



# 2026 Keystone Title IX & Education Law Summit: Employee Title IX Issues | Rights & Responsibilities

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Gareth is a shareholder Saxton & Stump Education Group where he concentrates his practice in all areas of public education, including labor, employment, and collective bargaining matters. In 2014, his impressive tax assessment work took him to the Pennsylvania Supreme Court to litigate a case that ended up saving his client several hundred thousand dollars. He came to Saxton & Stump in 2025 from longtime York County law firm Stock & Leader.

A former social studies teacher in the Gettysburg Area School District, Gareth started his legal career as a legal assistant in the Pennsylvania Department of Education Chief Counsel's Office. In his private practice, that experience allows him to understand the viewpoints of both administration members and teachers.


## Practice Areas

- ▶ Education



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Mike is a Lancaster-based attorney in the Saxton & Stump Education Group. His practice includes all aspects of working with Pennsylvania school district representatives, including school boards, superintendents, executive leadership teams and other district staff. He advises districts on legal issues related to the Constitution, students' rights, education, employment, civil rights, real estate, local government, procurement, contracts, tort law, and more. He interprets federal, state and local laws, providing his legal opinions and advice in the drafting of legal documents, policies, rules and regulations, resolutions, applications and other documents. In 2024, he extensively familiarized himself with the new Title IX rules to perform explanatory presentations to school boards, staff and administrations.

## Practice Areas

- ▶ Education



# Agenda

- ▶ Discrimination Under Title IX
- ▶ Prohibited Employment Discrimination – Board Policy 104
- ▶ Ability to Report Title IX Discrimination
- ▶ Case Law Update

A diverse group of stylized human figures in various colors and styles, representing different ethnicities, ages, and genders. The figures are arranged in a crowd, with some wearing glasses, hats, or jewelry. The background is a light teal color.

# Discrimination Under Title IX

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## Title IX prohibits discrimination on the basis of sex in any education program or activity receiving federal funds.

- ▶ Protections applied to:
  - Students
  - **Employees**
  - Applicants
  - Third parties
- ▶ “Sex” in this context includes:
  - Biological sex
  - Pregnancy and related conditions
  - Sexual orientation
  - Gender identity



# Title IX and Title VII Interplay

- ▶ Title VII and Title IX work together to attack the problem of sex discrimination in schools through different mechanisms
- ▶ Congress passed Title IX as part of a series of amendments to the Civil Rights Act of 1964 and other anti-discrimination statutes
  - The Equal Employment Opportunity Act of 1972 first eliminated the educational-institution exception in Title VII's prohibition of employment discrimination, creating an express right of action for school employees
  - Just three months later, Congress enacted Title IX to create a separate Spending Clause remedy for sex discrimination in educational institutions
- ▶ Title IX creates an alternative remedy by conditioning federal funding on compliance with its prohibition of sex discrimination in schools

# *Bostock* Evolution of “Sex”

## Interplay with the Title VII

- ▶ 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.
- ▶ Discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat employees differently because of their sex—the very practice Title VII prohibits in all manifestations.
- ▶ **Title VII's message is simple but momentous: an individual employee's sex is not relevant to the selection, evaluation, or compensation of employees.**
- ▶ *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020)



# Prohibited Employment Discrimination – Board Policy 104

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- ▶ **Discrimination** shall mean to treat individuals differently, or to harass or victimize based on a protected classification including race, color, age, religious creed, religion, sex, sexual orientation, genetic information, ancestry, national origin, marital status, pregnancy or handicap/disability.
- ▶ **Pregnancy, childbirth and pregnancy-related medical conditions**, refers to the pregnancy or childbirth of the specific employee and includes, but is not limited to, current pregnancy; past pregnancy or recovery; termination of pregnancy; potential or intended pregnancy (which can include infertility, fertility treatment and the use of contraception); labor; childbirth; and lactation.
- ▶ **Related medical conditions** are medical conditions relating to the pregnancy, termination of pregnancy, childbirth or lactation of the specific employee.
- ▶ **Religious creed** includes all aspects of religious observance, practice or belief.



- ▶ **Race** includes all of the following:
  - Ancestry, national origin or ethnic characteristics.
  - Interracial marriage or association.
  - Traits associated with race, which includes but is not limited to, hair texture and protective hairstyles, such as braids, locks and twists.
  - Hispanic ancestry, national origin or ethnic characteristics.
  - Persons of any other national origin or ancestry as specified by a complainant or in a complaint.

- ▶ **Title IX sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:
  - A district employee conditioning the provision of an aid, benefit, or district service on an individual's participation in unwelcome sexual conduct, commonly referred to as *quid pro quo sexual harassment*.
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to a district education program or activity.
  - Sexual assault, dating violence, domestic violence or stalking.



- ▶ **Dating violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined by the following factors:[\[26\]](#)
  - Length of relationship.
  - Type of relationship.
  - Frequency of interaction between the persons involved in the relationship.
- ▶ **Domestic violence** includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving federal funding, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- ▶ **Sexual assault** means a sexual offense under state or federal law that is classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

- ▶ **Stalking**, under Title IX means stalking on the basis of sex, for example when the stalker desires to date a victim. Stalking means to engage in a course of conduct directed at a specific person that would cause a reasonable person to either: [\[26\]](#)
  - Fear for their safety or the safety of others.
  - Suffer substantial emotional distress.
- ▶ Such conduct must have taken place during a district education program or activity and against a person in the United States to qualify as sexual harassment under Title IX. An **education program or activity** includes the locations, events or circumstances over which the district exercises substantial control over both the respondent and the context in which the harassment occurs. Title IX applies to all of a district's education programs or activities, whether such programs or activities occur on-campus or off-campus.
- ▶ **Retaliation** (by the District or any other person) against any person for:
  - Reporting or making a formal complaint of conduct that may constitute discrimination or retaliation, including Title IX sexual harassment.
  - Testifying, assisting, participating in any manner or refusing to participate in a related investigation, process or other proceeding or hearing.
  - Acting in opposition to practices the person reasonably believes to be discriminatory.



# Ability to Report Title IX Discrimination



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# Internal Options

- ▶ Employees who believe they have experienced Title IX discrimination have several avenues for reporting and seeking resolution.
  - The initial step often involves utilizing the institution's internal grievance procedures, typically by contacting the designated Title IX Coordinator, whose contact information should be readily available based on the regulations and accompanying District Board Policy 104.
- ▶ The Title IX Coordinator will explain the process for filing a formal complaint and discuss available supportive measures. The institution's grievance process will then involve an investigation, which may include interviews and evidence collection, leading to a determination of responsibility.
  - \*\*\*Informal Resolution is *not* an option when an Employee is the Respondent in a matter involving a Student Complainant.



# External Options

1. Filing a complaint with the U.S. Department of Education's Office for Civil Rights (OCR).
  - OCR investigates complaints of sex discrimination in federally funded education programs and activities.
  - Complaints to OCR typically need to be filed within 180 days of the last discriminatory act, though waivers may be granted for good cause.

# External Options

## 2. Filing a Charge with the Equal Employment Opportunity Commission (EEOC)

- EEOC enforces federal employment discrimination laws, including Title VII, which covers discrimination and retaliation based on sex, sexual orientation, gender identity, and religion.
- School employees may file a charge directly with the EEOC, regardless of whether they first use district complaint procedures or union grievance processes.
- In “Deferral States” such as Pennsylvania, charges generally must be filed within 300 days of the alleged discriminatory or retaliatory act.
- The EEOC may:
  - Investigate the charge
  - Seek voluntary resolution, or
  - Issue a Notice of Right to Sue, allowing the employee to pursue the matter in court.

# Why Pennsylvania is Considered a “Deferral State”

- ▶ A state is considered a “deferral state” when it has:
- ▶ A state or local agency, and
- ▶ State law prohibiting employment discrimination on the same bases as federal law (e.g., sex, race, religion).
- ▶ In Pennsylvania, that Agency is the Pennsylvania Human Relations Commission (PHRC), which enforces the Pennsylvania Human Relations Act (PHRA).
- ▶ Because the PHRC has the authority to investigate employment discrimination claims against public school districts, EEOC filing deadlines are extended.

### 3. Filing a Complaint with the Pennsylvania Human Relations Commission (PHRC)

- The PHRC enforces the Pennsylvania Human Relations Act (PHRA), which prohibits discrimination and retaliation by public school districts.
- Employees may file a complaint directly with the PHRC, independent of district processes or union involvement.
- Complaints must be filed within 180 days of the alleged discriminatory act.
- PHRC complaints are often dual-filed with the EEOC, preserving both federal and state claims simultaneously.
- The PHRC may:
  - Investigate the complaint
  - Attempt resolution, or
  - Allow the matter to proceed toward litigation toward litigation if not resolved.

**OCR focuses on educational access and Title IX compliance.**  
**EEOC and PHRC focus on employment discrimination and retaliation.**  
**An employee may pursue any—or all—of these routes, regardless of internal district processes.**

Agency	What It Covers	Who Can File	Filing Deadline	Key Notes for Districts
<b>OCR</b>	Sex discrimination and retaliation under Title IX in federally funded education programs and activities	Students and employees	180 days from the last discriminatory act (extensions possible for good cause)	Focus is on institutional compliance and corrective action, not damages
<b>EEOC</b>	Employment discrimination and retaliation under Title VII (sex, sexual orientation, gender identity, religion, etc.)	Employees and applicants	300 days in deferral states (PA/NY)	Charges may proceed even if district policies were followed
<b>PHRC</b>	Employment discrimination and retaliation under the PHRA	Employees	180 days from the discriminatory act	Often dual-filed with EEOC to preserve federal claims



# Case Law Update



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# Title IX w/r/t Unions as an Added Party

Doe v. Clark Cnty. Sch. Dist., No. 2:24-CV-00284-GMN-BNW, 2025 WL 2193581, at \*1 (D. Nev. Aug. 1, 2025)

## Background

- ▶ Student was sexually assaulted by a teacher in the School. The family sued the School District, the Teacher, the Principal, and the Teachers' Union. The issue in this case was whether the Teachers' Union could be added as a Party, given that they represent the employees in CBA negotiations and indirectly benefit from federal funding. The Union moved to completely dismissed all claims pled against it by the Student's family.



## Issue

- ▶ Does the prohibition of discrimination on the basis of sex by those “receiving federal financial assistance” include a school district union?

## Holding

- ▶ No – the Union is not a direct recipient of federal funds, and is therefore not covered by Title IX.

## Analysis

- ▶ Plaintiffs contended that the Union is a federal funds recipient by proxy in that it indirectly receives federal financial assistance through an award or grant of money that makes up the entirety or part of its budget, and is thus under the jurisdiction of Title IX.
- ▶ The court made clear that **Title IX liability follows federal education funding — and unions do not receive it.** Although the teacher accused of sexual abuse was a union member and the union collected dues from district employees, the court held this was legally irrelevant. Title IX applies only to actual recipients of federal funds, such as school districts and educational institutions. The plaintiffs' argument that the union was an "indirect" recipient through employee dues was rejected outright; the court emphasized that **economic benefit from a federally funded entity does not make an organization a Title IX defendant.**
- ▶ "Dues payments do not suffice to render an organization a federal funds recipient. An entity that only benefits economically from federal assistance is not considered a federal funding recipient for purposes of Title IX. Thus, **a public-school employee union cannot typically be found to be a direct federal funding recipient in regard to Title IX violations.**"
- ▶ As a result, all Title IX claims against the union were dismissed **with prejudice**, meaning they could not be refiled.



# Accommodations Under Title VII

Kluge v. Brownsburg Cmty. Sch. Corp., 150 F.4th 792  
(7th Cir. 2025)

## Background

- ▶ Former high school orchestra teacher brought action alleging that public school's decision to terminate his employment for refusing to follow school's guidelines for addressing transgender students by their self-identified first names and pronouns in school's PowerSchool database was result of discrimination on basis of his religious beliefs and retaliation for seeking accommodation, in violation of Title VII.

## Background...Continued

- ▶ Plaintiff asserted that the new PowerSchool policy conflicted with his religious beliefs, and that his religion prohibited him from encouraging students to identify in ways that do not align with their respective biological sexes. After meeting with the principal and Superintendent, he was given three options: to comply and use the names in PowerSchool; resign; or be suspended pending termination.
- ▶ In a subsequent meeting, Plaintiff proposed a middle ground where he would be allowed to call students by only their last names, avoiding first names and pronouns altogether, which was accepted. However, District administration received a handful of complaints about this accommodation being disruptive to the classroom environment.
- ▶ Given the District's stance on the importance for faculty to "create a safe and supportive environment for all students," the accommodation was removed the following school year (2018-2019). Although Plaintiff reiterated his position, the school thought the last-name-only accommodation was unreasonable given some students being offended by this approach. Plaintiff submitted a conditional resignation that was approved by the Board, despite his attempts to withdraw it and comply with the PowerSchool directive.



## Issues

1. Did Kluge's last-name-only accommodation impose an “**undue hardship**” under the heightened **Groff** standard ?
2. Did the accommodation expose the school to an **unreasonable risk of Title IX liability**?

## Undue Hardship Standard from Groff

- ▶ In *Groff v. Dejoy* (2023), the Supreme Court unanimously created a new, and much higher, standard for determining whether an undue hardship exists in religious accommodation claims under Title VII.
  - Since the Supreme Court's 1977 decision in *Trans World Airlines, Inc. v. Hardison*, courts across the country have analyzed undue hardship by determining whether an employer would be required to "bear no more than a *de minimis* cost" if it granted an employee's religious accommodation request. If more than a *de minimis* cost was required, then the request was deemed to cause an "undue hardship" on the employer's business and the employer could lawfully deny the request.
  - With the ruling in *Groff*, however, the Supreme Court requires an employer seeking to deny religious accommodation requests to demonstrate that the "**burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.**"

## Undue Hardship Standard from Groff...Continued

- In determining what would cause an “undue hardship” on the conduct of business, the Court provided little guidance, focusing its discussion on the importance of case-by-case analysis in such a way that courts “must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, “size and operating cost of [an] employer.”
- Determining what constitutes a “substantial increased cost” is currently undefined and will necessarily differ depending on an employer’s size, the nature and scope of its operations, etc. It is reasonable to surmise that this decision may impose a greater obligation on larger employers because demonstrating “substantial increased cost” may be more difficult when there is a large workforce with talent presumably available to perform others’ work tasks and significant revenues or profits where the ability to bear the costs of accommodations are presumed.

## Analysis

- ▶ Accommodation-based cases follow a burden-shifting framework:
  - **The initial burden is on the employee** - to establish a case of religious discrimination under Title VII, employee must show: (1) practice is religious in nature and conflicts with employer's requirements; (2) employee notified his employer of religious practice; and (3) need for religious accommodation was motivating factor for adverse employment decision.
    - The employee must also show that their religious belief is “sincerely held” – that the belief is an essential part of the persons identity, with the understanding that the validity of *what* the person believes cannot be questioned.
  - If the plaintiff can establish the above, **the burden shifts to the employer** to show that “any reasonable accommodation would result in undue hardship.”

## Analysis...Continued

### ▶ Applying Undue Hardship Standard:

- To be free from accommodating employee's religious belief, as required by Title VII, employer must show that burden of granting accommodation would result in substantial increased costs in relation to conduct of its particular business.
- Fact-specific inquiry including the particular accommodations at issue and their practical impact in light of employer's nature, size, and operating cost.
- As government employees, teachers do not have same speech protections under First Amendment as students when former are not speaking as citizens on matters of public concern.
- The court found that it was still unclear whether the teacher's last-name-only policy actually harmed students, disrupted learning, or interfered with the school's mission, so the case had to go to trial instead of being dismissed early.
- Even if students suffered subjective emotional injury as result of school's accommodation for teacher's sincerely-held religious belief, those injuries must be objectively reasonable to rise to level of undue hardship required to support school's refusal to permit accommodation under Title VII.

## Holding

### ▶ Undue Hardship

- The court stressed that, pursuant to *Groff*, the correct *undue hardship* standard requires showing that the accommodation would cause substantial increased costs relative to the employer's business, a higher bar than previously applied.
- The Seventh Circuit held that the District did not violate Title VII or the First Amendment when it required the teacher to comply with the district's policy on addressing students by their chosen names and pronouns. The court concluded that the district had initially provided a reasonable religious accommodation by permitting the teacher to use students' last names only, but was not required to continue that accommodation once it became clear that it caused harm to transgender students and interfered with the district's educational mission and nondiscrimination obligations.
- Because the accommodation imposed an undue hardship by negatively affecting students and undermining a supportive learning environment, the district lawfully withdrew it. The court further held that the District's policy was neutral and generally applicable and that any incidental burden on the teacher's religious exercise was justified by the school district's compelling interest in protecting students from discrimination and ensuring equal access to education.

## Holding...Continued

### ▶ District's Risk of Title IX Liability

- The court concluded that the accommodation exposed the school district to an unreasonable risk of Title IX liability because it resulted in differential treatment of transgender students and caused documented emotional harm. By permitting the teacher to address students only by their last names, the district effectively singled out transgender students in a way that undermined the district's obligation to provide a nondiscriminatory educational environment. The court emphasized that Title IX requires schools to respond to practices that may deny students equal access to educational benefits based on sex, including gender identity.
- Once the district received complaints and evidence that the accommodation was stigmatizing and harmful, continuing it would have conflicted with the district's Title IX responsibilities, thereby constituting an undue hardship and justifying withdrawal of the accommodation.

Some school districts have adopted Board Policies to address staff accommodations related to preferred names and pronouns. For example:

- ▶ *The Board adopts this policy to ensure that Administration also reasonably accommodates district staff when student accommodations related to preferred names and pronouns may conflict with a staff member's sincerely held religious beliefs or unconstitutional compelled speech.*
- ▶ *District staff shall endeavor to avoid addressing the student by the non-preferred name/pronoun as an accommodation to the student. They shall use the student's preferred name/pronoun to the maximum extent feasible.*
- ▶ *District staff shall not be forced to use language inconsistent with their sincerely held religious beliefs or unconstitutional compelled speech. Nothing in this policy shall be read to compel district staff to address or refer to any person in any manner that would violate their sincerely held religious beliefs or unconstitutional compelled speech.*

## Examples...Continued

- ▶ *If using a student's preferred name/pronoun would conflict with their sincerely held religious beliefs or unconstitutional compelled speech, a staff member may submit a written request to their building principal seeking a reasonable accommodation.*
- ▶ *Upon receipt of a written request for accommodation consistent with sincerely held religious beliefs or unconstitutional compelled speech, the building principal shall permit the staff member to cease using the preferred name/pronoun, but the staff member must avoid addressing the student by their non-preferred name/pronoun. Such requests shall be reviewed in the discretion of the building principal and Administration, who reserve the right to request additional information to clarify the nature and scope of the request. When addressing the student, staff members may use gender neutral names, neutral second person pronouns such as "you, your, yours," third person pronouns "they, them, their, theirs," and/or other mutually agreeable and respectful identifiers. Regardless of the means of address, the staff member must always address the student with respect.*



# Retaliation & Monell Liability

Vasquez v. Yonkers Pub. Sch. Dist., No. 24-1220, 2025 WL 893368 (2d Cir. Mar. 24, 2025)

## Background

- ▶ A District employee filed a Title IX complaint after a coworker attempted to kiss her. The District investigated, substantiated the complaint, and removed the coworker. She later told the superintendent she had additional concerns about two other officials but did not request a new investigation. She also believed details of her original complaint were being shared among staff. Vasquez brought a **§1983 retaliation lawsuit** against the District and the superintendent, alleging they retaliated against her for the initial Title IX complaint and failed to investigate her additional allegations. The district court granted summary judgment to the defendants.

## Issue

1. Did the District or superintendent take an **adverse employment action** against Vasquez in retaliation for her filing a Title IX complaint?
2. Could the District be held liable under **Monell** based on the superintendent's actions or alleged inaction?

## Holding

- ▶ The Second Circuit held that:
  - Vasquez **did not suffer any adverse employment action**, as the District investigated her complaint, removed the offending employee, and granted her requested transfer.
  - The superintendent did not retaliate against her, nor was there evidence he failed to act knowingly or intentionally.
  - Because there was no individual liability, the District **could not be held liable under Monell**.
- ▶ Judgment for the District and superintendent was affirmed.

## Analysis

- ▶ The Court reiterated that a retaliation claim under §1983 (mirroring Title VII standards) requires proof of an **adverse employment action** — something that would dissuade a reasonable employee from reporting discrimination. None of the superintendent's actions met that standard.
- ▶ Rather, the District:
  - Immediately transferred the harasser,
  - Initiated a Title IX investigation that substantiated her complaint, and
  - Granted her transfer request when she asked for one.
- ▶ Any shortcomings in follow-up — such as the Title IX coordinator not investigating additional allegations or not updating her — could not be attributed to the superintendent, who had no involvement in those lapses. The Court emphasized that **administrative neglect by someone who is not a defendant cannot be treated as retaliation by someone who had no knowledge or role in the alleged failure.**

## Analysis...Continued

- ▶ On the Monell claim, the plaintiff argued that the superintendent's failure to investigate constituted district policy. The Court rejected this, noting:
  - Individual liability must exist before municipal liability attaches, and
  - A superintendent's discretionary decisions in a single case do not constitute **official district policy** when an existing written policy requires investigations, and the alleged departure from that policy was not an exercise of policymaking authority.
- ▶ The Court concluded that nothing the superintendent did — or failed to do — would deter a reasonable employee from reporting harassment, and therefore **no adverse action or causal connection existed**.



# Political Speech

Dolce v. Connetquot Cent. Sch. Dist., No. 24-CV-00622 (HG), 2025 WL 1070079 (E.D.N.Y. Apr. 9, 2025)

## Background

- ▶ Three LGBTQ+ teachers/club advisors at a high school challenged district policies restricting classroom displays to the U.S. and New York State flags. Their claims centered on the removal of Pride flags and stickers, selective enforcement of district policies, unequal treatment regarding a GSA field trip, and the district's response to anti-LGBTQ graffiti.



## September 2022 – Classroom Inspection & Initial Removal Warning

- ▶ A teacher who served as GSA advisor used her classroom as the GSA meeting space.
- ▶ On September 14, 2022, the Superintendent, Board President, and a Board Trustee conducted an unannounced classroom inspection.
- ▶ They informed the teacher that the Pride Progress Flag must be removed, warning that all Pride-related flags used by staff could also be removed if she declined.

## October 2022 – Enforcement of District Policies

- ▶ On October 4, two teachers emailed the Board requesting a meeting to discuss the anticipated flag restrictions and their concerns for LGBTQ+ students.
  - That same day, the Assistant Superintendent emailed all faculty reminding them of a long-standing “Political Practices Policy,” limiting classroom displays to the U.S. and NYS flags and banning flags representing political viewpoints.
- ▶ On October 6, the Superintendent emailed staff stating that a student had complained about a Pride flag and that full enforcement of the policy would now occur. Staff were told that a neutral “safe space” sign could be used as an alternative.
- ▶ On October 7, the Principal reiterated the policy and ordered all non-U.S./NYS flags removed by the end of the day, except curriculum-related flags (e.g., foreign language classrooms).
  - As a result, all Pride flags across the high school were removed.

## October 2022 – Enforcement of District Policies...Continued

- ▶ On **October 15**, two **teachers** discovered that Pride-flag stickers on their classroom doors had been **replaced with American-flag stickers**.
  - They reported the vandalism to the **principal** the next day.
  - The principal informed them that a **student had been identified and initially assigned a suspension**, though plaintiffs alleged the **Superintendent later overturned the suspension**.
  - The principal then issued a school-wide directive stating that **no flag stickers of any kind** were permitted on classroom doors or windows.
  - One teacher emailed the Superintendent stating he felt “heartbroken” and unsafe, and expressing concern for vulnerable LGBTQ+ students.
- ▶ On **October 20**, the **teachers** contacted their **teachers’ association** to report these events.
  - The **union president** contacted the Superintendent, who clarified that **no stickers**—of any type—were permitted on district property unless purchased or placed by the district.
  - Plaintiffs alleged that for many years, **employees had been permitted** to display various expressive items such as flags, stickers, slogans, memorial displays, and team banners.

## Issue

1. Did the removal of Pride flags, enforcement of a flag/sticker policy, and additional permission-slip requirements constitute **adverse employment actions** supporting Title VII or Title IX discrimination or retaliation claims?
2. Did these actions create a **hostile work environment** under Title IX?
3. Did the District's policy and enforcement constitute **First Amendment retaliation or viewpoint discrimination**?
4. Did selective enforcement of the policy violate the teachers' **Equal Protection** rights?
5. Could the District be held liable under **Monell** for any alleged constitutional violations?

## Holding

- ▶ The Court dismissed all federal claims with prejudice. It held:
  - None of the district's actions amounted to an adverse employment action under Title VII or Title IX.
  - Plaintiffs failed to state a Title IX hostile work environment claim because the conduct alleged was not severe or pervasive.
  - First Amendment claims failed because plaintiffs did not suffer adverse action.
  - Equal Protection claims failed because plaintiffs did not plausibly allege selective treatment based on LGBTQ+ status or malicious intent.
  - With no underlying constitutional violation, there could be no Monell liability.

## Analysis

- ▶ The Court emphasized that not every workplace frustration or disagreement with policy is actionable discrimination or retaliation. Removal of Pride flags, the no-flag policy, sticker removal, and the added burden of modifying a permission slip did not change the terms or conditions of employment; the teachers were not disciplined, transferred, demoted, or denied opportunities. These acts amounted to minor annoyances, not materially adverse actions under federal law.
- ▶ On retaliation, even assuming protected activity, the same conclusion applied: the district's actions would not dissuade a reasonable employee from engaging in protected conduct.
- ▶ The Title IX hostile environment claim collapsed because the allegations were isolated, not pervasive, and lacked discriminatory intimidation or abuse. A neutral policy's enforcement—even when disagreeable—does not create a hostile environment.

## Analysis...Continued

- ▶ For the First Amendment claims, the Court noted that the governing standard for teacher classroom speech (*Garcetti vs. Hazelwood vs. Tinker*) is unresolved in the Second Circuit. Because the law is unsettled, qualified immunity barred the claims, and in any event, plaintiffs again failed to plausibly allege adverse action.
- ▶ The Equal Protection claim failed because plaintiffs did not sufficiently allege that any differential treatment was because of their LGBTQ+ status. The emails they attached actually documented the district's stated non-discriminatory rationale: responding to a student complaint and enforcing Policy 1310. These attachments undercut plaintiffs' theory and, as the Court put it, plaintiffs "pleaded themselves out of court."
- ▶ Finally, with all constitutional claims dismissed, Monell liability was impossible as a matter of law.

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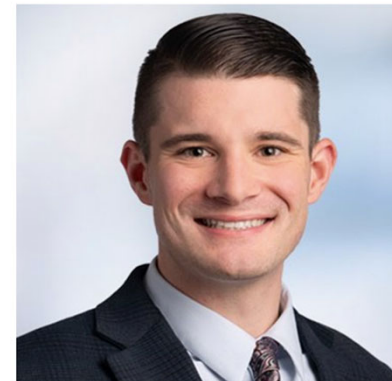


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