolve allegations that an employee sexually harassed a student.
- ▶ Schools cannot require or pressure the parties into an informal resolution process.
- ▶ The informal resolution process must have reasonably prompt timeframes.

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What is Mediation?

Mediation involves the intervention of a third person, or mediator, into a dispute to assist the parties in negotiating jointly acceptable resolution of issues in conflict.

- ▶ The mediator meets with the parties at a neutral location where the parties can discuss the dispute and explore a variety of solutions.
- ▶ Each party is encouraged to be open and candid about his/her point of view. The mediator facilitates the consideration of alternatives and options that the parties might not have considered.
- ▶ The mediation session is private and confidential.

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Written Notice Requirement

The option for an informal resolution will be introduced by the Title IX Coordinator. If the parties want to pursue this route, the District must provide written notice to the parties disclosing the:

- ▶ Allegations.
- ▶ Discussion about the availability of informal resolution.

The written notice must include the requirements of the informal resolution process:

- ▶ Voluntary participation without coercion.
- ▶ The circumstances that preclude the parties from resuming a formal complaint.
- ▶ Notice that the parties can withdrawal any time before a resolution agreement is reached.
- ▶ Facilitation by neutral, objective and trained facilitator.

34 C.F.R. §106.45(b)(1)-(2)

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Written Notice Requirement

Written notice should include the consequences from participation in the informal resolution process:

- ▶ An explanation of the records that will be maintained or that could be or could not be shared.
- ▶ Iteration that records relating to informal resolutions and the result thereof must be maintained for at least seven (7) years.
- ▶ Notice that if a resolution is reached, the Formal Complaint concludes, and Parties abide by terms of resolution.
- ▶ Notice that if a resolution is not reached, the Formal Complaint returns to the formal Grievance Process.

Written notice should also include a description of the types of resolution available (dependent on the situation):

- ▶ Remedies-based resolution
- ▶ Restorative justice
- ▶ Respondent accepts responsibility
- ▶ Arbitration
- ▶ Mediation

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Written Notice Requirement

Additionally, there are several additional *recommended* disclosures:

- ▶ Whether there is confidentiality within the informal resolution process.
- ▶ Whether the facilitator will be called as a witness in the formal grievance process if informal resolution fails.
- ▶ Facilitator's right to end the mediation for good reason.
- ▶ Notice that the Title IX Coordinator may reject any agreed-upon resolution if it is unreasonable or inequitable.
- ▶ Any right to appeal.

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Documents Needed for Mediator

The Mediator should have three key documents to conduct the informal resolution:

1. The Notice of Allegations
2. The District's Title IX policy
3. Voluntary Agreement to Resolve Formal Complaint by Informal Resolution

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Cases Amenable / Not Amendable to Informal Resolution

Generally Amenable

- Hostile environment sexual harassment cases between employees or between students where little to no power differential.
- Lower-level sexual assault cases.
- Sexual assault cases resulting from miscommunication.
- Dating/domestic violence cases where mutual harm is alleged.
- Stalking potentially connected to a mental health or personality disorder.

Generally Not Amendable

- Physical or threatened violence
- Predation
- Intimidation
- A dangerous pattern of conduct
- Where the power differential between the parties, under the circumstances, could exacerbate the harm.

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Characteristics of a Title IX Mediation

Title IX mediations are:

- ▶ Voluntary,
- ▶ With informed consent,
- ▶ Facilitated by a neutral mediator, and
- ▶ With outcomes controlled by the parties.

Types of Mediations:

- ▶ Facilitative - conducted by third-party neutral with no authority to propose a solution or opine on issues.
- ▶ Evaluative - conducted by third-party neutral who may give opinions and propose solutions.
- ▶ Title IX Hybrid – facilitative with measured evaluation and proposal of solutions.

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Mediation Techniques

Pre-Mediation Contact with the Parties

- ▶ Email the parties to set up a pre-mediation conference.
- ▶ Use neutral language when communicating with parties.
- ▶ Don't overload the parties with information.
- ▶ Pre-mediation conference should be 2-5 days before the mediation.
- ▶ Inform all parties of their ability to have support at the mediation and pre-mediation conference (it can be an attorney, but is not required)
- ▶ Memorialize all contact in emails.

Pre-Mediation Conference

- ▶ Introduce yourself and explain your role.
- ▶ Try to get to know the parties if you don't already.
- ▶ Gently explore where they are comfortable / not comfortable.
- ▶ Go over the information in the written notice (such as freedom to withdraw from mediation)
- ▶ Explain that compromise is part of the process.
- ▶ Ask them if they have any questions.

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Mediation Techniques

Pre-Mediation Preparation

- Read all materials (NOIA, voluntary agreement to participate, policy).
- If possible, outline strong facts and weak facts for Complainant.
- Determine how to structure the mediation.
- If possible, determine expectation of parties.
- If the Mediator is not the Title IX Coordinator, the Title IX Coordinator may have helpful information about resolution options.

Pre-Mediation Evaluation

- What are the undisputed facts? Who, if either, do the facts favor?
- From your Pre-Mediation Conference, where do you think each party stands?
- What are the core issues?
- Where might compromise be achieved?
- What are the respective party's objectives?
- What might the ultimate agreement look like? Are there multiple options for an outcome?

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Mediation Techniques

Prepare the Mediation Environment

- The mediation space should be neutral and accommodating, such as a conference room.
- The space should ensure total confidentiality, such as having a door one can close.
- Each party should have a separate space sufficiently separated from the other party.
- If the mediation is virtual, each party can be separated into different meeting rooms in the same meeting. The Mediator, as host to the meeting, will have the ability to navigate between the two.
- Joint caucus should only be used in rare circumstances.

Strong Communication Skills

- Characterize but don't criticize
- Clarity
- Emotional control
- Simplicity is more important than complexity
- Facts are foundation to persuasion
- Eye contact
- Relaxed tone
- Avoid negative body language, verbal reactions, or facial expressions

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Mediation Techniques

Begin the Mediation

Meet with Each Party Separately

- ▶ Re-establish connection and establish credibility of the parties
- ▶ Discuss any outstanding questions from the pre-mediation conference
- ▶ Remind parties of the purpose of the mediation
- ▶ Re-introduce the process and expectations for the mediation.

Shape the Issues for the Parties

- ▶ Share what you understand the issues to be.
- ▶ Probing whether we can achieve an "agreed" outcome.
- ▶ Session is not whether complainant can prove her/his/their allegations.
- ▶ Facts are Important!

Search for Shared Values

- ▶ Do each hope an agreement can be reached?
- ▶ If agreement reached, what if any relationship will exist with the other party?
- ▶ Are there underlying interests?
- ▶ What are goals for the future?

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Mediation Techniques

Facilitate the Mediated Conversation

- ▶ Neutrally convey the positions of the parties.
 - "He/She understand the severity of this situation."
- ▶ Empower the parties to accurately convey their continued positions throughout the conversation.
 - "What do you want me to say to him/her/them about the concern you continue to have?"
- ▶ Facilitate a discussion about a potential solution and their reasoning for it.
- ▶ Offer subtle opinions in a non-judgmental way.
 - "I know you don't want to agree to these restrictions but if we don't reach an agreement, you risk more severe restrictions imposed by others."
- ▶ Ultimately massage a path to a solution based on agreements the parties arrive at through mediated conversation.

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Mediation Techniques

Fact Exploration Techniques

Ask General Narrative Questions:

- Encourage the party to open-up, vent, and articulate.
- Allows story to be told.
- Rarely will there be a need for interrogation on the who, what, when, where, why, how, describe, explain, tell, etc. when parties feel empowered to narrate their perspective.
- Understand the relationship between the parties.
- Obtain enough facts to assess strengths and weaknesses of the case.

Ask Probing Questions:

- Ask for additional facts if needed to evaluate a case's strengths and weaknesses.
- Explore feelings, opinions, and thoughts.
 - "How would you feel if we are unable to reach an agreement?"
 - "What is the best result for you today?"
 - "If you couldn't achieve the best result, what will you need to feel comfortable about resolving this complaint?"

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Mediation Techniques

Fact Exploration Techniques

Ask General Exploration Questions:

- "What more would you like me to know, if anything, about what happened."
- "Please explain..."
- "Would you describe..."
- What does each party believe to be the other party's perspective on what happened?
- Understand the parties' motivation to participate in the informal resolution process.

Subtle Persuasion Techniques

Use the Facts as Subtle Persuasion

- Speak to the parties about factual strengths, factual weaknesses of their position.
- Address contested facts head-on.

Move the Parties Toward the Goal

- "Do you think it will be more comfortable for you to move classes?"

Constantly Suggest a Solution Outcome

- "Your concern is seeing the person each day, so, if you change science classes do you think you'd see them less often?"

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Terms for Resolution

Resolution Agreements

- ▶ The terms or outcome of the resolution are negotiable and may be restricted by the applicable policy.
- ▶ The resolution may result in party-imposed corrective or punitive measures for a Respondent; remedies for Complainant.
- ▶ Informal resolution agreements may become binding according to their terms (i.e. contractual in nature).
- ▶ The outcome should be enforceable by the District.

Types of Remedies

- ▶ Complainant or Respondent relocate within the building: each party is assigned to a different cafeteria, classroom for a specific class, area of library.
- ▶ Respondent writes an apology letter to Complainant acknowledging harm caused.
- ▶ Indefinite mutual no contact order.
- ▶ Transportation is arranged or schedules amended.
- ▶ An in-classroom aide is provided.

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Terms for Resolution

Types of Corrective or Punitive Measures

- ▶ Withdrawal from extra-curricular activities (athletics, student groups, etc.).
- ▶ Avoidance of school activities (athletics events, programs, concerts, etc.).
- ▶ Enter counseling or other educational programming relating to alleged misconduct.

Ethical Considerations for Arriving at the Terms of Resolution

- ▶ Conflicts of interest
- ▶ Confidentiality
- ▶ Pressuring to reach agreement
- ▶ Subsequent disclosure of information
- ▶ Appearance of impropriety
- ▶ Disclosure of background or special education status / disability
- ▶ Impartiality
- ▶ Mental competency of a party
- ▶ Autonomy and informed consent
- ▶ Honesty and privileged communications

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Failure to Reach an Agreement

- ▶ Explain that the initial inability to reach an agreement does not mean we stop trying, unless a party says so.
- ▶ Explore methods of continuing dialogue such as a date certain mediation, times for follow-up phone conferences, establishing times for meetings with each party, offering additional time to think and consult others
- ▶ If efforts to resolve fail, formal complaint returns to the Grievance Procedure.

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The Resolution Agreement

Resolution Agreement

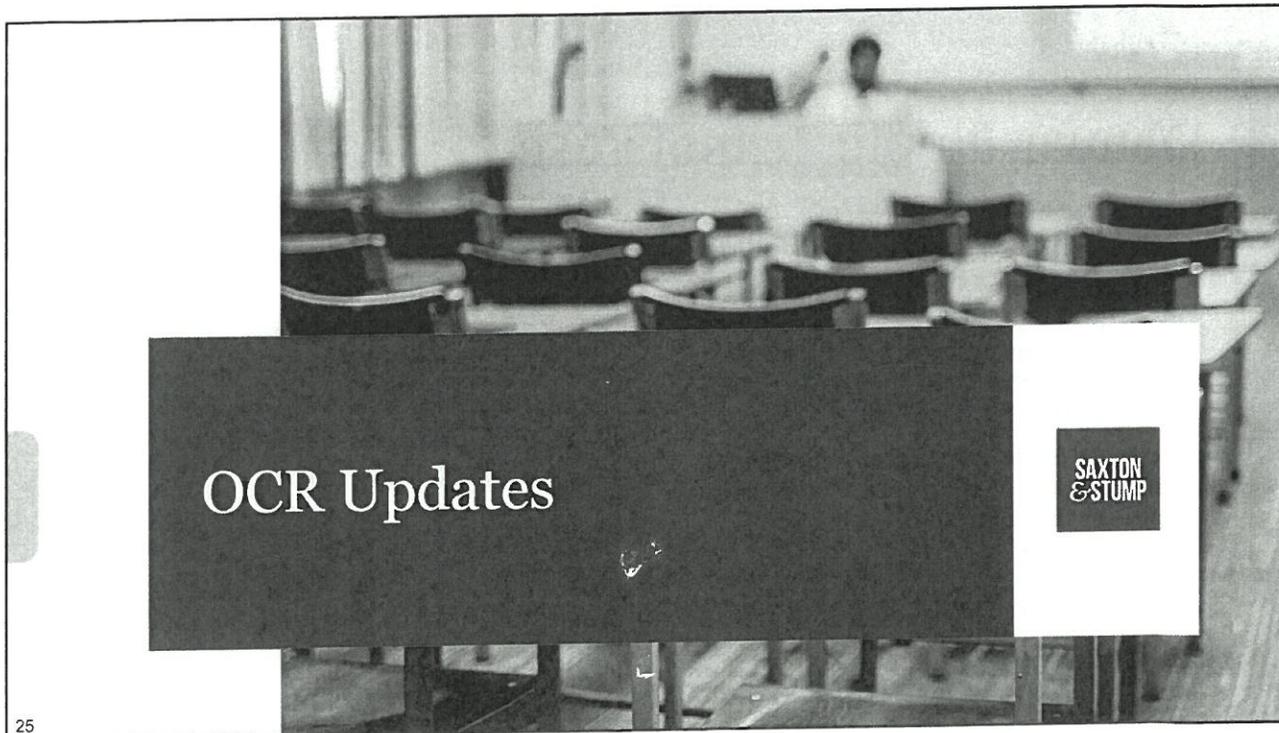
- ▶ In writing,
- ▶ Sufficiently detailed,
- ▶ Resolution fully described and explained,
- ▶ Signed by:
 - Complainant
 - Respondent
 - Title IX Coordinator

Other Terms in the Agreement

- ▶ The parties agree to waive right to appeal the resolution agreement (optional).
- ▶ The parties agree to waive formal grievance procedure.
- ▶ Title IX Coordinator will facilitate the agreed upon outcomes.
- ▶ Non-disclosure clause.
- ▶ Non-disparagement clause.

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OCR Case Processing Manual (CPM)

Complaint Process

1. Evaluation
2. Mediation
3. Investigation & Resolution
4. Monitoring & Enforcement

Directed Investigation
OCR may initiate an investigation absent a complaint when information indicates a possible failure to comply with laws enforced by OCR.

Purpose of the CPM

- ▶ Establishes uniform procedures for OCR's complaint handling
- ▶ Ensures investigations are legally sufficient, evidence-based, and fair
- ▶ Promotes transparency and consistency

Both processes should follow the same "preponderance of the evidence" evidentiary standard

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Denver Public School Case

- ▶ Finding issued: Aug. 28, 2025
- ▶ Allegation: conversion of sex-separated restrooms into all-gender multi-stall facilities
- ▶ OCR Conclusion: Violated Title IX by denying female students' equal access, safety, and privacy. District's *LGBTQ+ Toolkit* guidance created a hostile environment
- ▶ Proposed Resolution: **reconvert restrooms, rescind gender identity policies, accept biology-based definitions of male/female**
- ▶ Superintendent Letter Aug. 29, 2025
 - Rejected OCR's findings as unsupported and legally unfounded
 - Criticized OCR's lack of process – no site visits, no interviews, limited dialogue
- ▶ District Letter to OCR Sept. 7, 2025
 - Requested 90-day resolution period
- ▶ [Letter of Findings – OCR case no. 08255901](#)

Case raises questions as to adequacy of the findings/justifications and highlights tension of OCR's new enforcement approach and procedures described in the CPM

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Issue 1: Facilities & Athletics

- ▶ Core Issue: Whether allowing participation or access based on gender identity rather than biological sex constitutes sex discrimination under Title IX.
- ▶ Current OCR Interpretation:
 - OCR Interpreting Title IX to require sex-separated facilities and sports
 - Guided by 2025 Executive Order (“Keeping Men Out of Women’s Sports”).
- ▶ District and State policies allowing gender-identity access now being treated as facial Title IX violations

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Facilities & Athletics: State Level Cases

State Dept. of Ed.	Focus of OCR Action	Status/Outcome
Maine	Allowed participation/access based on gender-identity	Violation=> reinstate single-sex opportunities <i>Directed Investigation</i>
California	Policies allowing access based on gender identity/ CIF policies and compliance	Violation=> revise guidance and reinstate female-only categories <i>Directed investigation</i>
Minnesota	Athletic participation based on gender-identity- multi-sport violations; citing to EO	Violation=> restoring records/titles; revising guidance; submit materials for approval. <i>Directed investigation</i>
Oregon	Gender-identity policies and access	Ongoing investigation
Illinois	Gender-identity policies and access	Ongoing investigation

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Facilities & Athletics: District Level Cases

District	Focus of OCR Action	Status/Outcome
Denver Public Schools	All-gender multi-stall restrooms	Violation=> rescind and reconvert. <i>Directed Investigation</i>
Northern Virginia Divisions	Facilities & Sport access	Violation=> High-Risk Funding Status. <i>~Directed Investigation</i>
Portland School District	Athletic participation based on gender-identity	Ongoing investigation
Saratoga Springs City School District	Board resolution affirming gender-identity access	Ongoing investigation <i>~Directed Investigation</i>
Kansas School Districts	(in part) Gender access policies	Ongoing investigation
Tumwater School District	Athletic participation based on gender-identity	Ongoing Investigation

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Issue 2: Sexual Harassment & Retaliation

Loudoun County Public Schools:

- ▶ Finding of noncompliance: Sept 16, 2025
- ▶ Title IX violations:
 - (1) Failure to respond to sexual harassment reports involving students in the boys' locker room.
 - (2) Retaliation and unequal treatment of male students during the Title IX grievance process.
- ▶ Sex-based double standard: Loudoun thoroughly investigated a female student's sexual harassment complaint but ignored/dismissed male students' complaints about a female student present in the boys' locker room.
- ▶ Proposed resolution:
 - (1) Rescind male student suspension, (2) review disciplinary actions (3) issue apology letters to male students (4) reopen investigation into male student's title IX complaint (5) provide Title IX training

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Issue 3: Parental Rights & Confidentiality

Kansas School Districts

- ▶ Investigation Initiated: Aug 14, 2025
- ▶ Two-part complaint including: (2) District policies bar staff from disclosing a student's transgender status to parents without the student's consent

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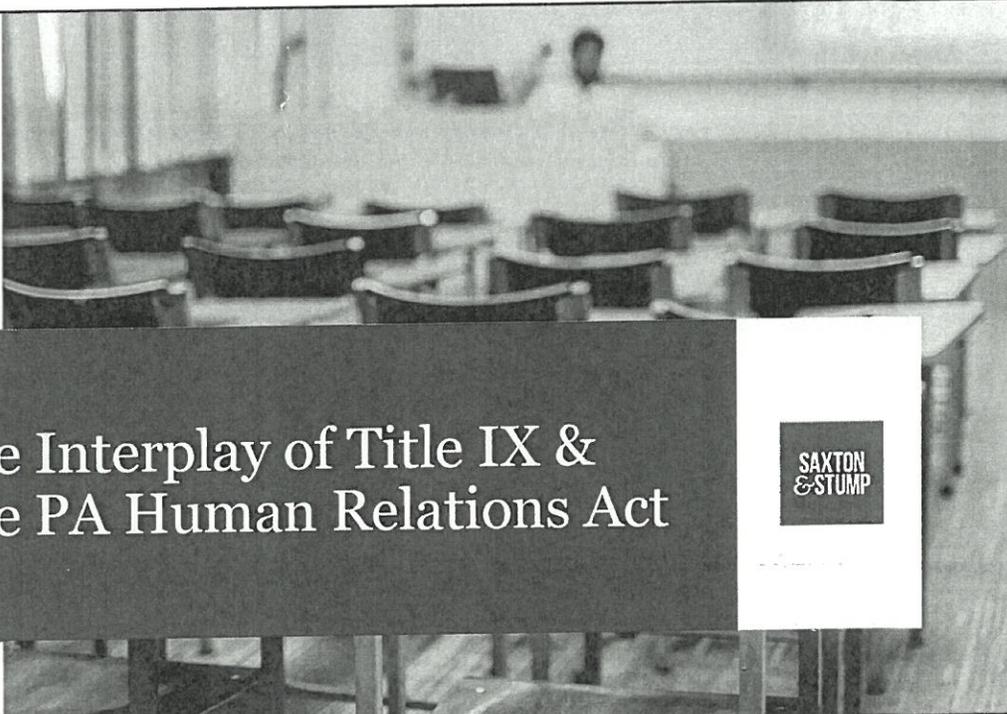
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Process Status

- ▶ Findings issued: (DPS, Maine, California, Minnesota, Loudoun, Northern VA)
- ▶ Ongoing investigations: (Oregon, Washington, Illinois, Kansas, Saratoga Springs)
- ▶ Directed (fast tracked) investigations expanding in 2025

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The Interplay of Title IX & The PA Human Relations Act

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Title IX of the Education Amendments of 1972

Title IX is a federal law that states:

"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."

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Tennessee v. Cardona (2024)

"On the basis of sex" means "that recipients of federal funds under Title IX may not treat a person worse than another similarly-situated individual on the basis of the person's sex, i.e., **male or female**."

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Pennsylvania Human Relations Act

- ▶ The Pennsylvania Human Relations Act (“PHRA”) is a state law that prohibits discrimination and harassment in employment, housing, commercial property, education, and public accommodations.
- ▶ The PHRA prohibits discrimination and harassment that is based on “race, color, sex, religious creed, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness, or physical handicap of the user or because the user is a handler or trainer of support or guide animals.” 43 P.S. § 995(i)

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“Sex” Under the PHRA

- ▶ In 2023, the Pennsylvania Human Relations Commission (“PHRC”) released new regulations clarifying the definition of “sex” under the PHRA.
- ▶ Under the PHRA, “sex” includes:
 - Pregnancy status
 - Childbirth status
 - Breastfeeding status
 - Sex assigned at birth
 - Gender identity or expression
 - Affectional or sexual orientation
 - Differences in sex development

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Supremacy Clause

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land**; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Article VI, Paragraph 2 of the U.S. Constitution

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Doctrine of Federal Preemption

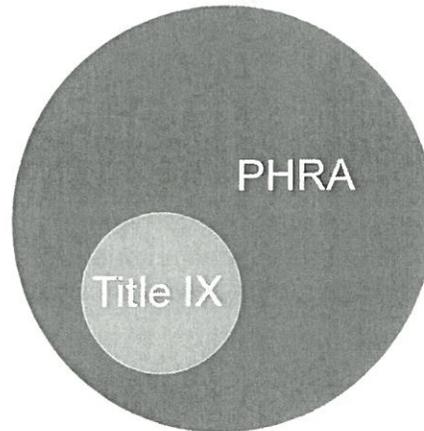
- Federal law supersedes conflicting state laws.
 - Express preemption
 - Implied preemption
 - Conflict preemption
 - Impossibility preemption – when compliance with both federal and state regulations is impossible.
 - Obstacle preemption – when state law poses an obstacle to the accomplishment of the full purposes and objectives of Congress.

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Title IX & The PHRA

Title IX and the PHRA **are not** conflicting statutes; therefore, school districts must comply with both laws.



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PSBA BOARD POLICY 103

Attachment 2

- Applies “to reports of retaliation or discrimination on the basis of race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin, marital status, pregnancy or handicap/disability that do not constitute Title IX sexual harassment as defined in the Policy 103.”

Attachment 3

- Only applies to reports of allegations of sexual harassment subject to the Title IX regulations.

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“Harassment in Education Settings” Guidance

- ▶ On August 29, 2025, the PHRC published a guidance document titled *“Harassment in Educational Settings” Guidance on Evaluating Claims of Bullying and Harassment Under the Pennsylvania Human Relations Act*
- ▶ The purpose of this Guidance is “to provide clarity to all Pennsylvanians regarding how the Commission will evaluate harassment and bullying cases resulting from discrimination in the education context.”

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Bullying

- ▶ The Pennsylvania School Code defines “bullying” as “an intentional electronic, written, verbal or physical act, or series of acts: (1) directed at another student or students; (2) which occurs in a school setting; (3) that is severe, persistent or pervasive; and (4) that has the effect of doing any of the following: (i) substantially interfering with a student’s education; (ii) creating a threatening environment; or (iii) substantially disrupting the orderly operation of a school.” 24 P.S. § 13-1303.1-A(a).
- ▶ **When bullying is based on one or more protected classes, it may constitute unlawful harassment under the PHRA.**

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Bullying Hypo 1

- ▶ Student A makes fun of Student B because of the clothing he wears. Student A taunts Student B every day in class, calling him a loser and saying that he is poor and shops at consignment stores. Student A tells the rest of the class that they shouldn't hang out with Student B. Student B started finding it harder to focus during class and sometimes didn't go to class at all, to avoid the constant taunting. As a result, Student B's grades started to suffer.
- ▶ Bullying or unlawful harassment under the PHRA?

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Bullying Hypo 2

- ▶ Student C makes fun of Student D for being the only African American student in the class. Student C uses racial slurs such as "monkey" when talking to or about Student D during class. Student C encourages others in the class to join them in taunting Student D. Soon, more students begin calling Student D a "monkey." Student D starts feeling depressed, skipping class and getting lower grades than usual.
- ▶ Bullying or unlawful harassment under the PHRA?

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Bullying vs. Unlawful Harassment under the PHRA?

- ▶ Bullying and/or harassment constitutes unlawful discrimination when it is based on one or more protected classes and creates a hostile environment that has the effect of refusing, withholding from, or denying to a student, either directly or indirectly, any of the accommodations, advantages, facilities or privileges provided by the school.
- ▶ The PHRA does not require a showing of intent to discriminate.

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★ Bullying vs. Unlawful Harassment under the PHRA?

- ▶ The PHRA may use the following standard to determine whether harassment and/or bullying constitutes unlawful discrimination:
 1. a student or students suffered discrimination because of their protected class or classes;
 2. the harassment was severe or pervasive and regular;
 3. the harassment detrimentally affected the student or students;
 4. the harassment would detrimentally affect a reasonable person of the same protected class; and
 5. a basis for liability.
- ▶ A basis for liability may be found where a school district or educational institution knew or should have known of the harassment but failed to take actions reasonably calculated to end the mistreatment and offensive conduct.

*does not
have to
be "bad"*

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PHRC's Suggested Best Practices for Schools

- ▶ Anti-Harassment & Bullying Policy Development & Distribution
 - ▶ Reporting of Harassment & Bullying
 - ▶ Investigation of Complaints
 - ▶ Corrective Action
- ▶ These are addressed in Policy 249 (Bullying/Cyberbullying) which is required by law.

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First Amendment Considerations

- ▶ Students do not "shed their rights at the schoolhouse gates."
- ▶ Speech that substantially disturbs school activities or infringes upon the rights of other students can be restricted.
- ▶ Schools can regulate speech that is reasonably forecasted to be disruptive. (Policy 220)
 - To be a substantial disruption, the student's speech needs "a strong nexus" with the school, such that "the offending speech is shown to have been clearly targeted at a member of the school community or clearly pertained to school activities."

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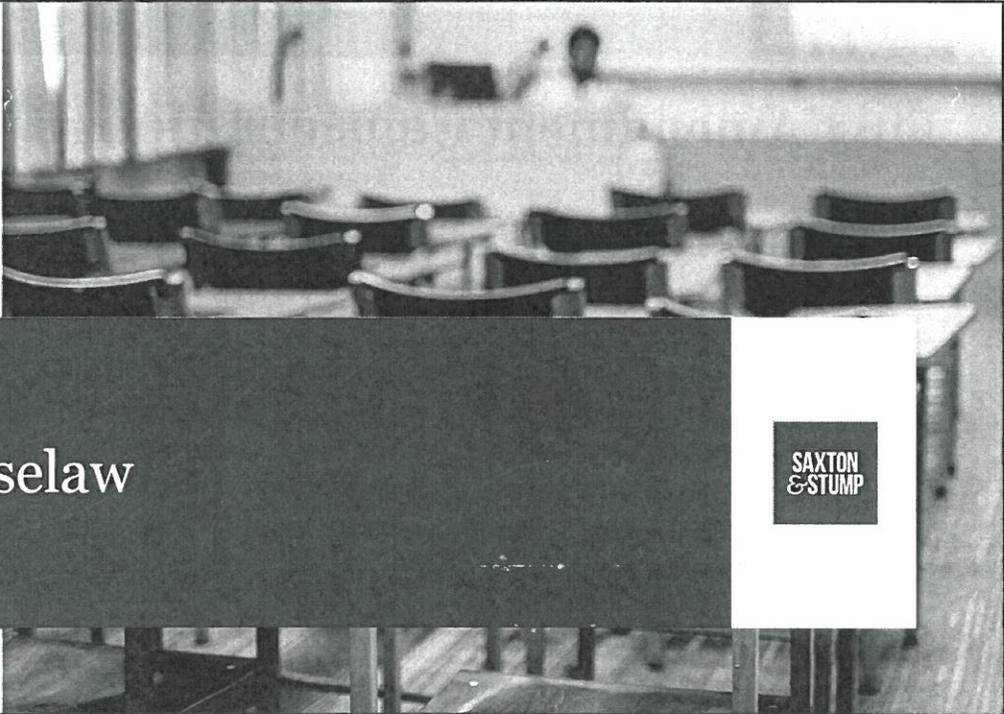
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First Amendment Considerations

- ▶ Cyberbullying
- ▶ Direct threats
- ▶ Fighting words

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Doe v. Boyertown Area School District (3d Cir. 2018)

Citation: *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018), cert. denied, 139 S. Ct. 2636 (2019)

► Facts

- The Boyertown Area School District in Pennsylvania allowed transgender students to use restrooms and locker rooms consistent with their gender identity.
- Several cisgender students sued under **Title IX** and the **Fourteenth Amendment**, claiming that the policy violated their privacy and created a hostile environment on the basis of sex.
- The plaintiffs sought a preliminary injunction to stop the policy.

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Doe v. Boyertown Area School District (3d Cir. 2018)

► Legal Issues

- Does allowing transgender students to use facilities aligning with their gender identity violate Title IX by creating a hostile environment for other students?
- Does the policy violate other students' constitutional right to privacy under the Fourteenth Amendment?

► Third Circuit Holding

- **The Third Circuit unanimously affirmed the district court's denial of an injunction**, holding that the school's policy did *not* violate Title IX or constitutional privacy rights.

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Doe v. Boyertown Area School District (3d Cir. 2018)

► Analysis

- People have a constitutionally protected privacy interest in his or her partially clothed body – however, the right to privacy is not absolute.
- The right to privacy in the school setting can be overcome if there is a compelling state interest.
 - The state has an interest in prohibiting discrimination and promoting inclusiveness.
 - The state has an interest in protecting the physical and psychological well-being of minors.
 - When transgender students face discrimination in schools, the risk to their well-being “cannot be overstated.”

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Doe v. Boyertown Area School District (3d Cir. 2018)

► Equal Protection:

- The policy served a legitimate and important governmental interest—protecting transgender students from discrimination and affirming their rights under Title IX and the Constitution.
- **No Title IX violation** because the District's policy does not create any sex-based classification.
 - “The School District’s policy allows all students to use bathrooms and locker rooms that align with their gender identity. It does not discriminate based on sex, and therefore does not offend Title IX.”
 - “The mere presence of transgender students in bathrooms and locker rooms does not constitute sexual harassment so **severe, pervasive, or objectively offensive** and that so undermines and detracts from the victims’ educational experience that [the plaintiff] is effectively denied equal access to an institution’s resources and opportunities.”

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Doe v. Boyertown Area School District (3d Cir. 2018)

► Outcome and Significance

- The Supreme Court denied certiorari in 2019, leaving the Third Circuit's decision intact.
- *Boyertown* is one of the first federal appellate cases to **explicitly uphold trans-inclusive restroom and locker room policies** in schools.
- It reinforces that **Title IX can protect transgender students** and that inclusive policies are not discriminatory against cisgender peers.
- The decision has been cited widely in subsequent Title IX and Equal Protection litigation, including in challenges to state laws restricting transgender students' facility access.

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Doe v. Boyertown Area School District (3d Cir. 2018)

► Principles Applied to "Equal Athletic Opportunity"

- "Title IX requires a systemic, substantial disparity that amounts to a denial of equal opportunity before finding a violation of the statute," *Parker v. Franklin Cty. Cmty. Sch. Corp.*, 667 F.3d 910, 922 (7th Cir. 2012).
- "Equal athletic opportunity ... includes equivalent opportunity to compete before audiences." *Parker v. Franklin Cty. Cmty. Sch. Corp.*, 667 F.3d 910, 922 (7th Cir. 2012).
- "A school may provide 'equal opportunity' to members of each gender in one of three ways:
 - (1) the participation opportunities for male and female students are in substantially proportionate numbers to their respective enrollments; or
 - (2) the interests and abilities of the sex which is underrepresented with respect to their undergraduate enrollment are fully and effectively accommodated by the present program; or
 - (3) the underrepresented gender's interests and abilities will be accommodated by expansion of the athletic program."

Kelley v. Bd. of Trs., 832 F. Supp. 237, 238 (C.D. Ill. 1993)

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Doe v. Boyertown Area School District (3d Cir. 2018)

➤ Principles Applied to "Equal Athletic Opportunity"

- Title IX requires "equality of athletic opportunity," not "gender balance." *Horner v. Kentucky High Sch. Ath. Ass'n*, 206 F.3d 685, 697 (6th Cir. 2000).
- Therefore, Title IX requires that students are provided with sporting opportunities which "effectively accommodate the interests of both sexes in both the selection of the sports and the levels of competition, **to the extent necessary to provide equal athletic opportunity.**" *Cmtys. For Equity v. Mich. High Sch. Ath. Ass'n*, Case No. 1:98-CV-479, 2002 U.S. Dist. LEXIS 14220, at *10-11 (W.D. Mich. Aug. 1, 2002).
- A recipient which operates or sponsors interscholastic ... 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:

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Doe v. Boyertown Area School District (3d Cir. 2018)

➤ Principles Applied to "Equal Athletic Opportunity"

- other factors:
 - (1) whether the selection of sports and levels of competition effectively accommodate the interest 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.

➤ 34 CFR 106.41

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Magalengo v. PIAA, Quakertown Community School District, and Colonial School District,

Case No. 2:25-cv-325 (E.D. Pa. 2025).

► **Facts of the Case**

- Plaintiff Aislin Magalengo sued Quakertown Community School District (“Quakertown”), Colonial School District (“Colonial”), and PIAA—the governing body for high school and middle school athletics teams in Pennsylvania—because a transgender female, L.A., was allowed to race against cisgender females in the 2024-25 cross-country season, pursuant to PIAA policy.
- Magalengo, a former student of Quakertown, competed in a cross-country meet against a school within Colonial, where L.A. was on the girls’ cross-country team. The lawsuit described an encounter on September 11, 2024, at a cross-country meet held at Quakertown.

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Magalengo v. PIAA, QCSD, and Colonial SD

► **Facts of the Case...continued**

- During the competition, L.A. secured first place, while Magalengo finished second. On losing to L.A., Magalengo told her: “You are not a girl. You should not be racing against girls.” Magalengo’s parents complained to Quakertown school administration about L.A.’s participation in the race.
- However, the PIAA had a policy at the time stating that where a student’s gender is “questioned or uncertain, the decision of the Principal as to the student’s gender will be accepted by the PIAA.” Such a determination was to be made by Colonial, and not Quakertown.

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Magalengo v. PIAA, QCSD, and Colonial SD

▶ **The Opinion**

- Quakertown, Colonial, and the PIAA defeated the claims brought by Magalengo over L.A.'s participation on the cross-country team.
- In dismissing the suit, Chief Judge Wendy Beetlestone of the U.S. District Court for the Eastern District of Pennsylvania stated in the August 1 opinion, Magalengo “failed to allege any facts” that the PIAA is federally funded to support her Title IX claim against it, nor did she present sufficient allegations to support her Title IX claims against the individual school districts.
- Magalengo presented no sufficient allegations that Colonial had substantial control over the context in which the alleged discrimination occurred, since the cross-country race was hosted at Quakertown.

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Magalengo v. PIAA, QCSD, and Colonial SD

▶ **The Opinion...continued**

- Additionally, Magalengo did not allege Quakertown “had any knowledge” about the transgender student’s participation until her parents complained to the school after she lost a race. Without that notice, Quakertown “cannot be held liable under Title IX.”
- The Court dismissed the Title IX claims against the PIAA and Colonial, as well as the Title IX claim against Quakertown—“insofar as it is premised on transgender girls’ participation in athletics.”
- The Court noted that Magalengo “[made] no effort” to link allegations between Quakertown allowing transgender females to use girls’ bathrooms and locker rooms to her Title IX claim. A claim based on a policy allowing students to use those facilities that align with their gender identity is “unlikely to succeed on the merits,” “insofar as it is premised on transgender girls using girls’ bathrooms and locker rooms.”

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Magalengo v. PIAA, QCSD, and Colonial SD

► The Opinion...continued

- Magalengo also did not allege she shared a bathroom or locker room with a transgender female.
- But even so, in the 2018 Third Circuit ruling in *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, the Court held that a school district had a compelling interest to allow transgender students to use their preferred facilities. The Court reasoned the 2018 decision declined to recognize a broader constitutional right to privacy “in a space that is, by definition and common usage, just not that private.”
- Here the Court held the amended complaint is additionally “devoid of any factual allegations that she was subject to purposeful discrimination,” the Court said, dismissing Magalengo her equal protection claims with prejudice.

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K.L. by and through Locker v. Dunmore School District, Civil Action No. 3:24-cv-01461 (M.D. Pa. Sept. 24, 2025)

► Facts

- **K.L.**, a 14-year-old eighth-grade student at Dunmore Middle School, received special education services under an IEP for ADHD.
- Another student, **J.M.**, who identified as male but was assigned female at birth, entered the boys' restroom and surreptitiously photographed K.L. urinating, exposing his genitals.
- J.M. shared the image via Snapchat with other students.
- When the school learned of the photo, **Principal Christopher Lucas** and the **school resource officer** interviewed both students. Lucas informed K.L.'s parents but said there was nothing more the school could do because of Snapchat's ephemerality.
- **No discipline** was imposed on J.M., even though the student handbook prohibited both phone possession and photographing other students.
- K.L. alleged he suffered ongoing **bullying, emotional trauma, anxiety**

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K.L. by and through Locker v. Dunmore School District

► Claims

- K.L. (through his parents) filed a **fourteen-count complaint** alleging:
 - Violations of § 1983 (**Due Process & Equal Protection**)
 - **IDEA, ADA Title II, Section 504, and Title IX**
 - Various **state-law tort and negligence claims**
- The Dunmore School District and Principal Lucas moved to dismiss for lack of jurisdiction and failure to state a claim.

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K.L. by and through Locker v. Dunmore School District

► Issues

- Whether K.L. was required to **exhaust IDEA administrative remedies** before bringing damages claims.
- Whether the District and Lucas **violated K.L.'s substantive due-process rights** under § 1983 (bodily integrity / state-created danger).
- Whether the complaint plausibly alleged a **Title IX violation** for student-on-student sexual harassment (bathroom incident).

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K.L. by and through Locker v. Dunmore School District

► Holdings

1. IDEA Exhaustion

- The court **denied dismissal** for lack of jurisdiction.
- Although the case involved a FAPE-related issue, **damages are not a remedy available under the IDEA**, so exhaustion was unnecessary under *Luna Perez v. Sturgis Pub. Schs.*, 598 U.S. 142 (2023).

2. IDEA and § 1983

- The § 1983 claim **cannot be used to enforce the IDEA**, per *A.W. v. Jersey City Pub. Schs.*, 486 F.3d 791 (3d Cir. 2007).
- Count I was **dismissed with prejudice** on that basis.

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K.L. by and through Locker v. Dunmore School District

► Holdings...continued

3. Fourteenth Amendment (Due Process)

- **No violation of bodily integrity:** The act of photographing, without any physical contact, **did not constitute an intrusion** under due-process precedent.
- The court emphasized *Shaefer v. Corba* (M.D. Pa. 2023), holding that taking photographs alone, without touching, **does not implicate the constitutional right to bodily integrity**.
- **No state liability for private acts:** Under *DeShaney v. Winnebago Cnty.*, 489 U.S. 189 (1989), the state generally has **no affirmative duty to protect** individuals from private harm.
- The alleged facts **did not satisfy the “state-created danger” test:**
 - Harm not foreseeable or direct.
 - No conscience-shocking conduct.
 - No affirmative act by the school increasing the danger.
- Result: **All due-process claims dismissed**

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K.L. by and through Locker v. Dunmore School District

➤ Holdings...continued

4. Title IX

- K.L. alleged that allowing a **transgender student** into the boys' restroom and failing to discipline that student amounted to **sex-based harassment**.
- As an initial matter, it is well established that Title IX does not authorize suits against individual defendants. Title IX reaches institutions and programs that receive federal funds, but it has consistently been interpreted as not authorizing suit against school officials, teachers, and other individuals. Thus, KL failed to state a claim upon which relief could be granted with respect to his claim for damages against Lucas individually.
- The court found the **complaint insufficient**:
 - The school's response (investigation, parental notification) did not show "**deliberate indifference**."
 - The incident, while serious, **did not amount to "severe, pervasive, and objectively offensive" harassment** that deprived K.L. of access to educational opportunities.
- Therefore, the **Title IX claim was dismissed** (the opinion suggests likely **without prejudice** to replead).

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K.L. by and through Locker v. Dunmore School District

➤ Key Takeaways for School Districts

- **Bathroom and privacy incidents** involving transgender students continue to test the boundaries of *Boyertown* (3d Cir. 2018). This court applied *Boyertown* indirectly, declining to find Title IX or constitutional violations.
- **Photographing another student**, even when highly inappropriate, **does not automatically trigger federal liability** absent physical contact or deliberate indifference by staff.

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Vincent C. v. Pennsbury School District,

No. 24-06340-PAC, 2025 WL 2524221 (E.D. Pa. Sept. 2, 2025)

► Facts

- Plaintiff Vincent C., age 14, was a Pennsbury student with an IEP for **emotional disturbance and trauma history**.
- The District placed him at **Valley Day School (VDS)**, a private special-education school.
- During the 2020–21 school year, **teacher’s aide Jerrilyne Derolf** at VDS **groomed and sexually assaulted Vincent** repeatedly, beginning with private Zoom calls during virtual learning and continuing in person after school resumed.
- After her **July 2021 arrest** (widely publicized), she was released on bail and **later died by suicide** after meeting Vincent again at a park while armed with a gun.
- Vincent alleged that **Pennsbury knew of the abuse after her arrest yet took no action to reevaluate his IEP, provide support, or protect him from renewed contact**

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Vincent C. v. Pennsbury School District,

- He sued Pennsbury for **Title IX violations, Section 1983 (Equal Protection and Title IX enforcement), ADA, and Section 504.**

► Issues

- Whether Pennsbury could be held liable under **§ 1983** for its customs, policies, or failure to train regarding student safety.
- Whether Pennsbury was **deliberately indifferent under Title IX** to known sexual abuse by a VDS aide when Vincent remained a Pennsbury student placed there by IEP.
- Whether the alleged conduct occurred **within Pennsbury’s “substantial control”** for Title IX purposes.

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Vincent C. v. Pennsbury School District,

► Holdings

1. § 1983 Claims – Dismissed

- The court applied *Monell* standards: a plaintiff must identify an official **policy, custom, or deliberate indifference in training** that caused the violation.
- Vincent failed to identify any **final policymaker** or widespread practice; allegations showed only **individual misconduct** by Ms. Derolf.
- No prior pattern of similar incidents or notice to the District existed.
- **Result:** All § 1983 claims **dismissed with prejudice**.

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Vincent C. v. Pennsbury School District,

► Holdings...continued

2. Title IX – Dismissed

- The court reaffirmed *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998): a district is liable for teacher-on-student harassment only if an official with authority to act had **actual notice** and was **deliberately indifferent**.
 - **Actual Notice:**
 - No evidence that Pennsbury knew of Derolf's misconduct **before her arrest**.
 - Post-arrest publicity and bail status were **not enough** to show the District knew she posed a continuing risk to Vincent.

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Vincent C. v. Pennsbury School District,

► Holdings...continued

2. Title IX – Dismissed

• Substantial Control:

- Pennsbury did not employ Derolf; she worked for VDS, a private entity.
- The District lacked day-to-day control over her or the VDS environment.
- Thus, the harassment occurred outside Pennsbury's control, placing it beyond the "zone of interest" of Title IX liability.

• Deliberate Indifference:

- Even if the District learned of the abuse after the arrest, it had no authority to discipline or supervise the VDS employee.
- Failure to modify Vincent's IEP or provide additional counseling did not meet the "clearly unreasonable" standard.

- Result: The Title IX claim was dismissed with prejudice.

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Vincent C. v. Pennsbury School District,

► Holdings...continued

3. ADA and Section 504 – Dismissed

- The court found no facts showing discrimination "by reason of disability."
- Allegations focused on sexual abuse, not denial of access to education due to disability.

- Result: No viable ADA/§ 504 claim remained.

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Vincent C. v. Pennsbury School District,

► Key Takeaways for School Districts

- **District liability under Title IX does not automatically extend to private placements.**
 - Even if the student remains “enrolled” in the district, **control over the harasser and setting** is determinative.
- **Post-incident knowledge** (e.g., publicity or police reports) is **not “actual notice”** unless a district official with corrective authority has specific information suggesting a risk within their control.
- **Monell claims** require showing a district-wide policy or pattern of indifference—not one rogue employee.

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Morelli v. Armstrong School District

No. 24-1028, 2025 WL 2345183 (W.D. Pa. Aug. 13, 2025)

► Facts

- **Plaintiffs:** Two students, *Baella Morelli* and *O.Y.*, and their parents.
- **Defendants:** *Armstrong School District* and *Douglas Flanders*, a teacher and coach at Armstrong Junior-Senior High School.
- During the **2022–23 school year**, Mr. Flanders allegedly:
 - Touched O.Y.’s buttocks under her backpack while posing for a photo.
 - Pressed his erect penis against Baella Morelli’s back and rubbed her shoulders.
 - Placed his genitals on her desk while handing out papers.
 - Touched O.Y.’s inner thigh and pulled her toward him at his desk.
- Students reported the misconduct in April 2023; Flanders was immediately removed from the baseball field but later allowed on school grounds briefly as a stepparent to a student
- Flanders retired May 25, 2023; he was criminally charged in June 2023. Child & Youth Services (CYS) later required the District to bar him from property.

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Morelli v. Armstrong School District

► Claims

- The First Amended Complaint (15 counts) alleged:
 - **Against the District:**
 - *Count I*: Title IX (Deliberate Indifference).
 - *Counts II & III*: § 1983 violations of parents' Fourteenth Amendment liberty interests.
 - *Count IV*: § 1983 Failure to Train.
 - *Count X*: § 1983 & Ninth Amendment (International Covenant on Civil & Political Rights).
 - **Against Flanders**: Various state-law torts (battery, assault, Intentional Infliction of Emotional Distress (IIED)) and § 1983 claims (substantive due process and equal protection).

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Morelli v. Armstrong School District

► Issues

- Did the District act with **deliberate indifference** under Title IX?
- Could parents recover for **constitutional injuries to their children** under § 1983?
- Was there a plausible **failure-to-train claim** against the District?
- Were the students' **state and constitutional claims** against the teacher viable?

► Relevant Holdings

1. Title IX (Count I) — Dismissed with Prejudice

- Plaintiffs alleged the District knew of prior complaints in 2019 but offered no details on who reported them or to whom
- The District's 2023 response was "prompt and appropriate": Flanders was removed once allegations surfaced.
- Brief later access as a stepparent did not constitute **deliberate indifference**.
- Therefore, the Title IX claim was **dismissed with prejudice** for failure to plead actual notice and clearly unreasonable response.

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Morelli v. Armstrong School District

► Relevant Holdings...continued

2. Teacher Liability (Counts V – VIII and XI – XIV)

- **Battery & Assault Claims:** *Survived.*
 - Court found allegations that Flanders intentionally touched students sexually sufficient to show offensive contact and intent
- **Substantive Due Process and Equal Protection (§ 1983) Claims:** *Survived.*
 - Students plausibly alleged violations of bodily integrity and sex-based discrimination.
- **IIED Claims:** Allowed to proceed given the severity of alleged conduct.

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Morelli v. Armstrong School District

► Key Takeaways for School Districts

- **Prompt response matters.** Once allegations surface, swift removal and cooperation with authorities usually defeat “deliberate indifference.”
- **Prior complaints must be specific.** Vague assertions of earlier knowledge (e.g., “heard something in 2019”) will not establish actual notice.

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Fuller v. School District of Philadelphia

No. 25-2952, 2025 WL 2654900 (E.D. Pa. Sept. 16, 2025) (Bartle, J.)

► Facts

- **Plaintiffs:** Kayla Fuller and Legende Lee, on behalf of their non-verbal son, **L.L.**, a student with Down syndrome enrolled at **Thurgood Marshall Elementary School**.
- L.L. had an IEP providing for "safe transport" and use of a seat belt on the school bus.
- On **May 3, 2024**, while riding the bus, **L.L. was sexually assaulted** by another non-verbal student, **T.M. (age 15)**.
- The **bus driver**, a District employee, was **on her cell phone** in violation of policy, failed to supervise, and only saw the assault after it began.
- There was **no attendant** on the bus that day, though one is normally assigned.
- After the incident, the driver reported to her dispatcher, and the matter was **investigated by the District's Title IX office using an outside law firm**.

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Fuller v. School District of Philadelphia

► Facts...continued

- The investigation **did not use interviewers trained in interviewing non-verbal students or sexual-assault victims**, and ultimately concluded **T.M. was not responsible** for sexual harassment or battery.
- L.L. became fearful of buses and male figures and required force to board the bus thereafter

► Claims

- Plaintiffs asserted violations of:
 - **Title II of the Americans with Disabilities Act (ADA)**;
 - **Section 504 of the Rehabilitation Act**; and
 - **Title IX of the Education Amendments of 1972**.
- They sought money damages for the District's alleged **deliberate indifference** to L.L.'s safety and rights.

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Fuller v. School District of Philadelphia

► Issues

- Did the District act with **deliberate indifference** toward a foreseeable risk of sexual assault to a disabled student, violating ADA § 202 or Section 504?
- Was the **Title IX investigation** so flawed that it constituted sex-based discrimination or an “erroneous-outcome” claim under *Doe v. University of the Sciences*?

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Fuller v. School District of Philadelphia

► Holdings

1. ADA and Section 504 — Dismissed

- The Court held plaintiffs did not plausibly allege **intentional discrimination** or **deliberate indifference** under the Third Circuit’s *S.H. v. Lower Merion School District* standard.
- To succeed, plaintiffs had to show:
 - the District knew that harm to a federally protected right was **substantially likely**, and
 - **failed to act** upon that likelihood (*S.H.*, 729 F.3d at 263).
- Here, the District had **developed an IEP** providing for safe transportation; the lack of an attendant and the driver’s misconduct, while negligent, **did not demonstrate knowledge of a substantial likelihood of harm**.
- At most, plaintiffs alleged **negligence**, which is **insufficient** for ADA/504 liability
- “What befell L.L. ... was nothing short of tragic ... [but] the standard under the ADA and Rehabilitation Act is not one of negligence but the more stringent standard of deliberate indifference.”

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Fuller v. School District of Philadelphia

► Holdings...continued

2. Title IX — Dismissed

- Plaintiffs argued the District's **investigation** of the assault was flawed and led to an "erroneous outcome."
- The Court relied on *Doe v. University of the Sciences*, 961 F.3d 203 (3d Cir. 2020) and *Yusuf v. Vassar College*, 35 F.3d 709 (2d Cir. 1994): to state an "erroneous outcome" claim, a plaintiff must plausibly allege **(a)** an erroneous disciplinary result **and (b)** that **gender bias was a motivating factor**.
- The Court found **no factual basis** suggesting gender bias influenced the investigation.
- The alleged failings showed **incompetence**, not discrimination:
 - Investigators failed to use trained professionals.
 - They could not interview non-verbal students effectively.
 - But there was **no evidence or inference of gender-based motive**.
- Consequently, the Title IX claim was dismissed

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Fuller v. School District of Philadelphia

► Outcome

- All claims — **ADA, Section 504, and Title IX** — were **dismissed** under Rule 12(b)(6). No state-law claims were properly pled.

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Doe v. Loyalsock Township School District

No. 4:21-cv-01343, 2025 WL 2463572 (M.D. Pa. Aug. 26, 2025) (Brann, C.J.)

► Facts

- **Plaintiff:** Jane Doe, former student at Loyalsock Township School District (“LTSD”).
- **Defendant:** *Kelli Vassallo*, a coach employed by the District.
- Plaintiff alleged that Vassallo **sexually abused her for over a year**, beginning with grooming while she was a **seventh-grade basketball player**, progressing to frequent sexual contact (cuddling, kissing, touching) through her eighth-grade year
- Abuse occurred at **Vassallo’s home and others’ homes**, including that of another staff family (the Rudes).
- Plaintiff first disclosed the abuse to a peer in high school, then to a teacher, who reported it, prompting **police and CYS investigations** and Vassallo’s criminal prosecution.

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Doe v. Loyalsock Township School District

- The lawsuit, however, focused on **the District’s prior knowledge**:
 - In **2010**, several years earlier, another student (*L.F.*) and her mother had reported Vassallo’s **inappropriate relationship** with L.F. to LTSD staff.
 - Teachers Terri Dietrick and Christina Herman brought these concerns to Superintendent Robert Grantier and Principal Matthew Reitz, who acknowledged they were aware of allegations of “a sexual relationship” between Vassallo and L.F.
 - State Police investigated but **did not pursue charges**.
 - The District conducted **no internal investigation** and **did not notify the School Board**, despite acknowledging that the allegations would have been relevant to Vassallo’s continued employment.

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Doe v. Loyalsock Township School District

▶ Claims

- Jane Doe sued LTSD under:
 - **Title IX** – for deliberate indifference to known sexual harassment by an employee;
 - **Negligence per se** – for failure to comply with the **Pennsylvania Child Protective Services Law (CPSL)**.

▶ Issues

- Whether "appropriate persons" within LTSD had **actual knowledge** of prior abuse by Vassallo (L.F.) that should have prompted protective measures preventing Jane Doe's later abuse.
- Whether the District's response (or lack thereof) constituted **deliberate indifference** under Title IX.

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Doe v. Loyalsock Township School District

▶ Holdings

1. Title IX — Motion Denied (Claim Survives)

- Chief Judge Brann held that a reasonable jury could find **actual knowledge and deliberate indifference** by LTSD.

▶ Actual Knowledge

- The record showed **Superintendent Grantier and Principal Reitz** were told directly of allegations that Vassallo was in a **sexual relationship with L.F.**
 - Herman's 2010 statement and deposition confirmed this.
 - These administrators were "**appropriate persons**" under Title IX because they had authority to address and correct misconduct.
 - The State Police investigation's "unfounded" conclusion did **not negate** the District's knowledge. The record contained **contradictions** and uncertainty about whether the District ever learned the investigation's results
- ▶ "A reasonable juror could conclude that appropriate persons in the School District had actual knowledge of Vassallo's abuse of L.F., where the underlying facts indicated Vassallo posed a sufficient danger to students."

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Doe v. Loyalsock Township School District

▶ **Deliberate Indifference**

- Although the District reported the matter to State Police, it **took no further internal action**, such as investigating or notifying the school board.
 - Principal Reitz admitted he had authority to conduct a review but did not do so.
 - The court found this **potentially “clearly unreasonable”** under *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).
- ▶ “A reasonable juror could conclude that the District failed to respond in a reasonable manner to the allegations.”
- ▶ **Result:** The Title IX claim **survived summary judgment** and will proceed to trial.

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Marfia v. Gettysburg Area School District

No. 1:22-CV-02029, 2025 WL 1688922 (M.D. Pa. June 16, 2025) (Wilson, J.)

▶ **Facts**

- **Plaintiff:** *Owen Marfia*, a former student who was sexually abused by his adoptive father, **Vincent Marfia**, a longtime teacher in the **Gettysburg Area School District (GASD)**.
- **Timeline:**
 - Marfia taught in GASD from 1999 until his 2021 resignation.
 - Owen attended GASD’s Franklin Township Elementary (2008–2010) but was never directly taught by Marfia.
 - The two met when Owen’s brother had Marfia as a teacher; Marfia soon became a “father figure” to the family, with the stepmother’s consent.

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Marfia v. Gettysburg Area School District

▪ Timeline:

- By 2010, Owen was spending most nights at Marfia's home. The abuse began there and continued for several years — but **never occurred on GASD property** or while Owen was enrolled at GASD
- The stepmother consented to overnight stays and allowed Marfia to pick up/drop off the children at school.
- In 2013, Marfia formally adopted Owen through the Adams County Orphans' Court.
- Owen disclosed the abuse in 2019, years after leaving GASD.

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Marfia v. Gettysburg Area School District

▶ School Awareness:

- Teachers recalled that Marfia "favored" certain male students, hugged them, and took them on outings.
- Some colleagues thought him "creepy" or suspected attraction to male students, but no one ever filed a report or complaint.
- The District received no allegation of sexual misconduct regarding Owen or any student before 2019.
- In 2019, GASD placed Marfia on administrative leave after unrelated allegations surfaced, cooperated with state investigations, and later suspended him when he was charged.

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Marfia v. Gettysburg Area School District

► Claims

- Owen sued **Gettysburg Area School District** for:
- **Title IX** — alleging GASD had actual knowledge that Marfia was a danger to students and was deliberately indifferent.
- **Negligence / Gross Negligence / Recklessness** — alleging failure to supervise, train, or report.
- Marfia was also sued individually for assault, battery, and IIED (intentional infliction of emotional distress).

► Issues

- Did GASD have **actual knowledge** of facts showing Marfia posed a “substantial danger” to students?
- Was GASD **deliberately indifferent** to known sexual harassment or abuse?
- Did the abuse occur **within GASD’s “substantial control”** (on school grounds or during school activities)?
- Could GASD be held **negligent** under Pennsylvania law?

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Marfia v. Gettysburg Area School District

► Holdings

1. Title IX — Summary Judgment for GASD (Dismissed)

- The court applied *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998), and *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999).
- To establish Title IX institutional liability, a plaintiff must show:
 - An **appropriate person** (principal/superintendent) had actual notice;
 - The district was **deliberately indifferent**;
 - The abuse occurred **under the school’s control**; and
 - The conduct **denied access to education**.

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Marfia v. Gettysburg Area School District

► Holdings...continued

▪ a. No Actual Knowledge

- No administrator, Title IX coordinator, or principal knew of any abuse or misconduct involving Owen.
- Vague rumors that Marfia was “too friendly” or had “favorites” were insufficient — they did not indicate a “**sufficiently substantial danger to students.**”
- The “creepy” reputation, jokes among students, and after-the-fact recollections could not establish that **any appropriate person** had notice before the abuse occurred

▪ b. No Deliberate Indifference

- When GASD did learn of unrelated 2019 allegations, it acted **swiftly and appropriately**: placed Marfia on leave, filed educator-misconduct reports with PDE, and cooperated with CYS and State Police.
- Therefore, the District’s conduct did not meet the “clearly unreasonable” standard under *Davis*.

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Marfia v. Gettysburg Area School District

► Holdings...continued

▪ c. Lack of Substantial Control

- The abuse occurred **at Marfia’s home**, years after Owen left GASD.
- GASD had **no control over the perpetrator’s conduct** in that context; thus, Title IX liability could not attach.
- “While hindsight may be 20/20, the court must assess what GASD knew at the time— not what could later be inferred.”
- **Result:** Title IX claim **dismissed with prejudice.**

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Marfia v. Gettysburg Area School District

► Holdings...continued

2. Negligence — Summary Judgment for GASD

- Plaintiff alleged negligent supervision, hiring, and training.
- The court found no duty breached: Marfia passed all clearances and there was no report of inappropriate conduct during Owen's enrollment.
- Rumors or colleague discomfort did not trigger a legal duty to investigate.
- GASD's later compliance with reporting laws further supported that its conduct was reasonable.
- **Result:** Negligence claim **dismissed with prejudice.**

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Marfia v. Gettysburg Area School District

► Key Takeaways for School Districts

- **No liability without notice:** Districts are not strictly liable for off-campus sexual abuse by employees absent actual knowledge of risk.
- **Rumors and hindsight don't equal notice:** Vague discomfort or gossip about a teacher's behavior cannot establish "actual knowledge."
- **Prompt response matters:** The District's 2019 administrative leave and PDE reporting demonstrated reasonable action and protected it from deliberate-indifference findings.
- **Training and policies help:** While some staff couldn't recall boundary training, compliance with PDE protocols and background checks met the standard of care.

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J.H. by & through Humphreys v. Dunmore School District,
 No. 3:24-cv-1154, 2025 WL 2300750 (M.D. Pa. Aug. 8, 2025) (Munley, J.)

► **Facts**

- **Plaintiff:** *J.H.*, a 13-year-old student with **autism spectrum disorder**, receiving support through an autistic support classroom at **Dunmore Junior-Senior High School**.
- **Incident:**
 - On **March 3, 2023**, a peer, *L.S.*, recorded **J.H. masturbating** in a bathroom stall without consent.
 - *L.S.* **AirDropped** the video to other students; it spread throughout the school and neighboring schools.
 - Staff learned of the video on **March 31, 2023**, when a teacher overheard students discussing it.

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J.H. by & through Humphreys v. Dunmore SD

► **Facts**

- **Incident:**
 - The **principal**, Timothy Hopkins, told the family the phone search revealed nothing and that “nothing more could be done.”
 - After police became involved, the video was found on **four students’ phones (C.M., M.H., L.S., and J.W.)**, and later shared with another student, *C.C.*
 - Juvenile delinquency petitions were filed, but all students remained enrolled in or were later reenrolled at Dunmore.
- **Follow-up harassment:**
 - In **January 2024**, other students yelled “beat it” at *J.H.* during dismissal while staff were present; no discipline resulted.
- **Policies:**
 - District prohibited phones and photos of students without consent, but the family alleged **widespread nonenforcement**.

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J.H. by & through Humphreys v. Dunmore SD

► Claims

- The **Second Amended Complaint** asserted 14 counts, with federal and state claims against the District, Principal Hopkins, and the student perpetrators/parents. Key federal claims against the **District and Principal Hopkins** included:
 - **IDEA, ADA, and §504** (Counts I–V) — failure to provide FAPE and disability discrimination.
 - **Title IX** (Count VI) — deliberate indifference to sexual harassment.
 - **§1983 Equal Protection and Failure to Train** (Counts II, VII).
 - **State Negligence, Vicarious Liability, and IIED** (Counts VIII–XII).

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J.H. by & through Humphreys v. Dunmore SD

► Holdings

1. **IDEA, ADA, and Section 504 — Dismissed (Lack of Jurisdiction / Failure to Exhaust)**
 - The court found all **IDEA, ADA, and §504** claims required **administrative exhaustion** because they centered on denial of a **Free Appropriate Public Education (FAPE)**.
 - Plaintiffs did **not pursue any due-process complaint or hearing** under the IDEA.
 - Under 20 U.S.C. § 1415(l), exhaustion applies to ADA/§504 claims when the relief sought (educational access, accommodations) is available under the IDEA.
 - The parents sought compensatory and punitive damages, not educational remedies, but the court held the **gravamen** of the complaint was still FAPE-based — i.e., the claim that Dunmore failed to supervise or accommodate J.H. in light of his disability.
- “Plaintiffs’ allegations may only be read for the proposition that they did not pursue any claims at an administrative level... Accordingly, the court lacks subject matter jurisdiction.”
- **Result:** Counts I, III (IDEA), related ADA (§ IV), §504 (§ V) **dismissed with prejudice.**

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J.H. by & through Humphreys v. Dunmore SD

► Holdings

2. Title IX — Motion to Dismiss DENIED

- The court allowed the **Title IX deliberate indifference claim** to proceed.
- Reasoning:
 - J.H. was a student “subjected to sexual harassment” via **nonconsensual recording and distribution of a sexual act**.
 - District officials, including the **principal**, had **actual knowledge** of the harassment but did not take effective steps to stop it.
 - The complaint plausibly alleged that **failure to enforce phone policies** and **lack of discipline** caused J.H. to suffer further harassment and emotional trauma.
 - The court distinguished between IDEA/ADA educational claims and Title IX’s **equal access to education** guarantee.

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J.H. by & through Humphreys v. Dunmore SD

► Holdings

2. Title IX — Motion to Dismiss DENIED

- **Key line:**
 - “The dissemination of a sexual recording of a student constitutes severe and objectively offensive harassment... Plaintiffs plausibly allege deliberate indifference when the school fails to act on actual notice.”
- **Result:** Title IX claim proceeds against **Dunmore School District**.

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Thank you!

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