



SEC Title IX Meeting

Athletics Compliance, Scholarships, and Equal Opportunity

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June 10, 2026



Historical Context

- ❑ Amateurism Model: NCAA framework conditioned eligibility on athletes remaining “amateurs,” limiting compensation to scholarships and prohibiting pay-for-play, endorsements, and monetization of athletic ability or NIL.
- ❑ Title IX in 1972: Enacted to prohibit sex-based discrimination in federally funded education programs and to expand opportunities for women.
- ❑ OCR guidance and enforcement, plus Title IX litigation has developed the rules since its enactment.



Statutory and Regulatory Framework

- Athletics Regulations under 34 C.F.R. § 106.41 governs overall athletics programs, requiring schools to provide equal athletic opportunity, including:
 - Equal participation opportunities to “effectively accommodate the interests and abilities of members of both sexes;” (three-pronged test)
 - Also analyze nine other factors of benefits of participation (e.g., equipment and supplies, travel, coaching, facilities, housing and dining, publicity)
- Difference between intentional discrimination (derived from the statute) and disparate impact (derived from subsequent regulations).
 - Title IX law is not settled on whether disparate impact is allowable for private damage disputes, unlike Title VII, which expressly allows for disparate impact.

Title IX Regulations Governing Athletics

- 34 C.F.R. § 106.41(c):
 - Equal participation opportunities to “effectively accommodate the interests and abilities of members of both sexes” (three-pronged test)
 - Also analyze equal opportunity based on nine other factors of benefits of participation (e.g., equipment and supplies, travel, coaching, facilities, housing and dining, publicity)
- 34 C.F.R. § 106.37(c):
 - Requires scholarship aid to be proportionate to the number of participating athletes.



The Three-Prong Test for Participation

- Established by Intercollegiate Athletics Policy Interpretation (Policy Interpretation) in the *Federal Register* on December 11, 1979.
- Central issue in most Title IX litigation.
- Only need to meet one of the three elements below to be compliant:
 1. Substantially Proportionate Participation;
 2. History & Continued Expansion; OR
 3. Full Accommodation of Interest & Abilities.

See Policy Interpretation and Additional Clarification of Intercollegiate Athletics policy: Three-Party Test – Party Three, Educ. OCR 2005.



Prong 1: Substantially Proportionate Participation

- Measures full-time enrollment sex ratio between males and females to that of the university's collegiate sport participation.
- To meet this prong, the sex ratio of athletes must be as close to the sex ratio of full-time undergraduate students as possible.
- Factors outside of the control of the university are taken into account when evaluation compliance, such as last-second transfer or the year-to-year natural fluctuation of the student body.

Prong 1: The Numbers

- While OCR has not formally established a fixed safe harbor percentage, courts typically find universities compliant if the sports participation ratio is within 5.5% of the ratio of full-time undergraduate students.
 - While most circuits follow OCR's fact-specific framework, other circuits (e.g., the Sixth Circuit) adopt a stricter "any viable team" standard rather than relying on percentage gaps.
 - The team-viability considerations checks the number of potential athletes of the underrepresented sex that are "left out" due to the difference in sex ratio.
 - If the number of athletes "left out" can form a full sports team, the greater the odds a court finds a university is not compliant.
- Courts very rarely find compliance in any university when the ratio disparity is greater than 10%.



Prong 1 Illustrated

Scenario: Suppose a university is 55% female and 45% male in its full-time undergraduate enrollment. Also assume that the university offers 500 athletic opportunities split equally between male and female students.

Measure	Men	Women	Total
Undergraduate Enrollment	9,000	11,000	20,000
Percent Enrollment	45%	55%	100%
Participation Opportunities	250	250	500
Percent Participation Opportunities	50%	50%	100%
Percent difference	+5%	-5%	
Count of Gap in Opportunities		56	

Key Participation Considerations

- Multi-sport athletes are counted multiple times for each team in which they meaningfully participate.
- EADA reporting numbers are a snapshot that occur at the time of the first competition of a sport, while the OCR observes participation all year.
 - So, relying on EADA reporting may not tell the full and correct story.



Participation Opportunity Prong 2: History & Continued Expansion



- Requires both historical evidence of fixing the disparity/noncompliance and ongoing responsiveness to developing interests.
- OCR guidance applies a heightened scrutiny to this compared to Prong 1.
- Cutting sports of underrepresented groups weighs heavily against the university, and replacing the cut teams does not count under this prong.



Participation Prong 3: Unmet Interest & Sufficiency to Sustain a Team

- If institution cannot prove compliance on prongs 1 or 2, it must show evidence of unmet interest and lack of sufficiency to sustain a team.
 - Also requires proof that the team can compete and be sustained a Division 1 varsity level.
 - Does not require proof of making playoffs, posting a positive record, etc.
- Requires consistent use of surveys, club sports, and a process to request elevation to a Division 1 sport.
- Most difficult prong of the three to satisfy, especially when a sport is cut or where sports have recently been cut.
 - When an institution cuts a sport of underrepresented group, a court will presume that there was interest and sufficient ability to sustain a team.

Case Study: University of Oregon's Women's Athletes Denied Class Certification

- Female athletes brought class action and accused Oregon of treating female athletes unequally.
- Beach Volleyball athletes alleged inferior facilities, equipment, and access to other resources as compared to men.
- Rowing athletes alleged denial of varsity status and other participation opportunities.
- Plaintiffs alleged reduced access to athletic scholarships and financial aid.
- Oregon sponsors 8 men's varsity teams and 12 women's varsity teams and has several women's club teams, which were all self-funded.
- **Legal Issue:** Whether Oregon violated Title IX by providing unequal treatment and benefits, unequal financial aid, and fewer varsity participation opportunities to female athletes.

Case Study: University of Oregon's Women's Athletes Denied Class Certification

- On May 29, 2026, court ruled the women's sports teams were denied class certification in their bias suit.
 - Though, the judge left certification as possibility at a later date.
- Women's volleyball team denied certification because of its "lack of typicality" compared to other women's sports teams.
 - The team had no full-time coach, no on-campus facility, and no locker room.
- Women's rowing team also denied certification because they could not prove that they could compete at the Division 1 level as required by the third prong.
- Case shows that differences across sports (facilities, funding, competition level) can make Title IX claims difficult to aggregate.

Caselaw Update: *Niblock v. University of Kentucky* (6th Cir. 2026)

- Plaintiffs alleged a failure to add women's Division 1 teams (equestrian, field hockey, and lacrosse).
- Compliance was found under prong 3: full and effective accommodation.
 - Based on extensive factual record demonstrating lack of sufficient Division I skill and interest in the general student body for sports in question.
- Two judges, in their concurrence, questioned the validity of Title IX regulations and guidance. And suggested future challenges based on new, lower standard for deference to federal agencies in *Loper Bright* decision.
- While the judges declined to decide the question of the Title IX regulations in *Niblock*, the concurrence signals likelihood of future litigation on this question and that judges are open to overturning Title IX regulations and guidance.

Caselaw Update: *Myers v. Stephen F. Austin State University* (E.D. Tex. 2025)



- Female student-athletes challenged the university's decision to eliminate multiple women's sports teams, including beach volleyball, bowling, and golf.
- Plaintiffs (sports teams) argue that the Court should rely on the 1979 Policy Interpretation, and the university argued that *Loper Bright* requires courts to not merely defer to these agency interpretations.
 - The Court deferred to the DOE's 1997 Interpretation and uses its three-pronged test.
- The Court granted an injunction requiring the preservation of women's sports teams pending litigation.
 - Court found sufficient likelihood success and irreparable harm for the injunction.
- Institutions become vulnerable to litigation when cutting women's sports teams.
 - SFA already had 223 athletes "left out" pre-cuts (63% women in undergraduate pool; 45.6% of athletic pool).
 - Post-cuts, the number of "left out" student athletes would be 245 to close the gap.

Athletes Financial Aid Standard – 34 CFR 106.37(c)

- If offered, financial amounts must be substantially proportionate to the sex ratio of participating athletes.
 - Note: This is a different and more exacting standard than participation.
- OCR only allows a disparity of up to 1% between the scholarship amounts ratio and sex ratio of participating athletes (1998 DCL).
- Multi-sport athletes are only counted once under this standard.
- However, if university is in “safe harbor” by satisfying participation through prong 2 or 3, they can arguably defend against resulting scholarship proportionality challenges.
 - *Gonyo v. Drake Univ.*, 879 F. Supp. 1000, 1005–06 (S.D. Iowa 1995) (cited by 1998 DCL and allowing scholarship disproportionality where Drake met prong 2).

Does 106.37(c) apply to
distribution of NIL funds?

Does § 106.37(c) apply to NIL?

- NIL regulations and Ed guidance never contemplated NIL agreements.
- NIL agreements fundamentally different than athletics scholarships.
- If the goal of House revenue sharing is to share revenue with those who generate it, subjecting NIL to 103.37(c) would undermine that objective.
- Section 106.37(c) is generally aimed at institutionally-controlled financial assistance.
- NIL payments are best understood as tied to publicity rights, not participation-based benefits.
- Applying § 106.37(c) to NIL risks treating market-based compensation as regulated financial aid in ways the framework may not fit.
 - For example, NIL and athletics scholarships have different tax treatment, different rules under immigration law, and different treatment under NCAA rules and *House* settlement.

Equal Treatment Standard “Laundry List”

- Beyond participation opportunities and scholarship dollars, institutions must provide equal treatment, benefits, and opportunities to male and female athletes in the form of equal:
 - 1. Equipment and supplies;
 - 2. Scheduling games and practice time;
 - 3. Travel and per diem allowances;
 - 4. Opportunity to receive coaching, and the assignment and compensation of coaches;
 - 5. Opportunity to receive academic tutoring, and the assignment and compensation of academic tutors;
 - 6. Locker rooms and practice and competitive facilities;
 - 7. Medical and training facilities and services;
 - 8. Housing and dining facilities and services; and
 - 9. Publicity.

Evaluating Equal Treatment

- Evaluations are done on a program-wide basis (not by team).
- Differences in treatment may be justified by sports-specific needs (men's vs. women's basketball, for example), or nondiscriminatory facts such as market revenue or travel.
- Section 106.37(c): *“Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.”*



Key Takeaways

- These three standards (equal participation opportunities, equal athletic scholarships, and equitable benefits) are separate but highly interconnected.
- Compliance is easiest when the numbers are met with consistency.
- Consider conducting regularly compliance reviews and, if necessary, start documenting legitimate, nondiscriminatory reasons for any disparity in the compliance numbers in your programs and strategize for how to be compliant (e.g., Prong 3).

Questions?





SEC Title IX Meeting

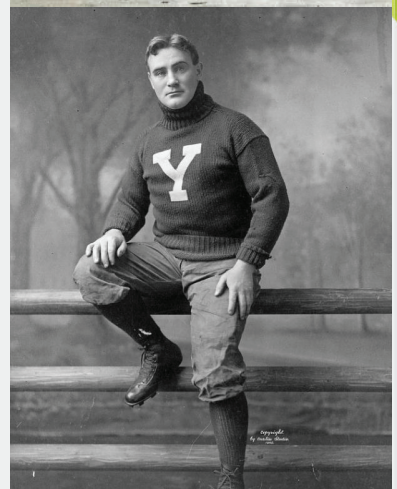
House Settlement, NIL Agreements, and Impact on Non-Revenue Sports

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Historical Background and Evolution

- Student-athletes have been compensated for competitive sports as long as sports have existed in college.
- Examples cited by SCOTUS in *Alston*:
 - In 1852 rowers at Harvard and Yale received compensation for the first intercollegiate competition in history.
 - Yale lured tackle James Hogan with free meals and tuition, a trip to Cuba, the exclusive right to sell scorecards from his games, and a job as a cigarette agent for the American Tobacco Company.
 - In 1896, Fielding Yost, law student at WVU, transferred to Lafayette as a freshman just in time to lead his new teammates to victory against its arch-rival, Penn, and next week he was back at WVU law school
 - In 1939, freshmen at the University of Pittsburgh went on strike because upperclassmen were reportedly earning more money.



Historical Background and Evolution

- The NCAA adopted the “amateurism” model in the early 20th century as a foundational principle, but little enforcement
 - NCAA restrictions starting in 1948, with “Sanity Code” limiting compensation to tuition, combined with enforcement.
 - In 1956, NCAA expands scope of allowable payments to include room, board, books, fees, and “cash for incidental expenses such as laundry.”
- This model worked for decades, all the while college sports became a bigger and bigger business, including media rights worth hundreds of millions / billions.
- In the last decade, there has been a shift to recognize the economic contribution of student-athletes with greater compensation.



The *House* Settlement (2025)

- Consolidated settlement agreement of several antitrust cases against the NCAA from former athletes.
- \$2.8 billion in back damages
- Direct payments by student athletes up to ~\$20.5 million per institution across all sports through NIL agreements
- New roster limits replace scholarship limits
- Review of third-party NIL by CSC for “valid business purpose” at market rates
- Settlement is currently subject to challenge on appeal, but it is proceeding.
 - Challenges include anti-trust and Title IX, among others

Revenue-Sharing Operations and Challenges

- Annual cap of \$20.5 million subject to an annual increase of ~4%.
- Most universities appear to be allocating vast majority of NIL dollars to revenue-generating sports—football, men’s basketball, and women’s basketball.
- Arms race leads to universities looking for ways to direct more funds to players, including MMR deals.
- Continued concerns regarding consistency and timing of review of third-party NIL by CSC (e.g., Nebraska MMR case, holdouts).



Core Risk Areas for Collegiate NIL Directly to Student Athletes

- ✓ Ongoing antitrust challenges
- ✓ Employment status (federal and state)
- ✓ NLRA and collective bargaining
- ✓ Title IX compliance
- ✓ NIL contract standardization
- ✓ Litigation to enforce NIL agreements
- ✓ International student athletes
- ✓ Impact on non-revenue sports



Solution to Professional Sports and Antitrust Law? Collective Bargaining Antitrust Exemption

- ✓ Collective bargaining agreements exempt from antitrust liability.
- ✓ Professional leagues generally exempt from antitrust law regarding matters covered by CBAs with players associations.
- ✓ Individual teams and its players do not bargain—contract is at league level.
- ✓ Ensures application of consistent rules across sport and fair play under CBA without violating antitrust laws.



The Next Big Challenge: Employment Status of Student-Athletes

- Courts are currently applying the “economic realities” test focusing on control, compensation, and benefit to the institution.
 - *Johnson v. NCAA* pending 3rd Circuit FLSA case.
 - Likely leading case to determine whether student athletes are employees under federal law.
- Courts look beyond mere labels and label of “amateur student athlete” unlikely to control post Alston.
- However, non-revenue sports weaker as to “benefit to the institution” and control.
 - Compare football versus golf.
- Possible that revenue-generating sports could gain employment status while non-revenue sports do not.

Checklist of Risks of Student Athletes as Employees

- ✓ Wage and hour (minimum wage, overtime)
- ✓ Hours worked (practice, travel)
- ✓ Paid sick leave / FMLA
- ✓ Health insurance, life insurance
- ✓ Workers' comp, unemployment
- ✓ Taxes and withholdings
- ✓ Wage credit for scholarships / housing / meals
- ✓ Performance evaluations
- ✓ Discipline and discharge
- ✓ Workplace safety and equipment
- ✓ Disability and religious accommodations
- ✓ Discrimination and EEO
- ✓ Equal Pay Act and Title IX
- ✓ Retirement benefits

Title IX Tension in the Revenue-Sharing Model



The consolidation of revenue-sharing funds to football, men's basketball, and women's basketball creates a Title IX risk due to disparity concerns.



If payments are characterized as financial aid, Title IX may require a proportionate allocation based on gender ratio.



Treating revenue-sharing as financial aid rather than compensation goes against the plain meaning of financial assistance in § 106.37(c) and the common understanding of NIL.

Additional Litigation: Enforceability of NIL Contracts

University of Cincinnati v. Brendan Sorsby

- UC seeking to enforce \$1 million buyout against QB transfer

Duke University v. Darian Mensah

- Alleged breach of contract by QB transfer; settled

Univ. of Wisc. & VC Connect, LLC v. Univ. of Miami

- Tortious interference with university and third party NIL contracts (tampering)



Legislative and Regulatory Outlook

- Protect College Sports Act, 2026 (Cruz & Cantwell)
 - Right to earn compensation through NIL, similar to *House*.
 - Adopts 5-in-5 years eligibility; limits transferring to once without penalty.
 - Provides benefits to athletes (e.g., medical coverage, governance, scholarship guarantee).
 - Option for schools to pool media rights.
 - Antitrust exemption for enforcement of rules re compensation, transfer, and eligibility.
 - Neutral on athlete employment status, says nothing re Title IX.
 - SEC and B1G publicly opposed in current form; NCAA says “essential” revisions required.
- Executive Order No. 14322—Saving College Sports
 - Encourages regulatory action ensuring NIL arrangements similar to *House* and not structured as pay-for-play.
 - Prevents NIL funding to come at the expense of cutting non-revenue sports.

Questions?





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Trends & Risk Mitigation in Title IX Enforcement + Caselaw Update

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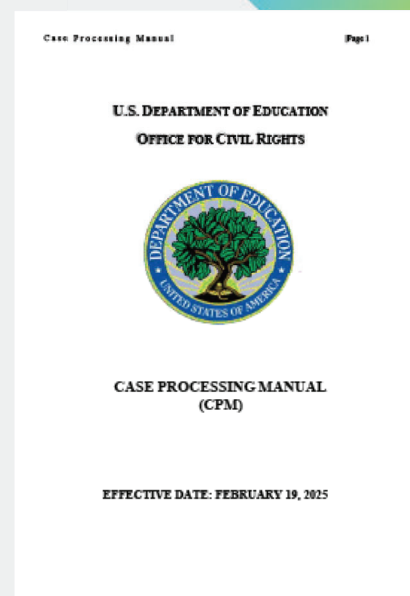
Department of Education Office of Civil Rights

- “OCR vigorously enforces Title IX to ensure that institutions that receive federal financial assistance from the Department comply with the law.”
- “OCR evaluates, investigates, and resolves complaints alleging sex discrimination.”
- “OCR also conducts proactive investigations, through directed investigations or compliance reviews, to examine potential systemic violations based on sources of information other than complaints.”
- Although federal funding theoretically at risk, not aware of any institution sanctioned with loss of federal funding.



What Happens When OCR Gets a Complaint?

- OCR case process manual is a good place to start.
- Updated Feb. 19, 2025.
- OCR first evaluates whether information received is subject to further processing (categories generally not processed: anonymous, courtesy copies, solely advice requests, oral only).
- New Section 109: OCR will interpret and act consistent with First Amendment principles and will not construe statutes/regulations to impinge protected rights-
- Options for dismissal, rapid response, investigation, mediation, and resolution.
- Investigation may include requesting documents and conducting interviews.
- Reach findings (insufficient evidence, non-compliance, mixed determination).
- Resolution agreement to be signed within 90 days.



Investigations

- Obligations on institution in OCR investigations are similar to discovery in litigation.
- Detailed requests for documents and information.
- Formal interviews conducted by OCR investigators, possibly on-site.
- Can involve a substantial amount of time and resources of Title IX Office, Legal Affairs, and related staff.



Resolution Agreements

- Allegations may be resolved at any time prior to the issuance of a final determination when the recipient expresses an interest and OCR determines it is appropriate.
- With non-compliance or mixed finding, OCR will issue proposed resolution agreement, and recipient has 90 days to reach a final agreement.
- Resolution agreement may include (examples):
 - Modified policies and procedures
 - Conduct mandated training
 - Fund additional resources (e.g., employee positions, materials, websites)
 - Develop and implement communication and marketing plans
 - Mandated data management and recordkeeping
 - Reimbursement to individual complainants
 - Monitoring, reports and documentation to OCR



Administrative Proceeding or Referral to DOJ

- If no resolution is reached, OCR may:
 - refer case initiate administrative proceedings or refer to DOJ.
 - Initiate administrative proceedings to suspend, terminate, or refuse to grant or continue federal financial assistance.
- OCR may refer to DOJ for denial of access to OCR or failure to comply with OCR agreement.
- DOJ can also intervene in private Title IX cases.
- DOJ also files “statements of interest” in private Title IX cases regarding application of law.

Article VI: Initiation of Enforcement Action



Examples of Recent OCR Investigations and Outcomes

- Wagner College (Aug. 2025) – result of a directed investigation concerning sex discrimination into the college for allegedly allowing males to compete in women’s sports.
 - Includes revisions to athletic policy, issuance of a public statement about its compliance with Title IX (including information such as Wagner not allowing male students to compete in female athletic programs or occupying female intimate facilities).
- University of Pennsylvania (July 2025) – result of OCR’s investigation that found UPenn violated Title IX by allowing a male to compete in female athletic programs and occupy female-only intimate facilities.
 - Includes restoration of swimming records and titles misappropriated to male athletes, issuance of a public statement about compliance with Title IX (including information such as UPenn not allowing male students to compete in female athletic programs or occupying female intimate spaces)
- Hinds Community College (April 2024) – result of a complaint alleging failure to provide pregnancy related academic adjustments and harassment based on her pregnancy.
 - Includes policy revisions, faculty training, better accommodation tracking, and financial reimbursement for the affected student.

Private Litigation

- Students can sue under various theories of liability
 - Official policy / archaic assumptions (more common in sports equity claims)
 - Deliberate indifference to sexual harassment
 - Selective enforcement based on gender bias
 - Erroneous outcome
 - Retaliation
- In the Fifth Circuit, employee Title IX claims preempted by Title VII.
 - Circuit split, ripe to be decided by SCOTUS.
 - Employees can still bring claims of Title IX retaliation based on Title IX protected activity.
- No administrative exhaustion requirement under Title IX.
- 2 year statute of limitations.

Private Litigation – Primary Causes of Action

- Deliberate Indifference:
 - To establish a claim of sexual harassment, a plaintiff must show that: (1) the sexual harassment was “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school;” (2) the school district had actual knowledge of the sexual harassment; and (3) it acted with deliberate indifference to the harassment.” *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 650 (1999).
- Selective Enforcement:
 - “Either punishment or the decision to initiate enforcement proceedings was motivated by gender bias.” *Klocke v. Univ. of Tex. at Arlington*, 938 F.3d 204 (2019).
- Erroneous Outcome:
 - “A plaintiff alleging an erroneous outcome must point to ‘particular facts sufficient to cast some articulable doubt on the accuracy of the outcome of the disciplinary proceeding’—for instance, ‘a motive to lie on the part of a complainant or witnesses, [or] particularized strengths of the [disciplined student’s] defense.’ ... The plaintiff must also demonstrate a “causal connection between the flawed outcome and gender bias.” *Klocke v. Univ. of Tex. at Arlington*, 938 F.3d 204 (2019).

Damages in Title IX Litigation

Cummings v. Premier Rehab Keller, P.L.L.C., 142 S. Ct. 1562 (2022).

- Emotional distress damages are not recoverable under Spending Clause antidiscrimination statutes (Title IX, Title VI, Rehabilitation Act).
- Relying on a contract-law analogy, the Court reasoned that funding recipients consent to conditions in exchange for federal funds and are only on notice for remedies traditionally available in contract.
- Does not affect Title VII claims where Congress expressly authorized emotional distress damages.
- Punitive damages are not available.
 - *Barnes v. Gorman*, 536 U.S. 181 (2002).



Recent Cases from Texas

Doe v. Rice Univ. (5th Cir. May 11, 2023)

- Affirmed USDC's dismissal of breach-of-contract claims but reversed and remanded summary judgment in favor of university regarding issues of material fact, namely regarding plaintiff-appellant's (respondent) claims of gender bias by the university.
- Respondent brought Title IX and breach-of-contract claims after the university's responding office determined that while respondent had not violated the sexual misconduct policy, respondent had "failed to adequately notify [complainant] of the fact that she was at risk of contracting [an STI] from [him]."
- Respondent was placed on interim suspension following the filing of a formal complaint and eventually lost his athletic scholarship and withdrew from the university, as he was allowed on campus only for academics as part of the university's sanction.
- At issue was whether respondent notified complainant regarding his STI. As it related to respondent's Title IX claim, the court expressed due process concerns regarding the conduct respondent defended against ("failure to notify" complainant) and the conduct respondent was ultimately sanctioned for ("failure to *adequately* notify" complainant).
- Notably, the court held a rational jury could hold the university's policy (and violation for which respondent was penalized) rested upon "archaic assumptions," namely that a "more-knowledgeable male" (respondent) had a duty to educate an "unwitting female" (complainant) regarding the dangers of STI transmission.

Preparation Before Any Complaint or Claim

- Regularly update policies and procedures
- Ensure Title IX staff qualified and trained
- Continue to take required trainings (like the one today)
- Have well-functioning systems in place for managing Title IX compliance process
 - Case intake methods and processes (including electronic intake)
 - Case tracking and monitoring during investigation and grievance process
 - Checklists and approved forms for all stages of investigation and grievance process
 - Reporting mechanisms for completed cases in compliance with state and federal mandates
- Have robust community education and outreach programs to both comply with various legal mandates

Preparation During Investigation and Grievance Process

- Follow your policies during each stage of investigation and grievance process
- Treat all parties equitably and do not make presumptions
- Be transparent with parties regarding process (e.g., notices, updates)
- Don't allow feelings about advisor / attorney affect treatment of party
- Document process (letters and emails to parties, with copies to the file)
- Document evidence, including requests, source, and when received
- Prepare reports that are self-explanatory and stand on their own
- Presume everything you write will be seen by OCR, a judge, and a jury (draft reports, emails to colleagues, etc.)

Preparation After Grievance Process Complete

- Ensure that cases are identified as closed and all required steps have been taken.
- Document and calendar any follow-up on sanctions to ensure purpose of sanctions achieved.
- Ensure case file complete, reflects all steps of process, and reflects final outcome and sanctions.
- Ensure case outcome reflected in case tracking systems and compliance reports.
- Document lessons learned and any proposed changes to policies and/or processes based on particular matters.
- Continue ongoing, iterative efforts with respect to overall program improvement.



What is Severe, Pervasive, and Objectively Offensive?

- Sex-based harassment must be “so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit.”
- Title IX requires not simply that the harassment affected student’s education but that it “had a concrete, negative effect on student’s ability to receive an education.”
- Purely de minimis effects are not sufficient.
- Conduct is actionable under Title IX only if it is *based on sex*.
- Must be more than “offensive conduct” that is “inappropriate, immature, and offense” or “teasing or bullying.”

Department of Education Guidance on Sanctions



Is a school required to impose particular remedies when a respondent is found responsible for harassment?

- No.
- The 2020 amendments do not dictate that a school provide any remedies for the complainant or disciplinary sanctions for the respondent after a finding of responsibility. Each school is free to make disciplinary and remedial decisions that it “believes are in the best interest of [its] educational environment.”

[U.S. Department of Education Title IX
Final Rule Overview \(PDF\)](#)

What Regulations Say about Sanctions

106.45(b)(1)(i)

- Must treat the parties equitably
- Must follow the grievance process before imposition of any disciplinary sanctions or other actions that are not supportive measures

106.45(b)(1)(vi)

- The grievance process must describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility

106.45(b)(7)(ii)(E)

- The written determination must include any disciplinary sanctions the institution is imposing on the Respondent

106.45(b)(10)(i)(A)

- Each recipient must maintain for a period of 7 years records of any disciplinary sanctions imposed on a Respondent

Risks Related to Sanctions and Private Litigation

Examples

- Prior misconduct history by Respondent may affect sanctions.
 - “A recipient may not adopt a rule excluding relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence.” 2020 Rule Preamble.
 - Failure to consider prior conduct could result in failure to consider serial / predatory behavior.
- Important to consider comprehensive set of possible remedies to restore access to complainant and ensure enforcement.
 - For example, are trespass warnings necessary to keep respondent off campus if suspended/expelled?
 - Who is monitoring completion of sanctions to ensure compliance?
 - Remedies may be needed beyond list, such as training for involved student organization.
- Disparate treatment of respondents in sanctioning can create risk of liability.
 - Helpful to have a sanctions matrix that considers nature and severity of the violation, as well as aggravating and mitigating factors, to guide decision-makers and assist in consistency.

Private Litigation – Defer to Decision Makers

Jane Doe v. Loyola University Maryland (D. Md. 2021)

- **Allegations**

- Male Student and Female Student lodged competing claims of sexual misconduct against each other over the same occurrence. Both claim non-consensual sex. Both alleged sexual violence. Both received identical sanctions of a one-semester suspension, no contact order, and a substance education requirement. Female Student filed suit against University challenging the University's process and its decision.
- University denied and filed a Motion to Dismiss.

- **The Court's Title IX Findings**

- It is neither the province of the court to re-try plaintiff's disciplinary proceeding nor to require a particular outcome of a disciplinary proceeding.
- Loyola carefully followed its well-crafted and gender-neutral policies and the record did not support a conclusion that an erroneous outcome had been reached.
- Plaintiff also failed to allege any facts that would amount to gender bias, which was also fatal to her erroneous outcome claim.

Private Litigation – Defer to Decision Makers

Garrett v. University of South Florida Board of Trustees (11th Cir. 2020)

- **Allegations**

- Plaintiff was a former doctoral student at the University of South Florida, who alleged the University inadequately responded to her report of sexual misconduct (non-consensual sexual touching) by a fellow student when they issued a deferred suspension and a no-contact order. Plaintiff alleged the University subjected her to additional sexual harassment by failing to issue harsher sanctions.

- **The Court's Title IX Findings**

- There was no genuine issue of material fact regarding whether USF was deliberately indifferent to plaintiff's report of sexual misconduct.
 - USF assigned plaintiff a victim advocate and opened a formal inquiry into her report.
 - It also was not clearly unreasonable for USF to offer the respondent a deferred suspension and no-contact order when he accepted responsibility.

Recommendations for Avoiding Sanctions Landmines

- ✓ Process should allow for communication of Respondent's prior misconduct history to Component Administrator for purposes of determining sanctions.
- ✓ Consider “other sanction(s) or remedies as deemed appropriate under the circumstances.”
- ✓ Provide Decision Maker / Administrator with sanctions matrix based on type of violation with example aggravating and mitigating factors for each.
- ✓ Document and calendar any follow-up on sanctions to ensure purpose of sanctions achieved (e.g., ensuring training completed).
- ✓ Consider privileged sanctions audit to establish guardrails for setting similar sanctions for similar violations.

Questions?





SEC Title IX Meeting

Intersection of Title IX with Other Laws and Legal Protections

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Title IX vs. Title VI vs. Title VII

Title IX	Title VI	Title VII
Conditioned on receipt of federal funding	Same	Covers all employers over 15 employees
Covers students, employees, and others participating in educational program	Same	No, just employees and applicants
Severe, pervasive, and objectively offensive standard	Same	No (severe or pervasive)
Regulations require specific grievance process	Regulations do not require specific process	Regulations do not require specific process
Damages include compensatory / economic damages with no caps, and attorney fees	Same	Back pay and front pay, compensatory and punitive (capped at \$300K), and attorney fees
Does not require complaint with federal agency	Does not require complaint with federal agency	Requires charge and exhaustion with EEOC / state agency
Deference to disparate impact regulations in question	Requires intentional discrimination for private action, per Supreme Court	Claims for both disparate treatment and disparate impact recognized

What is Severe, Pervasive, and Objectively Offensive?

- Title IX's "severe, pervasive, and objectively offensive" standard more demanding than Title VII's "severe or pervasive" standard.
- Nevertheless, courts rely on Title VII cases in employment context to interpret Title IX standard.
- The Fifth Circuit uses a totality of the circumstances test to determine whether the acts are objectively severe, pervasive, and offensive. The Court looks at the:
 - (1) frequency of the acts,
 - (2) severity,
 - (3) physically threatening or humiliating, or mere offensive utterance, and
 - (4) whether it unreasonably interferes with the learning environment.

Conduct that rises to the level of severe, pervasive and objectively offensive

After being allegedly raped by football players at off-campus party, student alleged:

- Classmates called student “whore” and “slut”;
- Classmates asked whether she had sex with multiple people;
- Classmate asked, “How did it feel to be fucked in every single hole of your body?”;
- Classmates excluded her from cheerleading;
- One student asked her the race of the baby she would be having;
- Alleged rapist “wore the pants that he raped [student] in to school, which had [her] blood on them from intercourse, and stood on the lunch table and said, these are the pants that I took [student’s] virginity in.”; and
- Multiple football players called her a liar and told her that she was “going to ruin everything.”

I.F. v. Lewisville Indep. Sch. Dist., 915 F.3d 360 (5th Cir. 2019)

Conduct that DIDN'T rises to the level of severe, pervasive and objectively offensive

- Calling another student “fat” and “pig.”
- Stealing food and throwing it down dorm hall.
- Stealing student’s picture and writing “call for a good time” and posting on Snapchat.
- “Play fighting.”
- Stealing items and conditioning return on she came to his room and “cuddled with him.”
- Calling student repeatedly, even after being blocked, and telling her to “grow up” and be nicer to roommate.
- Calling student a “fag.”
- Grabbing student’s “clothed buttocks” for several second.

Owens v. La. State Univ., 709 F. Supp. 3d 245 (M.D. La. 2023).

Title VI case where conduct DIDN'T rise to the level of severe, pervasive and objectively offensive

- White male student told complainant that she “was only [at University and the Honors College] to fill the black girl quota.”
- Complainant “regularly encounter[ed] white students referring to Jane Doe No. 3 and other African Americans at [University] as [the n-word].”
- Professors “facilitated racist and bigoted conversation” in courses with topics titled “Are people of color discriminated against or do they just commit more crimes?” and “Everyone is a little bit racist.”
- University used her as a minority show piece by regularly soliciting her participation in school activities.

Doe No. 1 v. Tex. Christian Univ., 2021 WL 12288641 (N.D. Tex. Jan. 12, 2021)
(same standard under Title VI)

Can employees sue under Title IX as well as Title VII?

- It depends.
- This issue varies by federal courts of appeals—circuits are split on this issue.
 - Federal courts in Kentucky, Tennessee and Oklahoma allow employees to sue for discrimination under Title IX, while courts in most of the rest of the SEC do not.
- Issue currently before the Supreme Court, to be decided next term.
 - *Crowther v. Bd. of Regents v. Univ. of Sys. of Ga.*
 - Relates to Title IX claims by an art professor at August University and a former women's basketball coach at Georgia Tech.

What if employee alleges retaliation based on participation in Title IX complaints unrelated to employment?



- *Lowery v. Texas A&M Univ. System*, 117 F.3d 242 (July 7, 1997)
- Female Tarleton State basketball coach alleged Title IX retaliation based on her involvement in complaints alleging noncompliance with Title IX in athletics program.
- Because coach's protected activity was under Title IX and did not constitute protected activity under Title VII, she could not bring a Title VII retaliation claim.
- Court held that her Title IX claim therefore not preempted and she could proceed under Title IX for that limited purpose.
- This issue may also be decided by *Crowther*.

Hypothetical – What law applies?

- Black female basketball player brings sexual and racial harassment complaint against white male student, who has been making allegedly sexist and racist remarks to student in person and on social media.
- Respondent's remarks target complainant but relate to his stated views that women shouldn't play sports and university shouldn't fund women's sports, as well as male student's views that Black students should attend HBCUs and should not attend State University, which should be reserved for white students.
 - Respondent claims views based on religious beliefs regarding racial purity and gender roles.
- Respondent's comments gain local, state, and national attention, with significant backlash on campus and Senator from State calls for student to be expelled, saying Respondent's beliefs "have no place on State U's campus."
- White male professor testifies on behalf of male student stating that his statements reflect student's genuinely held beliefs, as reflected in student's work product in class.
- Black female professor testifies on behalf of Complainant and granted tenure shortly thereafter.

Hypothetical – What law applies?

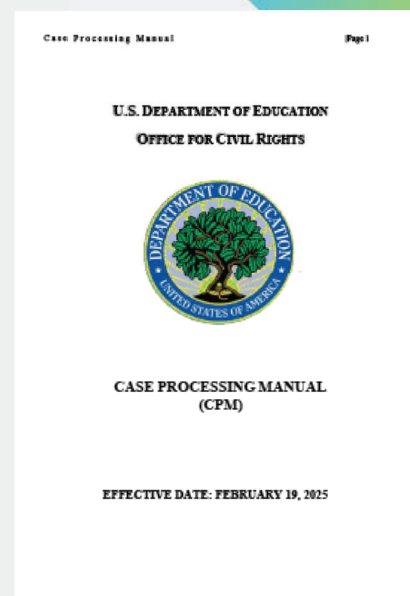
- Complainant (a junior) is interviewed by school newspaper and says she won't play unless University kicks complainant off campus.
 - She refuses to play in a game pending hearing, is kicked off team, and loses \$75K NIL deal.
- Respondent is found responsible, suspended for one year, and sues, alleging he was discriminated against based on race, gender, and his beliefs.
- Associate Professor goes on podcasts with Respondent stating that outcome was a violation of Respondent's First Amendment rights.
- Associate Professor is denied tenure 6-months later, and sues State U, alleging denial because of his race, participation in the case, and speech on podcast.
- Complainant sues State U for breach of contract, discrimination, and retaliation.
- What law(s) apply?

Hypothetical – What law applies?

Party	Potential Applicable Laws
Respondent	Title IX (sex-based discrimination) Title VI (race-based discrimination) First Amendment (viewpoint discrimination; retaliation)
Associate Professor	Title VII (race-based discrimination) Title IX and Title VI (retaliation) First Amendment (retaliation)
Complainant	Title IX (sex-based discrimination and retaliation) Title VI (race-based discrimination and retaliation) First Amendment (retaliation) State contract law (breach of NIL agreement)

Intersection of Free Speech and Title IX

- “Although OCR does not have jurisdiction to enforce the First Amendment to the U.S. Constitution, as a threshold issue and throughout the processing of the complaint, OCR interprets its statutes and regulations consistent with the requirements of the First Amendment, and all actions taken by OCR must comport with First Amendment principles. OCR will not interpret any statute or regulation to impinge upon rights protected under the First Amendment or to require recipients to encroach upon the exercise of such rights.” *OCR Case Processing Manual, Section 109 (February 2025)*.



Free Speech on Campus

- Public universities are subject to constitutional limitations when restricting student and employee speech protected by First Amendment.
- Administrators can be personally liable for restrictions that violate students' or employees' constitutional rights.
- However, universities generally can enforce content-neutral time, place, and manner restrictions.
 - For example, noise restrictions during finals, camping bans, approval for outside speakers, approval to use reservable spaces, no blocking of egress to buildings or on roadways.
 - Enforcement should be consistent without regard to the speaker's viewpoint.

When can University restrict speech?

Brandenburg v. Ohio (1969)

Imminent Lawless Action Test

Speech loses First Amendment protection when it is:

- Directed to inciting or producing imminent lawless action
- Likely to incite or produce such action

Both prongs must be met. Abstract advocacy of lawlessness is still protected speech.

Tinker v. Des Moines (1969)

Substantial Disruption Test

Speech may be restricted when the university:

- Reasonably forecasts the speech will cause a material and substantial disruption to university operations
- Or the substantial disruption actually occurs.

Undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.

*Note: Tinker decided in K-12 context. There is some debate whether it should apply to higher ed.

Enforcement of Time, Place, and Manner Restrictions

- Enforcement must be consistent, as actions to enforce create precedent.
- Selective enforcement may be found to be unlawful if used to suppress or punish particular speech or other religious or political activity under the First Amendment.
- Consistency is critical—respond to rules violations the same each time, regardless of whether the speech is supported by the majority or clearly offensive.
- Your community members are watching.



Intersection of Free Speech and Title IX

- Universities are permitted to take action against conduct that meet the definition of harassment or discrimination under Title IX.
- First Amendment generally covers speech, not conduct.
- To be considered harassment, actions must include something beyond the expression of offensive views, words, or symbols protected by the First Amendment.
- Discomfort or unpleasantness alone does not justify suppressing speech.
- Free speech advocacy groups have sued numerous universities challenging their speech codes as allegedly infringing students' First Amendment rights, including suits in Texas, Florida, Oklahoma, Virginia, Michigan, Indiana, and Illinois.
- In many cases, courts sided with plaintiffs and/or universities quickly moved to narrow policies.

Example: Speech First, Inc. v. Cartwright (11th Cir. 2022)

- Speech First sued Central Florida University challenging university's discriminatory-harassment policy.
- *The discriminatory-harassment policy is almost certainly unconstitutionally overbroad. The overbreadth doctrine is designed “to prevent the chilling of protected expression.” A regulation that covers substantially more speech than the First Amendment allows is overbroad and thus invalid. ... the policy (1) prohibits a wide range of “verbal, physical, electronic, and other” expression concerning any of (depending on how you count) some 25 or so characteristics; (2) states that prohibited speech “may take many forms, including verbal acts, name-calling, graphic or written statements” and even “other conduct that may be humiliating”; (3) employs a gestaltish “totality of known circumstances” approach to determine whether particular speech, for instance, “unreasonably ... alters” another student's educational experience; and (4) reaches not only a student's own speech, but also her conduct “encouraging,” “condoning,” or “failing to intervene” to stop another student's speech.*
- *The policy, in short, is staggeringly broad, and any number of statements—some of which are undoubtedly protected by the First Amendment—could qualify for prohibition under its sweeping standards.*

Intersection of Free Speech and Title IX

Perlot v. Green, 609 F. Supp. 3d 1106 (D. Idaho 2022) – No Contact Orders and First Amendment Rights

- **Background:** Law students brought action against president of the University of Idaho and other school officials, alleging that university's issuance of a no-contact order, which forbade them from contacting a student with whom they discussed their opposition to same sex marriage, violated their rights to free speech and free exercise of their religion. Plaintiffs moved for a TRO, preliminary injunction, and expedited hearing.
- **Holdings:** The District Court held that:
 - No-contact order was content-based restriction;
 - Comments did not constitute sexual harassment under Title IX;
 - Imposition of no-contact order was not least restrictive means for accomplishing goal of preventing student from hearing disagreeable speech that she deemed sexual harassment;
 - No-contact order was not least restrictive means to restrict plaintiffs' speech to accomplish goal of creating harmonious environment amongst students;
 - Law students showed likely harm from public university's issuance of no-contact order; and
 - No-contact order was issued with virtually no due process.

Enforcement and Intersection of Speech, Religion, and Title VII

- February 24, 2026, DOJ filed Title VII enforcement action UCLA for discrimination and retaliation against Jewish and Israeli faculty and staff.
- Alleges antisemitic harassment became severe and pervasive after October 7, 2023, and that UCLA knew but failed to respond effectively and declined to enforce policies.
- Lawsuit focuses on spring 2024 campus encampment at UCLA, which coincided with similar encampments around the country.
- Treats campus protest activity as workplace conduct when it interferes with employees' terms and conditions of employment
- Protest activity is no longer viewed solely through the lens of student affairs or expressive rights.
- DOJ alleges policies were selectively unenforced when violations affected Jewish or Israeli employees.



Key Compliance Takeaways

- Protest activity affecting employees can trigger Title VII exposure.
- The risk might not be limited to Title VII (e.g., state laws).
- Policies must be enforced consistently, not just written neutrally.
- Civil rights intake and aggregation practices matter.
- Mandatory reporting failures increase institutional risk.
- Internal reviews can increase exposure if not followed by action.



Intersection of Religious Freedom, Religious Accommodations, and Title IX



- Title IX religious exemptions for institutions “controlled by a religious organization” to the extent application of Title IX “would not be consistent with the religious tenants of such organization.”
 - 20 U.S.C. § 1681(a)(3).
- The government, including state public universities, cannot violate the free exercise of religion or discriminate based on religion.
 - Title IV prohibition on religious discrimination by public educational institutions.
 - Title VI prohibition on discrimination based on shared ancestry in federally funded programs.

Intersection of Religious Freedom, Religious Accommodations, and Title IX



- *Meriwether v. Hartop* (6th Cir. 2021)
 - Meriwether is a devout Christian teaching at a public university. University informed faculty they needed to refer to students by their “preferred pronoun[s].” Meriwether refused to call a transgender student by preferred pronouns during classroom instruction due to his religious beliefs.
 - Court found refusal to use preferred names and pronouns not per se discriminatory. Faculty member may have viable First Amendment claim based on academic freedom and/or freedom of religion. University’s application of its gender-identity policy was not neutral because university officials expressed hostility toward Meriwether’s religious beliefs.

Intersection of Religious Freedom, Religious Accommodations, and Title IX



- Title IX grievance process requires Component to treat complainants and respondents equitably.
- Component needs to provide religious accommodations to parties and witnesses during the grievance process.
 - Reasonable accommodations should not fundamentally alter, or result in inequity, in the grievance process.
- Common religious accommodation: extended deadlines, flexible scheduling, prayer breaks, fasting-sensitive timing.
- University should have a religious accommodations process that parties or witnesses can invoke for purposes of Title IX grievance process.

Questions?





Title IX Training

Parenting, Pregnancy, and Lactation

Darren G. Gibson, Partner
Michael Best & Friedrich LLP

June 10, 2026



Agenda

- ✓ **Pregnancy Discrimination under Federal Law**
- ☐ Texas State Law
- ☐ Role of Title IX
- ☐ OCR Enforcement / Litigation



Pregnancy Discrimination Under Federal Law

- Title IX statute does not expressly include pregnancy.
- But Title IX regulations make it clear that pregnancy discrimination is a form of sex discrimination prohibited by Title IX for both students and employees.
- Pregnancy discrimination in employment is expressly prohibited under Title VII based on the Pregnancy Discrimination Act of 1978.
- Federal law also includes the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act.

20 U.S.C. § 1681; 34 C.F.R. § 106.21(c), 106.40, 106.51(b), 106.57.

Pregnancy and Title IX Regulations—2020 Regulations

- 106.21(c)—Prohibits pregnancy discrimination in admission and recruitment.
- 106.40(b)(1)—Prohibits discrimination of students in education program or activities on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom.
- 106.40(b)(4)—Requires institution to treat these conditions similar to other temporary disabilities.
- 106.40(b)(5)&104.57(d)—Requires institution to treat these conditions as valid reasons for leave under any student or employee leave of absence policy.
- 106.57—Prohibits employment discrimination on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, and requires employer to treat these conditions similar to other disabilities.



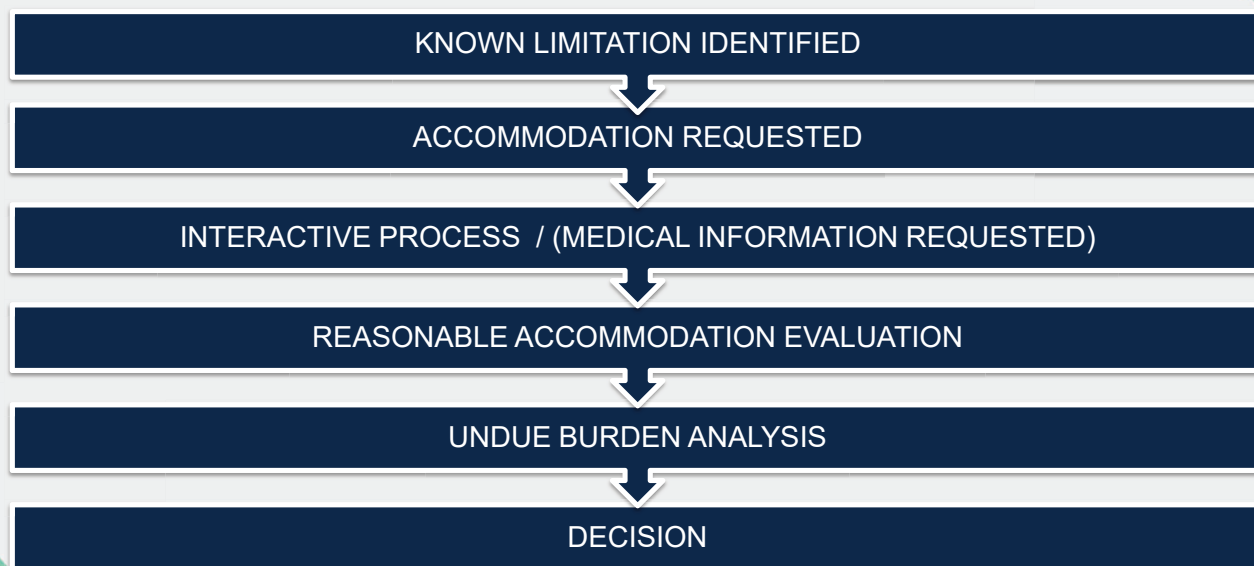
34 C.F.R. § 106.21(c), 106.40, 106.51(b), 106.57.

What is the PWFA?

- The Pregnant Workers Fairness Act (PWFA) applies only to accommodations.
- The PWFA requires a covered employer to provide a “reasonable accommodation” to a qualified employee’s or applicant’s known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.”
- Went into effect on June 27, 2023. EEOC issued its final regulation on April 15, 2024, which went into effect on June 18, 2024.
- On August 15, 2025, Fifth Circuit overturned district court decision enjoining enforcement of the PWFA against Texas state agencies.
 - *State of Texas v. Bondi*: “The House’s proxy-voting rule did not violate anyone’s fundamental rights. There is a reasonable relationship between the rule and the result it seeks—majoritarian rule. And the constitutional text, history, and tradition indicate that the Quorum Clause contains no physical-presence requirement that the House’s rule could have flouted.”

[What You Should Know About the Pregnant Workers Fairness Act | U.S. Equal Employment Opportunity Commission](#)

PWFA Accommodation Process



PWFA Reasonable Accommodation

- Employee may be eligible for accommodation *even when they are unable to perform the essential functions* if the inability to perform the essential functions is temporary, the essential functions can be performed in the near future, and the inability to perform the essential functions can be reasonably accommodated.
- Presumptive reasonable accommodations:
 - Allowing employee to carry or keep water near, and to drink as needed
 - Allowing employee to take additional restroom breaks, as needed
 - Allowing employee whose work requires standing to sit and vice versa, as needed
 - Allowing employee to take breaks to eat and drink, as needed

ADA v. PWFA Key Differences

	ADA	PWFA
Covered Individual	Qualified individuals (employees and applicants) with disabilities.	Employees and applicants who have known limitations related to pregnancy, childbirth, or related medical conditions.
Medical Documentation	May only ask for medical documentation when disability and/or need for accommodation is not known or obvious, for assessing fitness for duty, or when returning from medical leave.	May only require certification if it is reasonable under the circumstances for the employer as to whether to grant the accommodation.
Knowledge of Limitation	Includes an individual who is perceived by others as having a disability ("regarded as").	Requires that employee or employee's representative has communicated physical or mental condition to employer.

What is the PUMP Act?

- Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act, effective December 29, 2022.
- Expands the FLSA to provide protections for breastfeeding parents with main updates to include:
 - protections for employees who were not previously covered, particularly salaried employees; and
 - time spent expressing breast milk must be considered hours worked if the employee is also working.
- Includes updated DOL wage poster.



PUMP Act requirements:

- Private space, other than a bathroom, that is functional for pumping. Must be shielded from view and intrusion from colleagues and the public.
- Reasonable break time of 20 minutes or less (if non-exempt) and without docking of salary (salaried employees).
 - If working on breaktime, must be paid.
 - If paid breaks provided, must include employees who pump during breaks.



Agenda

- ☐ Pregnancy Discrimination under Federal Law
- ✓ Texas State Law
- ☐ Role of Title IX
- ☐ OCR Enforcement / Litigation



Texas State Law Protections for Pregnant and Parenting Students

- Adds protections for pregnant and parenting students and requires institution to adopt a policy on pregnant and parenting students.
- Institution may not require a pregnant or parenting student to:
 - (1) take a leave of absence or withdraw from the student's degree or certificate program;
 - (2) limit the student's studies;
 - (3) participate in an alternative program;
 - (4) change the student's major, degree, or certificate program; or
 - (5) refrain from joining or cease participating in any course, activity, or program at the institution.
- Requires institution to provide accommodations similar to those provided to students with temporary disability by:
 - (1) excuse the student's absence;
 - (2) allow the student to make up missed assignments or assessments;
 - (3) allow the student additional time for assignments in same manner as students with a temporary medical condition; and
 - (4) provide the student with access to instructional materials and video recordings of lectures for classes to the same extent as any other student with an excused absence.
- Also requires institution to allow student to take a leave of absence and provide early registration for parenting students.

Tex. Educ. Code § 51.982–83

Texas State Law Protections for Pregnant and Parenting Students

- Texas Education Code requires policy on students to identify the “point of contact” for accommodations, and requires institution to designate “a liaison officer for current or incoming students” with children under 18.
- Liaison shall provide students information regarding:
 - (1) resources to access medical and behavioral health coverage and services and public benefit programs;
 - (2) parenting and child care resources;
 - (3) employment assistance;
 - (4) transportation assistance;
 - (5) student academic success strategies; and
 - (6) any other resources developed by the institution to assist the students.

Tex. Educ. Code §§ 51.982, 51.9357

Texas Law re Pregnancy Discrimination in Employment

- Statute makes clear that sex discrimination includes “discrimination because of or on the basis of pregnancy, childbirth, or a related medical condition.”
- “A woman affected by pregnancy, childbirth, or a related medical condition shall be treated for all purposes related to employment, including receipt of a benefit under a fringe benefit program, in the same manner as another individual not affected but similar in the individual's ability or inability to work.”

Tex. Labor Code § 21.106

Texas Law re Right to Express Breast Milk

- Law applies to public employers, including IHEs.
- Law makes it clear that employee has a right to express breast milk at work.
- Employer shall have a policy on expression of breast milk by employees to support practice and “make reasonable accommodations for the needs of employees who express breast milk.”
- Employer shall:
 - (1) provide a reasonable amount of break time for an employee to express breast milk each time the employee has need to express the milk; and
 - (2) provide a place, other than a multiple user bathroom, that is shielded from view and free from intrusion from other employees and the public where the employee can express breast milk.

Tex. Government Code 619

Department of Education Guidance

- Texas has state law similar to Title IX regulations, but all other SEC states rely on the broader Title IX statutes.
- Under the new DOE guidance, schools must:
 - Allow class participation with reasonable accommodations like larger desks;
 - Must excuse absences due to pregnancy;
 - Accept late work;
 - Protect students from pregnancy harassment;
 - Implement a policy against harassment;
 - Have specific grievance procedures for harassment claims;
 - Have at least one employee carrying out procedures.

[Know Your Rights: Pregnant or Parenting? Title IX Protects You From Discrimination At School | U.S. Department of Education](#)

Agenda

- ☐ Pregnancy Discrimination under Federal Law
- ☐ Texas State Law
- ☒ **Role of Title IX**
- ☐ OCR Enforcement / Litigation



Role of Title IX Coordinator

- While Texas state law requires “contact person” or liaison for student, not necessarily the Title IX office or Title IX Coordinator.
 - For example, the contact person at the University of Texas is the Student Parent Liaison in the Title IX Office.
- The 2024 regulations re pregnancy discrimination are not in effect, 2020 regulations include similar requirements.
- However, 2024 regulations’ requirement of mandatory disclosure of pregnancy-related information, break-time for employee lactation, and lactation spaces for students and employees not in effect.
- Assisting with compliance with federal and state law to avoid students making claims to OCR or employees making claims to EEOC.

Role of Title IX Coordinator

- Consider whether complaints regarding pregnancy accommodations are complaints of sex discrimination (although not sexual harassment) under Title IX.
- Consider providing ways for students to have complaints regarding pregnancy / parenting discrimination heard, including the right to challenge a denial of an accommodation request.
 - The University of Texas addresses pregnancy-related discrimination within its broader Title IX and nondiscrimination frameworks but does not have a distinct procedural pathway or classification for non-harassment sex discrimination claims.
 - Texas A&M directs pregnancy-related requests to their Title IX/equity offices but does not have a standalone framework.
 - Alabama provides clear guidance that students can request accommodations through the Title IX office but does not have a clear appeal process.
 - Florida provides reporting and accommodation pathways but does not have a defined right to challenge accommodation denials.

Agenda

- ☐ Pregnancy Discrimination under Federal Law
- ☐ Texas State Laws
- ☐ Role of Title IX
- ☒ **OCR Enforcement / Litigation**



OCR Resources

- “Know Your Rights: Pregnant or Parenting? Title IX Protects You From Discrimination At School”
 - <https://www.ed.gov/laws-and-policy/civil-rights-laws/sex-discrimination/know-your-rights-pregnant-or-parenting-title-ix-protects-you-from-discrimination-at-school> (page last reviewed by OCR Jan. 15, 2025).
- Helpful resource directed to students.
- Explains discrimination and exclusion on the basis of pregnancy and parental status.
- Includes guidance on how schools must handle classes and school activities; excused absences and medical leave; harassment; and policies and procedures.
- Tells students how to file a complaint with OCR.

Case Study: VMI Resolution Letter 2014

- Students at VMI alleged broad Title IX violations which included a pregnancy-specific violation.
- Under VMI rules, female cadets who became pregnant were required to resign or be separated, effectively excluding them from enrollment.
- Pregnancy, as a result, was not treated like a temporary medical condition as required by Title IX.
- OCR investigated and found the policy was in violation of Title IX, which led VMI to enter into a resolution agreement and revise their policies.
- For pregnant cadets, the resolution included a requirement that pregnancy be treated the same as other temporary medical conditions, including leave and return rights, as necessary.

[vmi-letter.doc](#)

OCR Investigation of Hinds Community College (MS) 2024

- OCR investigated complaint filed by student alleging:
 - College discriminated against her by not providing academic adjustments during pregnancy; and
 - College did not respond promptly to her complaint that her instructors and program supervisor subjected her to harassment based on her pregnancy.
- Through Resolution Agreement, College agreed to:
 - (1) review and revise its practices, policies, and procedures for pregnant students;
 - (2) update its website and other areas for disseminating information;
 - (3) train all full-time faculty and relevant staff on the Title IX rights of pregnant students;
 - (4) conduct surveys to assess the effectiveness of trainings;
 - (5) develop a tracking system for pregnancy-related adjustments for students;
 - (6) compile a list of all pregnancy-related requests for adjustments; and
 - (7) reimburse the complainant for tuition and related mandatory costs associated with repeating the final semester of her program.

Source: [Hinds Community College](#)

OCR Investigation of Troy University (AL) 2023

- OCR investigated a complaint by a student who alleged the University did not make reasonable adjustments in response to her pregnancy-related requests and that she received lower or failing grades as a result.
- Through the Resolution Agreement, the University agreed to:
 - (1) review and revise its practices, policies, and procedures for pregnant students;
 - (2) update its website and other information dissemination;
 - (3) train all faculty and those staff involved in providing Title IX resources for pregnant students on the students' rights and the University's obligations under Title IX;
 - (4) assess the effectiveness of that training through a survey;
 - (5) develop a tracking system for requests for pregnancy-related adjustments and the University's responses;
 - (6) compile a list of these requests and responses; and
 - (7) provide individual remedies to the complainant, including removing certain grades from her transcript and reimbursing related documented expenses.

Source: [Troy University \(PDF\)](#)

Doe v. The Pennsylvania State University (M.D. Pa. 2023)

- Former employee of the Nittany Lion Inn (owned by Penn State) alleged she became pregnant after she was sexually assaulted by a co-worker, who then harassed her, demanding she terminate the pregnancy.
- Plaintiff reported harassment and requested to work different shifts than her alleged harasser.
- Manager reduced the number of shifts they worked together and offered to transfer her from dishwashing shifts to housekeeping, but plaintiff quit, saying she felt she was being pushed out.
- Court ruled that a reasonable juror could find that the alleged harassment was severe or pervasive.
- Court permitted claim under Title VII to proceed, finding a question as to whether the manager took sufficient measures to end the alleged harassment, but it granted summary judgment Title IX claim, finding no juror could conclude that the manager was deliberately indifferent.

Questions?





SEC Title IX Meeting

Executive Orders and State Law

Darren G. Gibson, Partner
Michael Best & Friedrich LLP

June 10, 2026



EO 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government



- Defines “sex” to mean biological sex and excludes gender identity from the definition.
- Requires government-issued IDs, including passports, reflect the holder’s sex, as defined by the EO.
- Precludes use of federal funds to promote “gender ideology.”
- Prohibits access to single-sex spaces based on gender identity and prohibits use of federal funds for gender affirming care in federal prisons.
- Order likely to have significant effect on how Dept. of Education interprets and enforces Title IX.
- Order takes the position that the Supreme Court’s *Bostock* decision, which holds that Title VII protections against “sex discrimination” includes discrimination on the basis of sexual orientation and gender identity, does not require gender identity-based access to single-sex spaces.
- Multiple lawsuits regarding EO 14168 still pending.



Trump Administration's Changes to Title IX via 01/25 Dear Colleague Letter



- DCL states the administration will revert back to 2020 regulations, including for pending cases.
- Declines to appeal court decisions holding that the 2024 regulations were unlawful.
- The revised DCL excludes original language stating that Title IX should not be read to include discrimination on the basis of sexual orientation and gender identity within the purview of sex discrimination.
- DCL directs Dept. of Education and OCR to enforce Title IX in accordance with EO 14168.
- Dept. of Education has subsequently rescinded Biden-era Title IX guidance regarding sexual orientation and gender identity.

IX

EO 14201, Keeping Men Out of Women's Sports

- Adopts definitions of male and female in EO 14168.
- Order directs Department of Education to take “all appropriate action” to protect “all-female athletic opportunities and all-female locker rooms” by clearly specifying and clarifying that males cannot compete on female teams.
 - This would preclude transgender athletes who meet EO’s definition of male from competing on female teams.
 - However, EO does not appear to preclude transgender athletes who meet EO’s definition of female from competing on male or female teams.
- NCAA rules modified in response to EO 14201.
 - NCAA allows anyone to participate in male sports, regardless of “sex assigned at birth or gender identity,” subject to medical exception process for banned substances (e.g., testosterone).
 - Only persons who were assigned female at birth may compete on female teams, but trans athletes who are taking testosterone are precluded from such participation.
- Order directs Department of Education and granting agencies to rescind funding to institutions that do not comply with the order.

Recent OCR Enforcement – Smith College

- 5/4/26 OCR announces investigation of Smith College, prominent all-women's college, "for admitting biological men and granting them access to women-only spaces, including dormitories, bathrooms, locker rooms, and athletic teams."
- "Title IX contains a single-sex exception that allows colleges to enroll all-male or all-female student bodies—but the exception applies on the basis of biological sex difference, not subjective gender identity. An all-girls college that enrolls male students professing a female identity would cease to qualify as single sex under Title IX."

[U.S. Department of Education Opens Title IX Investigation into All-Women's Smith College for Admitting Men | U.S. Department of Education](#)

Recent Enforcement – Jefferson County (CO) Public Schools

- 6/3/26 OCR announces warning letter to Jefferson County Public Schools in Colorado for violating Title IX for “by allowing male students to participate in female sports, occupy female bathrooms and locker rooms, and even share overnight accommodations with females based on their ‘gender identity.’”
- “A review of Jefferson County’s athletic rosters found the District allowed male students to occupy roster spots on girls’ sports teams, displacing girls from the athletic programs designed for female students.”
- “Today’s letter of impasse notifies the District that OCR will prepare for impending enforcement, which, following OCR’s regulatory procedures, could ultimately result in termination of the District’s federal education funding.”

[U.S. Department of Education Issues Warning Letter to Jefferson County Public Schools in Colorado as District Refuses to Follow Title IX | U.S. Department of Education](#)

Additional OCR Investigations in 2026 -- Examples

- 4/29/26 Investigation into Stanford for discriminating against students on the basis of race (Title VI).
 - “Stanford’s National Board Resource Center (NBRC) has a program that helps future teachers who “identify as a person of color” receive National Board Certifications.”
- 4/23/26 Investigation into NYC Dept. of Education for Alleged Antisemitic Discrimination (Title VI).
 - “Many reports received by OCR indicate that a group of NYCDOE employees organized a series of teaching seminars focused on “Palestine, Zionism, and Resistance.” ”
- 3/24/26 Investigation into San Jose State University under Title IX
 - “In January, the Department found that SJSU’s policies allowing males to compete in women’s sports and access female-only facilities deny women equal educational opportunities and benefits.”
 - “SJSU has 10 calendar days to come into compliance or face enforcement action, including referral to the U.S. Department of Justice (DOJ) and risk of termination of SJSU’s federal funding.”

EO 14322, Saving College Sports

- Describes current landscape as an “out-of-control, rudderless system,” where donors compete for the best players via “bidding wars,” and where states pass laws “in a chaotic race to the bottom.”
- Claims current system will reduce competition by creating “oligarchy of teams” with greatest resources and siphon resources from non-revenue sports, women’s sports, and Olympic sports.
- Includes directives to preserve and expand opportunities in women’s and non-revenue sports. For schools with athletics budget greater than \$125 million (all SEC schools):
 - “Should provide more scholarship opportunities in non-revenue sports than during the 2024-2025 athletic season and should provide the maximum number of roster spots for non-revenue sports permitted under the applicable collegiate athletic rules.”
- “Any revenue-sharing permitted between universities and collegiate athletes should be designed and implemented in a manner that preserves or expands scholarships and collegiate athletic opportunities in women’s and non-revenue sports.”
 - Notably, the EO does not take the position that revenue-sharing funds should be distributed equitably to male and female student athletes, like the Title IX requirements for distribution of scholarship funds.

EO 14400, Urgent National Action to Save College Sports

- **Regulation through federal funding and procurement:**
 - Institutions may face heightened exposure under federal grant / contract authority based on violations of certain college-athletics rules effective August 1, 2026.
- **NIL Regulation:**
 - Seeks to operationalize core elements of *House*.
 - Prohibits “improper financial activities,” which include “fraudulent NIL schemes” of above-fair market value payments connected to participation and pay-for-play, using federal funds for NIL, and interference with another school’s student-athlete contract.
- **Governing Rules:**
 - Considers violation of rules regarding eligibility, transfers, and revenue sharing as potential basis for action by funding agency.
 - Recommends guidance on age-based restrictions, five-year eligibility rules, no professional athletes, limits on transfers, and medical care.
- **Women’s and Olympic Sports:** Requires “implementation of revenue-sharing between higher education institutions and student-athletes in a manner that preserves or expands scholarships and collegiate athletic opportunities in women’s and Olympic sports.”

State Laws – Examples

State	Title IX-related Laws
Texas	Yes (2019). Addresses mandatory reporting by employees, policy requirements, rules regarding transcript notations, and reporting to THECB.
Louisiana	Yes (2021). Mandatory reporting, defines “power-based violence,” student accommodations and amnesty, inter-campus accountability, and Board of Regents oversight.
Kentucky, Tennessee, Florida	Yes. Includes general non-discrimination requirement similar to Title IX for state funded educational programs.
Numerous states	Many SEC states have passed “divisive concept” or anti-DEI laws that restrict which topics that can be addressed in trainings and/or how particular topics can be addressed. These can intersect with TIX trainings and should be consulted in your state.

Questions?

