



## TITLE IX LEGAL UPDATE: THE CASES AND CHANGES SINCE OCTOBER 2019

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## WESTLAW SEARCH

Since October 14, 2019 ... 513 Federal Opinions that include "Title IX"\*

Since August 1, 2020 ... 92 Federal Opinions that include "Title IX"\*

Since October 14, 2019 ... 59 Federal Opinions in Fifth Circuit include "Title IX"\*

\*As of 9/25/20

## JACKSON V. VALDEZ N.D. TEXAS, NOV. 2019

- Jackson, who is transgender, attempted to have the judge in her case against her employer (the City of Dallas) recused because of the The Honorable United States District Judge Brantley Starr's "apparent bias"
- This request was denied
- Appointed in 2019

## JACKSON V. VALDEZ N.D. TEXAS, NOV. 2019

- Participated in the Attorney General's opinion condemning Fort Worth ISD for implementing the Obama administration's Dear Colleague letter allowing transgender students to use the bathroom of their gender identity
- Spoke at a panel discussion and stated he supported the right of county clerks to refuse issuing marriage licenses to same-sex couples in October 2015
- Testified before Texas legislature supporting legislation that allowed adoption agencies to refuse placing children with same-sex couples
- Supported the judicial nomination of Jeffrey Mateer, who stated that transgender children were part of "Satan's plan." He never withdrew support from Mateer after the statement was made.

**DOE V. KATY ISD  
S.D. TEX., DEC. 2019**

- Jane Doe showed enough evidence to raise a material fact issue as to whether Katy ISD was deliberately indifferent to a pedophile teacher (student-teacher relationship)
- Some **teachers were suspicious**, but never reported suspected pedophile to appropriate administrator
  - **Told fellow teachers**
  - **Told school secretary**
- Never told assistant principal, principal, superintendent until too late

Notice is when any school employee has notice

**POLOCENO V. DALLAS INDEP. SCH. DIST.,  
2019 WL 7305216 (N.D. TEX. DEC. 30, 2019)**

- Student had to do “ceiling jumps,” got ill, condition grew worse, and she was hospitalized for almost a week and diagnosed with rhabdomyolysis, breakdown of muscle tissue.
- Plaintiff alleged that Teacher **treated boys and girls the same** even though professional standards of care required him to treat them differently. She asserted that teacher's P.E. program violated Title IX because it **did not consider the physical and metabolic differences between boys and girls**. Plaintiff alleged DISD was liable under Title IX because A.I.'s school principal and nurse both knew that female students were more likely than males to be injured by Washington's punishment.
- Pl: Plaintiff **should have been treated “substantially different.”**

(Cirkiel Special) Affirmed by 5<sup>th</sup> Circuit September 10, 2020

**J.B. V. KLEIN INDEP. SCH. DIST.  
2020 WL 813020 (S.D. TEX. FEB. 18, 2020)**

- Student claimed bullied from 3rd through withdrawal in 8th grade
- J.B.'s counsel conceded on the record at the hearing that the bullying and teasing J.B. experienced in third grade was not sexual in nature.
- J.B. was taunted by the same student through elementary school and most of middle school; vulgar insults and sexual remarks on a daily basis.
- J.B.'s mother emailed the middle school principal to inform them of J.B.'s bully, and the two were purposefully placed in different classes.
- Cont.

**J.B. V. KLEIN ISD  
S.D. TEXAS, FEB. 2020**

- J.B. alleges she told her middle school principal about the bullying and was told to wear earphones in the hallway so she would not hear him.
- School district never conducted an investigation, took any action in response to J.B.'s sexual harassment complaints, or took any disciplinary action against C.E. or any other student for harassing J.B. during middle school.
- MSJ granted for elementary school conduct, denied for middle school

**RUVALCABA V. ANGLETON INDEP. SCH. DIST.**  
2020 WL 1431602 (S.D. TEX. MAR. 23, 2020)

- Student claims she was sexually assaulted, district investigated and did not believe her
- Student claimed she had given district notice of bullying multiple times
- MSJ Granted for AISD: Reports of generalized bullying were insufficient to place AISD on actual notice of severe sexual harassment and certainly did not place AISD on notice that Student was at risk of sexual assault.

**GRUVER V. LOUISIANA BD. OF SUPERVISORS  
FOR LOUISIANA STATE UNIV. AGRIC. & MECH.  
COLL., 959 F.3D 178 (5TH CIR. 2020)**

- Tragic death of Maxwell Gruver after a fraternity hazing event at LSU. His parents sued LSU for violations of Title IX and state law alleging that LSU discriminated against male students by **policing hazing in fraternities more leniently than hazing in sororities.**
- State does not have immunity under Title IX, MTD denied.

**BREND V. COPPERAS COVE ISD**  
5TH CIRCUIT, SEP. 15, 2020

- Student sued District because she was subjected to the tradition of “Slap Butt Friday,” “Titty Twister Thursday” and sexual name calling and rumors
- The 5th Circuit affirmed the lower court’s summary judgment in favor of the District because the District was **not deliberately indifferent**
- After investigating, the District found the Student who sued herself had been participating in “Slap Butt Friday” in the girl’s locker room
- The District also spoke with Student’s teachers, and warned male students who taunted Student to stay away from her with written and verbal warnings

**ARNOLD V. BARBERS HILL INDEP. SCH. DIST.**  
2020 WL 4805038, (S.D. TEX. AUG. 17, 2020)

- **Dreadlocks** case brought under many causes of action, including Fourteenth Amendment’s Equal Protection Clause; Title VI of the Civil Rights Act of 1964; sex discrimination under the Fourteenth Amendment’s Equal Protection Clause; sex discrimination under Title IX; (5) violation of his First Amendment right to free speech.
- Injunction Granted – not on Title IX

**SEWELL V. MONROE CITY SCH. BD**  
2020 WL 5416305 (5TH CIR. SEPT. 10, 2020)

- EE harassment of Sewell stemmed from a discriminatory view that African American males should not have two-toned blonde hair.
- And even though white students and black female students wore a variety of dyed hairstyles, Sewell was the only student punished during the school year for violating the hair policy.
- EE's verbal abuse also tied Sewell's hair to his race and sex.
- EE asked if Sewell "was gay with 'that mess' in his head," which could imply animus toward males who do not conform to stereotypical notions of masculinity.
- MSJ Reversed for Title IX (male/hair) Title VI (race)

**IDAHO TRANSGENDER SPORTS PARTICIPATION BILL**

- Two bills signed into law in Idaho March 31, 2020.
- One bill prohibits transgender people from changing the sex on their birth certificates, and the other bans trans girls and women from competing in women's sports.

**SOULE V. CONNECTICUT ASS'N OF SCHOOLS, INC.**

- Three high school female runners are suing through their mothers because they have two transgender females competing in races with them.
- The two transgender athletes have been winning their races by an average of .2 seconds faster than the other female competitors.
- Connecticut Association of Schools, Inc. has a policy which allows transgender athletes to compete on the gendered sports team of their identity.
  - They also do not require transgender students to share their medical histories in order to compete (this is common in other states).
- The Department of Justice intervened on March 25, 2020, on behalf of Soule to further advocate that transgender athletes should compete according to their assigned sex at birth.
- The ACLU has intervened on behalf of the Connecticut Association of Schools.

**TEXAS TEENAGER EXPELLED FROM CHRISTIAN SCHOOL OVER HIS SEXUAL ORIENTATION**

10/16/20

COLLEYVILLE, Texas (NewsNation Now) — Devin Bryant, a Dallas-area senior who was expelled from his private Christian academy for being gay is speaking out about the experience. For the 18-year-old senior in Colleyville, Texas, talking about his newly proclaimed identity is still a fresh and delicate topic. "I came out on my birthday, so it was October 2nd, and my reasoning behind it was to give myself the best birthday gift I could think of," said Bryant.

## BETSY DEVOS NEW TITLE IX INITIATIVES

- U.S. Secretary of Education Betsy DeVos announced a new Title IX enforcement initiative, led by the Department's Office for Civil Rights (OCR), to combat the troubling rise of sexual assault in K-12 public schools.
- Department's Office of Elementary and Secondary Education's announcement that it will publish an extensive study of measures taken by states and school districts to prevent the phenomenon known as "Pass the Trash." The study examines best practices for prevention and raises awareness of the requirement under Section 8546 of ESSA, which prohibits state education agencies, school districts, schools and school employees from assisting an individual in obtaining new employment if the individual has engaged in sexual misconduct with a student or minor.

## OCR: TITLE IX

### Changes include:

- Empowers persons to make decisions about how a school responds to incidents of sexual harassment
- **Restores fairness** by upholding all students' right to written notice of allegations, the right to an advisor, and the right to submit, cross-examine, and challenge evidence
- **Protects students and faculty by prohibiting schools from using Title IX to deprive students/EEs of rights guaranteed by the First Amendment**

## TITLE IX – BUT SERIOUSLY, FOLKS

- Requires schools to select one of two standards of evidence, the **preponderance of the evidence** standard or the **clear and convincing evidence** standard
- Districts have option of having hearings (required for colleges)
- New positions created, totally new process, new training required.
- Took effect **August 14, 2020**
- Title IX Coordinator and new procedures need to be on website, new policies, included in handbooks, training too

## TITLE IX

### New Positions:

- Title IX Coordinator – coordinates [High Level Administrator]
- Investigators – investigates [HR investigators]
- Decision Makers – makes final decisions [Principal?]
- Facilitators – mediates [Counselors?]
- Advisors – helps complainant/respondent [Assistant Principals?]

## TITLE IX

- Victims are now Complainants
- Perpetrators/Accused are now Respondents
- Investigations include notice to Respondent, cannot tell them to maintain confidentiality, let them know who witnesses are, let them watch and provide questions
- Maintain neutrality
- Hearing? Cross examination

## DOE V. EDGEWOOD INDEP. SCH. DIST. 964 F.3D 351, 362 (5TH CIR. 2020)

- Who is an “appropriate person” to report Title IX sexual abuse to in a district
- EISD doesn’t contest that Hernandez (the peace officer) knew that the teacher was abusing Doe. Nor does EISD contest that Hernandez responded with deliberate indifference.
- Employee must “at a minimum ha[ve] authority to institute corrective measures on the district’s behalf.”
  - Such as:
    - anyone with the ability to fire people on the District’s behalf,
    - anyone with the ability to contract on the District’s behalf,
    - receive or hold real or personal property or funds on the District’s behalf, or
    - be assigned any administrative tasks.

## OH, AND DID YOU SEE TITLE VII NOW APPLIES TO LGBTQ?

### **Bostock v. Clayton County, GA 6/15/20**

- “An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.”
- “So long as the plaintiff’s sex was one but-for cause of that decision, that is enough to trigger the law.”

## BOSTOCK, CONT.

- “[A]n employer who intentionally treats a person worse because of sex—such as by firing the person for actions or attributes it would tolerate in an individual of another sex—discriminates against that person in violation of Title VII.”
- “That distinguishes these cases from countless others where Title VII has nothing to say. Take an employer who fires a female employee for tardiness or incompetence or simply supporting the wrong sports team.”

## G.G. V. GLOUCESTER COUNTY SCH. BD 4TH CIRCUIT (8/26/20)

- (After Supreme Court remanded to trial court)
- Court of Appeals affirmed trial court granting of summary judgment based upon the Fourteenth Amendment and equal protection and Title IX.
- September 22, 2020 Court denied petition for en banc consideration
- Will it go to the Supremes again? 90 days to “appeal”...

December 21, 2020

## ANY QUESTIONS?



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