

WEBINAR

What Did I Miss? Hot Title IX Issues You May Have Missed But Can't Ignore

Jackie Gharapour Wernz & Emily Tulloch

FRANCZEK

Your Hosts



JACKIE GHARAPOUR WERNZ

JW@FRANCZEK.COM

312.786.6137



EMILY TULLOCH

ET@FRANCZEK.COM

312.786.6542

About Franczek P.C.

Franczek P.C. is one of the premier labor, employment, and education practices in the country. Our firm has one of the largest teams of K-12 and higher education lawyers in Illinois. Franczek attorneys have decades of experience representing the full range of public and private K-12 and higher education institutions.





TITLE IX IN 2020



Title IX SH To Do



- ✓ Training of entire Title IX Team
- ✓ Post training materials online
- ✓ Consider customizations to template policies and procedures
- ✓ Post policies and procedures online (especially if policies not formally approved)
- ✓ Post Coordinator information online
- ✓ Prepare forms/notices

POLLING!



Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

My institution has finalized its Title IX Sexual Harassment policy and procedures and posted them on our website

True

False

My institution has trained its entire Title IX team (coordinator(s), investigator(s), decisionmaker(s) and informal resolution facilitator(s)) as required by the new rules

True

False

The risk if my institution fails to comply with the requirements of the new rule is

An appeal by someone who is involved in a Title IX SH complaint

An OCR complaint by someone who is involved in a Title IX SH complaint

A lawsuit by someone who is involved in a Title IX SH complaint

An OCR complaint alleging a procedural violation even if there is no pending SH complaint

All of the above



**Leading the policy movement
for fairness and due process on campus.**

PR: Many Universities Not Compliant with New Title IX Requirement to Post Training Materials

PRESS RELEASE

Many Universities Not Compliant with New Title IX Requirement to Post Training Materials

WASHINGTON / September 8, 2020 – A review of the websites of 50 colleges and universities across the nation reveals that 65% are out of compliance with the Title IX regulation's requirement to post all Title IX training materials. This past week, SAVE filed complaints with Office for Civil Rights against several of these non-compliant schools.

FRANCZEK

WHAT'D I
MISS?



What Did I Miss?

- Rescission of Title IX guidance
- OCR stance on LGBTQ student rights
- OCR's updates to its Case Processing Manual (CPM)
- Rules on religious institution exemptions



Rescission of Title IX Guidance

- 2001 Guidance on Sexual Harassment
- 2017 Q&A on Sexual Harassment
- 2015 Title IX Coordinator Materials

Know The Rules!

What Guidance is still in effect?

- 2010 Bullying Harassment Guidance Document
- Guidance on Pregnancy and Parenting
- Guidance on Athletics


The background of the slide is a vibrant, blurred rainbow flag. A large white circle is positioned on the left side, containing the title and a list of bullet points. The text is in a dark blue, sans-serif font.

LGBTQ Student Rights

- August 31, 2020
- Two Letters
- Distinction between sex-separated facilities & teams and other discrimination & harassment

Compare and Contrast: OCR & the Courts

- Two cases in 11th Circuit (FL, GA, AL) and 4th Circuit (VA, MD, NC, SC, WV)
- Courts relied on *Bostock* case – held Title IX does protect LGBTQ+ students, including in cases seeking access to bathroom and other facilities based on gender identity
- Conflicts with OCR interpretation
- Subject to appeal to whole circuit



“At the heart of this appeal is whether equal protection and Title IX can protect transgender students from school bathroom policies that prohibit them from affirming their gender,” U.S. Circuit Judge Henry Floyd wrote in the majority opinion. “We join a growing consensus of courts in holding that the answer is resoundingly yes.”

Grimm, 4th Cir.

Case Processing Manual Updates

- OCR will provide draft resolution letter and resolution agreement to recipients
- Recipients can propose revisions to correct factual errors within five calendar days
- More language on the First Amendment
- Standard of review for appeals is clear error of fact or legal conclusion that changes outcome

U.S. Secretary of Education Betsy DeVos Delivers on Promise to Protect Free Inquiry and Religious Liberty

Announces final rule that upholds fundamental rights guaranteed by the First Amendment

SEPTEMBER 9, 2020

Contact: Press Office, (202) 401-1576, press@ed.gov

WASHINGTON — Today, U.S. Secretary of Education Betsy DeVos delivered on her promise to protect free inquiry and religious liberty on campus by publishing the *Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities* [final rule](#). The new rule will ensure that public institutions of higher education uphold fundamental rights guaranteed by the First Amendment to the U.S. Constitution and that private institutions of higher education adhere to their own policies regarding freedom of speech, including academic freedom. The final rule also ensures the equal treatment and constitutional rights of religious student organizations at public institutions and provides clarity for faith-based institutions with respect to Title IX.

Questions?

@JackieWernz

@EmilyMTulloch

www.titleXinsights.com

TITLEIX@FRANCZEK.COM

