

Title IX Update

*50 Years of Title IX: **We're Not Done Yet!***

Pennsylvania AAUW State Convention

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LEGAL DISCLAIMER

The information provided in this presentation is NOT a substitute for legal advice.

Title IX of the Education Amendments of 1972 is a federal law.

I'm not a lawyer and participants of this presentation are strongly encouraged to seek the advice of legal counsel.

June 23, 2022



TITLE IX^{at} 50
Celebrating and Growing Opportunities

TITLE IX & **EDUCATE**
celebrate
1972 - 2022



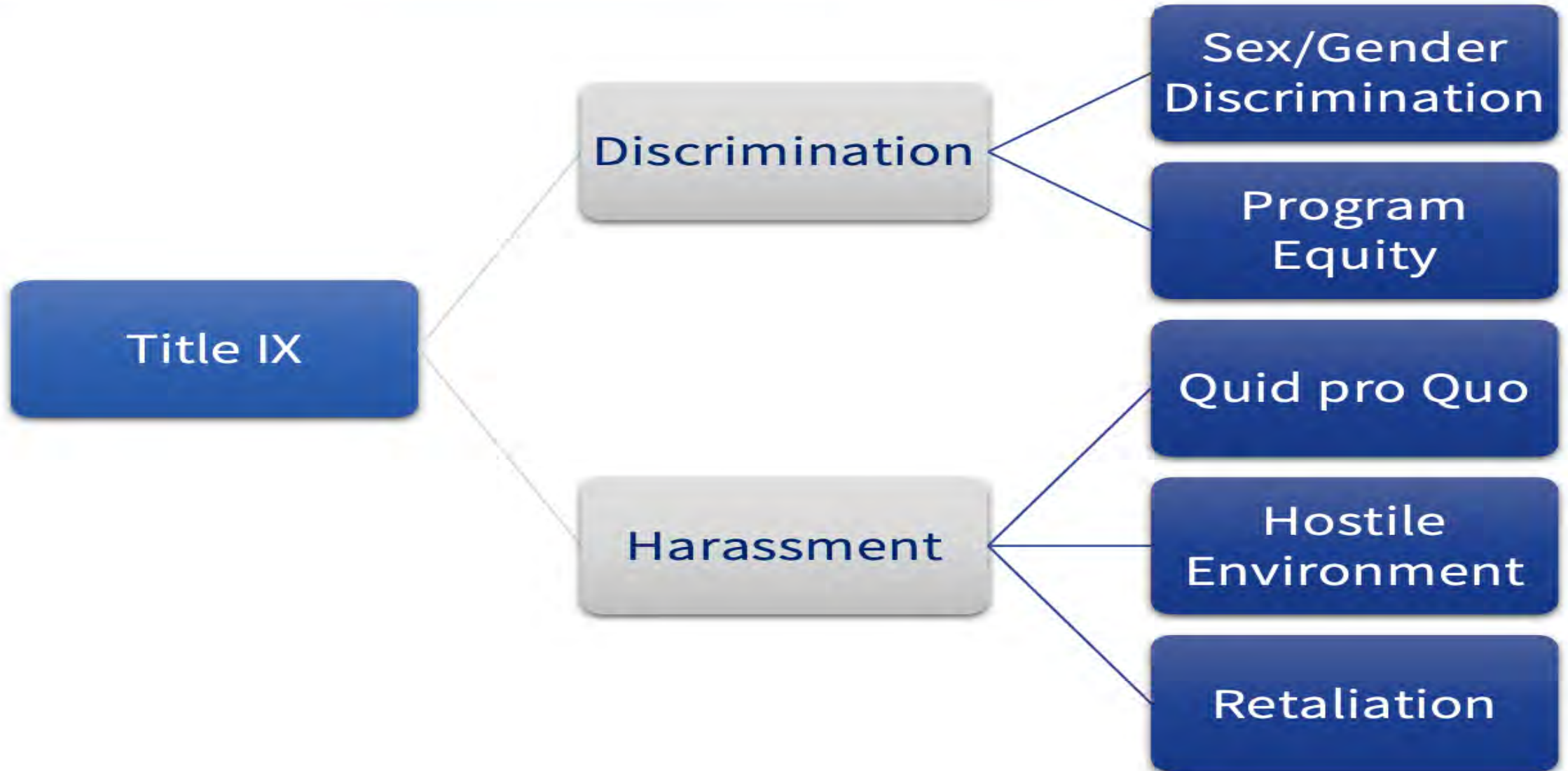
Title IX of the Education Amendments of 1972

“No person in the United States shall, on the basis of sex, be excluded from participation in, **be** denied the benefits of, or **be** subjected to discrimination under any education program or activity receiving Federal financial assistance.”

[Original 37-word statute]

Title IX has a long history of Sources of Law and other guidance including numerous “Dear Colleague Letters” and Q & A documents.

TITLE IX



KEY TITLE IX-RELATED ISSUES

Sex-Based Discrimination

- Program Equity
- Recruitment, Admissions and Access
- Pregnancy
- Athletics
- Employment, Recruitment & Hiring
- Extra-curricular activities
- Housing
- Access to Course Offerings
- Salaries and Benefits
- Financial Assistance
- Facilities
- Funding
- Sex, Gender, Gender Identity

Sexual Harassment

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking

Retaliation



EQUALITY

requires a level playing field that doesn't yet exist



JUSTICE

eliminates systemic barriers

The journey starts by asking those affected how they see and are impacted by the conditions, rules, and resources.



EQUITY

acknowledges systemic impediments with targeted fixes



AGENCY

individuals know that access is their right

General Concepts About Title IX of the Education Amendments of 1972

- Title IX does not only pertain to sports. Title IX is not a sports law. *The OCR considers athletics an education program.*
- Title IX is the first comprehensive federal law that prohibits sex discrimination in education programs and activities that receive Federal financial assistance.
- Title IX does not only protect females. It protects all students (boys & girls), faculty and staff.
- *Title IX covers sexual harassment/sexual assault in schools.* (5-6-2020 New Regulations)
- Title IX requires schools to maintain policies, practices and programs that do not discriminate against anyone based on sex.
- *Title IX is at the heart of efforts to create gender equitable schools. Males and females are expected to receive fair and equitable treatment in all arenas of public schooling.*

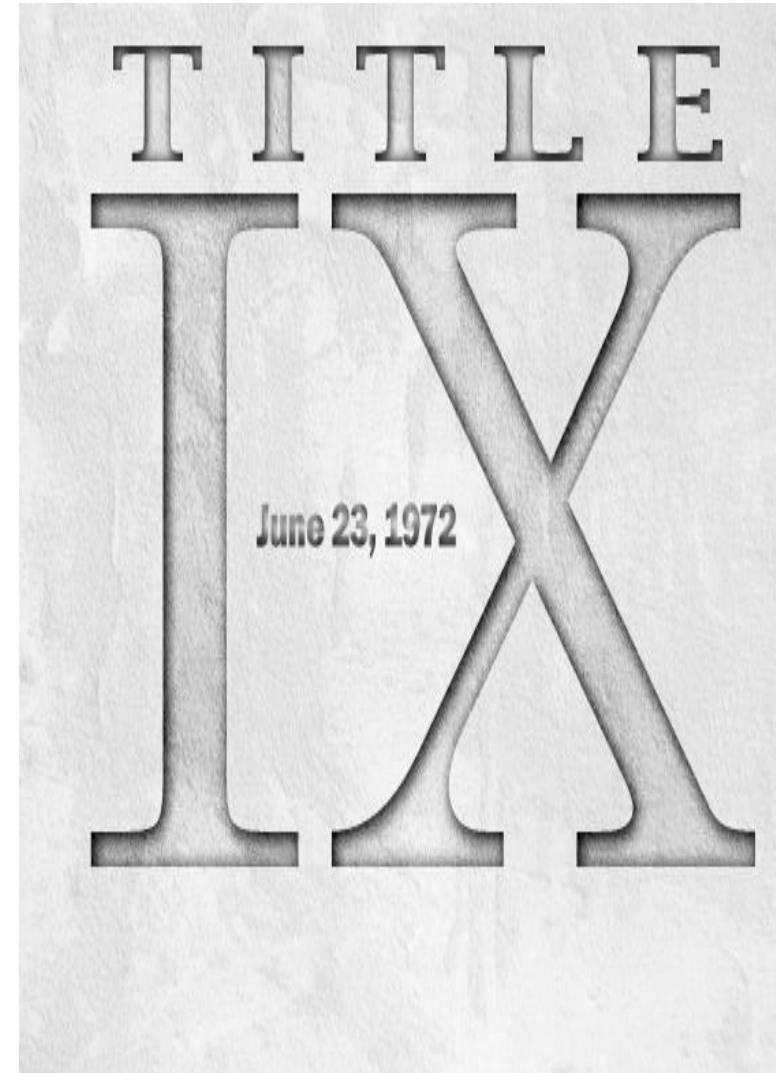
2020 New Title IX Regulations

New Title IX Regulations – Issued 5/6/2020

On May 6, 2020, the U.S. Department of Education issued its final (new) regulations concerning sexual harassment and sexual assault in K-12 schools, colleges and universities.

The new regulations, which took effect on August 14, 2020, include several significant changes in the requirements for schools that receive complaints of sexual harassment.

While many changes effect higher education institutions, the most dramatic changes apply to elementary and secondary schools (K-12).



... K-12 Schools Put On Notice...



U.S. Department of Education

Search...

Student Loans

Grants

Laws

Secretary DeVos Announces New Civil Rights Initiative to Combat Sexual Assault in K-12 Public Schools

FEBRUARY 26, 2020

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

WASHINGTON — U.S. Secretary of Education Betsy DeVos announced today a new Title IX enforcement initiative, led by the Department's Office for Civil Rights (OCR), to combat the troubling rise of sexual assault in K-12 public schools. This initiative will enhance OCR's enforcement of Title IX in both elementary and secondary public schools and strengthen the ability of schools to respond to all incidents of sexual harassment and assault. The new initiative also builds on the Department's work to implement the "Pass the Trash" provisions of the Every Student Succeeds Act (ESSA), which prohibits schools from simply moving employees who have committed acts of sexual misconduct.

"We hear all too often about innocent children being sexually assaulted by an adult at school. That should never happen. No parent should have to think twice about their child's safety while on school grounds," said Secretary DeVos. "That's why I've directed our OCR team to tackle the tragic rise of sexual misconduct complaints in our nation's K-12 campuses head on. Through compliance reviews and raising public awareness about what's actually happening in too many of our nation's schools, we can build on the good work we're already doing to enforce Title IX and protect students. We cannot rest until every student can learn in a safe, nurturing environment where their civil rights are protected."

OCR's recent resolution of two sexual harassment complaints involving [Chicago Public Schools](#) illustrates the systemic and significant deficiencies that require OCR's intentional and focused examination.

In fact, according to the most recent available Civil Rights Data Collection (CRDC) for the 2015-2016 school year, there were approximately 9,700 incidents of sexual assault, rape or attempted rape reported in public elementary and secondary schools.

OCR's initiative to examine sexual assault will include the following activities:

- **Compliance Reviews:** OCR will conduct nationwide compliance reviews in schools and districts, examining how sexual assault cases are handled under Title IX, including sexual incidents involving teachers and school staff. OCR will work with school districts to identify and correct compliance concerns.
- **Public Awareness and Support:** OCR will focus on raising awareness of the issue of sexual assault in K-12 schools, including making information available to educators, school leaders, parents and families.
- **Data Quality Reviews:** OCR will conduct Data Quality Reviews (DQRs) of the sexual assault/offenses data submitted by school districts through the CRDC. As a part of conducting DQRs, OCR will partner with the National Center for Education Statistics (NCES) and will work with districts to ensure that incidents of sexual assault/sexual offenses are being accurately recorded and reported through the CRDC.
- **Proposed CRDC Data Collection:** OCR has proposed, for the 2019-2020 data collection, to collect more detailed data on sexual assault. The proposed data collection includes incidents perpetrated by school staff or school personnel. If adopted, the inclusion of this data would make the CRDC collection the first universal collection to gather such data systemically by school.

"The number of K-12 sexual harassment and violence complaints filed with OCR is nearly fifteen times greater than it was a decade ago. This disturbing change is a matter of serious concern and requires immediate attention," said Assistant Secretary for Civil Rights Kenneth L. Marcus. "Secretary DeVos has directed OCR to focus our enforcement, technical assistance, and data-gathering activities on this issue, and we are going to make it a priority going forward."

Today's actions follow the Department's Office of Elementary and Secondary Education's announcement that it will publish an extensive study of measures taken by states and school districts to prevent the phenomenon known as "Pass the Trash." The study examines best practices for prevention and raises awareness of the requirement under Section 8546 of ESSA, which prohibits state education agencies, school districts, schools and school employees from assisting an individual in obtaining new employment if the individual has engaged in sexual misconduct with a student or employee. Further, the study will also examine the impact of the requirement on schools and school employees.

Key Provisions of the 2020 Regulations

- **The Definition of “Sexual Harassment”**
- Ensuring Accessible Channels for Reporting Sexual Discrimination and Harassment
- Actual Notice Standard and Mandatory Response Obligations
- Supportive Measures for Complainant and Respondent
- Grievance Process
- Live Hearing Requirement (colleges/universities)
- Informal Resolution Options

What Schools Must Do:

- Revise policies, guidelines and forms.
- **Identify the school district's Title IX Coordinator.**
- **Identify who is on the school district's "Title IX Team". (The Athletic Director should be part of the "Title IX Team".)**

[Title IX Coordinator, Deputy Title IX Coordinators, Investigators, Decision-Makers, Informal Resolution Facilitator, Appeals Officer, Advisors]

- **Provide necessary training...including athletic coaches... that is comprehensive and continuous.**
- Develop templates, notices, and forms.
- Consider implications for student and staff discipline.
- Update record retention process. Documentation is critical.
- Post required notices and training materials.
- Athletic Directors must take the necessary steps to protect the student-athletes and abide by the new Title IX regulations.

The 2020 Title IX Regulations DO NOT change anything with regard to Title IX Athletics Compliance

Title IX and Athletics Compliance:

- There are no changes to Title IX compliance relative to athletics programs.
- The duties and obligations that schools have regarding the application of Title IX in athletics remains the same.

I. PARTICIPATION OPPORTUNITIES

Effective Accommodations of Athletic Interests and Abilities

("The Three-Prong Test")

II. TREATMENT

Equivalence of Other Athletics Benefits and Opportunities

("The Laundry List")

Coming Soon...

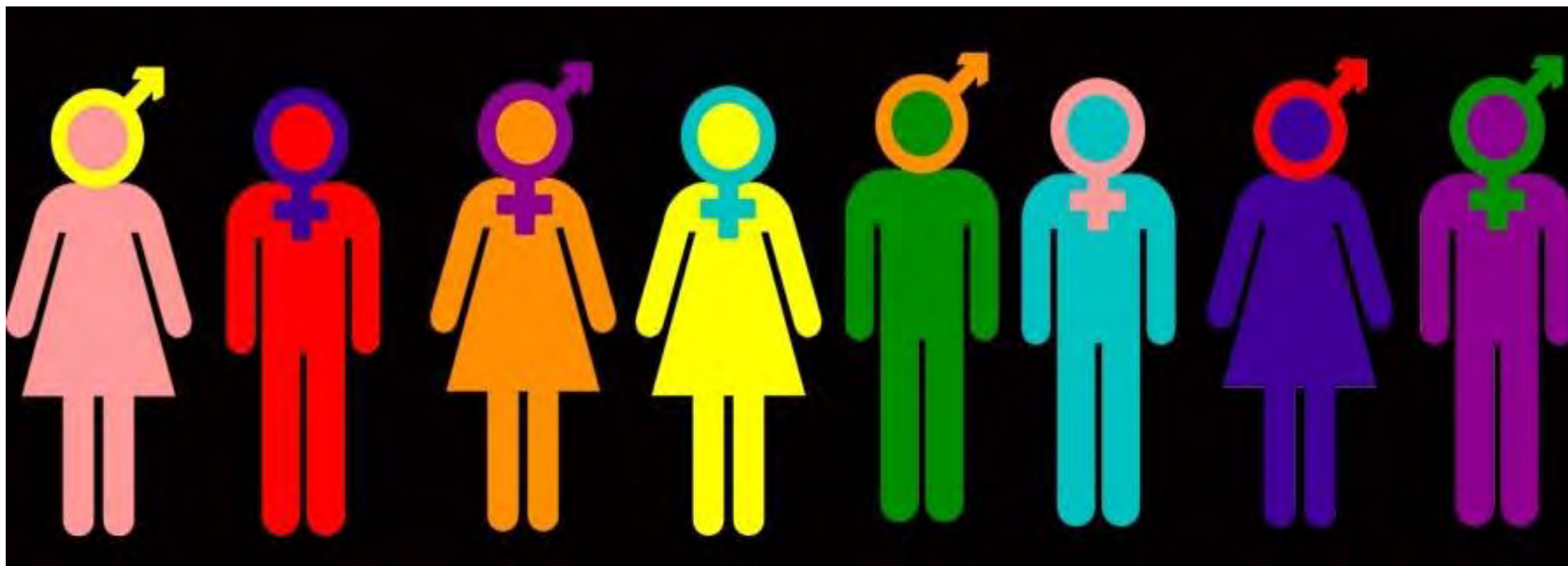
2022 Title IX Regulations

Biden Administration

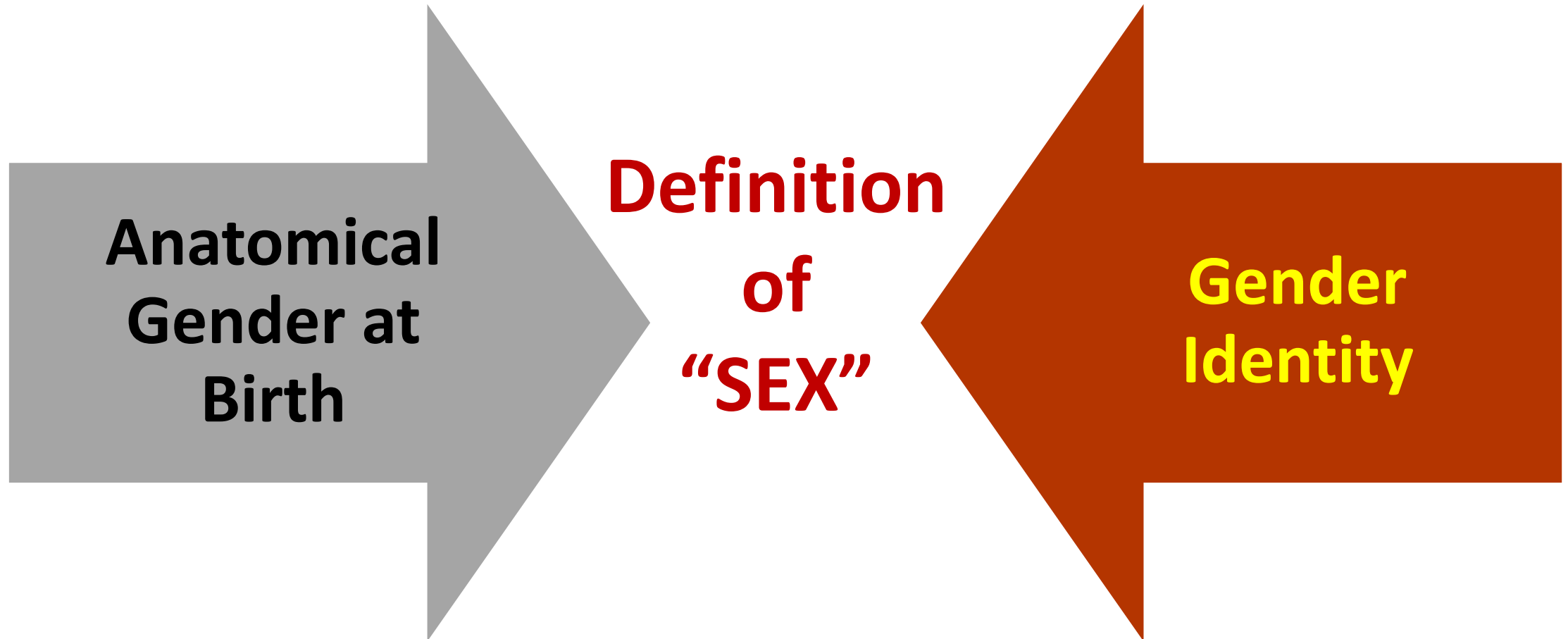
2022 NRMP

- June 2021 – the Biden administration formally announces it will replace the DeVos rule with its own regulation.
- In December 2021, the Dept. of Education announces it plans to release its proposed Title IX rule in April 2022 – delayed to June 2022.
- The draft rule will dictate how schools must investigate and potentially punish sexual misconduct.
- **It is also expected to include protections for transgender students.**

Sex, Gender, Gender Identity...



The Three-Letter Word...



New Proposed Rulemaking Process - 2022

- The reported proposed regulations will include this provision:

Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex-related characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

- If adopted, such protections would apply to anyone participating in, or attempting to participate in, an educational program or activity receiving federal funding assistance and would preclude any program from excluding a student based on their gender identity.

Transgender Student-Athletes: *A Continuing Evolution of Legal Standards*



Transgender Student-Athletes: *A Continuing Evolution of Legal Standards*

- OCR/Dept. of Education Guidance – *Obama-era/Trump-era/Biden-era*

2011 Dear Colleague Letter

2014 Q & A

Dept. of Ed. & Dept. of Justice guidance

2017 Dept. of Ed. rescinds 2016 guidance and withdraws Obama administration's 2011 guidance and follow-up Q & A

2018 Dept. of Ed. under DeVos releases draft rule on Title IX / 2020 new Title IX regulations

- OCR/Dept. of Education Guidance – *Obama-era/Trump-era/Biden-era* (CONTINUED)

January 2021 President Biden issues EO stating everyone should receive equal treatment under federal law, regardless of sexual orientation or gender identity

March 2021 Biden signs EO – directs Dept. of Ed. to evaluate 2020 Title IX rule – Biden pledges to undo.

June 2021 Biden administration formally announces it will replace DeVos rule/December 2021 Dept. of Ed. announces it plans to release its proposed Title IX rule in April 2022 - now to be released in June 2022

June 2021 Department of Education issues its **NOTICE OF INTERPRETATION reiterating that the Dept. considered gender identity to already be covered by the existing rules, citing Bostock v. Clayton County.*

- *Bostock v. Clayton County* and *R.G.& G.R. Harris Funeral Home Inc. v. Equal Employment Opportunity Commission*

2020 U.S. Supreme Court decision that found discrimination based on sexual orientation or gender identity is inherently “on the basis of sex”.

The Equality Act

- Passed by the House (2-25-21)
- Amends the 1964 Civil Rights Act
- Ban discrimination against people based on sexual orientation and gender identity.
- Expand protection to cover federally funded programs, as well as “public accommodations”.
- Explicitly says that it supersedes the *Religious Freedom Restoration Act* (RFRA).
- Pros and Cons to the legislation



A Line in the Sand

Transgender Athletes



Caster Semenya



Hecox v. Little

Decision on Idaho's Transgender Law

August 17, 2020, U.S. District Court blocked **Idaho's** state law banning transgender females from college and high school **women's/girls'** sports teams.



Mack Beggs – Transgender Male



2017 - Texas

Mack Beggs is a transgender male that was undergoing the transitioning process while in high school. He was forced to wrestle against females because the UIL policy requires that student-athletes compete based on the sex listed on their birth certificates. Mack and his parents wanted him to wrestle in the boys' division.

Soule et al v. Connecticut Association of Schools (CIAC)

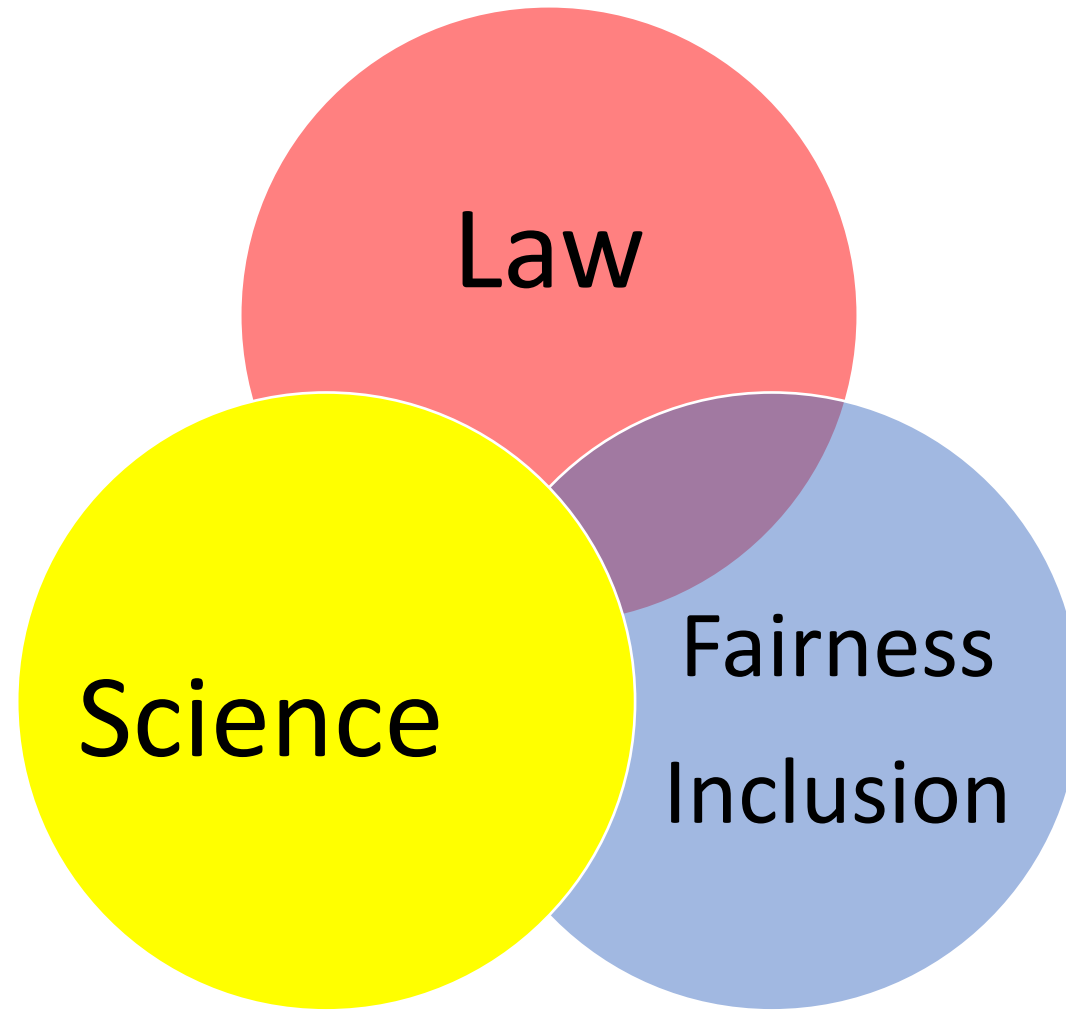


State laws banning transgender women/girls from college/high school women's/girls' sports teams

PENNSYLVANIA - HB 972

Would require that “**athletic** teams or sports designated for females, women or **girls**” are not to be “**open** to students of the male **sex,**” with sex defined as “**the** biological distinction between male and female based on reproductive biology and genetic make-up.”

Transgender Students-Athletes



*At its core, Title IX is about balance, equity and fairness.
It is both a sword and a shield.*

College and Elite Competition

- Competitive advantage/fairness.
- The “science” becomes more impactful.
- NCAA Policy change.
- 4/2021: NCAA President Emmert affirms the NCAA’s position to support transgender student-athletes – NCAA “championship sites must demonstrate how they will provide an environment that is safe, healthy, and free of discrimination.”

High School/Middle School

- Focus on inclusion.
- Benefits of participating in interscholastic athletics.
- Mental health and safety.
- Better education re: transgender students and student-athletes -dispelling the myths.

****Psychological impact?***

2019 CIAC Track Championships – Transgender female won

2020 CIAC Track Champions – Cisgender female won defeating the transgender female student-athletes



Transgender Girls and Opportunities in Interscholastic Athletics

- Destroys fair competition
- Physical safety in danger
- Heading off a potential increase in transgender (female) participation
- ***Takes athletic opportunities away from girls***
- The number of transgender female student-athletes is extremely small
- The increase in the number of transgender females wanting to participate in sports is unfounded
- Males do not transition to female in order to win medals
- **Girls have fewer athletic participation opportunities in high/middle school because K-12 schools DO NOT follow the law**

Ban on Transgender

Transgender Inclusion

Health/Safety

Politics/Power/
Control...

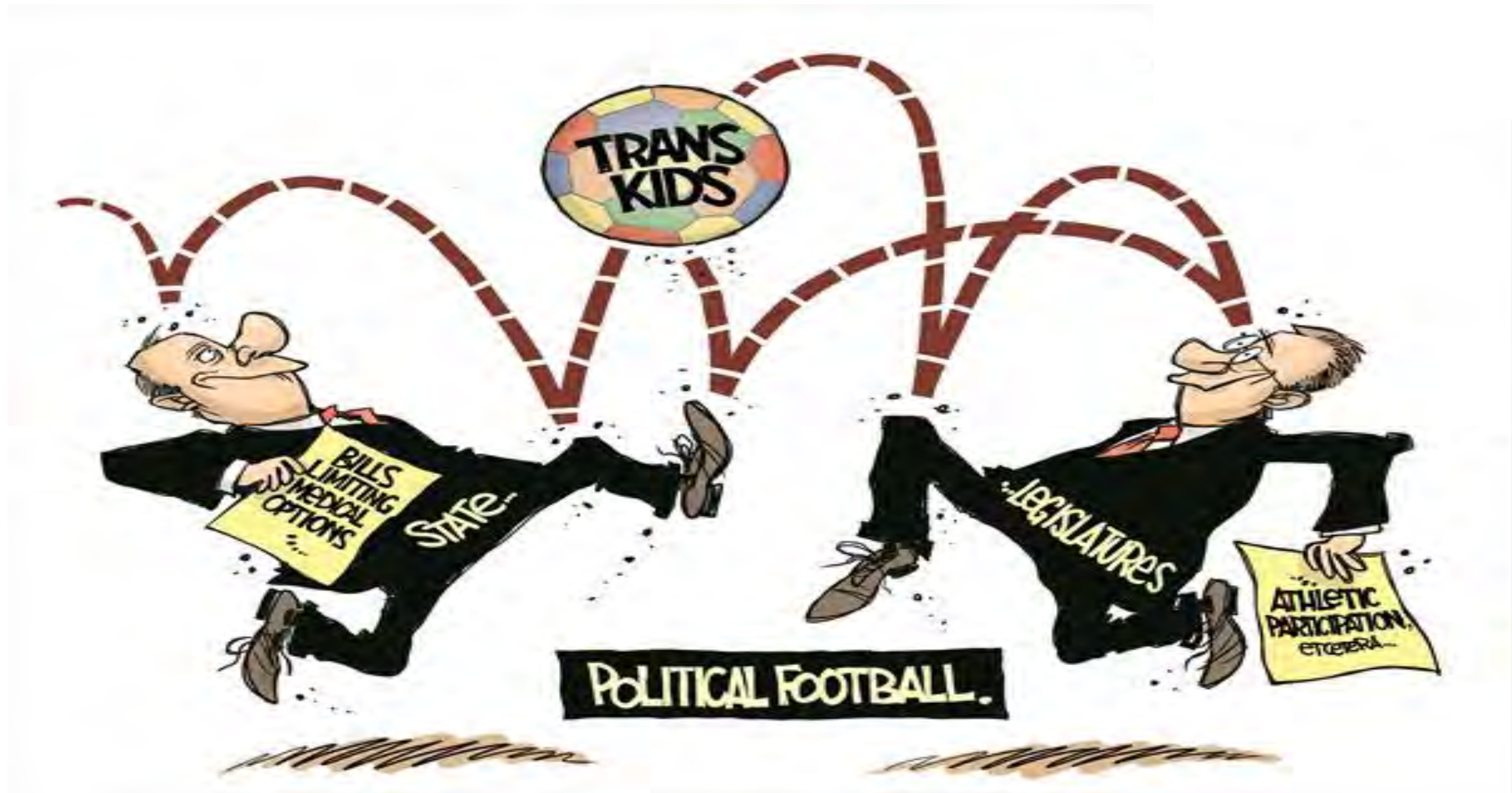
Benefits of
Participation

Fear/Morality/
Ethics/Religious
Beliefs/**Science**...

Acceptance/
Authenticity







What is the answer?



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Resources

- American Association of University Women – www.aauw.org
- Association of Title IX Administrators – www.atixa.org
- **National Women’s Law Center** – www.nwlc.org
- Stop Sexual Assault in Schools – www.stopsexualassautinschools.org
- PA Coalition Against Rape – www.pcar.org
- Office for Civil Rights – www.www2.ed.gov
- Trans Athlete – www.transathlete.com
- Athlete Ally – www.athleteally.com
- GLAD – www.glad.org
- GLSEN – www.glsen.org
- U.S. Center for Safe Sport – www.uscenterforsafesport.org
- **Women’s Sports Foundation** – www.womenssportsfoundation.org
- Outsports – www.outsports.com
- Trans Student Educational Resources – www.transstudent.org
- YouthCelebrateDiversity – www.ycdiversity.org
- **Women’s Sports Policy Working Group** – www.womenssportspolicy.org



Questions and Conversations

Thank you for allowing me to visit with you today!

Contact Information:

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**Title
IX**