

Title IX: Here We Go Again



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Title IX of the Education Amendments of 1972

“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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Where Have We Been?

- ▶ August 2020: Updated “Final Rule” takes effect.
- ▶ Updated definition of sexual harassment and confirmed that sexual harassment (including sexual assault) is a form of unlawful sex discrimination.
- ▶ Requirement to implement lengthy and comprehensive grievance procedure to address formal complaints of sexual harassment.



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Current Final Rule

Built on Supreme Court precedent discussing liability for damages under Title IX.

- *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998) – liability for sexual harassment of student by a school employee; money damages available in private lawsuit when a school has actual knowledge of an employee sexually harassing a student but responds with deliberate indifference.
- *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 274 (1999) – liability for sexual harassment of a student by a peer; sex-based conduct becomes actionable sexual harassment when the conduct is so “severe, pervasive, and objectively offensive” that it denies victims equal access to education, and utilization of actual knowledge and deliberate indifference standards.



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Current Final Rule

Three-part *Gebser/Davis* framework to determine Title IX violations by a school:

1. *Existence of actionable sexual harassment?*
2. *Actual knowledge by the school?*
3. *Deliberate indifference when responding?*

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Biden Administration – 2021 Updates

March 8, 2021: Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity

It is the policy of my Administration that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity.

For students attending schools and other educational institutions that receive Federal financial assistance, this guarantee is codified, in part, in Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance.

Also tasked the Secretary of Education with reviewing the Title IX regulations and issue new guidance on implementing Title IX.

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Also available as part of the eCourse

[2023 School Law eConference](#)

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