



Title IX Training

Presented by: Holly Boyd Wardell
July 23, 2019

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Holly Boyd Wardell



Holly is a Shareholder in our Austin office.

Holly is licensed to practice law in all Texas state courts; the United States District Courts for the Northern, Eastern, Southern, and Western Districts of Texas; the United States Court of Appeals for the Fifth Circuit; and the United States Supreme Court.

She is a member of the Austin Bar Association, National School Boards Association Council of School Attorneys; School Law, Litigation, Administrative and Public Law, and Labor and Employment Law sections of the Texas Bar, Texas Council of School Attorneys, and the Texas Association of Defense Counsel. Holly has also served on the State Bar's Disabilities Issues Committee and the Texas Education Agency's State Supervision Committee & Complaints Management System. Holly graduated cum laude from Texas Wesleyan University in 1992 and earned her Juris Doctorate from The University of Texas School of Law in 1996.

Holly has an impressive litigation background in whistleblower cases and civil rights cases including gender, race, and national origin, and disability discrimination claims. Her work on position statements, motions, and briefs has resulted in numerous victories for school districts at every level conceivable. Additionally, she regularly attends ARD and Section 504 Committee meetings and represents clients at due process hearings.

Holly's outgoing personality, enthusiasm, and thoroughness combine to make her a popular lecturer. She is a frequent guest speaker for school districts, regional education service centers, special education cooperatives, state organizations, and universities on a variety of topics related to school law, including special education, Section 504, education records, sexual harassment, student discipline, and search and seizure. Holly has published numerous articles for state and firm publications on special education and other issues.

Holly's email address is [**hwardell@edlaw.com**](mailto:hwardell@edlaw.com).

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TITLE IX

Holly Boyd Wardell
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TITLE IX

Education Amendments of 1972

ESEA 1965

2

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.

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RELEVANT POLICIES

- **FB (LEGAL) Equal Educational Opportunity**
- **FB (LOCAL) Equal Educational Opportunity**
- **FFH (LEGAL) Freedom from Disc, Har, & Ret**
- **FFH (LOCAL) Freedom from Disc, Har, & Ret**
- **FNE (LEGAL) Pregnant Students**
- **FNE (LOCAL) Pregnant Students**
- **FNG (LEGAL) Student & Parent Complaints**
- **FNG (LOCAL) Student & Parent Complaints**

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RELEVANT POLICIES

- DAA (LEGAL) – Equal Employment Opportunity
- DGBA (LEGAL) – Employee Complaints

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McAllen ISD
108906

EQUAL EDUCATIONAL OPPORTUNITY FB
(LEGAL)

Nondiscrimination A district shall provide equal opportunities to all individuals within its jurisdiction or geographic boundaries. *Education Code 1.002(a)*
No officer or employee of a district shall, when acting or purporting

A district shall provide equal opportunities to all individuals within its jurisdiction or geographic boundaries. *Education Code 1.002(a)*
No officer or employee of a district shall, when acting or purporting

A district may not deny services to any individual eligible to participate in its special education program, but it shall provide individuals with disabilities special educational services as authorized by law. *Education Code 1.002(b)*

104.01 (Section 504), 105.71 (Title IX)

DATE ISSUED: 10/13/2017
UPDATE: 109
FB(LEGAL)-P 1 of 8

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McAllen ISD
108906

EQUAL EDUCATIONAL OPPORTUNITY

FB
(EXHIBIT)

The District designates the following person to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended, for students:


Name: John Wilde
Position: Director for Student Support Services
Address: 2000 North 23rd Street, McAllen, TX 78501
Telephone: (956) 618-6031

The District designates the following person to coordinate its efforts to comply with Title II of the Americans with Disabilities Act of 1990, as amended, which incorporates and expands upon the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, for students:


Name: John Wilde
Position: Director for Student Support Services
Address: 2000 North 23rd Street, McAllen, TX 78501
Telephone: (956) 618-6031

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Types of Title IX Complaints




Athletics



Sexual Harassment

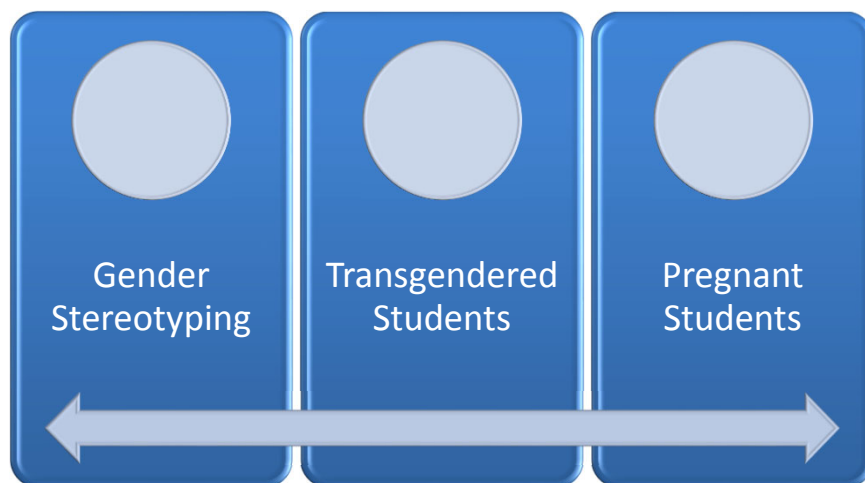


Bullying



8

Types of Title IX Complaints



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Arkansas, Louisiana, Mississippi, Texas

Office for Civil Rights, Dallas Office

U.S. Department of Education

1999 Bryan St., Suite 1620

Dallas, Texas 75201-6810

Telephone: 214-661-9600

Fax: 214-661-9587

E-mail: OCR.Dallas@ed.gov



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GENDER EQUITY IN ATHLETICS

- Participation
- Comparable Benefits,
Equipment, Facilities

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OPPORTUNITIES FOR PARTICIPATION

ATHLETICS

12

Houston ISD

- OCR complaint that district discriminated against female students by failing to effectively accommodate their athletic interests and abilities.
- OCR examined the district's athletic program in light of the "three-part test."

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3-Part Test

1. Proportionate opportunities for participation for both males and females;
2. District had demonstrated a history and continuing practice of expanding its athletic programs for the underrepresented sex; or
3. District had demonstrated that members of the underrepresented sex were fully and effectively accommodated by existing programs.

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Houston ISD

Should HISD satisfy any prong of the test, it would demonstrate compliance with Title IX with respect to the availability of equal opportunities to participate in athletic programs.

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Houston ISD

- Only one campus had more girls than boys participating in athletics
- Remaining campus had a sum total of 1152 more “opportunities” for boys than girls (a 12% disparity)
- Unable to demonstrate a history of program expansion
- Had not surveyed to determine if any unmet interest by female students

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STUDENT ATHLETIC INTEREST SURVEY

Purpose: This survey is being conducted for evaluation, research, and planning purposes and may be used along with other information to determine whether the _____ Independent School District (_____) is effectively accommodating the athletic interests and abilities of its students, including whether to add additional teams.

Confidentiality: All responses to this survey as well as any personally identifiable information you provide will be kept confidential. Aggregate survey information will be shared with athletic directors, coaches, and other staff, as appropriate.


Questions: If you have any questions regarding this survey, please contact the _____ Title IX Coordinator, _____, at _____ or _____, TX.

1. Have a purpose that benefits
2. Is not done exclusively for participants
3. Other: _____


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Resolution:



Agreed to conduct assessments regarding unmet interests and abilities



If assessments found unmet interests, the district agreed to take steps to increase athletic opportunities for female students

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Resolution:

Increased opportunities could be in the form of

- New sports teams for girls
- Additional levels of existing teams
- Increased squad size

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Resolution:



Additionally, district had to develop, implement, and publicize a procedure for students, coaches, and parents to use in requesting new sports or levels of sports.



OCR monitoring of implementation of the agreement.

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COMPARABLE BENEFITS

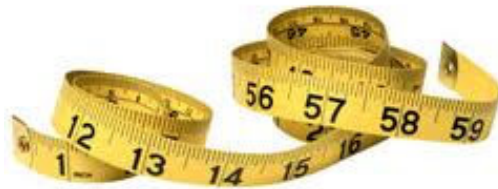
ATHLETICS

21



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- On site investigation
- 250 students
- Limited to high school
- 3 days
- 3 investigators, including one attorney
- Notebooks
- Cameras
- Measuring tape



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Resolution

- Renovations to softball complex
 - Compliance with UIL regulations
 - Dug-outs
 - Batting cages
 - Distance to restroom
- Improved quality and number of uniforms for girls softball
- Means to accommodate interest and abilities of underrepresented sex

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<p>STUDENT WELFARE FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION</p> <p style="text-align: right;">FFH (LEGAL)</p> <p>A district may develop and implement a sexual harassment policy to be included in the district improvement plan. A district shall adopt and implement a dating violence policy to be included in the district improvement plan. <i>Education Code 37.083, 37.0831</i> [See BQ]</p> <p>Sexual abuse of a student by an employee, when there is a connection between the physical sexual activity and the employee's duties and obligations as a district employee, violates a student's constitutional right to bodily integrity. Sexual abuse may include</p>	
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<p>EMPLOYEE- STUDENT SEXUAL HARASSMENT</p> <p>A district official who has authority to address alleged harassment by employees on the district's behalf shall take corrective measures to address the harassment or abuse. <i>Gebser v. Lago Vista ISD, 118 S.Ct. 1989 524 U.S. 274 (1998); Doe v. Taylor ISD, 15 F.3d 443 (5th Cir. 1994)</i></p> <p>STUDENT-STUDENT SEXUAL HARASSMENT</p> <p>A district must reasonably respond to known student-on-student harassment where the harasser is under the district's disciplinary authority. <i>Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)</i></p>	

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<p>Sexual harassment of students may constitute discrimination on the basis of sex in violation of Title IX. <i>20 U.S.C. 1681; 34 CFR 106.11; Franklin v. Gwinnett County Schools, 503 U.S. 60 (1992)</i> [See FB regarding Title IX]</p>	
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HOW TO RESPOND

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STUDENT WELFARE FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION	FFH (LOCAL)
<p>Note: This policy addresses discrimination, harassment, and retaliation involving District students. For provisions regarding discrimination, harassment, and retaliation involving District employees, see DIA. For reporting requirements related to child abuse and neglect, see FFG. Note that FFH shall be used in conjunction with FFI (bullying) for certain prohibited conduct.</p>	
STATEMENT OF NONDISCRIMINATION	The District prohibits discrimination, including harassment, against any student on the basis of race, color, religion, gender, national origin, disability, or any other basis prohibited by law. The District prohibits dating violence, as defined by this policy. Retaliation against anyone involved in the process set out in this policy is a violation of District policy.
DISCRIMINATION	Discrimination against a student is defined as conduct directed at a student on the basis of race, color, religion, gender, national origin, disability, or any other basis prohibited by law, that adversely affects the student.
PROHIBITED HARASSMENT	Prohibited harassment of a student is defined as physical, verbal, or nonverbal conduct based on a student's race, color, religion, gender, national origin, disability, or any other basis prohibited by law that is so severe, persistent, or pervasive that the conduct: <ol style="list-style-type: none">1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or3. Otherwise adversely affects the student's educational opportunities. Prohibited harassment includes dating violence as defined by this policy.
SEXUAL HARASSMENT BY AN EMPLOYEE	Sexual harassment of a student by a District employee includes both welcome and unwelcome sexual advances, requests for sexual favors, sexually motivated physical, verbal, or nonverbal conduct, or other conduct or communication of a sexual nature when: <ol style="list-style-type: none">1. A District employee causes the student to believe that the student must submit to the conduct in order to participate in a school program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct, or
DATE ISSUED: 6/15/2012 LDU 2012.01 FFHLOCAL.X	1 of 6

FFH (LOCAL)

- Reporting Procedures
- Title IX Coordinator
- Alternative Reporting Procedures
- Timely Reporting
- Notice to Parents
- Notice to Other Officials

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<p style="text-align: center;">STUDENT WELFARE FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION</p> <p style="text-align: right;">FFH (LOCAL)</p> <hr/> <p>Note: This policy addresses discrimination, harassment, and retaliation involving District students. For provisions regarding discrimination, harassment, and retaliation involving District employees, see DIA. For reporting requirements related to child abuse and neglect, see FFG. Note that FFH shall be used in conjunction with FFI (bullying) for certain prohibited conduct.</p> <hr/> <p>STATEMENT OF NONDISCRIMINATION The District prohibits discrimination, including harassment, against any student on the basis of race, color, religion, gender, national origin, disability, or any other basis prohibited by law. The District prohibits dating violence, as defined by this policy. Retaliation against anyone involved in the process set out in this policy is a violation of District policy.</p> <p>DISCRIMINATION Discrimination against a student is defined as conduct directed at a student on the basis of race, color, religion, gender, national origin, disability, or any other basis prohibited by law, that adversely affects the student.</p> <p>PROHIBITED HARASSMENT Prohibited harassment of a student is defined as physical, verbal, or nonverbal conduct based on a student's race, color, religion, gender, national origin, disability, or any other basis prohibited by law that is so severe, persistent, or pervasive that the conduct:</p> <ol style="list-style-type: none"> 1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment; 2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or 3. Otherwise adversely affects the student's educational opportunities. <p>Prohibited harassment includes dating violence as defined by this policy.</p> <p>SEXUAL HARASSMENT BY AN EMPLOYEE Sexual harassment of a student by a District employee includes both welcome and unwelcome sexual advances, requests for sexual favors, sexually motivated physical, verbal, or nonverbal conduct, or other conduct or communication of a sexual nature when:</p> <ol style="list-style-type: none"> 1. A District employee causes the student to believe that the student must submit to the conduct in order to participate in a school program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct; or <p style="font-size: small;">DATE ISSUED: 6/15/2012 LDU 2012.01 FFH(LOCAL)-X</p> <p style="text-align: right; font-size: small;">1 of 6</p>	<h2 style="margin: 0;">FFH (LOCAL)</h2> <ul style="list-style-type: none"> • Investigation of the Report • Concluding the Investigation • Appropriate Action • Confidentiality • Appeal • Records Retention • Access to Policy
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RECORDS RETENTION

The District shall retain records of the complaint and investigation in accordance with FB(LOCAL) and CPC(LOCAL).

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Copies of reports alleging discrimination, prohibited harassment, including sexual harassment, and retaliation; investigation reports; and related records shall be maintained by the District for a period of at least three years. If the person alleged to have experienced discrimination, prohibited harassment, or retaliation was a minor, the records shall be maintained until the person reaches the age of 21.

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ACCESS TO POLICY

Information regarding this policy and any related procedures shall be included annually in the employee and student handbooks. The policy and procedures shall be posted on the District's website; a copy may also be obtained at each campus and the District's administrative offices.

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GENDER STEREOTYPES

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Anoka-Hennepin School Dist., MN

Complaint: *whether students were being harassed on the basis of sex, including harassment based on not conforming to gender stereotypes*

nonconformance with gender stereotypes

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Anoka-Hennepin School Dist., MN

Female students: *manly, guy, he-she*

Male students: *girl, gay-boy, you're a guy, act like it*

Female student: *go kill herself*

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Anoka-Hennepin School Dist., MN

Some students reported that they had been threatened and subjected to physical assaults because of their nonconformity to gender stereotypes.

- physical and mental health problems
- stopped attending school for periods, left district, or dropped out

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Anoka-Hennepin School Dist., MN

District entered into consent decree with OCR and the Justice Department:

1. Review and improve its policies and procedures concerning harassment to address sex-based harassment, including harassment based on gender stereotypes, by working with an Equity Consultant

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Anoka-Hennepin School Dist., MN

2. Hire or appoint a Title IX and Equity Coordinator to ensure proper implementation of the District's harassment policies and procedures;
3. Conduct training of all District faculty, staff, and students on policies and procedures for reporting and responding to harassment

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Anoka-Hennepin School Dist., MN

4. Hire a mental health consultant to assist students who are subject to harassment;
5. Create an anti-bullying/anti-harassment task force;
6. Administer an anti-bullying survey once per year;
7. Identify harassment "hot spots" and assign personnel to monitor these trouble areas;

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Anoka-Hennepin School Dist., MN

8. Ensure that all of its middle and high schools have a peer leadership program addressing harassment;
9. Convene annual meetings between the Superintendent and students at every middle and high school in the district; and
10. Provide compliance reports to DOJ and OCR each trimester during the 5 year term of the consent decree.

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free speech v. title ix

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free speech v. title ix

B.H. v. Easton Area Sch. Dist., 725 F.3d 293 (3d Cir. 2013)

- First Amendment Case
- Title IX “rights of others” – D raised as defense
- Allowing students to wear the “I [heart] boobies” bracelets = likelihood of increase in student-to-student sexual harassment

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free speech v. title ix

B.H. v. Easton Area Sch. Dist., 725 F.3d 293 (3d Cir. 2013)

- Court not convinced.
- District does not explain why the bracelets would breed an environment of pervasive and severe harassment.

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BOGGLING

BULLYING



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BULLYING BY OPPOSITE GENDER INSUFFICIENT FOR TITLE IX CLAIM

Williams-Grant v. Arlington ISD, 2012 WL
5871595 (N.D. Tex. Nov. 19, 2012)

- Jasmine was mean to Travon
- Complaint: “The bully (sic) has got so bad that Travon Talks about taking his life.”

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BULLYING BY OPPOSITE GENDER INSUFFICIENT FOR TITLE IX CLAIM

Court: There is no allegation that, while the person allegedly bullied Travon was female, Travon was subjected to anything by reason of his gender. No allegation is made in the complaint that, as cruel as Jasmine's comments to Travon might have been, any of her comments were prompted by the fact that Travon was a male.

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SANCHES v. CARROLLTON-FARMERS BRANCH ISD (2010)

Parent claimed that daughter was sexually harassed by another female student

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- 1) declaring she was in the presence of a “ho”;
- 2) circulating a rumor that the plaintiff had a hickey on her breast;
- 3) a confrontation in the hall where the Senior cheerleader alleged bragged that she was having sex with plaintiff’s now-boyfriend;
- 4) the Senior cheerleader’s touching the boyfriend’s rear end; and
- 5) the Senior cheerleader’s allegedly starting a rumor that she, the Senior cheerleader, was pregnant by plaintiff’s boyfriend.

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COURT:

Even if allegations constituted sexual harassment, district responded by conducting investigation into each allegation and disciplining the alleged harasser in the one instance where they were able to substantiate a claim.

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Sanches v. Carrollton-Farmers Branch ISD, 647
F.3d 156 (5th Cir. 2011)

- District court decision: not saying events rose to the level of sexual harassment, but district not deliberately indifferent
- Fifth circuit: affirmed

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Court: This is nothing more than a dispute, fueled by a disgruntled cheerleader mom, over whether her daughter should have made the squad. It is a petty squabble, masquerading as a civil rights matter, that has no place in federal court or any other court.

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FEDERAL REGULATIONS

- 34 C.F.R. 106.31
- Prohibit schools from excluding a person on the basis of sex from extracurricular programs and activities.
- Nothing limits this to the female gender.



57

**What if a boy wants to tryout
for our dance squad?**

LET HIM*



58

****D.M. v. Minnesota State High School League*,
2018 WL 4656275 (D. MN 2018).**

- Male students brought action alleging that the MSHSL rule that high school competitive dance team was a girls-only sport violated equal protection and Title IX.
- Male students were denied an injunction – unlikely to succeed on the merits.



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60



Compete on Athletic Team of Sex Corresponding to Birth Certificate

61

***Parents for Privacy v. Dallas
Sch. Dist. No. 2, 326
F.Supp.3d 1075 (D. OR 2018).***

High school students and their parents brought action against USDOE alleging that high school's policy of allowing transgender students to use restrooms, locker rooms, and showers that matched their gender identity, rather than their biological sex assigned at birth, violated the Due Process Clause, Title IX, and the First Amendment's Free Exercise Clause, and Oregon law.



62

*Parents for Privacy v. Dallas
Sch. Dist. No. 2, 326
F.Supp.3d 1075 (D. OR 2018).*

Students **did not have a
fundamental privacy right**
under the Due Process Clause
to not share restrooms, locker
rooms, and showers with
transgender students whose
biological sex was different
than theirs...



63



OTHER RELEVANT CASES

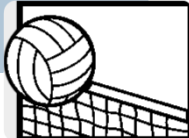
64



65

BIEDIGER v. QUINNIPIAC UNIV. (2010)

- Volleyball players and coach sued university for dismantling the volleyball team, allegedly to use the funds for a cheerleading squad
- Cheerleaders not athletes at this school in NCAA for Title IX purposes.



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66

Jane Doe v. Georgetown County Sch. (D. S.C. 2015)



- Saggy boobs
- Sexual harassment?
- Court: No, not sufficiently severe and pervasive to rise to level of T9 violation

67

Ollier v. Sweetwater Union High School, (SD Ca 2014)



- Female high school athletes
- T9 – unequal treatment and benefits by athletic program
- Lack of publicity and promotional support, including use of cheerleaders, band, and pep squad
- Permanent injunction – district to implement systemic plan to address areas of noncompliance

68

Arceneaux v. Assumption Parish Sch. Bd., 733 FedAppx 175 (5th Cir. May 17, 2018)



- Female cheerleader
- On squad Freshman, Sophomore, Junior
- Junior year removed from squad for posing for picture in uniform, with skirt raised
- Picture appeared on a publicly viewable social media account (Snapchat)
- Removal from squad meant she could not try out for Senior year

69

Arceneaux v. Assumption Parish Sch. Bd., 733 FedAppx 175 (5th Cir. May 17, 2018)



- Sued under Title IX claiming gender discrimination
- Claimed cheer constitution as harsher than athletic code of conduct
- “any unacceptable behavior while in uniform or at a school function”
- Claim dismissed – not based on gender

70



Higgins v. Saavedra

2018 WL 327241 (D. NM. 2018)

*Motion to Dismiss – Facts as Alleged by Plaintiff

71

What happens at camp...

- B.P. = cheerleader
- Parents allowed her to go to camp “on the condition that B.P. stay in the same room as the head varsity cheerleading coach”
- Coach’s boyfriend came
- B.P. moved to different room with 2 other girls and a “chaperone”

*chaperone was 17-year-old who graduated 2 months prior to camp.

72



What happens at camp...



- One girl put a phone over the shower curtain and took pictures of B.P.
- Other girl then pulled the shower curtain away and videotaped B.P., “ who was naked, scared, and defenseless.”
- They then “made the contemptible decision to post the video of B.P. on a social media app and show it to other teammates...”

73



What happens at camp...



TEAMMATES

- “she doesn’t shave,”
- “who could want to have sex with her,”
- “her body aint shit,” and
- “didn’t know girls still had hair on their vagina.”

74



What happens at camp...



Mortified, B.P. went to her cheerleading coach for help. Rather than help the child and discipline the perpetrators of a crime, the coach turned on B.P. The coach prevented B.P. from telling hotel security, refused to cooperate with the eventual police investigation, forced B.P. to apologize to the entire squad for ruining the weekend, ostracized her from squad activities, and ultimately demoted her from her squad

75



What happens at camp...



Coach Saavedra's response

That same evening, “B.P. went to Coach Saavedra’s hotel room to discuss the incident.” (*Id.* ¶ 29.) Inexplicably, Coach Saavedra instructed B.P. to apologize to her teammates “for overreacting to a joke.” (*Id.* ¶ 30.) Coach Saavedra told B.P. that she would not discipline the Squad members, because she did not want to ruin their trip. (*Id.* ¶ 31.) In fact, Coach Saavedra threatened to punish B.P. “by making her run during practice if B.P. ruined the trip for” the Squad. (*Id.* ¶

76



What happens at camp...



Coach Saavedra told B.P. that the “incident was no big deal because” one of the two girls who had perpetrated the incident “had previously taken photos and videos of another teammate” who was using the toilet, “and that teammate had not complained.” (*Id.* ¶¶ 33, 51.)

77



What happens at camp...



Later that day, Coach Saavedra excluded B.P. from a WMHS Varsity Cheerleading Squad photo.

78



What happens after camp...

*3 In the weeks following the July 25, 2015 incident, Coach Saavedra demoted B.P. from her “flier” position on the varsity squad and “blamed B.P. for [a] two-week suspension of practices in front of the entire team....” (*Id.* ¶ 44.) Coach Saavedra refused to coach B.P. and “continued to exclude her from team activities, including a team meeting with” Athletic Director Schroer on August 10, 2015. (*Id.* ¶¶ 44, 131(1).)

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What happens after camp...

Harassment from Squad members

B.P. continued to experience “pervasive sexual harassment, distress and intimidation by her former teammates....” (*See id.* ¶¶ 54, 58(c).) The Amended Complaint details these examples of the harassment: (1) “an incident on October 5, 2015, when B.P. was followed around campus by a former teammate involved in the July 25th incident and that teammate’s mother” (*see id.* ¶ 69); (2) former teammates followed B.P. around campus and laughed at her (*id.* ¶ 70); and (3) three of the original seven teammates who “constantly made comments about” both B.P. and one of her friends, calling them “bitch friend” and “whore” (*id.* ¶ 73). Both Squad members and coaches “so severely taunted and ostracized” B.P. “that she was

80



Higgins v. Saavedra

2018 WL 327241 (D. NM. 2018)

*Motion to Dismiss – Facts as Alleged by Plaintiff

Title IX harassment claim dismissed, but retaliation claim was not.

81

**Can we remove a
student from an activity
or class for becoming
pregnant?**

No!

82

- **Violates Title IX**
- **OCR: treat like temporary disability (accommodations)**
- **Cannot penalize for absences**

83

Can require medical certification if district requires same for *“all students for other physical or emotional conditions requiring the attention of a physician.”*



84

STUDENT RIGHTS AND RESPONSIBILITIES PREGNANT STUDENTS		FNE (LEGAL)
TITLE IX	The District shall not discriminate against any student or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of the student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the District's program or activity. [See FB]	
SEPARATE PROGRAM	A district that operates a separate, voluntary program or activity for pregnant students shall ensure that the separate portion is comparable to that offered to nonpregnant students.	
LEAVE OF ABSENCE	<p>If the District does not maintain a leave policy for its students, or if a student does not otherwise qualify for leave under such a policy, the District shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long as the student's physician deems medically necessary.</p> <p>At the end of the leave, the District shall reinstate the student to the status she held when the leave began.</p> <p>20 U.S.C. 1681; 34 CFR 106.40(b)</p>	

85

STUDENT RIGHTS AND RESPONSIBILITIES PREGNANT STUDENTS		FNE (LEGAL)
MEDICAL CERTIFICATION	The District may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such certification is required of all students for other physical or emotional conditions requiring the attention of a physician.	
SEPARATE PROGRAM	A district that operates a separate, voluntary program or activity for pregnant students shall ensure that the separate portion is comparable to that offered to nonpregnant students.	
LEAVE OF ABSENCE	<p>If the District does not maintain a leave policy for its students, or if a student does not otherwise qualify for leave under such a policy, the District shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long as the student's physician deems medically necessary.</p> <p>At the end of the leave, the District shall reinstate the student to the status she held when the leave began.</p> <p>20 U.S.C. 1681; 34 CFR 106.40(b)</p>	

86

STUDENT RIGHTS AND RESPONSIBILITIES PREGNANT STUDENTS		FNE (LEGAL)
TITLE IX	The District shall not discriminate against any student or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of the student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the District's program or activity. (See	
SEPARATE PROGRAM	A district that operates a separate, voluntary program or activity for pregnant students shall ensure that the separate portion is comparable to that offered to nonpregnant students.	
SEPARATE PROGRAM	physical or emotional conditions requiring the attention of a physician. A district that operates a separate, voluntary program or activity for pregnant students shall ensure that the separate portion is comparable to that offered to nonpregnant students.	
LEAVE OF ABSENCE	If the District does not maintain a leave policy for its students, or if a student does not otherwise qualify for leave under such a policy, the District shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long as the student's physician deems medically necessary. At the end of the leave, the District shall reinstate the student to the status she held when the leave began. <i>20 U.S.C. 1681; 34 CFR 106.40(b)</i>	

87

STUDENT RIGHTS AND RESPONSIBILITIES PREGNANT STUDENTS		FNE (LEGAL)
TITLE IX	The District shall not discriminate against any student or exclude any student from its education program or activity, including any	
LEAVE OF ABSENCE	If the District does not maintain a leave policy for its students, or if a student does not otherwise qualify for leave under such a policy, the District shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long as the student's physician deems medically necessary. At the end of the leave, the District shall reinstate the student to the status she held when the leave began. <i>20 U.S.C. 1681; 34 CFR 106.40(b)</i>	
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STUDENT RIGHTS AND RESPONSIBILITIES
PREGNANT STUDENTS

FNE
(LOCAL)

Pregnant students have the right to continue their education during pregnancy [see FB] and may choose to exercise that right by:

1. Remaining in the regular school program.
2. Participating in any other special program the District may provide for pregnant students. [See EHBC and EHBD]

themselves of this option are exempt from compulsory attendance during the period certified by the physician as necessary for the leave of absence.

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STUDENT RIGHTS AND RESPONSIBILITIES
PREGNANT STUDENTS

FNE
(LOCAL)

The student may also choose to request a leave of absence. Such request shall be accompanied by a licensed physician's certification that the leave is a medical necessity. Students who avail themselves of this option are exempt from compulsory attendance during the period certified by the physician as necessary for the leave of absence.

themselves of this option are exempt from compulsory attendance during the period certified by the physician as necessary for the leave of absence.

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STUDENT RIGHTS AND RESPONSIBILITIES
STUDENT AND PARENT COMPLAINTS/GRIEVANCES

FNG
(LOCAL)

STUDENT RIGHTS AND RESPONSIBILITIES
STUDENT AND PARENT COMPLAINTS/GRIEVANCES

FNG
(LOCAL)

accordance with FFH.

3. Complaints concerning retaliation related to discrimination and harassment shall be submitted in accordance with FFH.
4. Complaints concerning bullying or retaliation related to bullying shall be submitted in accordance with FFI.
5. Complaints concerning loss of credit on the basis of attendance shall be submitted in accordance with FFC.
6. Complaints concerning removal to a disciplinary alternative education program shall be submitted in accordance with FOD and the Student Code of Conduct.
7. Complaints concerning expulsion shall be submitted in accordance with FOD and the Student Code of Conduct.
8. Complaints concerning any final decisions of the gifted and talented selection committee regarding selection for or exit from the gifted program shall be submitted in accordance with EHBB.
9. Complaints concerning identification, evaluation, or educational placement of a student with a disability within the scope of Section 504 shall be submitted in accordance with FE and the procedural safeguards handbook.
10. Complaints concerning identification, evaluation, educational placement, or discipline of a student with a disability within the scope of the Individuals with Disabilities Education Act shall be submitted in accordance with EH&AC, FOF, and the procedural safeguards handbook provided to parents of all students referred to special education.
11. Complaints concerning instructional materials shall be submitted in accordance with EPA.
12. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with O&E.

DATE ISSUED: 9/24/2012
UPDATE 95
FNG(LOCAL)-A

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FNG
(LOCAL)

STUDENT RIGHTS AND RESPONSIBILITIES
STUDENT AND PARENT COMPLAINTS/GRIEVANCES

STUDENT RIGHTS AND RESPONSIBILITIES
STUDENT AND PARENT COMPLAINTS/GRIEVANCES

FNG
(LOCAL)

Student or parent complaints shall be filed in accordance with this policy, except as provided below:

1. Complaints alleging discrimination or harassment based on race, color, gender, national origin, disability, or religion shall be submitted in accordance with FFH.
2. Complaints concerning dating violence shall be submitted in accordance with FFH.
3. Complaints concerning retaliation related to discrimination and harassment shall be submitted in accordance with FFH.
4. Complaints concerning bullying or retaliation related to bullying shall be submitted in accordance with FFI.

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FNG(LOCAL)-A

with O&E.

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FNG
(LOCAL)

STUDENT RIGHTS AND RESPONSIBILITIES FNG
STUDENT AND PARENT COMPLAINTS/GRIEVANCES (LOCAL)

COMPLAINTS In this policy, the terms "complaint" and "grievance" shall have the same meaning.

OTHER COMPLAINT PROCESSES Student or parent complaints shall be filed in accordance with this policy, except as provided below:

1. Complaints alleging discrimination or harassment based on race, color, gender, national origin, disability, or religion shall be submitted in accordance with FFH.
2. Complaints concerning dating violence shall be submitted in accordance with PEC.
3. Complaints concerning removal to a disciplinary alternative education program shall be submitted in accordance with FOC and the Student Code of Conduct.
4. Complaints concerning expulsion shall be submitted in accordance with FOC and the Student Code of Conduct.
5. Complaints concerning any final decisions of the gifted and talented selection committee regarding selection for or exit from the gifted program shall be submitted in accordance with EMBB.
6. Complaints concerning identification, evaluation, or educational placement of a student with a disability within the scope of Section 504 shall be submitted in accordance with FB and the procedural safeguards handbook.
7. Complaints concerning identification, evaluation, educational placement, or discipline of a student with a disability within the scope of the Individuals with Disabilities Education Act shall be submitted in accordance with EMBAC, FOF, and the procedural safeguards handbook provided to parents of all students referred to special education.
8. Complaints concerning instructional materials shall be submitted in accordance with EPA.
9. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with CNE.

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NOTICE TO STUDENTS AND PARENTS The District shall inform students and parents of this policy.

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FNG
(LOCAL)

STUDENT RIGHTS AND RESPONSIBILITIES FNG
STUDENT AND PARENT COMPLAINTS/GRIEVANCES (LOCAL)

COMPLAINTS In this policy, the terms "complaint" and "grievance" shall have the same meaning.

OTHER COMPLAINT PROCESSES Student or parent complaints shall be filed in accordance with this policy, except as provided below:

1. Complaints alleging discrimination or harassment based on race, color, gender, national origin, disability, or religion shall be submitted in accordance with FFH.
2. Complaints concerning dating violence shall be submitted in accordance with FFH.
3. Complaints concerning retaliation related to discrimination and harassment shall be submitted in accordance with FFH.
4. Complaints concerning bullying or retaliation related to bullying shall be submitted in accordance with FFH.
5. Complaints concerning loss of credit on the basis of attendance shall be submitted in accordance with PEC.
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9. Complaints concerning identification, evaluation, or educational placement of a student with a disability within the scope of Section 504 shall be submitted in accordance with FB and the procedural safeguards handbook.
10. Complaints concerning identification, evaluation, educational placement, or discipline of a student with a disability within the scope of the Individuals with Disabilities Education Act shall be submitted in accordance with EMBAC, FOF, and the procedural safeguards handbook provided to parents of all students referred to special education.
11. Complaints concerning instructional materials shall be submitted in accordance with EPA.
12. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with CNE.

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GUIDING PRINCIPLES

INFORMAL PROCESS

FORMAL PROCESS

FREEDOM FROM RETALIATION

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FNG
(LOCAL)

STUDENT RIGHTS AND RESPONSIBILITIES
STUDENT AND PARENT COMPLAINTS/GRIEVANCES

FNG
(LOCAL)

COMPLAINTS In this policy, the terms "complaint" and "grievance" shall have the same meaning.

OTHER COMPLAINT PROCESSES Student or parent complaints shall be filed in accordance with this policy, except as provided below:

1. Complaints alleging discrimination or harassment based on sexual orientation, gender identity, or gender expression

Complaints under this policy shall be submitted in writing on a form provided by the District.

Copies of any documents that support the complaint should be attached to the complaint form. If the student or parent does not have copies of these documents, copies may be presented at the Level One conference. After the Level One conference, no new documents may be submitted by the student or parent unless the student or parent did not know the documents existed before the Level One conference.

sexual safeguards handbook provided to parents of all students referred to special education.

A complaint form that is incomplete in any material aspect may be dismissed, but may be refiled with all the required information if the refile is within the designated time for filing a complaint.

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FNG
(LOCAL)

LEVEL ONE

Complaint forms must be filed:

1. Within 15 days of the date the student or parent first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance; and
2. With the lowest level administrator who has the authority to remedy the alleged problem.

In most circumstances, students and parents shall file Level One complaints with the campus principal.

If the only administrator who has authority to remedy the alleged problem is the Superintendent or designee, the complaint may begin at Level Two following the procedure, including deadlines, for filing the complaint form at Level One.

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LEVEL ONE

FNG
(LOCAL)

If the complaint is not filed with the appropriate administrator, the receiving administrator must note the date and time the complaint form was received and immediately forward the complaint form to the appropriate administrator.

The appropriate administrator shall investigate as necessary and hold a conference with the student or parent within ten days after receipt of the written complaint. The administrator may set reasonable time limits for the conference.

The administrator shall provide the student or parent a written response within ten days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the administrator may consider information provided at the Level One conference and any other relevant documents or information the administrator believes will help resolve the complaint.

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(LOCAL)

- **Level I**
- **Level II**
- **Level III**

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