

# 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.



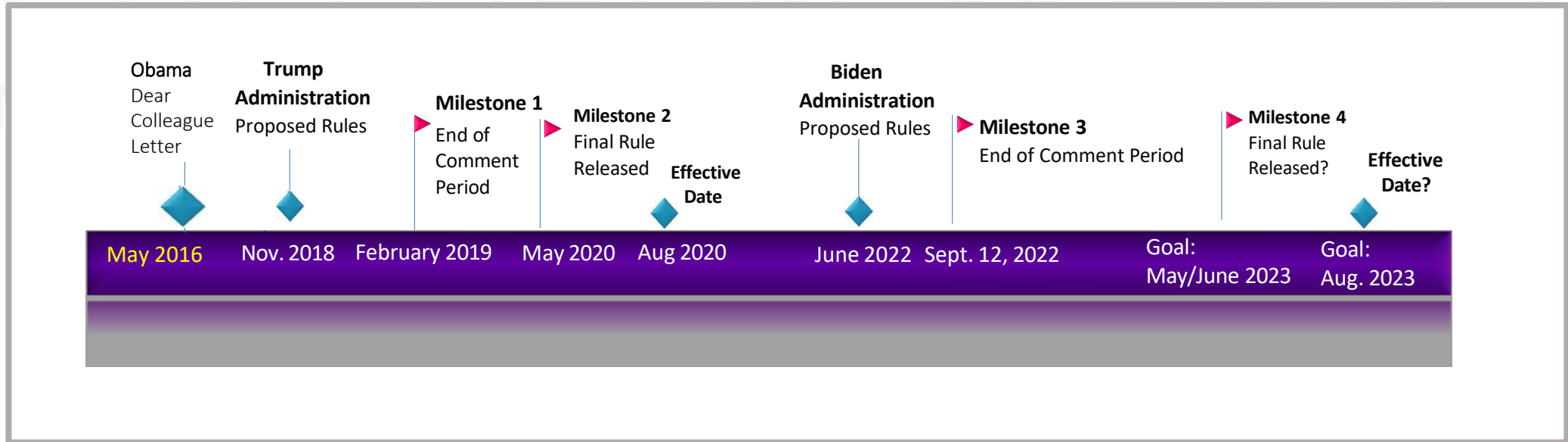
# Title IX: 1972

- 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.

# But you may be the first to hear it...

## Report to Principal, Possibly Police

Sexual harassment of a student by a District employee includes both welcome and unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. A District employee causes the student to believe that the student must submit to the conduct in order to participate in a school program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct; or
2. The conduct is so severe, persistent, or pervasive that it:
  - a. Affects the student's ability to participate in or benefit from an educational program or activity, or otherwise adversely affects the student's educational opportunities; or
  - b. Creates an intimidating, threatening, hostile, or abusive educational environment.

Romantic or other inappropriate social relationships between students and District employees are prohibited. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See DH]



# Student to Student

Sexual harassment of a student, including harassment committed by another student, includes unwelcome sexual advances; requests for sexual favors; or sexually motivated physical, verbal, or nonverbal conduct when the conduct is so severe, persistent, or pervasive that it:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

Belle comes to you complaining that Gaston keeps calling her at home, asking her for dates. She also says he has left her notes on her desk saying “he loves her.” What can you do about this Beast?

Several boys have come to you complaining that 8th grade student Sara Burnhard is pinching their rears. What do you do?

Laverne and Shirley, two seniors at Schotz High School, have a rather close relationship. It has been reported to you that students have seen them kissing each other during lunch in the cafeteria.

- Your star basketball player, Wilt the Built, constantly brags about how many women he's been with. Roy Sniffles, a fellow teammate, comes to you complaining that he's sick of the bragging.
- Dolly keeps teasing Barbie about not being well endowed. In the locker room Dolly keeps making comments, and jokingly leaves training bras and toilet paper in Barbie's locker. Barbie comes to you crying.
- Archie and Betty are always making eyes and passing love notes in the cafeteria. Veronica is terribly jealous. She comes to you complaining.

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**Note:** The following legal provisions address dating violence and sexual harassment. For legal provisions addressing discrimination on the basis of disability, sex, and other

"Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to a district's Title IX Coordinator or any official of the district who has authority to institute corrective measures on behalf of the district, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the district with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the district. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

A dating violence policy must also address safety planning, enforcement of protective orders, school-based alternatives to protective orders, training for teachers and administrators at each district campus that instructs students in grade 6 or higher, counseling for affected students, and awareness education for students and parents.

*Education Code 37.083, .0831 [See BQ]*

Student Resources

To the extent possible, a district shall make available to students age-appropriate educational materials that include information on the dangers of dating violence and resources to students seeking help. *Education Code 37.0831(c)*

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**Note:** References to Title IX, part, or subpart in the following legal provisions refer to Title IX and its corresponding regulations.

The U.S. Department of Education's Office for Civil Rights has issued a formal interpretation that discrimination on the basis of sex under Title IX includes discrimination on the basis of sexual orientation and gender identity.

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## 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.

# No Retaliation

Examples of retaliation may include threats, intimidation, coercion, rumor spreading, ostracism, assault, destruction of property, unjustified punishments, or unwarranted grade reductions. Unlawful retaliation does not include petty slights or annoyances.

"Supportive measures" means nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or district-provided housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The district maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

34 C.F.R. 106.2, .30(a)



## Under Title IX: AISD

A district with actual knowledge of sexual harassment in an education program or activity of the district against a person in the United States, must respond promptly in a manner that is not **deliberately indifferent**. A district is deliberately indifferent only if its **response** to sexual harassment is **clearly unreasonable** in light of the known circumstances.

# Under Constitution: You and the District

- You and AISD can be sued
- If you knew and did nothing...
  - You could lose your job
  - You could lose your certificate
  - You could go to jail.

Sec. 21.12. IMPROPER RELATIONSHIP BETWEEN EDUCATOR AND

STUDENT. (a) An employee of a public or private primary or secondary school commits an offense if the employee:

(1) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works;

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Sec. 261.101. PERSONS REQUIRED TO REPORT; TIME TO REPORT. (a) A person having reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

(b) If a professional has reasonable cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has reasonable cause to believe that the child has been abused as defined by Section 261.001, the professional shall make a report not later than the **48th hour after the hour the professional first has reasonable cause to believe that the child has been or may be abused or neglected** or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

Sec. 261.106. IMMUNITIES. (a) A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from civil or criminal liability that might otherwise be incurred or imposed.

Sec. 261.109. FAILURE TO REPORT; PENALTY. (a) A person commits an offense if the person is required to make a report under Section 261.101(a) and knowingly fails to make a report as provided in this chapter.

(a-1) A person who is a professional as defined by Section 261.101(b) commits an offense if the person is required to make a report under Section 261.101(b) and knowingly fails to make a report as provided in this chapter.

(c) An offense under Subsection (a-1) is a **Class A misdemeanor**, except that the offense is a **state jail felony** if it is shown on the trial of the offense that the actor **intended to conceal the abuse or neglect**.

# Class A Misdemeanor

In Texas, Class A misdemeanors are punishable by up to one year in jail, a fine of up to \$4,000, or both jail time and a fine.

# DOE v. TAYLOR I.S.D.

## 1. The Facts



## 2. The Lessons

1. The person learned of facts or a pattern of inappropriate sexual behavior by a subordinate pointing plainly toward the conclusion that the subordinate was sexually abusing a student.
2. The person demonstrated deliberate indifference toward the constitutional rights of the student by failing to take action that was obviously necessary to prevent or stop the abuse.
3. Such a failure caused injury to the child.

So How Can You **Always**  
Avoid Civil Liability?

# If a Student comes to you complaining... Notify your principal and one of you...

## Title IX Coordinator

The District designates and authorizes the following person as the Title IX coordinator to be responsible for coordinating the District's efforts to comply with Title IX of the Education Amendments of 1972, as amended, for students:

Name: Dr. Michael Hill

Position: Assistant Superintendent

Address: 690 East Lamar Blvd., Arlington, TX 76011

Email: [Title IX coordinator \(mhill4@aisd.net\)](mailto:mhill4@aisd.net)

Telephone: (682) 867-7340

## TITLE IX COMPLIANCE

[Arlington ISD](#) > [District](#) > [About](#) > [Required Postings](#) > Title IX Compliance

AISD's Title IX administrators have attended Eichelbaum Wardell Hansen Powell & Muñoz P.C.'s "New Title IX Rules and Regulations" series. Materials from this series in compliance with Section 106.45(b)(10)(i)(D) of the regulations can be found on the [New Title IX Rules and Regulations Materials](#) web page.

## TITLE IX COORDINATOR

The District designates and authorizes the following person as the Title IX coordinator to be responsible for coordinating the District's efforts to comply with Title IX of the Education Amendments of 1972, as amended, for students:

**Name:** Dr. Michael Hill

**Position:** Assistant Superintendent

**Address:** 1203 W. Pioneer Parkway, Arlington, TX 76013

**Email:** [Title IX coordinator \(mhill4@aisd.net\)](mailto:mhill4@aisd.net)

**Telephone:** (682) 867-7340

**Then what happens?**

**A formal or informal investigation**

# 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.

What *other* issues may arise that are covered by Title IX *besides* sexual harassment?

# 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.

# 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	<b>No caselaw</b>	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 between child and parent?
- What options are available on campus?
- What other factors are there to consider?