Higher Education: Title IX Litigation Update

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Bricker Graydon

Your Presenters

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Disclaimers

- We are not giving you legal advice
- Many of these cases may still be in appeals – stay tuned
- Some of these cases predate the 2020 regulations
- Consult with your legal counsel regarding how best to address a specific situation
- Feel free to ask general questions and hypotheticals
- There are a variety of stakeholders listening, so please keep that in mind as you submit questions
- Watch your inbox for a link to the slides!

Agenda

- Federal Update
- Cases brought by Student Complainants
- Cases brought by Student Respondents
- Cases brought by Employees
- Title IX Athletics
- First Amendment & Title IX

Quick Reminder

- Pay the closest attention to the Supreme Court, your Circuit Court, and your District Court, as these decisions are "precedential," which means future courts are supposed to follow the same logic.
- All other decisions are "persuasive." The persuasiveness depends on how thoughtful the decision is, and how similar the facts are to your own.
- Your District Court might prefer to look first to case law from other District Courts in your Circuit.
- We are not second-guessing parties or attorneys in these cases. Today we are focusing on how courts have construed facts and what they have said about those facts as construed, so as to help Title IX team members better implement their procedures.

Another Quick Reminder

- The information considered by the Court will depend on how far along the case is at the time of the decision
- Motion to Dismiss – If we assume everything in the plaintiff's complaint is true, do they have a case?
- Motion for Summary Judgment – Court can make findings of fact based on what is in the record now that depositions and other discovery has taken place
- Appeal – Look to whether this is an appeal of a motion to dismiss, or an appeal for motion for summary judgment, and that will tell you whether we are working with established facts.

Federal Update

Tennessee v. Cardona *(E.D. Ky., Jan. 9, 2025) (slide 1 of 2)*

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2024 Title IX regulations vacated nationwide:

- Department exceeded its statutory authority
  - Nothing in Title IX suggests "that discrimination 'on the basis of sex' means anything other than it has since Title IX's inception—that recipients…may not treat a person worse…on the basis of the person's sex, i.e., male or female."
  - Department read *Bostock* "far too broadly"
- First Amendment – Rule compels and chills speech (i.e. names and pronouns associated with a student's gender identity)
- Vagueness – Several terms are so vague recipients have no way of predicting if conduct will violate the law
- Spending Clause – Title IX did not clearly condition federal funding on the prohibition of gender identity protections
- Arbitrary and capricious in violation of Administrative Procedures Act – The Department failed to justify its departure from its longstanding interpretation of Title IX
- Vacated entire rule, not just challenged provisions

Tennessee v. Cardona *(slide 2 of 2)*

- Deadline to appeal was March 10, 2025
- The Victim Rights Law Center and A Better Balance moved to intervene to appeal
  - District court did not rule before deadline, so parties filed in Sixth Circuit Court of Appeals to preserve right to appeal
- Sixth Circuit Appeals
  - Case No. 25-5205 brought by Victim Rights Law Center and Jane Doe – seek to appeal district court's vacatur of provisions related to sex-based harassment, including definition of hostile-environment sex-based harassment
  - Case No. 25-5206 brought by A Better Balance – issue on appeal is whether district court was wrong to vacate nationwide portions of the regulations plaintiffs did not argue were unlawful, and whether the Court should permit portions related to pregnant and postpartum students to go into effect

Title IX Sexual Harassment

- February 4, 2025 DCL
  - Supersedes Jan. 31 Guidance
- OCR will enforce the 2020 Title IX Regulations – NOT the 2024 regs
  - Definition of Sexual Harassment
  - Procedural protections
  - "… no portion of the 2024 Title IX Rule is now in effect in any jurisdiction.“
  - “In light of the recent federal court decision vacating the 2024 Title IX Rule, and consistent with President Trump’s Defending Women Executive Order, the binding regulatory framework for Title IX enforcement includes the principles and provisions of the 2020 Title IX Rule and the longstanding Title IX regulations outlined in 34 C.F.R. 106 et seq., but excludes the vacated 2024 Title IX Rule.”

Gender Identity

"Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," Jan. 20, 2025

- Declares that gender identity is not on the basis of sex
- Lawsuits pending

- "Keeping Men Out of Women's Sports," Feb. 5, 2025
  - Declares it is policy of United States to rescind all funds from educational programs that deprive women and girls of fair athletic opportunities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7301 of title 5, United States Code, it is hereby ordered:

Section 1. Purpose. Across the country, ideologues who deny the biological reality of sex have increasingly used legal and other socially coercive means to permit men to self-identify as women and gain access to intimate single-sex spaces and activities designed for women, from women's domestic abuse shelters to women's workplace showers. This is wrong. Efforts to eradicate the biological reality of sex fundamentally attack women by depriving them of their dignity, safety, and well-being. The erasure of sex in language and policy has a corrosive impact not just on women but on the validity of the entire American system. Basing Federal policy on truth is critical to scientific inquiry, public safety, morale, and trust in government itself.

Title IX Special Investigations

- April 4, 2025 – ED and DOJ announce the formation of the Title IX Special Investigations Team ("SIT") to streamline investigations and allow personnel to apply a rapid resolution investigation process.
  - The press release focuses on transgender athlete participation.

We Are Already Seeing...

- NCAA changed its transgender athlete policy on Feb. 6, 2025
- ED announced investigations of universities, school districts, state superintendents of public instruction and departments of education, and high school athletics associations
- ED OGC sent letter to NCAA and NFHS "urging them to restore to female athletes the records, titles, awards, and recognitions misappropriated by biological males competing in female categories."
- The EO will likely be addressed in multiple court cases that are already pending regarding transgender women athletic participation
- ED rescinded the fact sheet on how Title IX applies to NIL.

False Claims Act

- Dept. of Justice established the Civil Rights Fraud Initiative
- Will use the False Claims Act to investigate and pursue claims against federal funding recipients that knowingly violate civil rights laws
- “[A] university that accepts federal funds could violate the False Claims Act when it…allows men to intrude into women's bathrooms, or requires women to compete against men in athletic competitions.”

Cases Brought By Student Complainants

Theme: Defining the confines of deliberate indifference

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Generally, from *Gebser*, a plaintiff must allege the following in a deliberate indifference Title IX private action:

1. sexual harassment over which institution had substantial control,
2. an official with authority to take corrective action had actual notice of the harassment,
3. The institution's response was clearly unreasonable, and
4. Institution's deliberate indifference caused plaintiff to suffer discrimination or exclusion from an educational activity or program

DeMarcus v. Univ. of South Alabama, 133 F.4th 1305 (11th Cir, April 10, 2025) (slide 1 of 4)

- 11th Circuit: Alabama, Florida, Georgia
- MTD stage – so no discovery yet
- Volleyball players alleged their head coach sexually harassed them, and that University was deliberately indifferent to the harassment in violation of Title IX
- Eleventh Circuit test for teacher on student Title IX sexual harassment claims:
  - "[T]he plaintiff must be able to identify an 'appropriate person' under Title IX ... with the authority to take corrective measures in response to actual notice of sexual harassment"; (2) "the substance of that actual notice must be sufficient to alert the school official of the possibility of the Title IX plaintiff's harassment"; and (3) "the official with such notice must exhibit deliberate indifference to the harassment."
- Appropriate person
  - Only the athletic directors were "appropriate persons" with authority to take corrective action – they were school administrators with authority over the coach
  - Assistant coaches were not – they were beneath the head coach on the organizational chart and at the bottom of the chain of command

DeMarcus v. Univ. of South Alabama (slide 2 of 4)

- "Actual notice"
  - Complaints to AD of "inappropriate conduct" and "improper practices" were generalized allegations of misconduct, not allegations of "sexual" harassment
  - Allegation that University knew of should have known about head coach's reputation for engaging in sexual harassment in previous job is conclusory – no factual allegations that state or imply who at the University had that knowledge
  - Allegation: "The University knew or should have known about [the head coach's] reputation for 'engaging in sexual harassment in a previous job."
    - Ct: Didn't say *who* had that knowledge
    - Must be more than bare assertions or conclusory legal statements

DeMarcus v. Univ. of South Alabama (slide 3 of 4)

- "Actual notice"
  - Ct: One complaint did place University on notice – player's report telling an AD that head coach summoned the player to her hotel room several times for "sexual conduct" and forcing the player to lie on coach's bed and to "use her [ ] boobs as a pillow." – This report provided specific claims about sexual assaults.
- After this "Actual Notice" was given -
  - University put the coach on administrative leave
  - Coach resigned shortly after
  - No reports of further conduct between the coach and players
  - Holding: No Deliberate Indifference here – MTD was appropriate for Title IX claims

DeMarcus v. Univ. of South Alabama (slide 4 of 4)

- § 1983 due process claim
  - "While many of the players' allegations are serious and, if true, may well indicate violations of state law, the bar set by our substantive-due-process precedent is very high—far too high, at the very least, to clearly establish the unconstitutionality of [the head coach's] alleged conduct."
  - MTD was appropriate for sec. 1983 claims

Doe v. North Carolina State Univ., 125 F.4th 498 (4th Cir, Jan. 7, 2025) (slide 1 of 3)

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- 4th Circuit: Maryland, North Carolina, South Carolina, Virgina, and West Virgina
- MTD granted by lower court – Court of Appeals reversed
- Student-athlete alleged he was sexually abused by the director of sports medicine (Murphy) under guise of medical treatment
- District court dismissed Complainant's Title IX lawsuit for failing to plead facts supporting an inference that University had actual notice of sexual harassment
  - District court assumed without deciding that senior associate athletic director (AD) had authority to redress complaints; but
  - Head soccer coach's report to AD in 2016 "that Murphy was engaging in what he suspected was **sexual grooming of male student-athletes**" wasn't enough to put University on notice

Doe v. North Carolina State Univ., 125 F.4th 498 (4th Cir, Jan. 7, 2025) (slide 2 of 3)

- Court's discussion of the "sexual grooming" allegation:
  - University argued that because "grooming" behavior can include conduct that isn't sexual harassment – a report to a University administrator of "grooming" can't objectively allege sexual harassment
  - Court disagreed
  - Notes that the test for "Actual Notice" is objective, not subjective - so it's about whether the University interpreted the report as sexual harassment – can the report be objectively understood as alleging SH
  - Here – the report was about *sexual* grooming of *male* athletes
  - "Under any definition, the term 'sexual grooming' connotes a pattern of wrongful and sexually motivated conduct."

Doe v. North Carolina State Univ. (slide 3 of 3)

- Fourth Circuit vacated and remanded
  - A reasonable official would construe a report of sexual grooming as sexual harassment
  - The coach's report specified conduct that was wrongful, sex-based, current, and committed by an employee with authority over student athletes
  - While coach's report of sexual grooming occurred years before Complainant was sexually abused, it was obligated to investigate or otherwise act
- On remand, district court must determine whether AD was an appropriate official with authority to address complaints of sexual harassment and institute corrective measures

Roe v. Univ. of Cincinnati, 2025 WL 961731 (S.D. Ohio, March 31, 2025) (slide 1 of 3)

- Complainants, ballet students, alleged the University's response to their complaint of harassment/groping by male student during class and rehearsals was deliberately indifferent
- Also alleged they were retaliated against by being denied performance and casting opportunities
- Trial Court denied University's motion to dismiss – taking allegations as true and drawing inferences in favor of the Complainants, they alleged sufficient facts to survive motion

Roe v. Univ. of Cincinnati (slide 2 of 3)

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- Title IX deliberate indifference
  - Complainant Roe alleged Respondent groped her repeatedly during ballet lifts
  - She reported the behavior to her instructor, who witnessed some incidents and acknowledged concern
  - Nevertheless, Complainant was still partnered with Respondent and harassment continued
- Taking Complainant Roe's allegations as true, the groping was "actionable sexual harassment"
  - It was severe, pervasive, and objectively offensive – Complainant Roe suffered stress and anxiety and needed to leave the classroom; she was so upset she suffered a nosebleed; groping took place on several occasions even after she raised the issue; harassment was so overt her instructor stopped class to ask if Complainant was okay following inappropriate contact by Respondent
  - University had actual knowledge of the harassment – While harassment was not reported to Title IX office until October, Complainant Roe reported the harassment to her professor in September, and Complainant alleges her professor was an "appropriate person"

Roe v. Univ. of Cincinnati (slide 3 of 3)

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- Title IX deliberate indifference, cont.
  - Complainant Soe's allegations also survive MTD
  - She alleged she was harassed by Respondent during high school, she reported this conduct to an appropriate person after enrolling in University, University did not act on her report, and University subjected her to further harassment by requiring her to partner with Respondent during which she was again groped
  - University's argument that groping was not severe or pervasive and that harassment was not reported to an appropriate person are better addressed on motion for summary judgment vs. motion to dismiss
- Title IX Retaliation
  - Complainants adequately alleged that they engaged in protected activity by reporting harassment and participating in investigations and proceedings; that they suffered adverse school-related actions when their casting prospects and performance opportunities declined; and their fallen prospects closely aligned to timing of protected activity

Doe v. Brown Univ., 2025 WL 815234 (D. Rhode Island, March 14, 2025) (1 of 2)

- Motion for Summary Judgment – record is better developed than previous cases
- Complainant attended a private party at an off-campus residence at which Respondent allegedly made an inappropriate comment about her body and touched her breast without consent
- A hearing panel found determined there was not enough evidence to find Respondent responsible
- Court granted University's motion for summary judgment on Title IX claim Deliberate Indifference claim

Doe v. Brown Univ., 2025 WL 815234 (D. Rhode Island, March 14, 2025)(2 of 2)

- University was not deliberately indifferent b/c:
  - University met with Complainant, issued a no contact order, conducted a prompt investigation, interviewed several attendees at the party, and convened a hearing
  - Complainant never informed Title IX officer that she was too traumatized to participate in the adjudicative process while the case was pending – she cannot now use this to allege University was deliberately indifferent
  - While Plaintiff believed University should have done more during its investigation and hearing process...

    Title IX does not require educational institutions to take heroic measures, to perform flawless investigations, to craft perfect solutions, or to adopt strategies advocated by [students]. The test is objective – whether the institution's response, evaluated in light of the known circumstances, is so deficient as to be clearly unreasonable.

Cases Brought By Student Respondents

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Doe v. Univ. of North Carolina System, 133 F.4th 305 (4th Circuit, April 4, 2025) (slide 1 of 4)

- Respondent expelled after being found responsible for two allegations of sexual misconduct
- He sued the University and several employees alleging he was denied due process; also brought claim of sex discrimination in violation of Title IX and state law claims
- Fourth Circuit held Respondent's cross-examination opportunity was constitutionally deficient
  - In Complainant Roe 1 hearing, the hearing panel allowed Complainant to leave partway through questioning and permitted her attorney to answer questions on her behalf
  - In the Complainant Roe 4 hearing, Respondent was denied the opportunity to cross-examine Complainant or any of her witnesses altogether

Doe v. Univ. of North Carolina System

(slide 2 of 4)

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- While Respondent raised serious due process concerns, it was not clearly established at the time of Respondent's hearing that a student has a due process right to cross-examination in the context of university disciplinary proceedings
  - *We agree with the employee defendants that a right to cross-examination in this context has not, up to this point, been clearly enough established to deny them the protection of qualified immunity. But we underscore that, as a matter of procedural due process, an accused student must be "afforded the meaningful hearing to which they [are] entitled." Going forward, cross-examination will materially assist in ensuring a meaningful hearing in higher-education disciplinary proceedings. This is particularly true where, as here, (1) the resolution of a disciplinary charge turns on credibility determinations, and (2) the potential sanctions are severe.* (Internal citations omitted.)

Doe v. Univ. of North Carolina System (slide 3 of 4)

- University adjudicators do have discretion to impose reasonable limits on cross-examination under the circumstances of a particular case
- "A university disciplinary panel or hearing officer may certainly impose limits to guard against 'concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant.'"
- Agree with sister circuit courts (1st, 5th, and 8th) that while some opportunity for real-time cross-examination is required for due process in the university disciplinary setting, "we have no reason to believe that questioning of a complaining witness by a neutral party is so fundamentally flawed as to create a categorically unacceptable risk of erroneous deprivation."
- Question "is whether the hearing as a whole was meaningful in substance and not just in form."

Doe v. Univ. of North Carolina System (slide 4 of 4)

- District court did not err in permitting Respondent's claim for injunction relief to go forward
  - Respondent sought three forms of injunctive relief: vacating disciplinary findings and decisions, expungement of his record, and reinstatement as a student in good standing
  - Respondent alleged a liberty interest in his reputation sufficient to trigger procedural due process protections
  - Erroneous university record of expulsion for sexual misconduct inflicts an ongoing harm
- Title IX claim – District court did not dismiss Respondent's Title IX claims against University; Fourth Circuit declined to review at this stage

Doe v. Trustees of Princeton Univ., 2025 WL 1218314 (D. New Jersey, April 28, 2025) (slide 1 of 2)

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- Two women (one student and one non-student who was visiting Respondent on campus) accused Respondent of choking them
- Respondent was found responsible for violating University's Personal Safety Policy and Alcohol Policy and was suspended for two years
- Respondent alleged University's investigation and decision were gender-biased in violation of Title IX
  - Respondent alleged University was pressured to respond differentially to female accusers of assault
  - Respondent alleged he was questioned "more pointedly and confrontationally" than Complainants
  - Complainants were found credible despite inconsistencies in their stories
  - Exculpatory witnesses were not pursued
  - Male witnesses were not asked questions about whether one Complainant had bruising on her neck
  - Female witnesses were pursued on behalf of Complainants but not similarly situated male witnesses on behalf of Respondent

Doe v. Trustees of Princeton Univ. (slide 2 of 2)

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- Court granted University's motion to dismiss
  - Respondent's complaint did not support plausible inference of sex discrimination
  - He failed to show how his alleged different treatment by discipline committee was tied to his gender
  - Failed to show how more pointed and confrontational questioning amounted to bias against men vs. intent to investigate two assault accusations thoroughly; at best, shows bias against perpetrators and in favor of complainants
  - Finding complainants credible does not demonstrate bias against Respondent based on his sex
  - Allegations of flawed process do not give rise to inference of gender bias – Respondent received notice of the charges against him, was given all the evidence collected, had opportunity to submit a statement and respond to the charges, could identify witnesses to be interviewed, was afforded a hearing, and was able to confront one of the Complainants and other witnesses

Cases Brought By Employees

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Lewis v. Bd. of Supervisors of Louisiana State Univ., 134 F.4th 286 (5th Circuit, April 8, 2025) (slide 1 of 2)

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- Former employee (Plaintiff) alleged University retaliated against her and terminated her in response to her filing Title IX complaints
  - Plaintiff alleged that after she reported the complaints of two students against head football coach, she was left of recruiting emails, excluded from meetings, and disciplined her for recruiting and NCAA violations she did not commit and was not aware of
  - Alleged University refused to promote her in response to Title IX complaints she made against head coach and other athletic department officials; when she was finally promoted, did not receive raise and was denied access to resources and support of administrative staff
  - Alleged she was terminated because new head coach re-hired a former assistant coach whom Plaintiff had reported for sexual assault and harassment

Lewis v. Bd. of Supervisors of Louisiana State Univ. (slide 2 of 2)

- Jury returned verdict in favor of University on all claims (Title IX and Title VII retaliation and Title VII hostile work environment)
- Fifth Circuit ruled Plaintiff failed to demonstrate that "no reasonable jury would have had a legally sufficient evidentiary basis" for the verdict
  - Board contended Plaintiff was terminated because the new head coach wanted to reorganize the recruiting department and hire his own staff
  - Around 40 staff and administrators in the football program were terminated as part of the reorganization
  - New head coach testified that when he terminated Plaintiff, he was not aware of her prior allegations, and recruiting department was a priority for restructuring for him because it was "an important and integral part to success"
  - Others testified restructuring was not uncommon when a new head coach was brought in

Barrio v. Univ. of Md., Bal. Cnty., 2025 WL 1238964 (D. Maryland, April 29, 2025) (slide 1 of 2)

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- In 2019, Plaintiff was recruited by UMBC for its open athletic director position
- During recruitment process, Plaintiff extensively researched any potential Title IX issues involving UMBC or its staff "so that he could be certain of what he would be stepping into"
- Plaintiff was told Title IX issues involving baseball team and gender equity complaint based on softball facility were being resolved, and that there were no other issues
- In 2020, after the campus shut down due to COVID, members of the swim team reported to Plaintiff sexual abuse and assault by the head swim coach
- Plaintiff acted quickly and the head coach was removed from his position
- In 2024, the U.S. Dept. of Justice issued a report on its Title IX investigation of the University – the report stated the University was on notice of the allegations from 2015-2020 but failed to address it
- In March 2024, Plaintiff was terminated

Barrio v. Univ. of Md., Bal. Cnty. (slide 2 of 2)

- Plaintiff sued for Title IX retaliatory discharge, fraudulent inducement, libel, and promissory estoppel/detrimental reliance
- Court denied UMBC's and Board of Regents' motion to dismiss Title IX claim
  - While Plaintiff reported the allegations of sexual assault by the swim coach in 2020, and Plaintiff was not fired until 2024, "the short period between the DOJ report coming out and Plaintiff's subsequent discharge satisfies the causal nexus because the DOJ report was allegedly a direct result of Plaintiff reporting [the head swim coach] in 2020."
  - Taking facts in complaint as true, Plaintiff plausibly alleged that he identified, reported, and ended the abuse by the swim coach, did not engage in any wrongdoing, but was "scapegoated" and terminated just weeks after DOJ report was released
  - It's plausible that if Plaintiff had not reported the coach, there would not have been a DOJ report and he would not have been fired
  - Title IX claim against University President dismissed because Title IX does not authorize suits against school officials

Terrell v. Alabama State University, 2024 WL 4949060 (11th Cir. Dec. 3, 2024)

- Senior Associate AD was not receiving budgeted salary for being the Senior Woman Administrator
- Trial court granted the University Motion for Summary Judgment
- Appeals court upheld the decision on the Title IX claim, finding that "Title IX does not provide an implied right of action for sex discrimination employment."
- Cites to *Joseph v. Board of Regents of the University System of Georgia* (11th Cir. Nov. 7, 2024)

Cases Brought Involving Athletics

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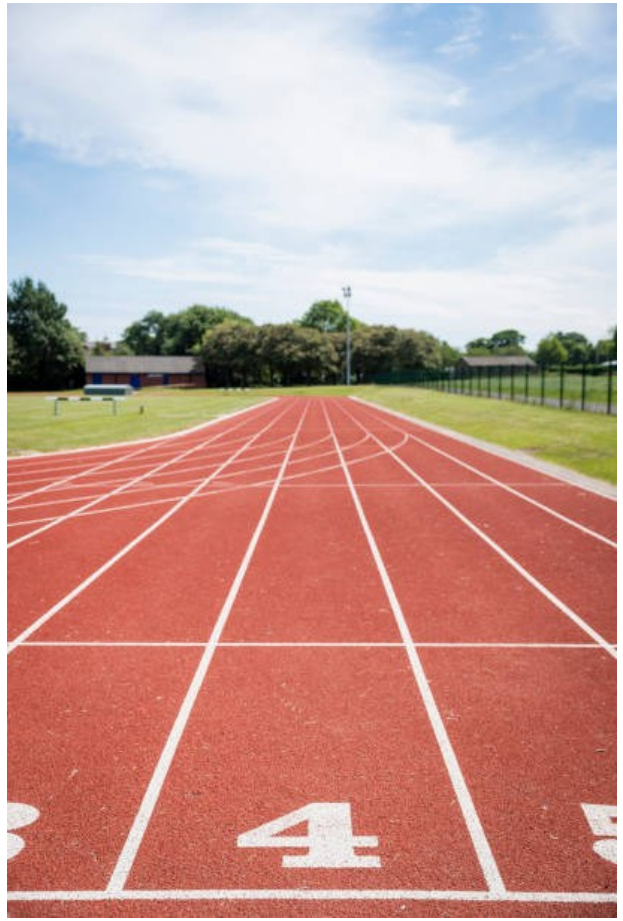
Transgender Participation in Athletics - ME

- State of Maine Litigation
  - April 7, 2025 – *State of Maine v. United States Department of Agriculture*, Case No. 1:25-cv-00131 (D.Me.)
    - *Latest*: State of Maine voluntarily dismissed the case because the USDA unfroze the funds after the judge ruled in favor of the State at the preliminary injunction stage
  - April 16, 2025 – *United States of America v. Maine Department of Education,* Case No. 1:25-cv-00173 (D.Me.)
    - *Latest*: Maine Department of Education filed an answer, discovery due by 9/25/2025

Transgender Participation in Athletics - NH

- *Tirrell et al v. Edelblut et al*, Case No. 1:24-cv-00251 (D.N.H.)
  - Two high school transgender girls challenge the "Keeping Men out of Women's Sports" EO
  - Latest: There was an extension of time (June 4, 2025) granted to respond to the amended complaint



Schroeder v. Univ. of Oregon, 2025 WL 1019760 (D. Oregon, April 5, 2025) (slide 1 of 6)

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- Current and former female athletes alleged University provided unequal treatment and benefits, unequal financial aid, and unequal participation opportunities compared to male student-athletes
- Plaintiffs: 26 current and former female student-athletes on varsity beach volleyball team and six current female student-athletes on club rowing team
- Ruling on University's motion to dismiss and motion for judgment on the pleadings

Schroeder v. Univ. of Oregon (slide 2 of 6)

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Ruling on Motion to Dismiss

- Taking allegations as true, Plaintiffs have standing to pursue the unequal financial aid claim
  - Plaintiffs allege they were highly qualified competitive beach volleyball players ready and able to compete for/receive financial aid
  - Plaintiffs alleged an injury—denial of scholarship funds—that compensatory damages would redress
- Equal treatment and benefits
  - Sufficiently stated an injury: Plaintiffs allege they had to purchase their own socks, shorts, pants, practice shirts, etc.; schedule their practice/training times around men's teams; cancel competition weekends; that they received less assistance from coaches, medical trainers, and tutors; they had to purchase own food and water; received less publicity and recruiting support, etc.
  - Plaintiffs who were student-athletes when complaint was filed have standing
  - Not moot as to Plaintiffs no longer enrolled at University because they graduated after complaint filed – "inherently transitory" exception applies
  - Also reasonable to expect that other female student-athletes will suffer same alleged harm if it is not stopped

Schroeder v. Univ. of Oregon (slide 3 of 6)

- Motion for judgment on the pleadings as to equal treatment claim (also accepting allegations as true)
  - University argued unequal treatment claim improperly premised on comparing female beach volleyball team and the male football team
  - "The Court has no doubt that most athletic teams, when compared to the juggernaut that has become college football, would liken themselves to a forgotten stepsister....But such dramatic comparisons are not evidence of discriminatory intent based on gender."
  - Complaint does not make any comparisons of equivalent varsity sports (women's basketball vs. men's basketball, etc.)
  - Plaintiffs cannot show they are treated less favorably than similarly-situated male athletes by making generalized statements not supported by facts or comparing themselves to football team

Continued on next slide...

Schroeder v. Univ. of Oregon (slide 4 of 6)

- Can Beach Volleyball Plaintiffs alone state a claim for program-wide unequal treatment?
  - While specific facts about other women's teams would strengthen Plaintiffs' claims, such specifics are not required at this stage of the case
  - Whether one women's sport can represent a broader class of female athletes is a question for future proceedings
- Is alleged superstar treatment of the football players a relevant consideration?
  - Not wholly irrelevant
  - "[W]here a mens-only team is receiving preferential benefits among student-athletes that are not related to the operational needs of the sport, Title IX does not turn a blind eye."

Continued on next slide…

Schroeder v. Univ. of Oregon (slide 5 of 6)

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- Complaint alleges football makes up 37% of University's men's varsity athletic program, is only available to male athletes; and has exclusive access to an equipment and athlete fitting room; priority for practices; weightlifting; meals; private chartered flights; hotel rooms during home games; priority access to tutoring and mental health counseling; a six-floor facility with big-screen tvs, video-game consoles, pool tables, and vending machines with free snacks; a private barber shop; and a hot tub for its coaches
- While University can submit evidence of nondiscriminatory reasons justifying these benefits, they're not irrelevant to claim of program-wide discrimination

Schroeder v. Univ. of Oregon (slide 6 of 6)

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- Other allegations also support claim of program-wide discrimination
  - More and superior equipment for men's teams vs. women's teams
  - Men's teams have priority for scheduling practice time and weight room training
  - Men's teams have better travel benefits and per diem allowances, and better opportunities to receive coaching and academic tutoring
  - Men's head coaches paid average of six times more than women's
  - Men's teams have better locker rooms, medical and training services, and publicity
  - Male student-athletes receive better treatment, benefits, opportunities, and income through NIL marketplace
- Re: NIL allegation: Plaintiff's not challenging third-party NIL contracts themselves, but that University's discrimination against female athletes results in them receiving fewer NIL opportunities

Texas A&M Queer Empowerment Council v. Mahomes,
2025 WL 895836 (S.D. Texas, March 24, 2025) (slide 1 of 2)

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- Intersection of Title IX and First Amendment
- Public university banned QEC's annual drag show from being held in campus special events venue
- Board of Regents resolution stated allowing special events venue to be used for drag shows
  - Was inconsistent with its mission and core values, including the value of respect for others
  - Drag show events involve sexualized, vulgar or lewd conduct and conduct that demeans women
  - Drag show events were "likely to create or contribute to a hostile environment for women contrary to System anti-discrimination policy and Title IX of the Education Amendments of 1972 (Title IX)"
  - Also cited Executive Order "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" and expressed that use of University facilities for drag show events could be considered promotion of gender ideology
- QEC challenged ban under the First Amendment

Texas A&M Queer Empowerment Council v. Mahomes, *(slide 2 of 2)*

- The Court granted QEC's motion for preliminary injunction – barred the University from enforcing its ban
  - Board argued its resolution was viewpoint-neutral because it targeted demeaning conduct; Court disagreed – censorship based on subjective judgment is viewpoint discrimination
  - Board's argument that executive order necessitated the ban not persuasive – "This executive order cannot override First Amendment protections."
    - The drag show performance does not offend the EO – "the Board's argument conflates the existence of two sexes with different ways to express sexuality and sexual themes"
  - Ban not narrowly tailored to comply with antidiscrimination law
    - No evidence that past performance caused harassment of female students or created hostile environment
    - Once-a-year drag show did not meet standard of "severe, pervasive, and objectively offensive"
  - Unconstitutionally vague – Resolution failed to define "lewd," "vulgar," or "sexualized" was susceptible to arbitrary enforcement

Upcoming Title IX In Focus Webinars

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August 28, 2025: Trauma-Informed Intakes

September 25, 2025: Working with Advisors in the Title IX Process

October 30, 2025: Weighing the Evidence in Sexual Violence Cases

November 20, 2025: Title IX Litigation Update

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