

Title IX

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Title IX: 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 subject to discrimination under any education programs or activity receiving federal financial assistance.

Signed into law by President Richard Nixon on Friday, June 23, 1972.



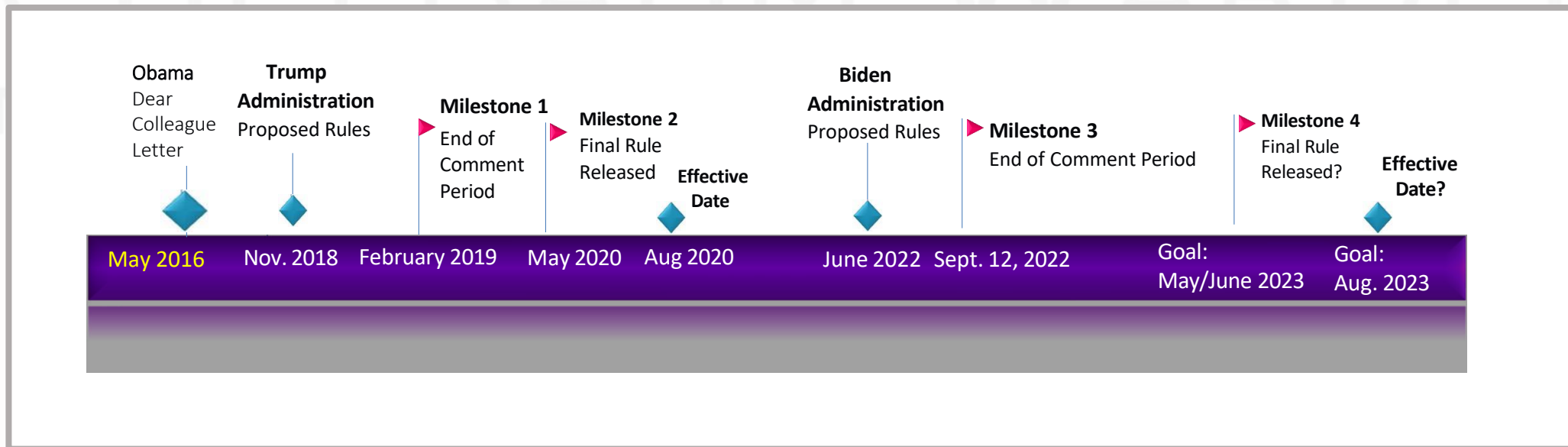
Title IX: 1972

- 1973:** Battle of the Sexes - Billie Jean King defeated Bobby Riggs in an exhibition tennis match
- 1975:** First Title IX regulations adopted
- 1976:** NCAA challenged the legality of Title IX regarding athletics in a lawsuit was dismissed two years later
- 1977:** Three female students at Yale, two graduates, and a male faculty member became the first to sue over sexual harassment under Title IX (Alexander v. Yale). The cause of action failed on appeal.
- 1979:** Three-prong test for compliance in athletics established.
- 1979:** **Students can sue for sex discrimination** (Cannon v. Univ. of Chicago)
- 1980:** Oversight for compliance was given to the Office for Civil Rights (OCR) in the U.S. Department of Education
- 1982:** **Employees could sue for sex discrimination**
- 1992:** **Students can sue for money damages** for discrimination by employees (Franklin v. Gwinnett County Public Schools)
- 1997:** OCR issued "*Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*" containing the first explicit reference to "gay or lesbian students" as being covered by federal prohibitions against sexual harassment

Title IX: 1972

- 1998:** **Student can sue for teacher's sexual harassment** only if the school had "actual notice" and acted with "deliberate indifference" (Gebser v. Lago Vista ISD)
- 1999:** **Title IX covers student-to-student harassment**; damages available only if school had actual notice and acted with deliberate indifference (Davis v. Monroe County)
- 2001:** OCR issued revised guidance on sexual harassment – Gebser and Davis did not apply to OCR enforcement actions
- 2005:** Coaches and teachers have a right of action under **Title IX for retaliation** (Jackson v. Birmingham Bd of Educ.)
- 2006:** OCR issued guidance allowing single-sex programs/schools
- 2014:** **Obama** Administration OCR issued DCL **defining sex as "gender identity"**, saying transgender students should be allowed to use the bathroom or locker room
- 2018:** Trump Administration OCR rescinded the 2014 Obama Guidance
- 2020:** **Second version of Title IX Regulations adopted** - amended to address sexual harassment investigations
- 2021:** Biden Administration – Exec. Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

How Did We Get Here?



The following are the current rules only

Proposed rules are just that – they are not the law yet.

Title IX: Formal v. Informal

“The Definition”

Sexual harassment is conduct based on sex that satisfies one or more of the following:

1. An employee conditioning an aid, benefit, or service of the school on an individual's participation in sexual conduct;
2. Unwelcome conduct that a reasonable person would consider severe, pervasive, and objectively offensive such that it effectively denies an individual equal access to a district program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking.

Formal Complaint

Complainant: an individual who is alleged to be the victim of sexual harassment.

Respondent: an individual who is alleged to be the perpetrator of sexual harassment. A Respondent may not be disciplined for sexual harassment until the conclusion of this grievance process.

Formal Complaint: a document filed by a Complainant (or parent/guardian) or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the District investigate the allegation.

Informal Complaint

Alleged Victim, who is claimed to be victim of sexual harassment, meets with Title IX Coordinator, who explains the Formal Complaint process.

After being explained the options, Alleged Victim elects informal route.

A person filing an “informal complaint” may report sexual harassment in writing and indicate they do not wish to engage in the formal process.

Parents will be notified as deemed appropriate.

Supportive Measures

Under the Formal Process

Inform the Complainant and Respondent of the availability of supportive measures with or without the filing of a formal complaint.

Supportive measures may include counseling, change of schedules/classes, campus escort or monitoring support, restrictions on contact between the parties (stay away agreement), increased security and monitoring, or other similar measures.

Informal Supportive Measures

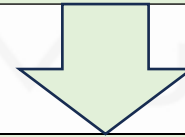
Inform the Alleged Victim of the availability of supportive measures with or without the filing of a formal complaint.

Supportive measures may include counseling, change of schedules/classes, campus escort or monitoring support, restrictions on contact between the parties (stay away agreement), increased security and monitoring, or other similar measures.

Informal

Voluntary Informal Resolution

If the Alleged Victim is interested in an informal resolution, the Title IX Administrator can facilitate a resolution at any time.



Investigation

Alleged Victim will be interviewed and asked what remedy is sought. Investigator will use judgment regarding whether to interview additional witnesses and interview accused, etc.

Informal

Conclusion

Based upon the investigation determination discipline may or may not result--discipline options being consistent with the District's Student Code of Conduct. The Investigator may provide other appropriate remediation as deemed in the best interest of the district and the students. A student cannot be discipline for "sexual harassment" without following the Formal Complaint process; however, a student can be disciplined for other violations of the Code of Conduct.

Back to Formal: Notice

Notice

Provide Notice to Parties: Simultaneous *notice must be provided to all known* Complainants and Respondents that includes:

- Allegations of sexual harassment, known at the time, with sufficient detail to prepare before any initial interview;
- Identities of the parties involved;
- Date, location of alleged incident(s);
- Statement that Respondent is presumed not responsible and that a determination will not be made until the conclusion of the grievance process
- Statement that the parties have the right to an advisor of their choosing, who can be a parent/guardian or another individual who may, but is not required to be, an attorney and who may inspect and review evidence; and
- Statement that the Code of Conduct prohibits knowingly making false statements.
- An offer of informal resolution.

Formal: Voluntary Resolution

Voluntary Resolution

At any time prior to deciding “responsibility” for sexual harassment, the District may facilitate an informal resolution process, such as mediation. This is a voluntary process. Any party may decline to participate. (The investigation may be abated for a short, defined period for the parties to engage in informal resolution. However, the informal resolution process cannot be used to delay an investigation.)

Informal Resolution cannot be used to resolve allegations that an employee sexually harassed a student.

Prior to a resolution, a party has the right to withdraw and resume the Formal Complaint grievance process.

Formal Investigations

The Investigation

1. The **burden of proof** (preponderance of the evidence) rests on the District and not on the parties.
2. The District cannot demand access to **legally privileged information** (e.g., healthcare-patient, attorney-client, priest-penitent).
3. Both parties must have an equal opportunity to present **witnesses**, including fact and expert witnesses, and other inculpatory and exculpatory **evidence**.
4. The District **cannot restrict a party's ability to discuss the allegations** under investigation or to gather or present relevant evidence.
5. Both parties have the right to have a **parent/guardian** and/or **advisor present** during any part of the grievance process, including interviews.

6. Parties are entitled to **written notice** of the date, time, location, participants, and purpose of **investigative interviews** and other meetings in this grievance process, with sufficient time for the party to prepare to participate.
7. Parties have the right to inspect and **review any evidence** obtained as a part of the investigation that is directly related to the allegations raised in the Formal Complaint.
8. Prior to completion of the investigative report, the investigator must send an electronic or hard copy of all the relevant evidence gathered to the parties and the parties' advisors, if any. The parties must be provided at least 10 calendar days to submit a written response that the investigator must consider before completing the investigative report.
9. The investigative report must be sent to the parties at least 10 calendar days before the Decision Maker determines whether sexual harassment has occurred.
10. The Investigator sends investigative report to Decision Maker.

From there it goes to the Decisionmaker,
and an appeal process

Are there other issues that arise?

NAME/PRONOUN POLICY

Remember:

In Texas, parents are partners in their children's education. Tex. Educ. Code §26.001.

Parents have the right to full information regarding their children's education. Tex. Educ. Code §26.008

STATE LAW REQUIREMENTS

- **Texas Education Code.** It is important that education records contain accurate information about the true identity of students enrolled in Texas public schools to thwart kidnappers and traffickers.
- To assist in locating missing children, Texas law requires that a parent furnish a copy of a child's birth certificate or other "document suitable as proof of the child's identity" to enroll a student in Texas public schools. Tex. Educ. Code §25.002(a)(1). If a child is enrolled under a name other than the child's name as it appears in the identifying document or records, the school must notify the Texas Department of Public Safety's Missing Persons hotline at (800) 346-3243. *Id.* at §25.002(b); FD(LEGAL); §3.3.4 - 2022-23 Student Attendance Accounting Handbook (texas.gov). See also DPS – Missing Persons Clearing House materials at 14 (texas.gov).

STATE LAW REQUIREMENTS

Student Attendance Accounting Handbook.

Student Detail Reports, which may be requested by TEA in the event of an attendance audit, require that student data include a student's **“legal first, middle, and last name”** and gender, among other data. See §2.3.1 - [2022-23 Student Attendance Accounting Handbook \(texas.gov\)](#).

STATE LAW REQUIREMENTS

Academic Achievement Record (AAR) Requirements.

Texas school districts are required to permanently maintain an accurate academic achievement record (AAR), which is often referred to as the “transcript.” The AAR must contain the student’s “full legal name.”

STATE LAW REQUIREMENTS

Any changes to the AAR must be dated, explained, and kept as part of the student's permanent file. *Id.* at §1.9. TEA has reportedly stated that it will accept the student-gender that a district reports through PEIMS, including a report that changes the student's gender following a student and/or parent request to alter the record. See Q 7. [Legal Issues Related to Transgender Students June 2022 \(tasb.org\)](#).

STATE LAW REQUIREMENTS

Accordingly, a student's name on the AAR and in PEIMS can be changed: 1) to correct a data entry error to reflect a student's true legal name from the birth certificate or other legal document; or 2) upon receipt of a revised birth certificate or other legal document. Any changes would have to be dated, explained, and the source documents kept as part of the student's permanent file in accordance with §1.9 of TEA's Minimum Standards for AARs (2012).

PROCEDURAL CONSIDERATIONS

Under what conditions must records be amended to reflect a different student name/gender?

Records must be amended when the school is provided a copy of a **final, signed court order** requiring that official government records be changed to reflect the new name/gender. The AAR and PEIMS records **may be amended only** when the district is presented with an **official, revised birth certificate or court order signed by a judge**. Documentation justifying and explaining the change to these records must be maintained permanently.

PROCEDURAL CONSIDERATIONS

What records cannot be changed without a revised birth certificate or court order? A student's legal name must be used for:

- PEIMS
- Academic Achievement Record/Transcript
- College exams (including but not limited to SAT/ACT/PSAT/TSI)
- College applications
- FAFSA/TAFSA
- College letters of recommendation
- Official college/university transcripts
- Texas State exams (STAAR, EOC, TX-KEA, ISIP, etc.)

PROCEDURAL CONSIDERATIONS

What records could be changed to reflect a student's preferred name, pronouns, and/or gender?

- Skyward (except for portions used for PEIMS/attendance reporting)
- Special Ed Manager or other special education software platform
- ID badges
- Class rosters
- Campus-based publications (e.g., yearbooks, athletic programs)
- High school diploma & graduation ceremonies

***A student's legal name will still appear on transcripts, attendance, and other areas necessary for legal documentation and state/federal reporting.**

Menzia v. Austin Indep. Sch. Dist.

Fifth Circuit (Aug. 25, 2022)

- The Fifth Circuit stated it, “require[s] a school district do more than simply respond to harassment, it must “respond[] *reasonably* to a risk of harm.” *Doe ex rel. Doe v. Dallas Indep. Sch. Dist.*, 220 F.3d 380, 384 (5th Cir. 2000) (emphasis added).”
- “We are mindful that “[j]udges make poor vice principals.” *Estate of Lance*, 743 F.3d at 996.
- So long as a school district’s response is not “clearly unreasonable in light of the known circumstances,” we “refrain from second-guessing the disciplinary decisions made by school administrators.” *Davis*, 526 U.S. at 648.”

John M. Kluge v. Brownsburg Community School Corp. (S.D. IN. July 12, 2021)

- Hired by BCSC in August 2014 to serve as a Music and Orchestra Teacher at BHS.
- BCSC implemented a policy (“Name Policy”) for all their teachers to address transgender students with their chosen names and pronouns
- Kluge refused as a Christian. The Principal gave Mr. Kluge three options: (1) comply with the Name Policy; (2) resign; or (3) be suspended pending termination

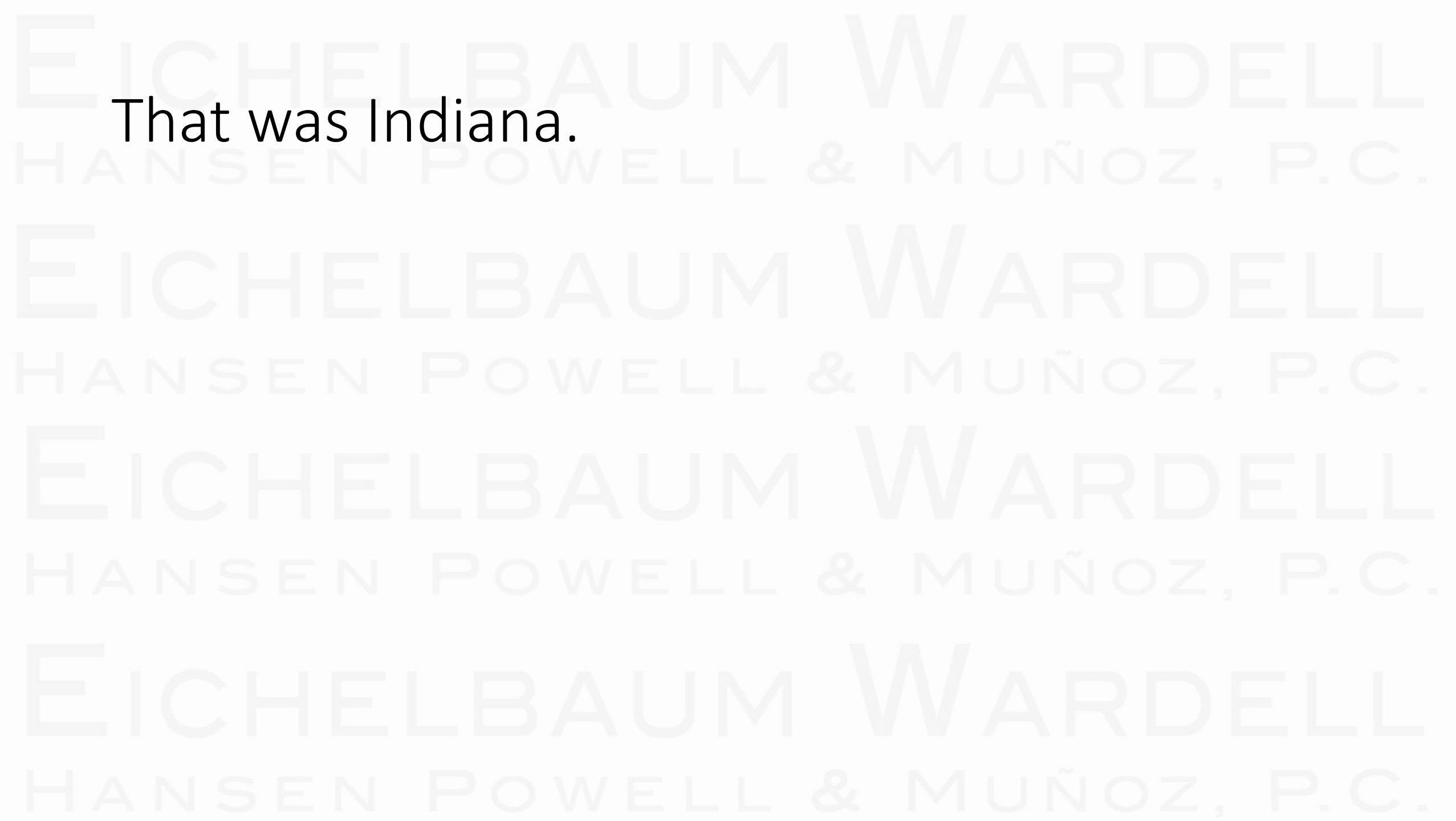
HOLDING

“BCSC is a public-school corporation and as such has an obligation to meet the needs of all of its students, not just a majority of students or the students that were unaware of or unbothered by Mr. Kluge's practice of using last names only.”

“BCSC has demonstrated ... it cannot accommodate Mr. Kluge’s religious beliefs.”

District wins. Kluge’s resignation was not coerced and there was no reasonable accommodation available.

That was Indiana.



Circuits on LGBTQ+ Students at a Glance:

3d	4th	5th	6th	7th	9th	11th
May use bathroom consistent with gender identity	May use bathroom consistent with gender identity	No caselaw	May use bathroom consistent with gender identity	Transgender students may bring claims of sex discrimination under Title IX	May use bathroom, locker room, and showers consistent with gender identity	May use bathroom consistent with gender identity
Doe by & through Doe v. Boyertown Area Sch. Dist., 897 F.3d 518, 538 (3d Cir. 2018)	Grimm v. Gloucester County Sch. Bd., 972 F.3d 586 (4th Cir. 2020), as amended (Aug. 28, 2020) *SCOTUS declined to hear		Dodds v. United States Dep't of Educ., 845 F.3d 217, 221 (6th Cir. 2016)	Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034, 1055 (7th Cir. 2017)	Parents for Privacy v. Barr, 949 F.3d 1210, 1217–18 (9th Cir. 2020), cert. denied, 20-62, 2020 WL 7132263 (U.S. Dec. 7, 2020)	Adams by & through Kasper v. Sch. Bd. of St. Johns County, 3 F.4th 1299 (11th Cir. 2021)

AISSD's practice

AISSD takes each case individually.

- What is the child requesting?
- Does the parent know?
- Is there any disagreement?
- What options are available on campus?
- What other factors are there to consider?