

UNDERSTANDING THE 2024 TITLE IX REGULATIONS

TIER 1: WHAT ALL K-12 SCHOOL EMPLOYEES ARE REQUIRED TO KNOW AND DO



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ALL EMPLOYEES MUST BE TRAINED ON:

1. The District's obligation to address sex discrimination in its education program or activity;
2. The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment; and
3. All applicable notification and information requirements under §§ 106.40(b)(2) and 106.44.



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WHY DO I CARE?



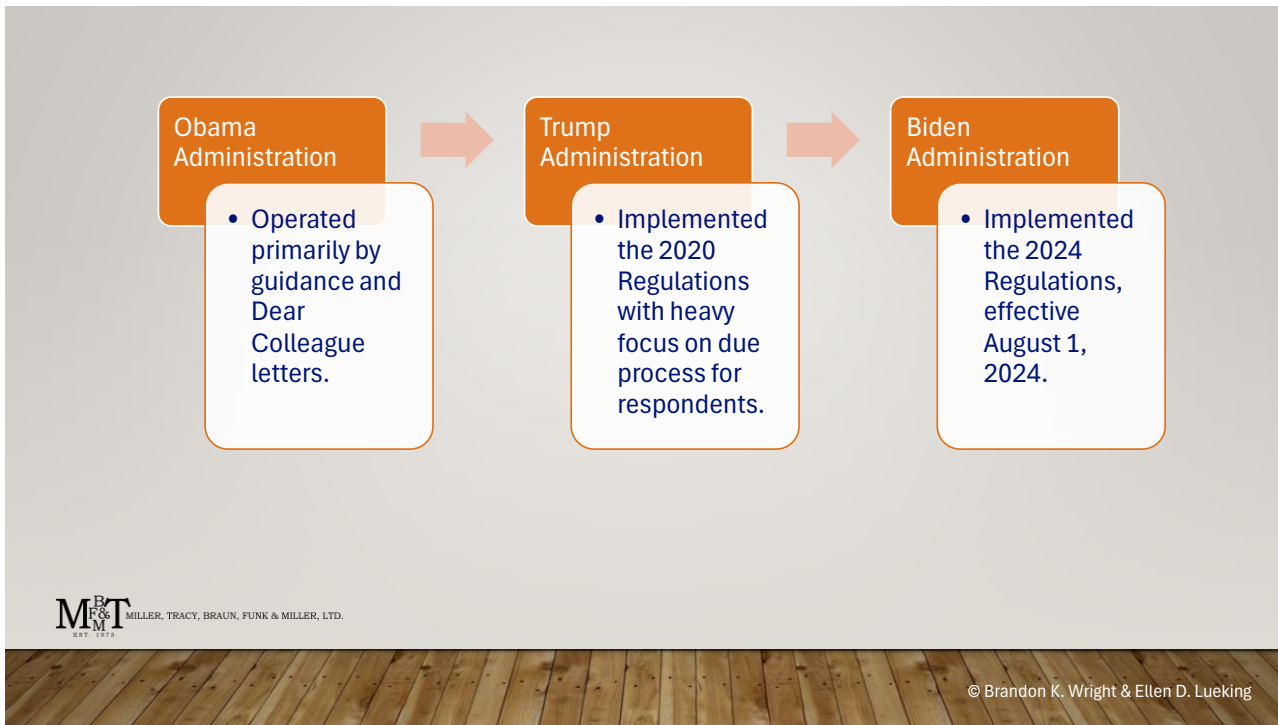
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TITLE IX

- Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. Title IX states:
- *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.*

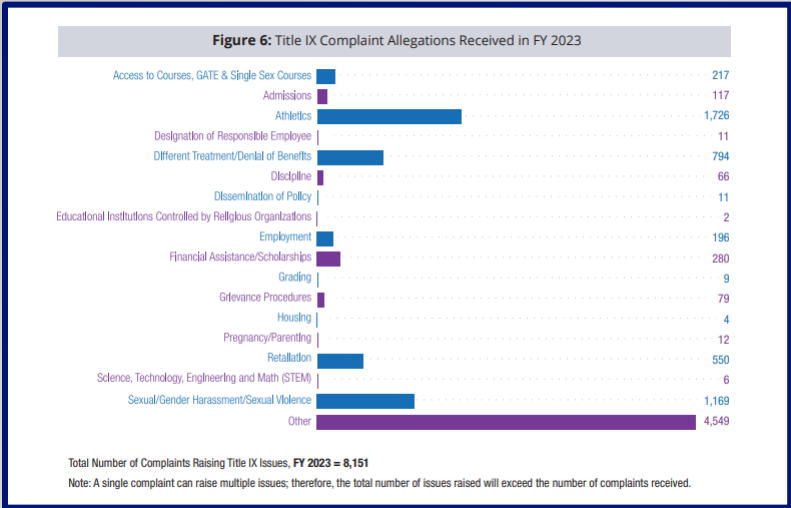


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EFFECTIVE DATES

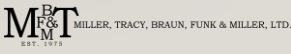
- **2024 Regulations**
 - Published April 19, 2024
 - Effective August 1, 2024
 - Covers conduct occurring on or after August 1, 2024
- **2020 Regulations**
 - Effective August 14, 2020
 - Covers conduct occurring on or after August 14, 2020 through July 31, 2024



OCR Complaint Trends by Year:

- 2021: 8,934 complaints filed
- 2022: 18,806 complaints filed
- 2023: 19,201 complaints filed

**a single individual filed 5,590 complaints raising sex discrimination allegations



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TERMS USED IN REGULATIONS

- Respondent = Accused
- Complainant = Victim/Accuser
- Recipient = School receiving federal funds



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TITLE IX PERSONNEL

- **Title IX Coordinator**—*may be the Investigator/Decisionmaker*
- **Informal Resolution Facilitator**
- **Investigator/Decisionmaker**—*may be the same person or separate*
- **Appellate Decisionmaker**
- **Impartial Employee** (for supportive measures challenges)



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TITLE IX PERSONNEL

- The **Title IX Coordinator** is the individual designated by the school district to coordinate compliance with Title IX, including overseeing all sex-based discrimination complaints.



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TITLE IX COORDINATOR AND NONDISCRIMINATION NOTICES

- **Prominently** on the District website
- In each handbook, catalog, announcement, bulletin, and application form for students, parents, guardians, employees, applicants for admission and employment, and all unions and professional organizations holding collective bargaining agreements with the District.



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TITLE IX COORDINATOR AND NONDISCRIMINATION NOTICES

- District must post its nondiscrimination statement
- That inquiries about the application of Title IX may be directed to the Title IX Coordinator
- The name or title, office address, email address, and telephone number of the Title IX Coordinator
- How to locate the District's nondiscrimination policy and the District's grievance procedures
- How to report information about conduct that may constitute sex discrimination under Title IX and how to make a complaint of sex discrimination



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TITLE IX PERSONNEL

- The **Informal Resolution Facilitator** is the individual who attempts to resolve a complaint of sex-based discrimination without the grievance process.
- Any person designated to facilitate informal resolution cannot be the same person as the investigator or decisionmaker in the grievance process, should the complaint not resolve in informal resolution.



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TITLE IX PERSONNEL

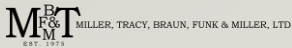
- The **Investigator/Decisionmaker** can either be the same individual or two separate persons.
- This person investigates the complaint and then makes findings of fact and applies the policy to determine whether sex-based discrimination occurred.



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TITLE IX PERSONNEL

- When an appeal of a dismissal or determination is filed, an **Appellate Decisionmaker** reviews the appeal.
- The Appellate Decisionmaker cannot be the Title IX Coordinator, Investigator, or Decisionmaker.
- The Appellate Decisionmaker can be the Board of Education, but the members must receive required training prior to hearing an appeal.



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TITLE IX PERSONNEL

- The **Impartial Employee** is the individual tasked with making a determination as to whether supportive measures should be modified or reversed when a party appeals the District's decision to provide, deny, modify, or terminate supportive measures applicable to that party.
- Cannot be the employee who made the challenged decision and must have authority to modify or reverse the decision.



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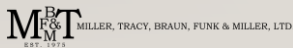
WHAT ARE THE TITLE IX RESPONSIBILITIES OF ALL EMPLOYEES?

Let's dig in...



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THE DISTRICT'S OBLIGATION TO ADDRESS SEX DISCRIMINATION IN ITS EDUCATION PROGRAM OR ACTIVITY

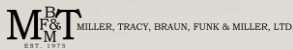


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OBLIGATION TO ADDRESS SEX DISCRIMINATION IN ITS EDUCATION PROGRAM OR ACTIVITY

- “...A [district] has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient’s education program or activity or outside the United States.”

§106.11



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EDUCATION PROGRAM OR ACTIVITY

C.R. v. Eugene Sch. Dist. 4J, 835 F.3d 1142, 1145 (9th Cir. 2016), cert. denied, 137 S. Ct. 2117 (2017):

“Because the harassment happened in such close proximity to the school, administrators could reasonably expect the harassment’s effects to spill over into the school environment. Simply seeing their harassers in the hallway could well be disruptive for affected students. Similarly, a student who is routinely subject to harassment while walking home from school may be distracted during school hours by the prospect of the impending harassment. A student’s ability to focus during the day could be impaired by intrusive worries about whether she or he would once again face uncomfortable and sexually intimidating comments immediately after school lets out...”



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EDUCATION PROGRAM OR ACTIVITY

Title IX applies to **locations, events, or circumstances** in the United States **over which the District exercised substantial control over both the Respondent and the context** in which the sexual harassment occurred. This extends to off-campus conduct if the off-campus incident occurs as part of the District's operations.

No single factor is determinative of whether the District exercised substantial control or whether an incident occurred as a part of the District's operations.



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WHAT IS THE EDUCATION PROGRAM OR ACTIVITY?

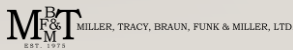
- In addition, Title IX applies to “...conduct that is subject to the [district’s] disciplinary authority.” § 106.11



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MAHANOY AREA SCH. DIST. V. B.L., 141 S. CT. 2038, 2045 (2021)

- In *Mahanoy*, the Supreme Court clarified districts' ability to regulate off-campus speech, specifically noting that harassment was conduct that the district generally maintained authority to regulate, even when it occurred-campus.



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MAHANOY AREA SCH. DIST. V. B.L., 141 S. CT. 2038, 2045 (2021)

“Unlike the Third Circuit, we do not believe the special characteristics that give schools additional license to regulate student speech always disappear when a school regulates speech that takes place off campus. The school's regulatory interests remain significant in some off-campus circumstances. The parties' briefs, and those of amici, list several types of off-campus behavior that may call for school regulation.” **These include serious or severe bullying or harassment targeting particular individuals;** threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices, including material maintained within school computers.”



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ALL EMPLOYEES MUST REPORT

- “An elementary school or secondary school recipient must require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee **has information about conduct that reasonably may constitute sex discrimination** under Title IX or this part.”

DEFAULT PRESS POLICY—CONFIDENTIAL EMPLOYEES

Default policy = no confidential employees in K-12 schools

Why?

- K-12 students are minors, unlike college students.
- All employees are mandated reporters.

NO CONFIDENTIAL EMPLOYEES

- Do not promise students confidentiality.
- Identify to students that you are happy to listen and be a trusted adult and that certain things they share may require you to share with the school to keep them and other students safe.
- There are times when you are required to report under Title IX, but also under state law requirements.



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WHAT IS INCLUDED IN “SEX DISCRIMINATION”?

- Discrimination on the basis of sex includes discrimination on the basis of:
 - Sex stereotypes
 - Sex characteristics
 - Pregnancy or related conditions
 - Sexual orientation
 - Gender identity



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SEX STEREOTYPES

“The Department appreciates commenters' support for coverage of harassment based on sex stereotypes and gender identity. The Department has long recognized, consistent with the text and purpose of the statute and courts' interpretations, that Title IX's prohibition on sex discrimination encompasses harassment based on sex stereotypes. See, e.g., 2001 Revised Sexual Harassment Guidance, at 3 (noting that “**acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping [is] a form of sex discrimination to which a school must respond, if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program**”) & nn.17-19 (citing cases); [85 FR 30179](#) (“sexual harassment . . . may consist of unwelcome conduct based on sex or sex stereotyping”).”

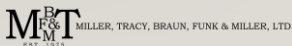
- 89 CFR 33516



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SEX CHARACTERISTICS

Discrimination against intersex individuals is similarly motivated by perceived differences between an individual's specific sex characteristics and their sex category (either as identified at birth or some subsequent time). Additionally, discrimination based on anatomical or physiological sex characteristics (such as genitals, gonads, chromosomes, and hormone function) is inherently sex-based. Intersex traits, like gender identity and sexual orientation, are “inextricably bound up with” sex. See *id.* at 1742. In other words, it is impossible to discuss intersex status without also referring to sex. Cf. *Grimm*, 972 F.3d at 609. Lastly, discrimination based on intersex traits may also involve sex stereotypes, as intersex people by definition have traits that do not conform to stereotypes about male or female bodies. Cf. *Whitaker*, 858 F.3d at 1048 (“[A] transgender individual does not conform to the sex-based stereotypes of the sex that [they were] assigned at birth.”)



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SEX CHARACTERISTICS

- Illinois Human Rights Act also prohibits discrimination on the basis of sexual orientation, which is defined to mean “actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person’s designated sex at birth.” 775 ILCS 5/1-103(O-1)
- Also, consider the applicability of the Illinois bullying statute/policy, the Racism Free Schools Act, and other similar requirements addressing harassment and discrimination.



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SEXUAL ORIENTATION

The Department disagrees with commenters who asserted that the term “sexual orientation” must be defined in the Title IX regulations. Courts routinely use the term without providing an express definition. See, e.g., *Bostock*, 590 U.S. at 653-54, 671; *Grabowski*, 69 F.4th at 1113; *Hively*, 853 F.3d at 340. The term is now well understood as it is used widely in laws and policies. ...describe the sex of a person to whom another person is attracted, as the term sexual orientation is commonly understood to mean.

89 CFR 33810



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PREGNANCY OR RELATED CONDITIONS

- ...because pregnancy is necessarily a condition related to sex characteristics (e.g., uterus, ovaries, fallopian tubes), discrimination based on conditions that arise from pregnancy, including termination of pregnancy, constitutes discrimination on the basis of sex characteristics. Commenters offered no persuasive reason for withdrawing protections for pregnancy discrimination on the basis of the termination of pregnancy.
- 89 CFR 33760



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GENDER IDENTITY

The Department understands gender identity to describe an individual's sense of their gender, which may or may not be different from their sex assigned at birth. Courts have used the term consistent with this understanding, see *Bostock*, 590 U.S. at 660, 669; *Parents for Priv. v. Barr*, 949 F.3d 1210, 1217 (9th Cir. 2020); *Whitaker*, 858 F.3d at 1049, sometimes with only a brief explanation, *Grimm*, 972 F.3d at 594 (“gender identity—or their deeply felt, inherent sense of their gender”); *Boyertown Area Sch. Dist.*, 897 F.3d at 522 (“A person's gender identity is their subjective, deep-core sense of self as being a particular gender”); *Schroer v. Billington*, 577 F. Supp. 2d 293, 295 (D.D.C. 2008). The term is now well understood as it is used widely in laws and policies, and so the Department determined that—consistent with the approach taken by many courts—it is unnecessary to articulate a specific definition of “gender identity” in § 106.10.

89 CFR 33809



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SEX-BASED HARASSMENT

Sex-based harassment prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10 that is:

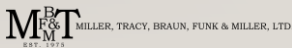
1. *Quid pro quo harassment.* An employee, agent, or other person authorized by the [district] to provide an aid, benefit, or service under the [district]'s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;



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SEX-BASED HARASSMENT

2. *Hostile environment harassment.* Unwelcome sex-based conduct that, based on the totality of the circumstances, is **subjectively and objectively offensive** and is **so severe or pervasive** that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:



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SEX-BASED HARASSMENT

- i. The degree to which the conduct affected the complainant's ability to access the [district]'s education program or activity;
- ii. The type, frequency, and duration of the conduct;
- iii. The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;



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SEX-BASED HARASSMENT

- iv. The location of the conduct and the context in which the conduct occurred; and
- v. Other sex-based harassment in the recipient's education program or activity.



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SEX-BASED HARASSMENT

3. Specific offenses:

- i. Sexual assault (fondling, rape, etc.)
- ii. Dating violence
- iii. Domestic violence
- iv. Stalking (a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others, or (2) suffer substantial emotional distress)



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RETALIATION

Intimidation, threats, coercion, or discrimination against any person by the [district], a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the [district]'s education program or activity, for the purpose of interfering with any right or privilege secured by Title IX...or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing...including informal resolution or the grievance procedures.



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RETALIATION

But, nothing in the retaliation definition “precludes a recipient from requiring an employee or other person authorized by a [district] to provide aid, benefit, or service under the [district]’s education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.”



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EXAMPLES—SEX-BASED HARASSMENT

- **Student A sends Student B explicit text messages one evening, while at home. Student B does not respond. The next day, Student A, at school, asked Student B why he did not respond and sends Student A a nude image of herself.**



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EXAMPLES—SEX-BASED HARASSMENT

- **Student C takes a picture of Student D changing in the locker room. Student C goes home and uploads the picture to his Snapchat story for all of Student D's peers to see.**

EXAMPLES—SEX-BASED HARASSMENT

- **Students E and F were in a romantic relationship, but break up. Student E, at lunch, tells Student G and H about the sexual encounters Student F had with Student E. Students G and H retell the story to peers, at school.**

EXAMPLES—SEX-BASED HARASSMENT

- **Male high school Student I teases other male high school Student J about his penis size in the locker room.**

EXAMPLES—SEX-BASED HARASSMENT

- **Student K, on the bus ride home from school, shows Student L images from a pornographic website. Student L tries to change the subject and asks Student K to stop.**

EXAMPLES—SEX-BASED HARASSMENT

- **Student M and Student N are horseplaying in the boys' bathroom and are caught. Student M alleges that Student N pulled down Student N's pants and flashed Student N's private body parts to Student M. The students are not romantically involved.**

EXAMPLES—GENDER DISCRIMINATION

- **Teacher O, tells his class that the students have to raise their hands to ask questions. Teacher O let a male student ask a question without raising his hand, and answers the question. Teacher O assigned a female student a lunch detention for doing the same.**

EXAMPLES—GENDER DISCRIMINATION

- **Student P** mocked and laughed at **Student Q** for crying over the death of his grandparent and then called him a “sissy” and told him to “quit acting like a girl.”

EXAMPLES—GENDER DISCRIMINATION

- **Student R**, a girls softball player on the high school team, while standing in the dugout, says to the maintenance worker who mows the outfield and drags the infield, “I am so frustrated that our dugout is always covered in trash. The boys team never has to deal with this because their field and dugouts have that gate that keeps people out of it at night.”

EXAMPLES—PREGNANT STUDENTS

- **Student R calls Student S, who becomes pregnant, “a whore” because she became pregnant.**

EXAMPLES—PREGNANT STUDENTS

- **Teacher T refuses to let Student U (pregnant) use the restroom when asked “because some students are still taking a test,” when Student U has been granted a reasonable modification to have access to water and the restroom as needed.**

EXAMPLES—LGBTQ+

- **Athlete V, on the basketball team, is told by Coach W that he has to go change in the stalls because he is making his teammates uncomfortable, because he is gay.**

EXAMPLES—LGBTQ+

- **Student X intentionally calls Student Y by their dead name, repeatedly, with no genuine apology, and snickers when doing it.**

KLUGE V. BROWNSBURG COMMUNITY CORPORATION (S.D. IND., 2024)

Kluge, a teacher, refused to call transgender students by anything other than their last name on the basis of his religious beliefs. The school accommodated him for one year and then changed its policy to require him to use the names in the student information system, which students were permitted to change with parental permission and a medical note. Kluge resigned and sued the school for failure to accommodate his religious beliefs.

In April 2024, the S.D. of Indiana granted summary judgment for the District—Kluge’s use of last names only caused undue hardship for the District. The District was in the business of “educating all students” and students were required to attend school. Kluge using only last names created substantial student harm—students quit or never joined band because of Kluge’s treatment of students who were transgender and Kluge using only last names created liability for the District because it was discriminatory.



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PREVENTION AND RESPONSE

- Without question, the most important solution to issues of sexual harassment is to make efforts to prevent it from happening in the first place.
- *Is there such a thing as a good sexual harassment training?*



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PREVENTION AND RESPONSE

1. Develop, implement and regularly communicate the school district's sexual harassment policy.
2. Provide training for administrators, all employees, and students on sexual harassment prevention, as well as the Title IX requirements.
3. Ensure clear communication on how to report incidents of sexual harassment or conduct of a sexual nature.



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PREVENTION AND RESPONSE

4. Administrators should monitor their environment to ensure the school is free of sexual harassment – both employee and student.
5. Administrators must lead by example and model appropriate conduct – refrain from engaging in conduct of a sexual nature.



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PREVENTION AND RESPONSE

6. Administrators should ensure that – in addition to training requirements – policy and information about reporting is clearly posted everywhere it should be posted.

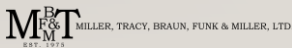
7. Ensure that all school employees (all means all) are aware of what to do when they have information regarding of an allegation of sexual harassment.



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MANDATED REPORTER

- Don't overlook the potential mandated report to DCFS and/or law enforcement in many of these situations!
 - If there is suspected abuse or neglect → DCFS
 - If there is criminal activity → law enforcement



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APPLICABLE NOTIFICATION AND INFORMATION REQUIREMENTS UNDER §§ 106.40(b)(2) (PREGNANCY) AND 106.44 (SEX-BASED DISCRIMINATION)



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§ 106.40(b)(2): NOTIFICATION REQUIREMENTS ON PREGNANCY

- *Responsibility to provide Title IX Coordinator contact and other information.* A [district] must ensure that when a student, or a person who has a legal right to act on behalf of the student, **informs any employee of the student's pregnancy or related conditions**, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee promptly provides that person with the Title IX Coordinator's contact information and informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the recipient's education program or activity.



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REASONABLE MODIFICATIONS

- The recipient, led by the Title IX Coordinator will make “reasonable modifications” to the recipient’s policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access.
- Reasonable modifications must be based on the student’s individualized needs.

REASONABLE MODIFICATIONS

- In determining the reasonable modifications, the student must be consulted.
- The student has discretion to accept or decline each reasonable modification offered. If accepted, it must be implemented.

POSSIBLE REASONABLE MODIFICATIONS

- Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions including eating, drinking, or using the restroom;
- Intermittent absences to attend medical appointments;
- Access to online or homebound education;
- Changes in schedule or course sequence;



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POSSIBLE REASONABLE MODIFICATIONS

- Extensions of time for coursework and rescheduling of tests and examinations;
- Allowing a student to sit or stand;
- To carry or keep water nearby;
- Counseling;



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POSSIBLE REASONABLE MODIFICATIONS

- Changes in physical space or supplies (for example, access to a larger desk or a footrest);
- Elevator access;
- Other changes to policies, practice, or procedures.

NOTIFICATION REQUIREMENTS FOR ALL EMPLOYEES

§ 106.44 NOTIFICATION REQUIREMENTS

An elementary school or secondary school recipient must require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee **has information about conduct that reasonably may constitute sex discrimination** under Title IX or this part.



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§ 106.44 NOTIFICATION REQUIREMENTS

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TITLE IX OBLIGATIONS FOR ALL EMPLOYEES

1. There is ongoing litigation—the rules have been enjoined in some circuits. With the June 28, 2024 SCOTUS decision overturning *Chevron*, there may be other challenges to the rules. In the meantime, maintain course.



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TITLE IX OBLIGATIONS FOR ALL EMPLOYEES

2. “An elementary school or secondary school recipient **must** require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or this part.”

THIS MEANS CONTACT THE TITLE IX COORDINATOR AS SOON AS SEX-BASED CONDUCT IS REPORTED TO YOU OR WITNESSED BY YOU.



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TITLE IX OBLIGATIONS FOR ALL EMPLOYEES

3. No discipline can be issued and no investigation can occur until the Title IX Coordinator is involved.

THE GRIEVANCE PROCESS



TITLE IX OBLIGATIONS FOR ALL EMPLOYEES

4. Supportive measures are an important part of the process. If you have any role in supportive measures, these are the steps taken to prevent the conduct from recurring and to allow the parties to access the educational environment. Take these seriously.



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TITLE IX OBLIGATIONS FOR ALL EMPLOYEES

5. Document every action you take—this is a place where you want a paper trail to exist to prove you did something, that you were not deliberately indifferent.



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TITLE IX OBLIGATIONS FOR ALL EMPLOYEES

6. Complete annual training requirements.

Employee training under the regulations must be provided “promptly” upon hiring and annually thereafter.

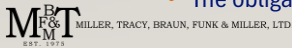
TITLE IX – SCHOOL DISTRICT OBLIGATIONS

- Update district policies (2:265 and related procedures)
- Address complainant and provide supportive measures
- Mandatory reporting
- Informal resolution
- Investigation
- Formal grievance process: - Notice - Report – Complaint – Investigation and Evidence Sharing – Decision - Appeal

TITLE IX – EMPLOYEE OBLIGATIONS

- **All employees should:**

- Know who the District Title IX Coordinator is (their information will be posted on the school's website)
- Recognize a potential Title IX violation, including sex discrimination and sex-based harassment
- Report any potential Title IX violation to the Title IX Coordinator immediately upon receiving information which reasonably may constitute sex discrimination or sex-based harassment
- Review the district's anti-discrimination and anti-harassment policies as soon as they are updated
- Recognize responsibility to report any acts of retaliation
- Understand supportive measures you may need to help implement
- The obligation to prevent and address sex discrimination and/or sex-based harassment



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