Title IX
History and Foundations

Gadsden Independent Schools
Administrator Training
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Today's Agenda

- Title IX Basics: what is it? Who is covered?
- Enforcement of Title IX
- History of Title IX case law
- Title IX and transgender athletes
- Title IX impact
- Questions?

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Title IX

Title IX of the Education Amendments Act of 1972. **Title IX** provides: 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.

https://www.pbs.org/video/makers-women-who-make-america-title-ix/

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Scope of Title IX

- Applies to institutions receiving federal financial assistance from ED, including state and local educational agencies.
- Approximately 16,500 local school districts, 7,000 postsecondary institutions, as well as charter schools, for-profit schools, libraries, and museums.
    - Also included are vocational rehabilitation agencies and education agencies of 50 states, the District of Columbia, and territories and possessions of the United States.

Scope of Title IX cont.

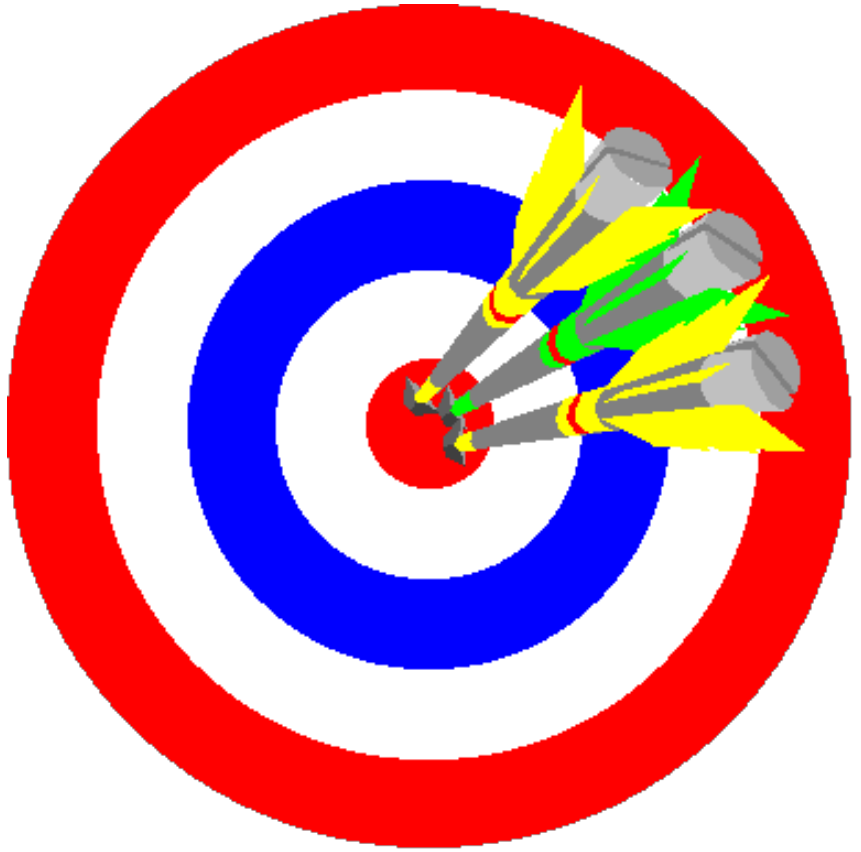
Title IX obligations apply to:

- recruitment, admissions, and counseling;
- financial assistance;
- athletics;
- sex-based harassment;
- treatment of pregnant and parenting students;
- discipline;
- single-sex education;
  and employment.

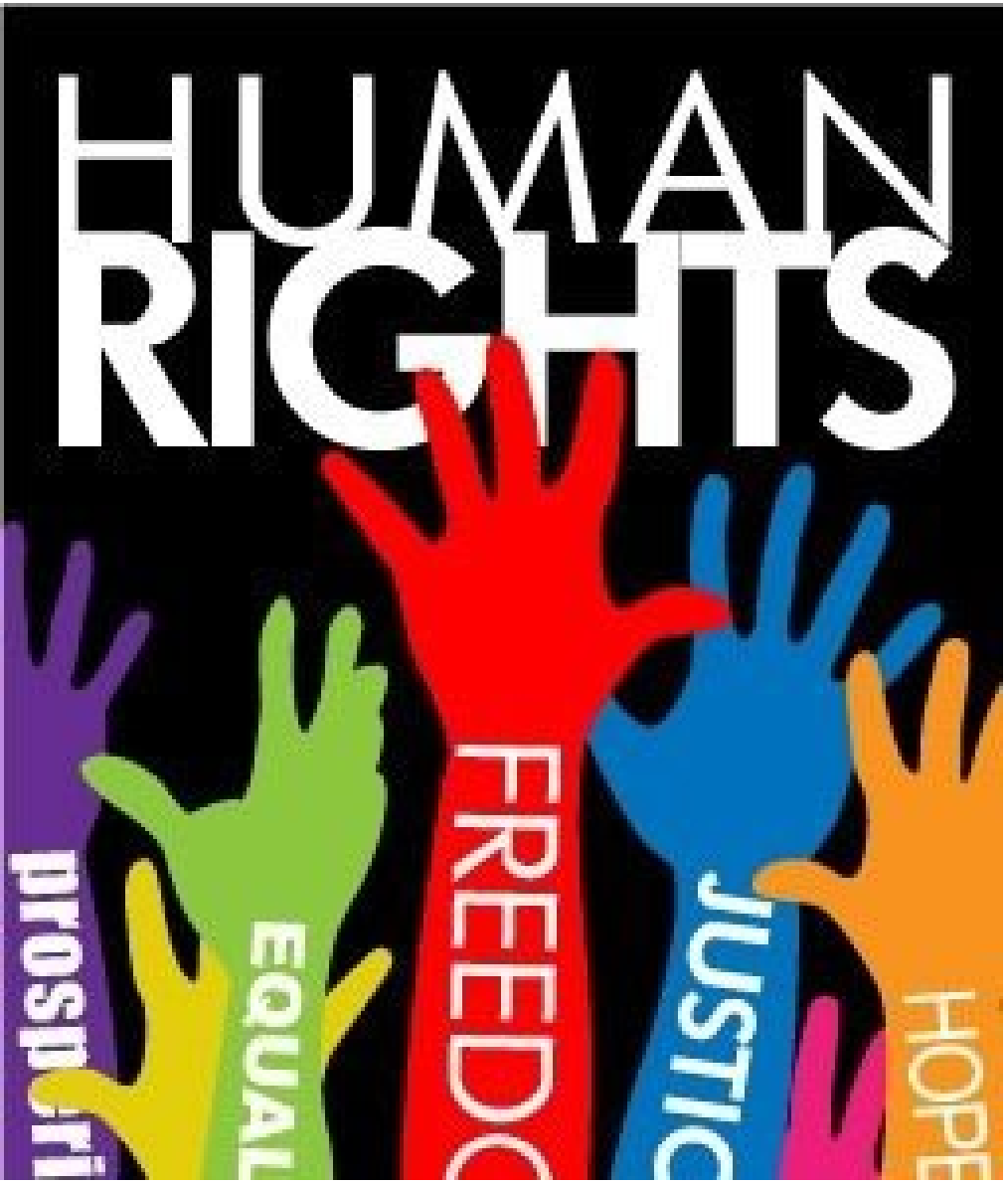


Who enforces Title IX?

- Title IX is a civil rights law and falls under the U.S. Department of Justice.
- DOJ enforces laws to ensure equal access to education, as well as the Equal Protection Clause of the 14th Amendment.
- DOJ coordinates enforcement of Title IX across agencies to include the Department of Education and Office of Civil Rights.



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History of Title IX

1964 Civil Rights Act

prohibits discrimination on the basis of race, color, religion, sex and national origin

42 U.S.C. § 2000d, et seq.

1972 Title IX of the Education Amendments.

Amended the Civil Rights Act of 1964.

20 USC § 1681 et. Seq.

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History of Title IX cont.

1974 Tower Amendment Proposed

- NCAA Director in speech to NCAA schools, "[the law would lead to the] possible doom of intercollegiate sports…"
- Amendment proposed that Title IX rules could not apply to any sports that brought in money from ticket sales.
  - Mainly football and basketball, which already had huge budgets for football and men's basketball.
  - Did not pass the Tower Amendment, but passed a new version of Title IX that noted that when comparing budgets for women and men, cost differences in different sports must be considered.

https://www.youtube.com/watch?v=5kNG78T9N5c



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Test Case under Title IX

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Cannon v. University of Chicago

441 U.S. 677 (1979)

39-year-old female brought suit alleging gender discrimination in admission to medical programs operated by the Univ. of Chicago.

Lower court: No private right of action. Only remedy intended is removal of federal funds.

Question: Whether Congress intended a private right of action/remedy to be implied by Title IX?

SCOTUS: Yes, Title IX allows a private right of action. Women are the protected class here and the language in Title IX mirrors the language of Title VI.

https://www.pbs.org/video/makers-women-who-make-america-title-ix/

Title IX Scope Case

Grove City College v. Bell

465 US 555 (1984)

- College sought to avoid Title IX/federal compliance requirements by refusing federal assistance.
- Students were receiving opportunity grants from feds.
- Ordered to sign assurances with feds.
- College refused and sued.

Lower Court: Compliance not required.

Question: Whether the College was subject to federal requirements because *students* accepted federal financial aid? Whether Title IX violated the 1st amendment rights of the College?

SCOTUS: Yes, the students' acceptance of federal assistance triggered Title IX compliance, but only for those programs affected (i.e. not for athletics).

- ➢ No, prohibiting discrimination does not infringe on the College's 1st amendment rights.



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More Clarity on Scope of Title IX

Civil Rights Restoration Act (1988)

- Overturned *Grove City*
- Legislative act that specified that recipients of federal funds must comply with civil rights laws in all areas, not just in the particular program or activity that received federal funding.
- Title IX applied to all programs and activities of any institution receiving federal financial assistance.

Title IX and the 14th Amendment

Equal Protection Clause of the 14th Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; ***nor deny to any person within its jurisdiction the equal protection of the laws.***



Separate, but Equal under Title IX



United States v. Virginia

Virginia Military Institute case

518 US 515 (1996)

U.S. brought suit against VA alleging the school's male-only admissions policy was unconstitutional.

Lower Court: No problem.

Question: Whether VA's creation of a women's only academy, as a counterpart to the male-only academy satisfies the 14th amendment's equal protection clause?

SCOTUS: No, separate was not equal. Women's school could not offer the same benefits that VMI offered to men. Required that all gender-based classifications be evaluated with "heightened scrutiny" instead of previous "substantive comparability" standard.

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Monetary Damages under Title IX

***Gebser v. Lago Vista ISD* (1998)**

524 US 274 (1998)

Sexual relationship between teacher and student in a high school.

Student brought suit against school district.

Lower Court: Ruled in favor of ISD – no money damages.

Question: Whether an education program can be required to pay monetary damages to a plaintiff under Title IX?

SCOTUS: Yes, money damages are available if Plaintiff meets two-part test:

1. Party must show that a school official, with the ability to institute corrective measures, knew of the conduct.
2. A party must show that despite knowledge of the conduct, the school failed to respond appropriately.



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Title IX and Student-to-Student Harassment

***Davis v. Monroe County Board of Education* (1999)**

526 US 629 (1999)

Grandmother sued school district on behalf of her 5th grade granddaughter.

Claimed school refused to stop harassment that had been reported multiple times.

Lower Court: School not responsible because it is a student harasser.

Question: Whether an educational entity can be held responsible under Title IX for student-on-student harassment?

SCOTUS: Yes, the entity can be held responsible. Title IX grants an implied right to education. Established the "deliberate indifference" standard. Damages may be awarded under this standard.

Proportionality Test Cases

Pederson v. LSU (2000)

F.3d 388 (5th Circuit, Jan 27,2000)

3 female LSU students brought suit alleging discrimination when LSU failed to create a women's soccer team.

District Court: Proportionality test appropriate here.

Question: Whether the women could represent a class for the lawsuit? Whether the proportionality test was appropriate when discrimination not intentional?

5th Circuit: Yes, the women were all denied the opportunity to participate in collegiate athletics and could certify as a class. Yes, the proportionality test was appropriate because even if LSU discriminated out of ignorance, they still discriminated. Title IX violated.



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OCR's Three Part Test for Title IX Proportionality

A school must pass *one* of the three parts.

Proportionality: The school's number of athletes from each sex should be roughly equivalent to enrollment percentages.

Additions: The schools show a history and continuing practice of adding women's sports.

Accommodation: Schools should be able to show athletic interests and abilities of women on campus are being fully and effectively accommodated. This is done by an extensive survey.



Badis and Troup v. James Campbell High School, Oahu Interscholastic Association, Hawaii Department of Education

- Ashley Badis and Tatiana Troup were student athletes at James Campbell High School.
- Alleged “widespread failure to ensure gender equity in school athletics”.
- As female athletes they were subjected to in equity in the form of:
- No stand alone locker rooms, including women’s track and field teams required to change in the bleachers
- Disparities in game scheduling, travel opportunities, publicity, and access to facilities and coaches.
- Girls’ teams had games regularly scheduled on Tuesdays and Thursdays, while three-quarters of Friday night slots were reserved for boys’ sports
- Boys’ basketball and football teams could hold additional practices at will that displaced the girls’ volleyball and track-and-field teams
- Failed to hire girls coaches and did not pay girls assistant coaches
- After the lawsuit was filed, the school retaliated by threatening cancelation of the girls water polo team
- Badis - In July 2023, ESPN awarded her the Billie Jean King Youth Leadership Award or leading the lawsuit.

Outcome of Badis v. Hawaii DOE case

Settlement Terms

Independent Oversight: Appointment of an independent evaluator to monitor gender equity compliance for seven years.

Mandatory Assessments: Requirement for Oahu Interscholastic Association schools to finish annual Title IX evaluations to keep their association membership.

Reporting Systems: Establishment of a dedicated complaint hotline and online process for reporting violations.

Staff Training: Mandatory Title IX and gender equity training for school and athletic personnel.

Facility Funding: Backed by state funding allocations—including $6 million specifically designated for Campbell's athletic facilities and broader statewide investments—to improve locker rooms and athletic gear equality.

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Ollier v. Sweetwater Union School District



The dispute centered around facility inequities between softball and baseball facilities at a California high school.

The case underwent a Title IX investigation by the Office for Civil Rights (OCR) and later led to a federal court proceeding.

The Court referenced data that had been collected to assess compliance with Component I of the Title IX Compliance Framework.

- Female enrollment at the school was found to be 45.4 percent
- While only 38.7 percent of sports participation opportunities belonged to girls, according to the duplicated measure of proportionality.
- This resulted in a 6.7 percent difference**, indicating a failure to meet the first prong of the three-prong test.**

The school was unable to demonstrate compliance with the second prong, which required a history and ongoing pattern of program expansion to provide equal athletic opportunities for girls.

To fulfill the third prong, the school was unable to produce surveys and other indicators to assess that the athletic interests of female students are being met.

The school lost their case.

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Considerations for Your District:

1. **Analyze data on expenditures for female and male sports, including travel, hotel accommodations, uniforms and equipment.**
2. **Analyze data on athletic participation by gender, as compared to student population?**
    1. These numbers are reported to the NMPED – are you reviewing them in District?
3. **Audit your athletic facilities.**
    1. Are your facilities equitable in size and condition for male and female sports?
    2. Are there equitable facilities for sports in which both males and females compete?
        1. i.e. wrestling rooms? Softball and baseball fields, dugouts, locker rooms

Title IX Prohibits Retaliation

Jackson v. Birmingham Board of Ed.

544 US 167 (2005)

- High school basketball coach claimed he was fired for reporting unequal treatment of girl's basketball team by school district.
- Brought suit under Title IX.
- Lower Court: No private right of action for reporting on behalf of others.

Question: Whether Title IX provides a right of action for retaliation for reporting unlawful sex discrimination?

SCOTUS: Yes, can't protect against discrimination if it does not protect those who report discrimination. Retaliation against Jackson constituted internal discrimination on the basis of sex.



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Break

Gavin Grimm

https://www.youtube.com/watch?v=My0GYq_Wydw&feature=youtu.be



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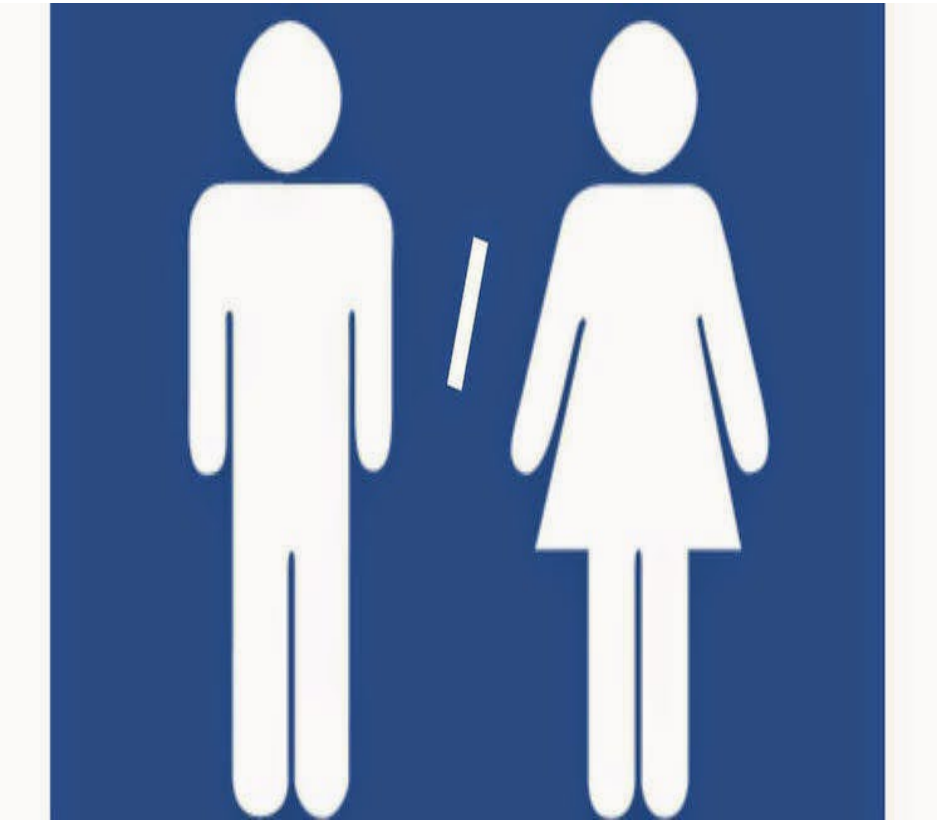
Title IX and Transgender Persons

2014: ACLU sued high school for discrimination on behalf of Gavin twice.

- Bathroom restriction policy in Virginia high school denied Gavin the use of boys' facilities.
- Suit brought under 14th amendment and Title IX
- Set to be heard by the Supremes in 2017, but Trump admin reversed the Obama-era guidance and returned it to the lower court.
- "Bathroom bills" swept the U.S.

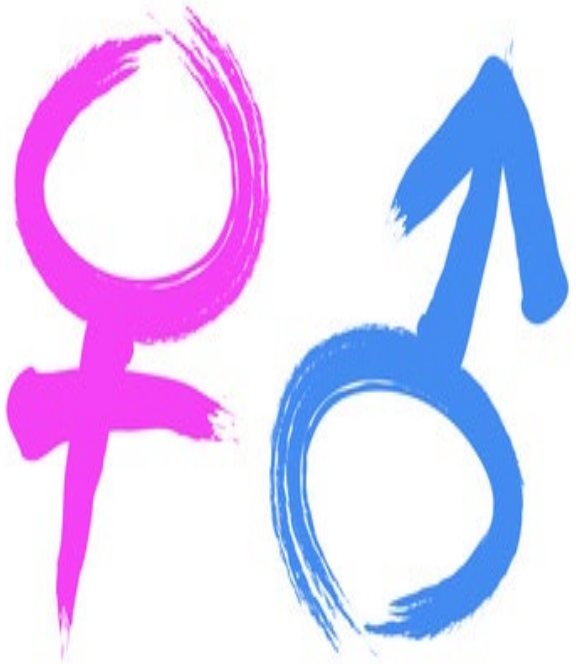
August 8, 2019: U.S.D.C. for the Eastern District of Virginia ruled that Gavin was "singled out"/subjected to discriminatory treatment due to his gender identity and excluded from places "similarly situated students are allowed to go".

- Board of Education appealed.
- SCOTUS: Declined to hear the case.



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Sex Discrimination = Gender Discrimination?



1. *J.L v. Mohawk Consolidated SD* (2010)
2. *Pratt v. Indian River CSD* (2010)
3. *Putnam v. Somerset ISD* (2010)
    1. Dept. of Ed negotiated a settlement agreements.
    2. Title IX prohibits discrimination against a student whose appearance/behavior does not conform to gender stereotypes.
    3. **Title IX protects students who are harassed due to actual or perceived sexual orientation.**
        1. Premise was that sexual orientation is about sex and notions of gender and protected by Title IX.

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Obama-Era Changes to Title IX

2011

April 4, 2011, Dear Colleague letter

Love letter to Title IX Coordinators

https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf

- This letter signaled an enormous change from the federal government of their expectations for how Universities will handle sexual assault.
- Huge changes in the interplay between Title IX and FERPA
- Changes in how Universities are expected to conduct Title IX investigations.

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Complaints under Title IX Require

- Equity in process for both parties.
- Due process for both parties.
- Neutrality in the investigatory process.

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Title IX and Transgender Persons

- Transgender activists have relied on Title IX
- Title VII (prohibits discrimination because of sex) in the employment context.
- Activists have also relied on 14th amendment equal protection clause to fight discriminatory state and local laws.
- **Obama-era guidance: Students should use the facilities corresponding with their gender identity.**

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Title IX and Transgender Persons

2016

North Carolina House Bill 2

- University of NC named in lawsuit that required trans people to use bathrooms matching their sex.
- NC does not have protections for transgender persons under state law.
- July 2019 Settlement reached by LGBTQ+ activists and Governor
  - Settlement says state agencies and universities can't ban transgender people from using the bathroom of the gender with which they identify.
  - It applies only to public restrooms and similar facilities in state government buildings.
  - Approved by a federal judge.

Title IX and Transgender Persons



2016

- US District judge in Texas handed down preliminary national injunction that Title IX would not implicitly prohibit discrimination based on gender ID or transgender status.
- Overturned Obama-era guidance on bathroom use.
- Says it applies nationwide because the alleged violation occurs nationwide.
  - OCR guidance does not override any state or local laws.
  - Schools can still adopt their own guidelines
  - 18 states and DC afford protection to transgender individuals.
  - NM Human Rights Act, NMSA 1978 section 28-1-7

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Recent Developments

2017

- Departments of Education and Justice rescinded Obama-era guidance allowing students to use sex-segregated facilities associated with their gender identity.
- Schools may develop their own rules.

DOE Directive:

We are no longer hearing complaints related to choice of bathrooms.





NCAA and Transgender Athletes

Concerns about transgender competition are based on three assumptions:

1. That transgender women are not "real" women and therefore not deserving of an equal competitive opportunity;
2. That being born with a male body automatically gives a transgender woman an unfair advantage when competing against non-transgender women; and
3. That men might be tempted to pretend to be transgender in order to compete in competition with women.

https://www.ncaa.org/what-we-do/health-sa
and-performance/participation-policy-for-
transgender-student-athletes/

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NCAA and Transgender Athletes

NCAA Bylaw 31.2.3 identifies testosterone as a banned substance and provides for a medical exception review for demonstrated need for use of a banned medication.

It is the responsibility of the NCAA institution to submit the request for a medical exception for testosterone treatment *prior* to the student-athlete competing while undergoing treatment.

In the case of testosterone suppression, the institution must submit written documentation to the NCAA of the year of treatment and ongoing monitoring of testosterone suppression.



NCAA and Transgender Athletes



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June 2019

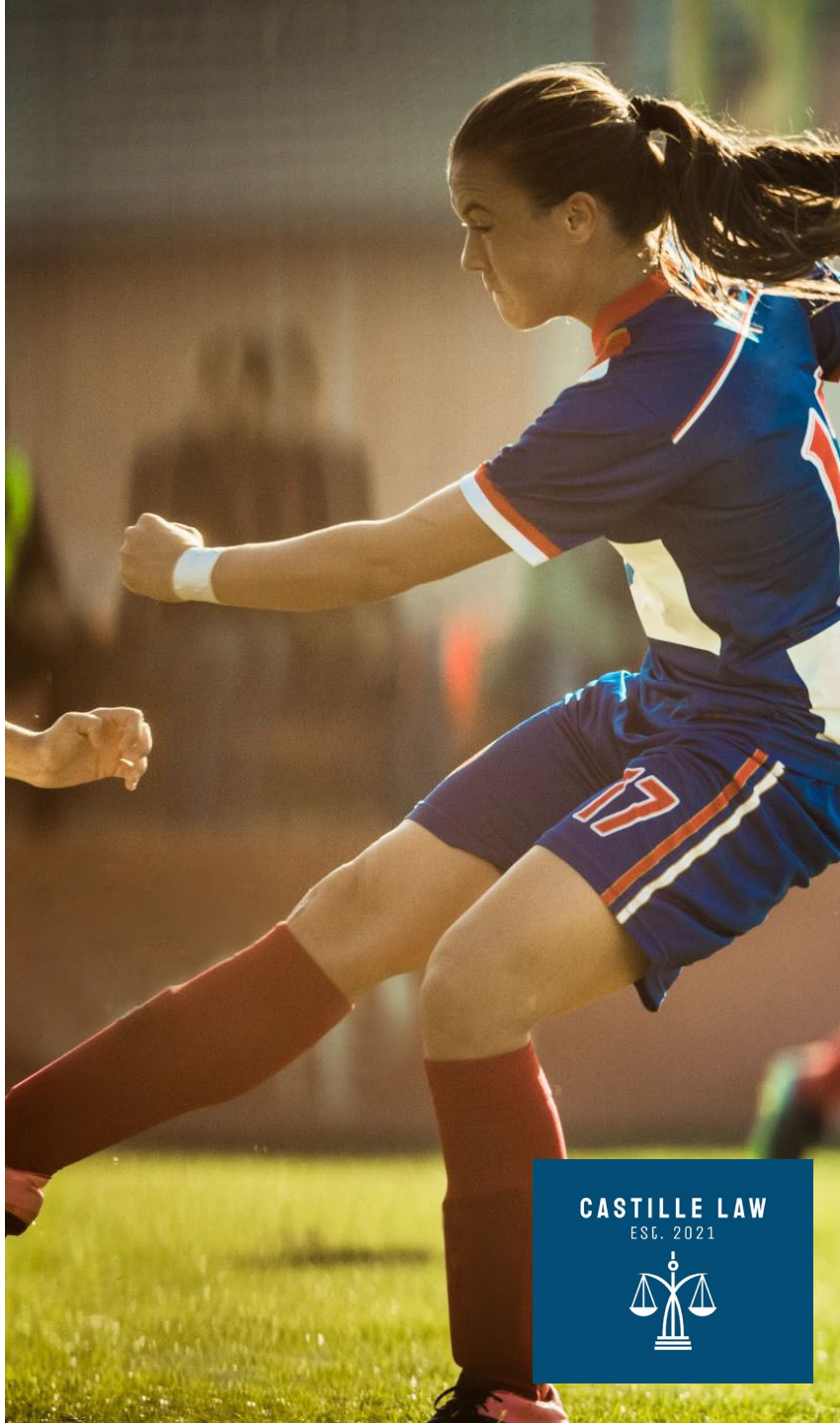
- A Christian conservative nonprofit organization called the Alliance Defending Freedom (ADF) filed an official complaint with the Department of Education's Office for Civil Rights on behalf of high school sprinter Selina Soule and two other female track athletes who wanted to remain anonymous.
- The Alliance argues that the policy of letting trans women athletes compete without restriction "discriminate[s] against girls and threaten[s] to reverse the gains for girls and women that Title IX has achieved."

https://www.outsideonline.com/2401736/juniper-eastwood-transgender-runners#close

Latest Development

On June 30, 2026, the U.S. Supreme Court ruled 6–3 in *West Virginia v. B.P.J.* (consolidated with Idaho's [*Little v. Hecox*]) that state laws restricting female school sports teams to biological females do not violate Title IX or the Equal Protection Clause of the Fourteenth Amendment

- The States argue – and the Court agrees – that the interests of safety and competitive fairness are important interests for purposes of equal protection analysis.
- And the States' sex-based classification – limiting women's and girls' sports to biological females – is substantially related to those interests.
- Schools may determine eligibility for women's and girls' sports based on biological sex.



OCR Regularly Conducts Title IX Compliance Reviews



2018, University of Montana

Agreement included:

- Look into processes to make sure they are effective and comparable for all parties.
- Look at remaining actions still available to the parties to address any concerns.
- Changes to guidelines, policies and procedures.
- Provide training to all staff involved in the Title IX process.

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Effects of Title IX

1970

8% of women age 19 and older were college students.

14% of men were college students

59% of women were high school grads.





Effects of Title IX cont.

2009

- 87% of women were high school grads
- 28% of women had a college degree

2011

- Title IX covered 49 million students in elementary/secondary schools
- 20 million in post-secondary schools (not including employees)

2018

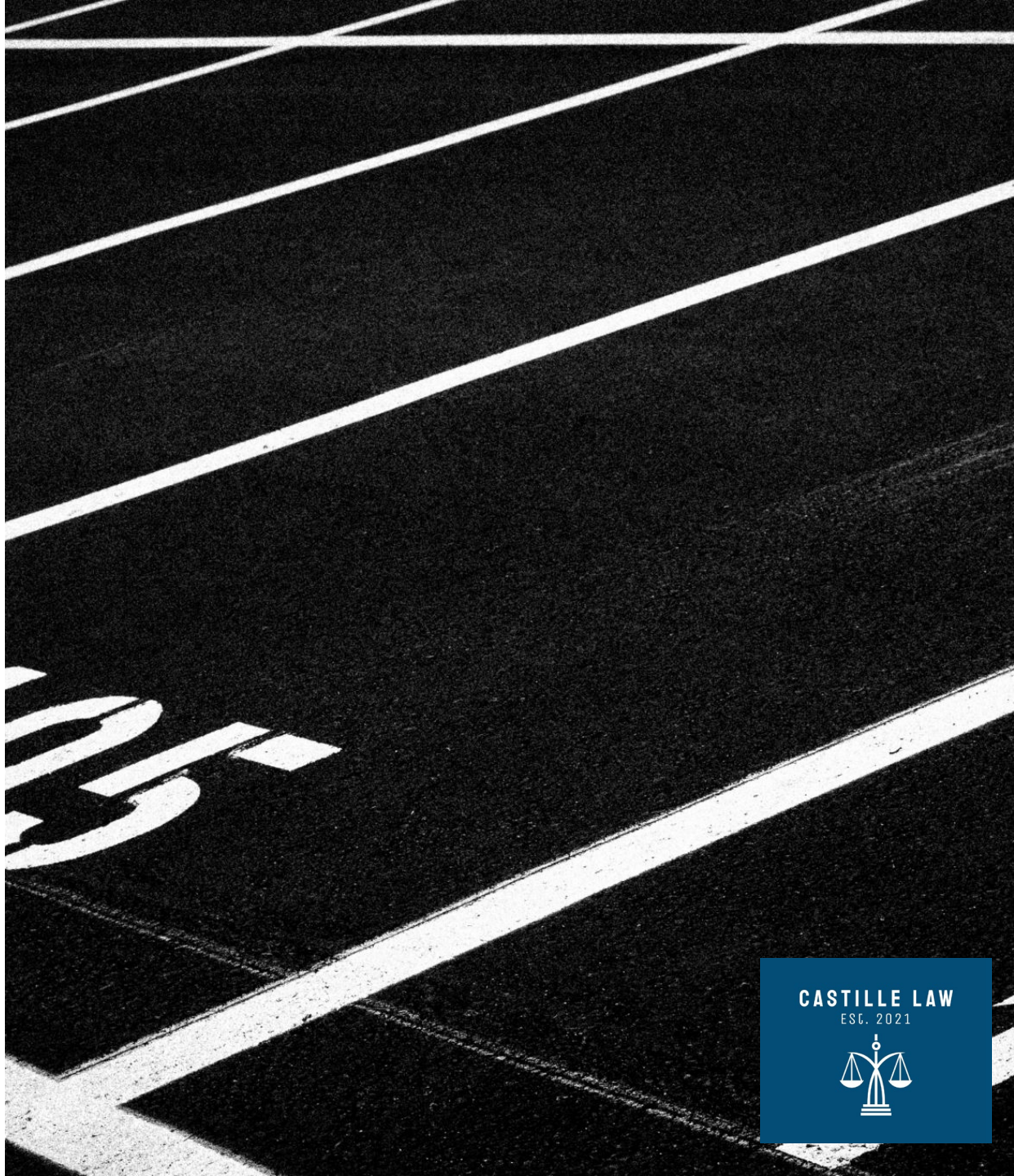
- Women represented 51% of matriculants from U.S. medical and law schools.

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Effects of Title IX cont.

1971-72

- Approximately 250,000 women participated in high school sports.
- Approximately 3,750,000 men participated.



Effects of Title IX cont.



2010-2011

- Approximately 3,250,000 women participated in high school sports.
- Approximately 4,500,000 men participated in high school sports.

Effects of Title IX cont.



Benefits of Title IX go well beyond the educational environment...

- Integral part of the labor force
- Increased earnings for women
- Better health and access to healthcare
- Attention on rights of gay and transgender individuals.
- Changes in the manner in which schools address sexual assault and sexual harassment.

Title IX has been used to address disparities in society at large.

https://www.youtube.com/watch?v=AKC72NYykXQ

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TIX takeaways

- TIX compliance is not optional.
- TIX regulations are highly prescriptive – TIXC and investigators must bring their A-game.
- TIX enforcement is critical to ensuring a safe, discrimination-free environment in your school/district.
- K-12 schools are still trying to get TIX right – get help – ask questions.
- Make sure your everyone in your school understands their obligation to report.
- Know and follow your policy.

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Got Questions?



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