



MARCH 2025 TITLE IX UPDATE

Presented to WSRMP members

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Amy Klosterman, Trainer



Thank you for being here!

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- ❖ Training
- ❖ Independent Investigations
- ❖ Expert Witness
- ❖ Title IX athletics mediator



Scope of Title IX

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.

Road Map

- General update on Title IX regulations
 - What happened to the Title IX regulations that went into force on August 1, 2024?
 - Which version of the Title IX regulations is now in force?
- 2020 Title IX Regulations Refresher
 - Case studies
- Federal and state enforcement update for transgender student issues

GENERAL TITLE IX UPDATE

Who is protected by Title IX*?

- All students and employees
- Male, female, nonbinary
- Regardless of sexual orientation, gender identity, gender presentation
- People with disabilities
- Undocumented people
- Same-sex discrimination and harassment



Title IX Regulations in Flux

- 1975/1979/1980: Initial Title IX regs (under HEW from 1975-1980, then ED 1980-present)
- 8/14/2020: New Title IX regulations provide specific guidance on handling complaints of sexual harassment
- 8/1/2024: Title IX regulations in effect that replace the 2020 regulations and expand upon them
 - 2024 regs mandated a process to be used for ALL complaints of sex discrimination, not just sexual harassment
 - For the first time, Title IX explicitly included discrimination on the basis of sexual orientation and gender identity
 - Summer 2024 injunctions meant these regulations were not in effect for some entire states, and also for specific individual schools within states that didn't have full state injunctions

1/9/2025 Ruling – Main Points

- 1/9/2025: Federal judge in Kentucky vacates the 2024 Title IX regulations in *Tennessee v. Cardona*
 - This is understood to apply nationwide
 - As of the 1/9/2025 ruling, the 2024 Title IX regulations are no longer enforceable

Holding: The Department of Education was wrong to expand the scope of prohibited discrimination to include “gender identity”

- Title IX sex discrimination ONLY means discrimination on the basis of being female or male
- US Supreme Court held that transgender employees are protected by Title VII (*Bostock v. Clayton County*), but that doesn’t translate to Title IX

1/9/2025 Ruling – Main Points

- Since the 2024 regulations prohibit discrimination on the basis of gender identity, and also say that anything more than 'de minimis' harm to a student would be prohibited, and also only require that a student's participation in their education program or activity be limited (as opposed to *effectively denied* which is the 2020 standard)...therefore the 2024 regs mean that teachers and staff must use a student's preferred name and pronouns, AND that failure to do so would be prohibited harassment
- The First Amendment does not permit the government to chill speech or compel affirmance of a belief with which the speaker disagrees, ie using a transgender student's preferred pronouns

1/9/2025 Ruling

Holding: 2024 definition for when sexual harassment would create a hostile environment is too vague

2024 Definition: “Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the district’s education program or activity”

Washington state sexual harassment definition: RCW 28A.640.020

(f) "Sexual harassment" as used in this section means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature if:

(i) Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an education or employment;

(ii) Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education or employment; or

- (iii) That conduct or communication has the purpose or effect of substantially interfering with an individual's educational or work performance, or of creating an intimidating, hostile, or offensive educational or work environment.

Washington state prohibits discrimination on the bases of sexual orientation and gender identity: RCW 28A.642.010

Discrimination in Washington public schools on the basis of race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability...is prohibited.

- Each district must have a transgender student policy and procedure incorporating elements of model P&P (RCW 28A.642.080)
- WSSDA 3211P: The District will provide all students, including transgender and gender-expansive students, the opportunity to participate in physical education and athletic programs/opportunities in a manner that is consistent with their gender identity.

What does the 1/9/2025 ruling NOT do?

- It doesn't rewrite Title IX
- It doesn't mandate anything about the enforcement of the provisions of Title IX that it didn't vacate
- It vacates the 2024 regulations, without specifying what is to be used in their place

Trump Administration Executive Orders and DCL

- 1/20/2025 Executive Order on Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
 - “It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality.”
 - “ ‘Gender ideology’ replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa, and requiring all institutions of society to regard this false claim as true.”
 - “ ‘Gender identity’ reflects a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum, that does not provide a meaningful basis for identification and cannot be recognized as a replacement for sex.”

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- 1/31/2025 Dear Colleague Letter from US Dept of Education
 - States that 2020 regulations are in place
 - Incorrectly states that the 2020 regulations interpret "sex" to mean "the objective, immutable characteristic of being born male or female...."
 - Replaced a few days later by...
 - 2/4/2025 Dear Colleague Letter
 - Reinforces that the 2020 regulations are in place
 - Reiterates the 1/20/25 EO that there are "two sexes, male and female," and that "[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality."
 - States that ED and OCR must enforce Title IX consistent with the 1/20/25 EO

Current approach is very different from the first Trump Administration's approach – see 2020 Regs Preamble

“Anyone may experience sexual harassment, irrespective of gender identity or sexual orientation.”

“Title IX precedent and principles of free speech and academic freedom, applies equally to all persons regardless of sexual orientation or gender identity, provides clear expectations for when schools legally must respond to sexual harassment, and leaves schools discretion to address misconduct that does not meet the Title IX definition.”

“These final regulations focus on prohibited conduct, irrespective of a person's sexual orientation or gender identity.”

Which Title IX regulations apply to a complaint?

Look to the date the conduct or issue occurred

- The 2020 regulations apply to allegations of sexual harassment with conduct occurring starting on the implementation date of the 2020 regulations, August 14, 2020. Did the 2024 regs ever apply, considering the vacatur?
- Some say the 2020 regs apply to conduct from August 14, 2020 through the present
- 2/4/25 DCL: “Open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reevaluated to ensure consistency with the requirements of the 2020 Title IX Rule...”
- What about an investigation of conduct that occurred on 9/5/24, that was fully completed and is now a closed matter, with decision issued 11/1/2024?
 - Would you go back to re-adjudicate a matter adjudicated under the 2024 regs, where something about the investigation (procedural, type of conduct, finding, etc) conflicts with the 2020 regs?
- Crucial to consult with counsel

Pregnant and Parenting Students: Still protected by Title IX

- Even though ALL of the 2024 regulations are vacated, including the pregnancy provisions, Title IX's original 1975 regs, which are still in place, provide protections for pregnant and parenting students
- Fact Sheet by A Better Balance: <https://www.abetterbalance.org/wp-content/uploads/2025/01/Title-IX-Fact-Sheet-1-1.pdf>

2020 TITLE IX REGS REFRESH

2020 Title IX Regulations Guiding Principles

- All parties should be treated equitably and receive the same rights
- Grievance process should be transparent
- Respondents should receive adequate due process protections in a grievance process
- Complainants should be adequately protected prior to a determination of responsibility or non-responsibility
- Schools have clear standards to follow that are enshrined in law

2020 Title IX Regulations

- A school's Title IX procedure applies ONLY to complaints of sexual harassment that meet certain requirements, and not to any other complaints regarding sex discrimination
- Specific definition for sex-based harassment that is narrower than 2024 regs
- Compliance focus is on the impact of harassment on an individual complainant who directly experienced harassment, rather than a more holistic view of the impact of discrimination on the educational environment
- 2020 Title IX regulatory language does not mention discrimination on the bases of sexual orientation and gender identity
 - The Preamble mentions it in numerous places
 - Title IX was interpreted to include these bases for several decades, until 1/20/2025

2020 Title IX regulations refresh

- Title IX staff roles: Who can do what in an investigation?
- What constitutes a complaint?
 - Can a Title IX complaint be made verbally?
- Who can file a complaint?
- What conduct do the 2020 regs apply to?
- 2020 definition of sexual harassment
- Do you need a written investigation report?
- Review timelines for investigation report, including review by parties prior to decision
 - Not covered today

Title IX Roles in the district

- Title IX Coordinator
- Investigator
 - **May be the Title IX Coordinator.** Investigator and Decision Maker cannot be the same person.
- Decision Maker(s) (single or panel)
 - **Cannot be the** investigator or **Title IX Coordinator**
- Informal Resolution facilitator – **can be the Title IX coordinator**
- Advisor to party - if the district provides advisors to parties, **cannot be the Title IX coordinator.**
 - District does not need to provide advisors; advisors can be parents/guardians/attorney may be an advisor
- Decision Maker for Appeal – cannot be the Title IX Coordinator
- If the district holds a live hearing for an expulsion and it's a Title IX matter, the TIXC could serve as a non-decision making procedural facilitator

Title IX Terminology

- Recipient = school or entity receiving federal funding.
- Complainant = person or their parent/guardian who files a written complaint alleging they have been harassed OR who provides notice of allegations
 - No 3rd party complainants
 - Could be a parent or guardian for those under 18
 - At the time of filing a formal complaint, a complainant must be “participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.”
- Respondent = person(s) against whom a complaint is filed OR about whom notice of an allegation is provided

Formal Complaint

- A document filed by a complainant or their legal guardian OR signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment
 - May be filed with the Title IX Coordinator in person, by mail, or by electronic mail, or any other method designated by the district
 - A “document filed by a complainant” means a document or electronic submission “that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint”

Monitoring Title IX compliance

A TIXC is responsible for monitoring the overall implementation of Title IX for the district and coordinates the district's compliance with Title IX in all areas of Title IX

- Prevention of sexual harassment and sex discrimination
- Education programs and activities such as access to schools operated by the district, counseling, athletics, discipline, student policies and procedures
- Employment in education programs and activities including employment criteria, compensation, benefits, job classification, recruitment

When does a Title IX coordinator sign a formal complaint?

- If the district has notice of sexual harassment but has not received a Formal Complaint, there are circumstances when the district would initiate a grievance process in order to attempt to avoid being deliberately indifferent
- The Title IX Coordinator does not become a complainant or party to a complaint
- The Title IX Coordinator may sign a formal complaint to initiate the grievance process for instances including but not limited to:
 - Threat
 - Serial predation
 - Violence
 - Weapons

How might a respondent be connected to a district program or activity?

- Student in your district
- Student from another district who is participating in an activity affiliated with your district
- Current employee
- Contractor/vendor
- Volunteer
- Parent
- Former student

Jurisdiction: a district's education program or activities

Program or activities = “Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs”

- Title IX may not require the district to have jurisdiction over an off-campus incident unless:
 - The location is owned or controlled by the school
 - The incident occurs at a location being used for a school-sponsored program or event
- While the district may not have jurisdiction over the initial incident, there may be post-incident issues like retaliation or in-school harassment that may require the district to determine whether the post-incident conduct falls under Title IX prohibited conduct or not

What is an “education program or activity”?

“Education program or activity” includes anything a district does:

Academics, Athletics, Extracurriculars, Field trips, 5th grade camping trip, Occupational Training, and more

- Title IX jurisdiction is dependent on whether an entity receives federal funding, but ED may consider that a district has control over an outside program that it partners with
- Look at all programs or activities that have a sufficient nexus to the district
 - Does the activity use district property?
 - Does the district advertise the activity?
 - Does the district assist with registration or staffing for the activity?
 - Examples include onsite childcare run by a nonprofit; afterschool clubs or sports offered by groups or individuals that have facilities use agreements



Jurisdiction - geographic limit

2020 Title IX regulations: apply to sexual harassment that occurred in a district's education program or activity in the United States

What process is generally required?

- District must respond **promptly** and **supportively** to a complainant, even in absence of formal complaint, by offering **supportive measures**
- If a formal complaint is made, district must provide a **prompt** grievance process that is predictable and fair to both parties and includes due process protections, before determining remedies and disciplinary sanctions
 - Within grievance process, respond **promptly** by offering **supportive measures to both** complainant and respondent
- District may not treat a respondent as responsible for sexual harassment without providing due process protections.
- If the district determines responsibility for sexual harassment after following a fair grievance process that gives clear procedural rights to both parties, the recipient must provide remedies to the complainant.
 - Ensure that remedies are implemented and effective. Best practice: follow up with complainant.

Some points of contrast between 2020 and 2024 procedural requirements

- If your district amended its policies per 2024 regs, go back and check if anything needs to be changed back
- Must receive a signed formal complaint; no verbal complaints
- District needs to provide a written notice of allegations to parties
- District needs to have a written investigation report that you share with parties for their review prior to finalizing. Then you share the final investigation report, then you share the decision once it's made
- Investigators can't be decision makers
- School counselors are not confidential, because ALL K-12 employees are considered mandatory reporters; ensure all employees are trained on this

Sexual Harassment as defined in 2020 regs

Conduct *on the basis of sex* that satisfies one or more of the following:

ONE: An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

Quid Pro Quo: the provision or denial of a benefit related to the acceptance or refusal of unwelcome sexual conduct

TWO: Unwelcome conduct that a reasonable person finds to be so severe, pervasive, and objectively offensive so that it effectively denies a person equal access to the recipient's education program or activity

Hostile environment

Sexual Harassment as defined in 2020 regs

THREE: Any of the following:

Sexual assault (Clery Act definition)

Dating violence (VAWA definition)

Domestic violence (VAWA definition)

Stalking (VAWA definition)

** There is no requirement to determine whether these acts are severe, pervasive, and objectively offensive.*

Sexual assault

☐ Rape

- ☐ The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim

☐ Fondling

- ☐ The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent due to age or permanent/temporary incapacity

☐ Incest

- ☐ sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

☐ Statutory Rape

- ☐ Sexual intercourse with a person who is under the statutory age of consent (WA = <16)

Includes attempted acts

Dating violence

- 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 shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.
- Can include, but does not have to include, sexual or physical abuse or the threat of such abuse
- Dating violence does not include acts covered under the definition of domestic violence

Domestic violence

A felony or misdemeanor crime of violence 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 in which the crime occurred
 - 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 where the crime occurred
-
- Includes threats of violence

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for the person's safety or the safety of others; or
2. Suffer substantial emotional distress.

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Examples of sexual harassment

- Verbal conduct of a sexual nature – comments; spreading rumors of sexual activity; sexually suggestive sounds
- Nonverbal conduct of a sexual nature – sharing an inappropriate photo via text or online
- Physical conduct of a sexual nature – touching, standing too close, cornering someone, leering, gestures, rape, sexual assault
- Unwelcome sexual advances
- Requests for sexual favors
- Stating or implying that a person will lose something if he or she does not submit to a sexual request
- Penalizing a person for failing to submit to sexual advances
- Some acts of sexual harassment are also crimes

What if?

- What if you don't know up front if something is severe, pervasive and objectively offensive?
- Do the 2020 regulations apply to Title IX issues that are not sexual harassment?

2020 regulations use the Davis standard in several ways

1. Adopts the specific Davis construct of hostile environment as one of three categories of conduct that constitutes sexual harassment:
“Unwelcome conduct that a reasonable person would determine is **so severe, pervasive, and objectively offensive** that it effectively denies them equal access to the program or activity”
2. A district must have “**actual knowledge**” of sexual harassment in order to have notice of it
3. Once a district has actual knowledge of SH, it must respond in a manner that is not **deliberately indifferent**

Actual Knowledge

A district is deemed to have “actual knowledge” of sexual harassment or allegations of sexual harassment when ANY employee of the district has notice of the conduct or allegations

- Someone tells an employee about it, even in passing
- An employee sees it
- An employee hears someone talking about it
- Receives a written or verbal complaint
- Any other means of having notice
- Receiving notice of conduct is NOT the same as receiving a formal complaint
- Under 2020 Title IX regs, constructive notice or “should have known” is NOT notice

Once the district has Actual Knowledge...

Its Title IX response obligations are triggered

- Must respond promptly
- Must provide supportive measures (even if no formal complaint is made)
- Must keep confidentiality
- Must not be deliberately indifferent (even if no formal complaint is made)
- If a formal complaint is made, must initiate grievance process
- May need to conduct an investigation (**depends** whether formal signed complaint was filed alleging conduct that, if true, would fall under the definition of sexual harassment; also depends on status of parties and on whether district has jurisdiction)

Deliberate Indifference: liability standard

- A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.
- “...for a recipient with actual knowledge to respond in a clearly unreasonable manner constitutes the recipient committing intentional discrimination”
- a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Informal resolution

- The district may offer an informal resolution option but it cannot be offered unless a formal complaint is FIRST filed with the district
- Participation in an informal resolution MUST be optional; district cannot require parties to participate
- Information resolution may be offered at any time prior to reaching a final determination
- Informal resolution may involve a partial investigation but may not involve a full investigation and adjudication
- Informal resolution may not be used to resolve allegations that an employee sexually harassed a student

Required Title IX training for staff

Who must be trained?

- Title IX Coordinators
- Investigators
- Decision makers
- Informal resolution facilitators

What must the training include at a minimum?

- the definition of sexual harassment, scope of district's programs and activities, how to serve in their roles; how to serve impartially

Recordkeeping

- A recipient is required to maintain certain records for a period of 7 years
 - The time period for retention begins the date that a record is created
 - For ease of recordkeeping, you may keep all records related to a casefile for 7 years from the date of creation of the last record pertaining to that case

Recordkeeping: What records to maintain?

- All records for a formal sexual harassment investigation, including
 - Any determination regarding responsibility
 - Any audio or audiovisual recording, or transcript
 - Any disciplinary sanctions imposed on the respondent
 - Any remedies provided to the complainant
 - Any appeal and the result of the appeal
- Any actions, including supportive measures, taken in response to a formal or informal complaint of sexual harassment, including the basis for the school's decision that its response to the complainant was not deliberately indifferent
- What measures a school takes to restore or preserve equal access to the education program or activity
 - If you have not provided supportive measures, then maintain documentation as to why your decision not to do so was not clearly unreasonable in light of the known circumstances

Recordkeeping: Title IX Training Materials

- Maintain for 7 years all training materials used to train Title IX Coordinators, investigators, decision makers, and those who facilitate informal resolutions
- Post training materials on the district's website

Recordkeeping

- What if you started an investigation then stopped it?
- What if the complainant withdrew a complaint?
- What if you dismissed a complaint?

Retaliation prohibited by Title IX - 106.71

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual:

- Because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing, or refused to participate
- For the purpose of interfering with any right or privilege secured by the statutes and regulations enforced by OCR/EEOC

Hypothetical 1

8th grade high achieving female student A gets invited to a high school book group run by male HS teacher (male teacher's wife is one of student's teachers; the wife recommends the student to her husband for inclusion in the group). While she's in the group, the male HS teacher makes sexually suggestive remarks to various students. Student A arrives to HS the following year and is placed in male teacher's advanced social studies class. He directs more sexual comments to her. She never reports the comments. Other students report comments made to them, and the principal arranges a meeting for the teacher to apologize to those students.

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- In the spring of student's 9th grade year, teacher comes to her home to “return a book” and kisses her, fondles her breasts and unzips her pants.
 - The two have sexual intercourse a number of times in the next several months, during school time, but never on school property. Student does not report the relationship to the school, saying later (after relationship is discovered) that while she knew it wasn't right, she wasn't sure what to do and she wanted to continue having him as a teacher and stay in the advanced program

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- In January of the student's sophomore year, she and the teacher are found by police having sex in a wooded area near the school but off school grounds. Teacher is arrested and loses his license. Student later sues the school, saying the district should have done something about the inappropriate sexual relationship.
 - No school employee except the teacher himself knew about what occurred between him and the student, until after the police discovered them.

Your turn to analyze

- What type of conduct is it?
- Is this sexual harassment under 2020 Title IX definition?
- Do you think the district had actual knowledge of the conduct before the police discovered the pair in the woods?

Do you think the district is liable for this conduct?

Why or why not?

Hypothetical 2: Jalen, Elementary School

Ana, a first grade student, comes back to her classroom directly after recess, and tells Ms. Blake, her classroom teacher (who was not out at recess), that she saw Ellie, a female first grade student from a different class, touch Jalen, a male first grade student, “on his privates.”

Jalen, Elementary School

Ms. Blake reports the incident to the principal, who meets separately with Ana, Ellie, and Jalen. Ana describes that she and Jalen were sitting on the ground, about 5 feet apart from each other, with their legs spread apart in V shapes, and they were rolling a ball back and forth. Ellie wanted to use the ball, so during one of the times the ball was rolling towards Jalen, she jumped right in front of Jalen and grabbed the ball as he caught it, right in front of his crotch. Ana thinks she saw Ellie touch Jalen's genitals as Ellie grabbed the ball. The principal interviews Ellie, who admits to grabbing the ball, but says she didn't touch Jalen's body other than maybe his hands. Jalen says that Ellie grabbed the ball from him and scratched one of his fingers while she did that, and that one of her hands brushed the front of his pants where his crotch is. The principal asks him if Ellie touched his penis, and he says no. He is sad about the scratch on his finger. A few days later, his parents email the principal saying they want to file a Title IX complaint. They say Jalen was touched inappropriately.

Hypothetical 3, School Mascot

Logan High School's mascot is a tiger, often depicted in graphics and logos as a fierce male tiger. Some athletes on the girls' basketball team object to the masculine presentation of the tiger, who is depicted as wearing pants but no shirt, and flexing his bulging biceps. Also, they don't want to be called the "Lady Tigers" anymore. They say the boys aren't called the "Gentleman Tigers."

Are the 2020 Title IX regulations applicable to these issues?
Why or why not?

Is this conduct covered under 2020 Title IX definition of sexual harassment or not?

1. Male student 8th grade “Student A” reports that another boy, “Student B,” called him “pussy” once in the hallway.
2. What if Student B called Student A that name multiple times a week while they were in the boys locker room changing for PE, while Student B attempted to and often did slap Student A’s rear end, and Student A began faking illness to miss PE?
3. What if Student A was female and Student B, a male student, called her that name under his breath in the hallways off and on for 3 months, with no touching?

Is this conduct covered under Title IX generally?

Is it conduct prohibited by the 2020 regs?

- A male 10th grade student reports that his ELA teacher, a man, makes comments like “girls are better organized” and “girls work harder than boys in this class.” The student checks with male and female classmates and finds out female students are getting better grades than male students in the class. Male students are also disciplined more often by this teacher. The student reports all of this in writing to the TIXC.
- A pregnant 12th grade student requests an extension on a class project due to feeling ill related to her pregnancy. Her teacher says “no extensions, no exceptions,” and says that rule applies to all students in the class. The student reports this in writing to the TIXC.

CURRENT FEDERAL AND STATE ENFORCEMENT ACTIONS IN WASHINGTON STATE

US Dept of Education's Office for Civil Rights – 2025 version

- Opening directed investigations regarding specific issues in its focus
 - Transgender students' athletic participation
 - Restrooms
 - Pre-2025 OCR also opened directed investigations, but nothing like what it's doing now
- Completing “investigations” in a matter of days
- Basing investigation findings on news stories or public events, without doing its typical data requests and interviews
- Issuing resolution agreements that, if complied with, would mean a district would violate state law

Trump Administration Executive Orders and DCL

- 1/20/2025 Executive Order on Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
 - “It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality.”
 - 2.f. “ ‘Gender ideology’ replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa, and requiring all institutions of society to regard this false claim as true.”
 - 2.g. “ ‘Gender identity’ reflects a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum, that does not provide a meaningful basis for identification and cannot be recognized as a replacement for sex.”

OCR investigates Tumwater SD regarding transgender athlete participation

From OCR's March 3, 2025 Press Release:

- FAIR, a nonpartisan, nonprofit organization, filed an OCR complaint alleging that a 15-year old female student at TSD experienced sex discrimination preventing her from participating in her school's basketball game after she discovered during the warm-up session that a player on the opposing team was a male
- When the complainant asked that competition be limited to female athletes, the TSD school principal reportedly cited Washington Interscholastic Activities Association (WIAA) policy, which allows athletes to play on the team that conforms to their "gender identity."

OCR Press Release - continued

“Despite President Trump’s February 5 Executive Order and the Department of Education’s guidance that Title IX protects students based on their biological sex, Washington state officials have publicly announced plans to violate federal antidiscrimination laws related to girls’ and women’s sports. For example, Superintendent of Public Instruction Chris Reykdal on February 6 sent an email to all Washington public school superintendents directing schools to “continue to follow state law” allowing male athletes to compete against girls. On February 27, Tumwater School District Board of Directors adopted a resolution supporting an amendment to WIAA policy that would limit participation in the girls’ sports categories to students whose biological sex is female.”

OSPI's 3/4/2025 letter to Tumwater SD

“The Equity and Civil Rights Office within the Office of Superintendent of Public Instruction (OSPI) is aware that the Tumwater School District (District)’s Board of Directors (Board) adopted a resolution, Resolution No. 09-24-25, Washington Interscholastic Activities Association Policy Amendments (Resolution), on February 27, 2025.

...

OSPI is compelled to notify the District that the Resolution does not align with the nondiscrimination requirements of Chapter 28A.642 RCW and may expose students to discrimination on the basis of gender identity or gender expression. The Resolution is not consistent with the state’s civil rights guidelines, Prohibiting Discrimination in Washington Public Schools, which state that school districts should allow students the opportunity to participate in athletic activities in a manner that is consistent with their gender identity. OSPI is also concerned that the Board’s Resolution may have a chilling effect on the rights of all students, including transgender and gender-expansive students, to participate in the District’s athletic programs and activities”

WIAA to vote in April

Proposed amendments to Gender Identity Participation rules:

“This policy encourages a culture in which all student-athletes can compete in a safe and supportive environment, free of discrimination. There are two categories of sports – ‘Boys/Open’ and ‘Girls.’ All student-athletes regardless of sex, gender identity, or gender expression who meet eligibility criteria are allowed to participate in the ‘Boys/Open Category.’ However, to maintain fair and equitable competition, participation in the ‘Girls Category’ is limited to students whose biological sex is female.”

“All Students are encouraged to participate in WIAA athletics and/or activities. All student-athletes regardless of sex, gender identity, or gender expression who meet eligibility criteria are allowed to participate in the ‘Boys/Open Category.’ However, in order to maintain fair and equitable competition, participation in the ‘Girls Category’ is limited to students whose biological sex is female as defined in Appendix 6.

What kind of OCR findings and resolution agreement terms could we expect?

From the March 2025 OCR Letter of Findings to the Maine DOE:

“Consistent with the requirements of both Title IX and the Maine HRA, MDOE guidance could instruct SAUs to provide sex-separated sports and intimate facilities while also prohibiting “discrimination based on gender identity” because all students – regardless of expressing a belief about “gender identity” – would have the opportunity to participate in sports and use facilities, on the basis of the objective characteristic of sex. Avoiding “discrimination based on gender identity” does not inherently require an institution to act as though an individual’s “gender identity” beliefs (subjective, mutable feelings) are true or determinative of the individual’s sex (an objective, immutable characteristic).”

Maine DOE draft Resolution Agreement provisions

- Issue a notice that says Title IX forbids schools from allowing boys or men to participate in any athletic program designated for girls or women
- Direct schools to provide intimate facilities such as locker rooms and bathrooms accessible to student athletes that are strictly separated on the basis of sex
- Advise schools that any interpretation of the Maine Human Rights Act is pre-empted by Title IX
- Instruct schools to define “sex” as an immutable biological classification as either male or female
- Review all individual athletic records, titles, honors, etc for school level, conference, regional, and state level competitions, received by male athletes participating in girls’ teams, and restore the recognitions to girls
- Apologize on behalf of the State of Maine to each female athlete receiving a restoration “for allowing her educational experience and participation in school sports to be marred by sex discrimination”

Links

Current OCR webpage for Title IX and sex discrimination, with resources for complying with 2020 regulations

<https://www.ed.gov/laws-and-policy/civil-rights-laws/title-ix-and-sex-discrimination/sex-discrimination-overview-of-law>

OCR Resource: Online or Digital Sexual Harassment under the 2020 Regulations (January 2025)

<https://www.ed.gov/media/document/digital-sexual-harassment-under-2020-title-ix-regulations-109318.pdf>

OCR Tumwater SD Press Release, 3/3/2025

<https://www.ed.gov/about/news/press-release/office-civil-rights-launches-title-ix-investigation-washington-state-school-district>

OCR Tumwater SD complaint notification letter, 2/28/2025

<https://www.ed.gov/media/document/letter-tumwater-school-district-february-2025-109531.pdf>

OSPI letter to Tumwater SD, 3/4/2025

[https://www.dropbox.com/scl/fi/m8zpzjetzks2scm2gk0ko/20250304 Tumwater Gender-Inclusive-Schools.pdf?rlkey=s3unbuynxzopl0r4fmps9iydx&st=nmnnvhen&dl=0](https://www.dropbox.com/scl/fi/m8zpzjetzks2scm2gk0ko/20250304_Tumwater_Gender-Inclusive-Schools.pdf?rlkey=s3unbuynxzopl0r4fmps9iydx&st=nmnnvhen&dl=0)

Links

Draft OCR Maine DOE resolution agreement re transgender female athletic participation, March 2025

<https://www.dropbox.com/scl/fi/qkpv1hgufxip2x3rkn9ql/Draft-Maine-DOE-Resolution-Agreement-3.2025-OCR-Directed-Investigation-01255902.pdf?rlkey=wcng6plju00od50suw5uhh7m&st=bj449mn5&dl=0>

OCR Letter of Findings re transgender female athletic participation, Maine DOE, 3/19/2025

<https://www.ed.gov/media/document/letter-of-finding-maine-doe-109602.pdf>

9th Circuit ruling in Roe v. Critchfield, 3/20/2025, declining to continue injunction of Idaho trans bathroom ban

<https://cdn.ca9.uscourts.gov/datastore/opinions/2025/03/20/23-2807.pdf>

February 2025 OCR complaint regarding the University of Washington's handling of a campus protest regarding a campus speaker from Turning Point USA whose topic was "*Protect Women From Men: The Threat of the Trans Agenda.*" The complaint alleges that the speaker was the victim of a hostile environment and discrimination at the UW, and that the UW was deliberately indifferent to the matter.

https://www.dropbox.com/scl/fi/2sha7eof0vp8pyggm8anv/Olivia-Krolczyk_OCR-Complaint_final-February-2025-University-of-Washington-Turning-Point.pdf?rlkey=npv0fd7jhdsa7u06rl5m4ndq3&st=bok34161&dl=0

A Better Balance: Title IX Fact Sheet on Pregnancy Discrimination

<https://www.abetterbalance.org/wp-content/uploads/2025/01/Title-IX-Fact-Sheet-1-1.pdf>

QUESTION AND ANSWER

Thank you for attending and participating!

Contact: amy@klostermanlaw.com
206-945-8921