

# Title IX Tune-Up: Summer Compliance Refresher

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Date: July 17, 2025

# Agenda

**01** Where We've Been

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**02** Where We Are

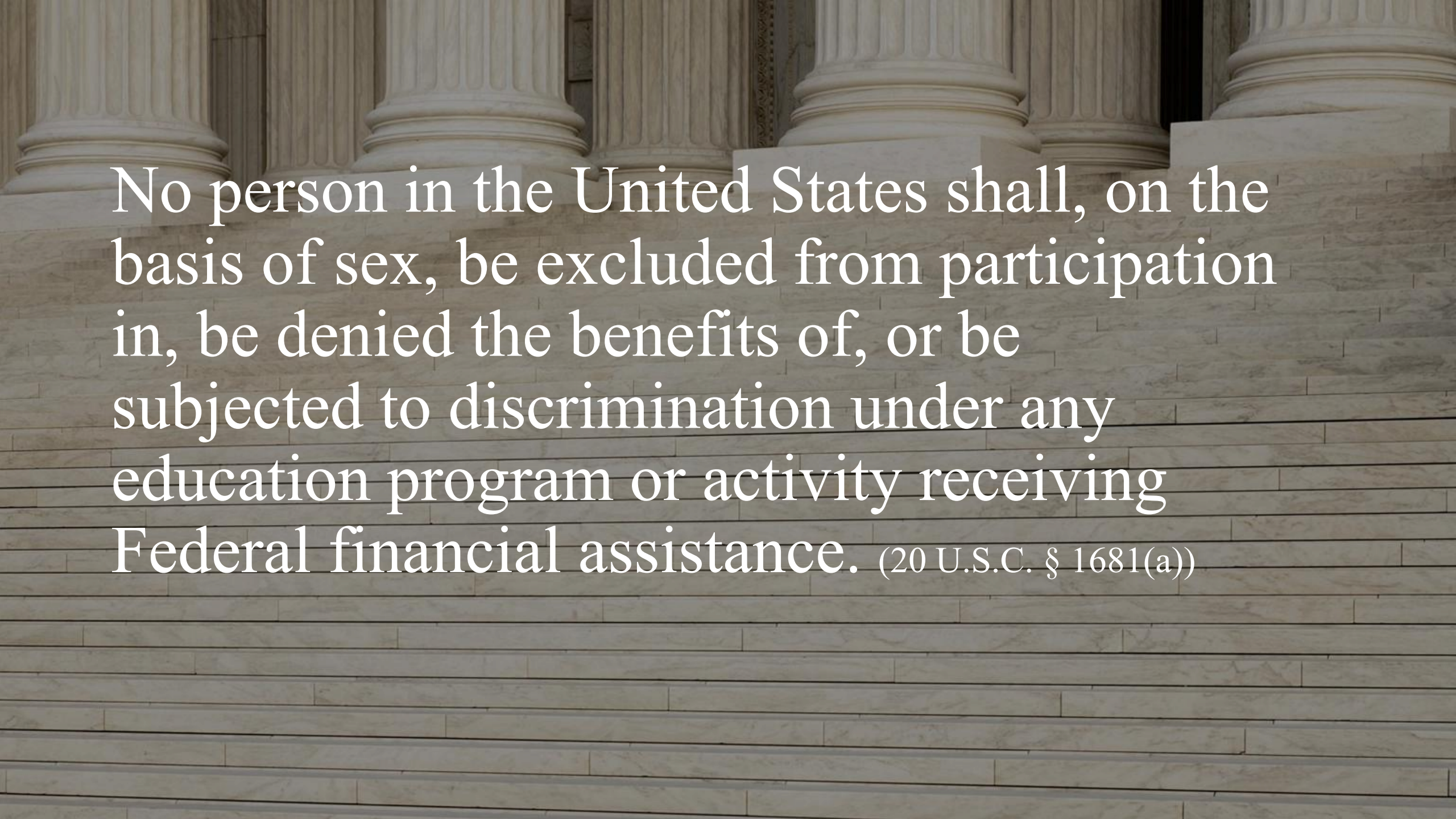
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**03** Where We Are Going

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**04** Q&A

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The background of the image shows a series of wide, light-colored stone steps leading up to a building with large, fluted classical columns. The scene is brightly lit, suggesting a sunny day. The text is overlaid on the upper portion of the image, positioned over the steps and the base of the columns.

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. (20 U.S.C. § 1681(a))



**Where We've Been**



# When You Realize Title IX Changed... Again.



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# Recent Developments

- Title IX Regulations
- Executive Orders
- Dismantling/Restructuring ED
- OCR Enforcement

# Title IX Regulations Timeline



August 1, 2024 Biden Rules  
Effective



August 2024-January 2025  
legal challenges/widespread  
injunctions



January 9, 2025-nationwide  
vacatur of Biden rule



OCR guidance/clarification  
that 2020 Rules apply

# Biden Title IX Rule Vacated

## *Tennessee v. Cardona* (Jan. 9, 2025)

### **Key Holding:**

- “the *entire point* of Title IX is to prevent discrimination based on sex—throwing gender identity into the mix eviscerates the statute and renders it largely meaningless.”

### **Court’s Rationale:**

- Exceeded Statutory Authority: Rule went beyond the scope of the statute passed by Congress
- Violated First Amendment: Implicated free speech and compelled speech concerns
- Arbitrary & Capricious: Lacked sufficient justification under the Administrative Procedure Act (APA)



# Executive Orders

- EO 14201-Keeping Men Out of Women's Sports
- EO 14168 Defending Women from Gender Ideology Extremism
- EO 14173 Ending Illegal Discrimination and Restoring Merit-Based Opportunity

# Elimination of Department of Ed?

- **Potential Reorganization:**
  - OCR enforcement moved to the Department of Justice (DOJ)
  - Higher ed policy moved to Labor or Commerce
  - K–12 oversight at state level
- **Staffing & Operations Already Shrinking**
  - Over 35% of ED staff cut since Jan 2025
  - OCR field office closures; centralized enforcement
  - Delays in investigations and technical assistance
- **Supreme Court Upholds Executive Authority**
  - SCOTUS decision confirms executive branch may reduce agency size
  - Clears path for staffing cuts, field office closures, and reallocation
- **Title IX Implications**
  - More reliance on state law
  - Potential for Title IX enforcement to shift toward DOJ

# OCR Enforcement Activity

- Focus on non-Title IX civil rights
- Title IX Special Investigations Team
- California Department of Education & CIF
- Denver Public Schools
- Cromwell, CT Schools
- Illinois State Board of Ed (ISBE)
- Maine Department of Education

PRESS RELEASE

# U.S. Department of Education Launches Investigation into Denver Public Schools for Converting Girl's Restroom to All-Gender Facility

East High School now has an exclusive restroom for male students and no restroom for female students on its second floor

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JANUARY 28, 2025

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## Related Content

[U.S. Department of Education Issues Statement on the Nation's Report Card](#)

The U.S. Department of Education released the following statement in response to the public release of the scores from the 2024

# Related & Overlapping Laws

State laws

Judicial  
decisions

Clery/VAWA

Title VII & other  
employment  
laws

Pregnancy  
related laws

FERPA





**Where We Are**

# Re-cap & Where We Are Today

- **Title IX is here to stay.**  
The law remains firmly in place — even if enforcement models shift.
- **The 2020 Regulations remain in full force.**  
Following the 2025 vacatur of the 2024 rules, the 2020 rules are back — and binding.
- **OCR still has enforcement authority — for now.**  
But staffing cuts, field office closures, and reorganization plans signal an uncertain future.
- **Shifting enforcement priorities.**  
More focus on transgender rights, Title VI race-based complaints, and athletics.
- **Possible transfer of enforcement to DOJ.**  
Part of broader federal restructuring and decentralization plans.
- **You can still be sued.**  
The **private right of action** remains — students and employees can file directly in court.



# Supreme Court Framework

*Franklin v. Gwinnett County Public Schools*  
(1992 503 U.S. 60)

*Gebser v. Lago Vista Independent School District*  
(1998 524 U.S. 274)

*Davis v. Monroe County Board of Education*  
(1999 526 U.S. 629)

# Title IX Grievance Procedure 34 CFR 106.45

Citation	Summary
106.45(a)	School's treatment of parties may constitute discrimination
106.45(b)(1)(i)-(x)	Grievance Process Requirements
106.45(b)(2)	Written Notice of Allegations to Both Parties
106.45(b)(3)-(b)(4)	Formal Complaints Must be Investigated, Dismissals, Consolidation
106.45(b)(5)(i)-(vii)	Investigation Requirements
106.45(b)(6)	Cross Examination Conducted by Advisor
106.45(b)(7)	Independent/Neutral Decision-maker, Standard of Evidence Same, Written Determination
106.45(b)(8)	Appeals: Procedural Irregularities, New Evidence, Bias or Conflict of Interest
106.45(b)(9)	Informal Resolution: Voluntary, Written Consent. Not Allowed for Employee Respondent
106.45(b)(10)	Record Keeping, Publication of Training Material
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## 2020 Rule

- No Single Model Investigator
- Actual Knowledge
- Sexual Harassment: Severe, Pervasive, Objectively Offensive
- “Sex-based”
- Grievance Process After Formal Complaint of Sex Harassment
- Live Hearing & Cross Exam
- Scope limited to educational program & activity in US
- Training only for T9 personnel

## 2024 Rule

- Investigator Can Make Decision
- Expansive notice & reporting
- Sex-based Harassment: Severe *or* Pervasive
- “Sex-based”
- Grievance Process for All Reports of Discrimination
- Hearing & Cross Exam Optional
- Further reach; “Impact” within EPA
- All employees must be trained



# Notice/Actual Knowledge

## Current Rule:

- Notice of sexual harassment or allegations of sexual harassment
- Made to the Title IX Coordinator
- Or to any school official who has the authority to institute corrective measures on behalf of the school
- Or to any employee of an elementary and secondary school
  - **2024 RULES:**
  - All employees had obligation
  - Included pregnancy in reporting requirement
  - Monitoring barriers to reporting

# Definition of Sexual Harassment

1. “Hostile Environment”: Unwelcome sexual conduct that is so severe and pervasive and objectively offensive it effectively denies a person equal educational access
2. Quid Pro Quo
3. Clery/VAWA Sex Offenses

# Definition of Harassment

## Sex-based Harassment (2024/Biden Rule)

- “sexual harassment and other harassment on the basis of sex, including on the bases described in [34 C.F.R.] § 106.10 . . . .” 34 C.F.R. 106.2. It includes “[u]nwelcome 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. . . .” 34 C.F.R. § 106.2 (emphasis added); 89 Fed. Reg. 33498

## Sexual Harassment (Current/Trump Rule)

- “conduct on the basis of sex” that is “[u]nwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.” 34 C.F.R. 106.30 (effective Aug. 14, 2020).

# Jurisdiction

- Educational program or activity
  - Locations, events or circumstances over which the school exercises substantial control over both the respondent and the context in which the alleged discrimination occurred
  - Any building owned or controlled by student organization officially recognized by the school
  - 2024 Rule
    - extended to contexts in which school exercises disciplinary authority
    - could apply outside program or activity or outside US if *some* of the conduct occurred in educational program or activity



# Complaints

- 2020: Only formal complaints trigger Title IX requirements. In writing, “signed” by complainant
- 2024: An oral or written request to the school that objectively can be understood as a request for the school to investigate and make a determination about the alleged discrimination



# Reluctant Complainant

- 2020 Rules; generally defer to Complainant's wishes (serious or ongoing threat)
- 2024 Rules-T9C must consider:
  - Complainant's safety concerns
  - Risk of recurrence
  - Severity of allegations (require removal or discipline?)
  - Age & relationship of parties
  - Scope of misconduct/pattern/other "victims"
  - Availability of evidence
  - Whether discrimination can be addressed w/o grievance process



# Supportive Measures

- 2020 Rule-less tolerance for measures which burden/penalize the respondent
- No Contact Orders should be mutual
- Emergency removals more stringent criteria-immediate threat to physical safety of another
- 2024 required “appeal” of supportive measures
- 2024 required coordination with IEP (K-12)

# Title IX Personnel

<b><u>TITLE</u></b>	<b><u>RESPONSIBILITIES</u></b>	<b><u>TRAINING</u></b>	<b><u>STATUS</u></b>
Title IX Coordinator (multiple &/or deputies)	Coordinate, Intake Reports & Complaints, T9 analysis, Initiate Formal Complaint, Implement Supportive Measures	Sexual Harassment, Investigation & Grievance Procedure, Hearings, Appeals & Informal Resolution (as applicable); Impartiality, Relevance, Privilege	Must be Employee May Not Serve as Decision-Maker
Investigator	Conduct Fair, Objective and Impartial Investigation, Differentiate b/w Related & Relevant Evidence & Privilege	Sexual Harassment; How to Conduct an Investigation, Impartiality, Relevance, Privilege, Report-Writing	Staff or External May Not Serve as Decision-Maker
Decision Makers	Evaluate Evidence, Make & Write Decision, “Rule” on Relevancy during adjudicative process	Sexual Harassment, Hearing Process, Technology, Evidence/Relevancy	Staff or External Cannot Serve in Any Other Capacity
Advisor(s)	Question Opposing Party & Witnesses *POSTSECONDARY ONLY	None required	Party provided Staff or External
Informal Resolution Facilitator	Informal Resolution Processes	Informal Resolution Processes	Staff or External

# Dismissal of Complaint

## 2020 Rule:

- Mandatory dismissal if the allegation does not meet the definition of sexual harassment
- Discretionary
  - Complainant requests withdrawal of complaint
  - Respondent no longer affiliated with school

## 2024 Rule:

- All dismissals discretionary & had higher bar

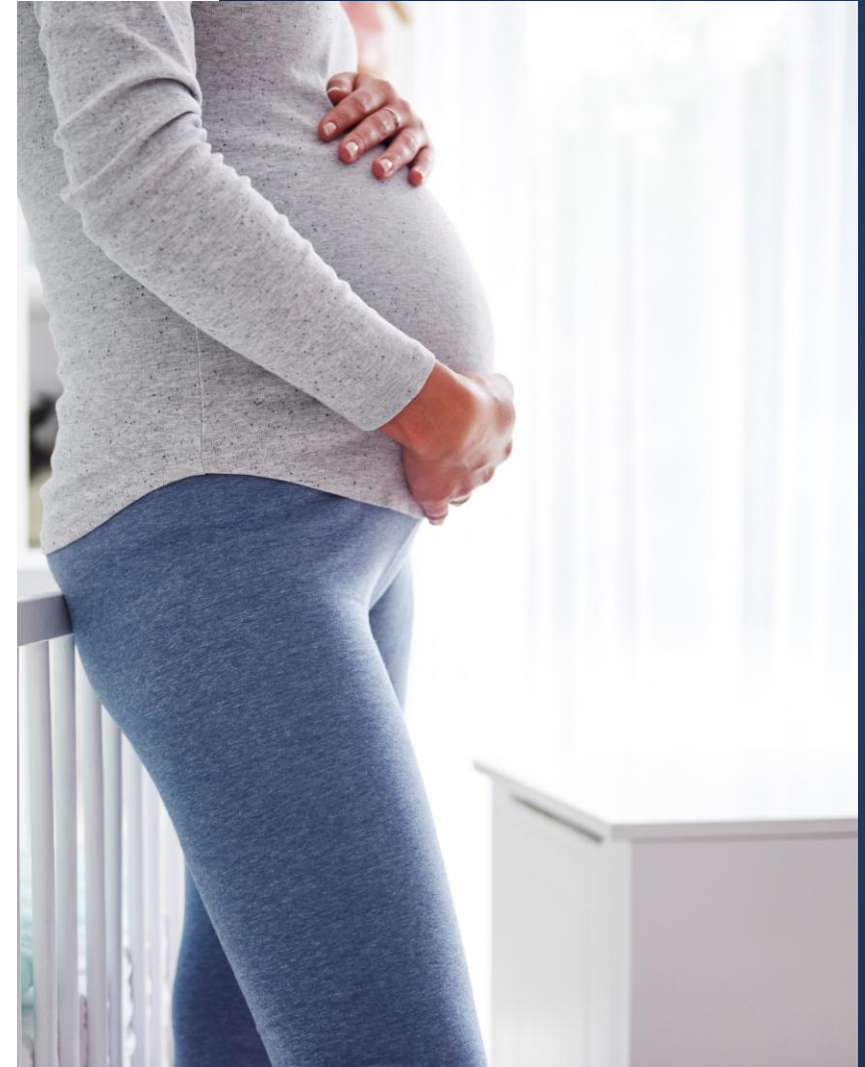
# Informal Resolution

- Discretionary
- If deemed appropriate by T9C
- IR process must be in writing
- Not permitted in Student v. Employee matters\*
- Formal complaint required\*
- Both parties voluntarily agree
- Facilitator must be trained/conflict & bias free



# Pregnancy & Related Conditions

- Both 2020 & 2024 Rules provide protections for pregnant students & employees
- 2024 clarified expectations/processes
- 2020 Rules do not have Notice/Reporting requirement related to pregnant students
- Requirement for lactation spaces no longer explicit
  - Federal laws PWFA & PUMP Act require for employees



# Re-Cap: Anatomy of a Title IX Complaint

- Actual Knowledge
- Supportive Measures
- Formal Complaint
- Evaluation-Mandatory Dismissal?
  - Non-Title IX process?
- Investigation
- Live Hearing
  - Cross-examination
- Appeal
- Discipline/Remedies

# What About Cases that Fall Outside of TIX?

## When Misconduct Doesn't Meet Title IX's Narrow Scope:

- **Title IX only applies to conduct that meets a strict definition**
  - Ex: Must be both **severe, pervasive, and objectively offensive**
  - Must occur **within the school's program or activity** (typically not off-campus)
- **BUT state laws may define harassment or misconduct more broadly**
  - Ex: Off-campus conduct, single severe incidents, verbal misconduct, etc.
- **Institutional standards also apply**
  - Even if not illegal, conduct may violate **student code, employee policy, or campus norms**
- **Procedural fairness still required — even outside Title IX**
  - Public schools must provide **due process**
  - Private schools must ensure **procedural fairness** (same principles apply!)
- **Core procedural expectations include:**
  - Notice of allegations
  - Opportunity to be heard
  - Access to evidence
  - Right to respond before discipline imposed
  - A live hearing may be required in some jurisdictions



**Where We're Headed**

# Emerging & Pending Issues

- **Elimination of the U.S. Department of Education**
  - SCOTUS upholds staffing cuts; ongoing uncertainty
  - Potential DOE reorganization, OCR dissolution, Title IX decentralization
- **OCR Enforcement Activity**
  - Pending investigations and compliance reviews gaining steam
- **DOJ Litigation**
  - DOJ sues State of California over conflicting state/federal obligations
- **State-Level Action: Maine**
  - Notable Title IX challenges involving gender identity & athletics
- **Supreme Court Watch**
  - Upcoming decisions may shape the definition of “sex” under Title IX

# Key Takeaways

- **Title IX isn't going anywhere.**  
Sex-based discrimination — including sexual harassment — remains prohibited under federal law.
- **Supreme Court cases ahead**  
Major cases may clarify the meaning of "sex" (biological vs. gender identity).
- **State battles and potential federal shifts**  
More state-level control likely if the Dept. of Ed is downsized, unless preempted by federal law.
- **2020 Rules = here to stay (for now)**  
Due to the APA process, they'll likely remain in place for **years**, even under a new administration.
- **Judicial interpretation will continue**  
Expect ongoing court decisions and circuit splits to gradually reshape how Title IX is applied.





- ✓ Make sure your Title IX policy aligns with the **2020 regulations**
- ✓ Train your Title IX team on the **rules currently in effect**
- ✓ When in doubt, go back to the **core principles**: fairness, notice, and support
- ✓ Stay informed — but don't spiral. **Simplify where you can**
- ✓ And most importantly... **you've got this**



Q&A

# Thanks for Attending!

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