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Title IX Challenges and Updates in Washington State

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Washington State Legislation Updates

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Chapter 49.60 RCW – Discrimination

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Prohibits discrimination in student admissions, campus housing, academics, and employment on the basis of:

- Race
- Creed or Religion
- Color
- National Origin
- Families with Children
- Sex
- Marital Status
- Sexual Orientation
- Age
- Military Status
- Presence of Disability
- Hair
- Citizenship Status

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RCW 28A.640.010 – Sex Discrimination

Prohibits sex discrimination in Washington Public Schools

Applies in several areas:

- Extracurricular Activities
- Fair Course Access
- Protection from Harassment

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Chapter 392-190 WAC – Unlawful Discrimination in Public Schools

- **Covers all K-12 Students**
- **Applies to:**
  - Equal Access
    - Classes, Sports, and Programs
  - Safe Environment
    - Stop Sexual Harassment and Bullying
  - Compliance Officers
    - Appoint a Civil Rights Coordinator

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Department of Education and Case Law Updates

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Department of Education (ED) Updates

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Executive Orders

In 2025, President Trump signed 225 Executive Orders (EO) (from EO 14147 through EO 14371)

The Executive Orders can all be found on the Federal Register.

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For Reference: Rescinded Prior Guidance

ED has rescinded all guidance documents inconsistent with the EOs or subsequent guidance

- White House Toolkit on Transgender Equality
- 2024 Title IX Regulations: Pointers for Implementation
- ED Toolkit: Creating Inclusive & Nondiscriminatory School Environments for LGBTQ Students
- Supporting Intersex Students
- Supporting Transgender Youth in School
- Letter of Educators on Title IX's 49th Anniversary
- Confronting LGBTQ Harassment in Schools
- Enforcement of Title IX - Based on Sexual Orientation and Gender Identity in light of Bostock v. Clayton County
- AG's memorandum "Application of Bostock v. Clayton County to Title IX"
- EEOC's "Enforcement Guidance on Harassment in the Workplace"

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Department of Education Updates

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- **Significant staffing reductions** and closure of some regional offices
  - Recently starting to see more complaint-driven investigations again, posting agreements online
- **Federal funding and oversight shifts**
  - Executive Order (EO): Improving Education Outcomes by Empowering Parents, States, and Communities (3/20/25)
    - Directed the Secretary of Education to "facilitate closure of the Department" and "return authority to the States and local communities"
  - Civil Rights enforcement remains in OCR, but other agencies (e.g., Health and Human Services (HHS) and Department of Justice (DOJ) appear to be ramping up enforcement in certain areas

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Increased Focus on Title VI

- Multiple federal agencies leveraging Title VI enforcement
  - Antisemitism and anti-Diversity, Equity, and Inclusion (DEI)
- A few anti-DEI efforts have been struck down in courts as **unconstitutional** under the First and Fifth Amendments
  - February 2025 Dear Colleague Letter (DCL) on DEI and race-based practices in admissions, financial aid, hiring, and other aspects of academic and student life
  - ED's certification requirements for K-12 districts re: "illegal DEI practices"
- ED intends to create regulations to make changes to **enforcement mechanisms**
  - Title VI regulatory process not expected to begin until next year, at the earliest

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Federal Changes Impacting Title IX

- ED released a DCL reinstating 2020 Title IX Regulations enforcement (02/04/25)
- **Executive Order: Defending Women from Gender Ideology Extremism and restoring Biological Truth to the Federal Government (01/20/25)**
  - Defines sex as a binary concept – man or woman
  - Limited Bostock v. Clayton County's holding, says it only applies to Title VII
    - Dept of Justice issued guidance on 02/12/25 that Bostock does not apply to Title IX
  - Prohibits federal funds and grants from promoting gender ideology
- **Executive Order: Keeping Men Out of Women's Sports (02/05/25)**
  - Prohibits transgender women from playing women's sports
  - Subject of active and rapid enforcement by Federal government
- **NIBRS User Manual Update:** Replaced "fondling" with "criminal sexual contact" and provided a new definition (06/23/25)

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What is going to happen to the Department of Education?

Will it close?

What is the current status?

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New and Emerging Definitions Under Title IX

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Defining Sex

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Should institutions implement the Executive Order's definition of biological sex?

- Likely depends on state law and court rulings in jurisdiction
- Considerations:
  - Bostock v. Clayton County applies an expansive definition of sex in employment
  - Residential schools/institutions are subject to the Fair Housing Act (FHA, aka Title VIII)
    - FHA Regulations are still in effect and protect sex expansively
- According to some federal court cases, sex includes sex discrimination that implicates sex stereotypes and sex characteristics

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Regulations – Sexual Assault: Rape

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Title IX Regulations:

- Penetration, no matter how slight,
  - of the vagina or anus with any body part or object, or
- oral penetration by a sex organ of victim, or by a sex-related object
- Without the consent of the victim
- Including instances where the victim is incapable of giving consent because of his/her age or because of a temporary or permanent mental or physical incapacity

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ATIXA Model – Sexual Assault: Rape

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ATIXA Model Definition:

- Penetration, no matter how slight,
  - of the vagina or anus of a person,
  - with any body part or object, OR
- **oral penetration**
  - **of a sex organ of the Complainant, or**
  - **by the Respondent's sex organ, or**
  - **by a sex-related object**
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of **their** age or because of a temporary or permanent mental or physical incapacity

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Sexual Assault: Criminal Sexual Contact (Fondling)

Title IX Regulations:

- The intentional touching of the clothed or unclothed body parts
- without the consent of the victim
- for the purpose of sexual degradation, sexual gratification, or sexual humiliation
- The forced touching by the victim of the actor's clothed or unclothed body parts,
- without consent of the victim
- for the purpose of sexual degradation, sexual gratification, or sexual humiliation
- This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation

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Sexual Assault: Fondling

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ATIXA Model Definition:

- The **intentional** touching of the **clothed or unclothed genitals, buttocks, groin, breasts, or other** body parts **of the Complainant by the Respondent**
  - without the consent **of the Complainant**
  - for the purpose of **sexual degradation**, sexual gratification, **or sexual humiliation**
- Or the Respondent caused or directed the Complainant's **intentiona**l touching **of the Respondent's clothed or unclothed genitals, buttocks, groin, breasts, or other** body parts
  - without consent of the Complainant
  - for the purpose of **sexual degradation**, sexual gratification, **or sexual humiliation**
- including instances where the Complainant is incapable of giving consent because of their age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation

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Case Law Updates

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Setting the Table

- We will be discussing cases that have not gone all the way to trial
  - Since pre-trial settlements are common, the real legal battles are in pre-trial motions
  - In pre-trial motions, the court assumes the allegations are true
  - Motion to Dismiss (MTD) v. Motion for Summary Judgement (MSJ)
- For the purposes of this session, we assume the allegations are true
  - Facts discussed have not been proven to be true
- **Note: This session does not provide legal advice**

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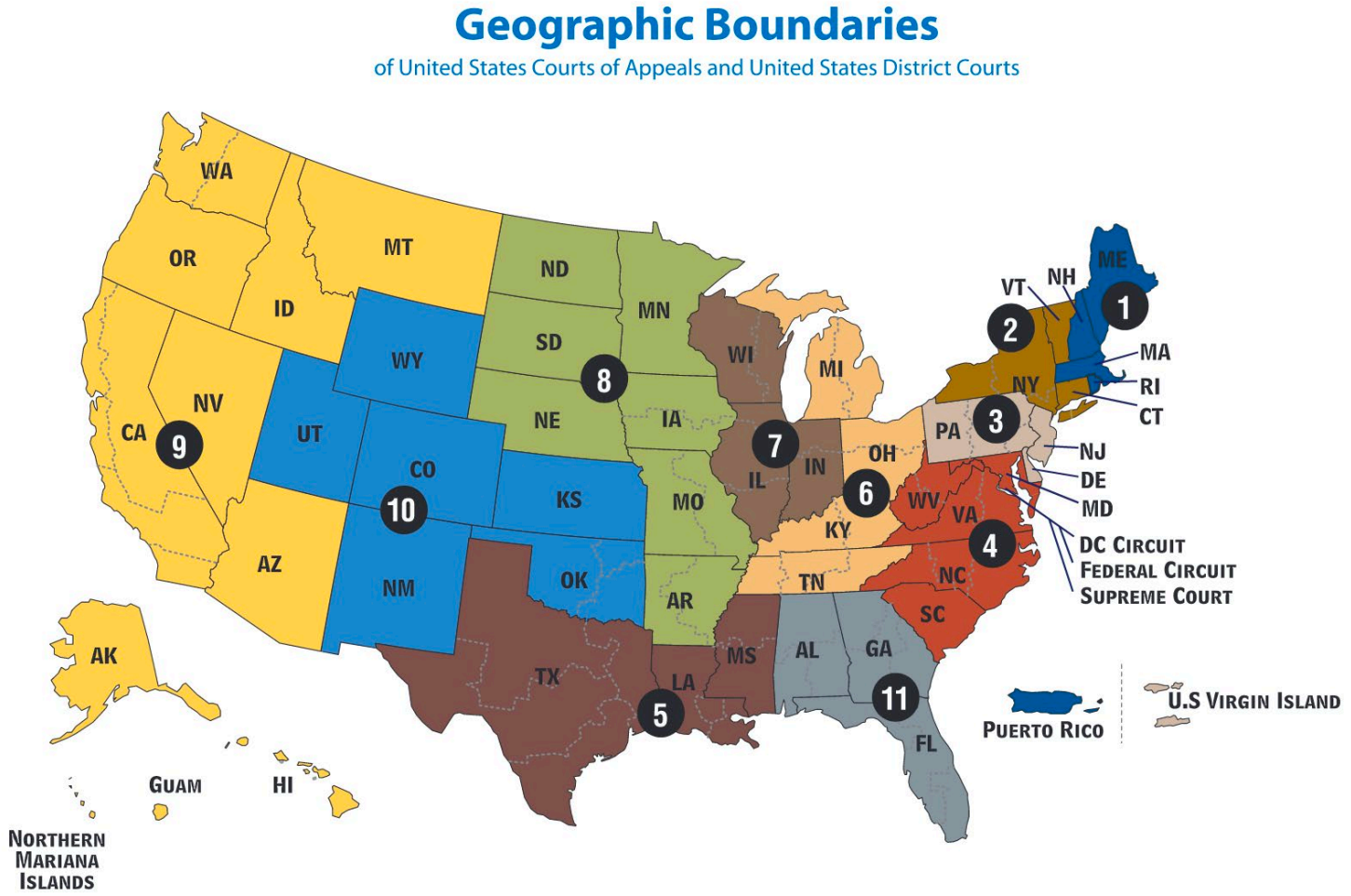
Map of Circuit Courts of Appeal



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Title IX Deliberate Indifference

Arana v. University of Wisconsin, 142 F.4th 992 (7th Cir. 2025)

Blair v. Appomattox County School Board, 147 F.4th 484 (4th Cir. 2025)

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Arana v. Wisconsin

- Plaintiff alleged sexual assault by a member of the University of Wisconsin (UW) football team, Quintez Cephus, in 2017
  - Cephus found responsible and expelled
- Criminal charges led to acquittal
- Cephus filed a petition for readmission with UW's Chancellor
  - In his petition, he described exculpatory evidence from trial, but that had not been submitted in the campus process
  - UW did not want to wait for the actual trial transcript
- Did not speak to Plaintiff about the readmission decision but did "receive input" from donors and football team
- Chancellor vacated the Title IX findings and Cephus was readmitted

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Arana v. Wisconsin (Cont.)

- Plaintiff returned to campus a few weeks later; shared with administration her concern Cephus would violate the No Contact Order
- Feeling unsupported by UW, Plaintiff:
  - Missed class
  - Did not access the student union or other communal spaces
  - Avoided certain parts of campus
  - Reduced her attendance at sorority events
  - Returned home to Chicago more frequently
  - Transferred from advanced courses to easier courses
  - Worked longer hours to attain the same grades

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Arana v. Wisconsin Outcome

- UW argued that the court should grant its motion for summary judgment because:
  - One instance of sexual harassment cannot be considered pervasive per Davis v. Monroe County Board of Education
  - Plaintiff was not deprived of educational opportunities
  - UW's response was not deliberately indifferent
- The court rejected those arguments, finding that the impacts Plaintiff experienced were a "deprivation" in the meaning of the statute
- Takeaways
  - Pressure campaigns and Title IX do not mix
  - Criminal court outcomes do not necessarily displace administrative findings
  - Involvement of senior officials without Title IX training
  - Develop policy on consideration of new evidence post-process

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Blair v. Appomattox

- S.B. was a 14-year-old trans student using the boys' bathroom at school
- Harassed and threatened by boys on bus, in the bathrooms, in the hallways
  - Subjected to "profane epithets," threats of sexual and physical assaults, touching her, shoving her, inappropriate touching
- School on notice of incidents, and did some investigation of the incidents on the bus, but did not interview the alleged respondents
- Grandparent (adoptive parent) unaware of S.B.'s transition
- School then responded by having S.B. use nurse's restroom

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Blair v. Appomattox (Cont.)

- Court examined whether the school had been deliberately indifferent in its response
  - A key component was whether the school engaged in efforts that were **reasonably calculated** to end the harassment
- School did not:
  - Report to the District's Title IX Coordinator to coordinate the response
  - Interview the boys accused of the harassing behavior or take any action regarding the boys
  - Check in on S.B.'s welfare amidst continued harassment
- The school was not entirely unresponsive, but did not engage in actions reasonably calculated to end the harassment

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Blair v. Appomattox Takeaways

- Response should not be piecemeal
- Ensure that school administrators report to the Title IX Coordinator
- Response must be effective to stop, prevent, and remedy
- “Deliberate indifference” is a high bar, but this standard brings the standard down to earth…response must be **effective**

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The Supreme Court and Transgender Issues

U.S. v. Skrmetti, U.S. Supreme Court, June 2025

West Virginia State Board of Education v B.P.J., U.S. Supreme Court, January 2026

Little v. Hecox, U.S. Supreme Court, U.S. Supreme Court, January 2026

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U.S. v. Skrmetti

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Supreme Court decided Skrmetti in June 2025

- Transgender individuals' access to certain medical care
- Held that a Tennessee state law banning puberty blockers and hormone therapy for the treatment of gender dysphoria in minors did not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution
- Court's analysis focused on the law's distinction on age and medical purpose rather than transgender status and therefore survives rational basis review
  - Declined to decide whether transgender individuals are a protected category under the Equal Protection Clause
- Anticipate more activity related to state laws regarding medical care

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West Virginia v. B.P.J.

- **Holding:** Title IX and the Equal Protection Clause permit a state law or school policy to restrict **women's** athletic teams to students based on **biological sex**, without violating Title IX or the Equal Protection Clause
- **Title IX** analysis (a 9-0 decision)
  - "Sex" under Title IX refers to biological sex
  - Title IX permits schools to maintain separate athletic teams for males/females; 1975 regulations expressly authorize sex-separated athletics
  - Nothing in Title IX statute or regulations requires exceptions for gender identity and/or hormonal differences
  - **Bostock** does not apply to school sports context

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West Virginia v. B.P.J. (Cont.)

- **Equal Protection Clause** analysis (a 6-3 decision)
  - The West Virginia and Idaho statutes classify students based on sex
  - Classifications based on sex are subject to **intermediate scrutiny**
    - Are the laws substantially related to important government interests?
  - **Holding:** Statutes intend to ensure safety, opportunities, and competitive fairness, satisfying intermediate scrutiny
    - **Dissent:** Statutes don't account for students who have undergone hormonal treatment

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Legal Upshot

- Court does not answer the question of whether Title IX **requires** athletic teams to be segregated based on **biological sex**
- Eligibility policies will turn entirely on state law/athletic conference policies
  - Laws/policies prohibiting discrimination on gender identity
  - Laws/policies prohibiting transgender student-athlete participation
- Applies to both higher education and K-12
- Holding that "sex" in Title IX means "biological sex" opens the door to more litigation in non-athletic contexts
  - Bathrooms/locker rooms
  - Department of Justice Executive Order enforcement will turn on preemption analysis

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Free Speech in the Classroom

Meriwether v. Hartop, 992 F.3d 492 (6th Cir. 2021)
Kluge v. Brownsburg Community School Corporation, 2025 WL 2218112 (7th Cir. 2025)

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Landmark Cases

Tinker v. Des Moines (1969)

- Students retain their free speech rights in schools.
- Schools may only censor speech if it causes a substantial disruption.

Tatro v. Univ. of Minnesota (2012)

- Social media posts can be subject to discipline if they violate professional or academic standards.

Oyama v. Univ. of Hawaii (2013)

- Schools can limit speech that undermines a non-discriminatory educational environment.

Chen v. Albany (2022)

- Schools can take action against student speech that leads to harassment or a hostile environment, even off-campus

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From Tinker to Chen

- Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)
- Layshock v. Hermitage Sch. Dist., No. 07-4465 (3d Cir. 2011)
- J.S. v. Blue Mtn. Sch. Dist., No. 08-4138 (3d Cir. 2011)
- Tatro v. University of Minnesota, 816 N.W.2d 509 (2012)
- Oyama v. Univ. of Hawaii, No. 13-16524 (9th Cir. 2015)
- Mahanoy Area School District v. B. L., 141 S. Ct. 2038 (2021)
- Chen v. Albany 56 F.4th 708 (9th Cir. 2022)

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Meriwether v. Hartop

- In 2016, Shawnee State University (SSU) informed faculty “they had to refer to students by their ‘preferred pronouns’”
- Meriwether, a tenured faculty member, referred to a student (Doe) who presented as male as “sir” (he used formal pronouns for all students). Doe approached Meriwether and demanded to be referred to using female titles and pronouns.
- Meriwether said his religious beliefs prevented him from complying with the student’s demands
- Doe filed a complaint, SSU investigated, and found Meriwether responsible for creating a hostile environment
- Meriwether was given a formal documented warning that could lead to additional progressive discipline
- Meriwether argued that he couldn’t use female pronouns with Doe because of his religious convictions

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Meriwether v. Hartop Outcome

- Meriwether lost at the trial court level, the Court of Appeals overturned the decision and found in favor of Meriwether
- The Court held that under Supreme Court decisions and Sixth Circuit precedent, the First Amendment protects the academic speech of university professors
  - "The First Amendment protects the right to speak freely and right to refrain from speaking…and the government may not compel affirmance of a belief with which the speaker disagrees"
  - Citing to the Tinker case the court said, "Government officials violate the First Amendment whenever they try to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion"

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Kluge v. Brownsburg Community School Corp.

- Brownsburg initiated a Name Policy requiring teachers call students by their first names as appearing in their database
  - For trans students, the database listed their new name if they had changed it
- Kluge objected to the policy on religious grounds
  - Received accommodation to call students by their last names
  - School rescinded the accommodation after one year, citing complaints
    - Kluge could adhere to the Name Policy or be terminated
  - Kluge resigned and sued under Title VII for failure to accommodate his religion and retaliation

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Kluge v. Brownsburg Community School Corp. Outcome

- Kluge's lawsuit was originally dismissed by the federal courts
  - Under the previous Title VII standard that required an employer to accommodate unless doing so would impose an **undue hardship** on the business
  - Undue hardship was anything that required an employer to "bear more than a **de minimis cost**"
  - As of March 2026, reports indicate the Indiana school district agreed to a $650,000 settlement to resolve the lawsuit.

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Free Speech Outside the Classroom and Title VI Hostile Environment

Landau v. Haverford College, 2025 WL 35469 (E.D. Pa 2025)

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Landau v. Haverford

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- One alumna, two anonymous students, and a group of Jewish members of Haverford's community brought a lawsuit against Haverford on the grounds that it fostered a **hostile environment** in violation of Title VI
  - "Bastion of antisemitism that is tolerated and at times perpetuated by the College"
  - Alleged incidents creating hostile environment where facts could support that Haverford was on notice:
    - Dean of Students' public statements following the October 7th attack
    - Posters advertising a Shabbat dinner and discussion were torn down
- Impacts of alleged hostile environment:
  - Lost friends
  - Experienced harassment
  - Changed their routines
  - Missed out on seminal Haverford experiences

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Landau v. Haverford Outcome

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Court held:

- Plaintiffs could not show Haverford was on **notice** of many of the incidents that comprise the complaint and/or that they would rise to the level of a discriminatory environment
  - Requires actual knowledge
  - Plaintiffs did not plead that Haverford was **deliberate indifferent** to known incidents
- Court uses "severe, pervasive, and objectively offensive" and "severe or pervasive" language
- Plaintiffs could not **aggregate** the experiences of many Jewish people at Haverford to demonstrate the hostility endured by the collective
  - Plaintiffs could not show personal awareness of specific instances of harassment

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Landau v. Haverford Outcome (Cont.)

- Complaint did not explain how criticism of Israel or promotion of Palestinian cause "veered" into **antisemitism**
  - "Deciphering when criticism of Israel or promotion of the Palestinian cause veers into antisemitism is necessarily a fact specific endeavor"

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Responding to Protests and Activism

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Establish Protocols

- **Establish clear, neutral policies**
  - Publish, update, review with legal counsel, communicate to community
  - Adopt a response protocol
- **Build positive relationships**
  - Ensure open lines of communication with student groups and employees
  - Identify an individual to oversee or implement the dialogue between the administration and school community

Adapted from: IACLEA Guide for University Presidents to Handle Protests and Demonstrations

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Establish Protocols (Cont.)

- **Implement training and education**
  - Educate students and staff on the difference between free speech and harassment
  - Regular training for school resource officers (SRO)/public safety and staff on de-escalation techniques and respectful engagement
- **Create a crisis management plan**
  - Practice scenarios, drills, and tabletop exercises
- **Develop MOUs with law enforcement**

Adapted from: IACLEA Guide for University Presidents to Handle Protests and Demonstrations

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Essential Actions During an Event

- **Communicate**
  - Maintain open, transparent communication with protest organizers
  - Use social media to inform campus about ongoing events and safety measures
- **Supportive Presence**
  - Ensure SRO/public safety is visible but not intimidating
  - Role of SRO/public safety should be to facilitate protest, not inhibit it
  - Provide necessary resources (e.g., first aid, water, restrooms)
- **Respect and Engagement**
  - Approach protest with a respectful and empathetic attitude
  - Consider meeting with protest leaders to listen to concerns

Adapted from: IACLEA Guide for University Presidents to Handle Protests and Demonstrations

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Safety and Security

- Prioritize safety of all participants, bystanders and school/campus property
- Ensure law enforcement/security staff receive specific training on managing crowds and protests
- Be prepared to call in additional resources if situation escalates

Adapted from: IACLEA Guide for University Presidents to Handle Protests and Demonstrations

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Community-Wide Impact Considerations

- Protests, demonstrations, and incidents involving expression issues can become catalysts for ongoing and wide-reaching school/institution impact

Supportive Measures

- Non-punitive, individualized supports
- Designed to restore or preserve access to the education environment, ensure safety, and prevent future harm
- Can be implemented without formal disciplinary action
- Temporary; should be timely and fair

Remedial Actions

- Designed to address the root causes of the incident, repair harm, and prevent recurrence
- Should always be considered, regardless of any policy violation(s)
- Demonstrate the school/institution's commitment to addressing potential harassment and supporting free expression

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Mental Health

Cuomo v. State of New York, 2025 NY Slip Op 01991
Adams v. Vanderbilt University, 2024 WL 1182861
Zhang v. Emory University, 2025 WL 1482873

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Cuomo v. State of New York

- Student murder in a Binghamton University (BU) residence hall
- BU had a Threat Assessment Policy in place, overseen by the Dean of Students
- Assailant made threatening statements about victim to counselor in BU Counseling Center in the months prior to the attack
  - Initial record is unclear on whether procedures were in place governing a counselor's referral to the Threat Assessment team
- Estate brought negligence claim to recover for wrongful death, arguing that University breached duty of care to the victim
- University could have a duty to warn or protect under these circumstances; remanded for further proceedings
  - Counselors can have a duty to third parties, in limited circumstances, to take reasonable steps to prevent harm when the provider knows the patient poses a credible threat of violence

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Adams v. Vanderbilt and Zhang v. Emory

- Both cases deal with student deaths by suicide
  - In both cases, parents allege that the university knew of the student's threat of harm to self and failed to take affirmative steps to intervene
- Both cases query whether the applicable state law negligence standard requires a special duty to university students, and whether university exercised reasonable care
  - Under TN law: Does public policy suggest imposing an affirmative duty of care, and was the risk of harm foreseeable?
  - Under GA law: Established Georgia law has a heightened liability standard in cases involving suicide; however, it was not plausible that the faculty member should have foreseen the risk of suicide on these facts

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Questions?

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