

Hot Topics in School Law: The “Did I Do That?” Episode

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Welcome to the “Did I Do That?” Show, with your host, the less famous one of Steve Urkel and Angie Stallbaumer!

Today’s episode will provide a refresher course in the areas of school law where school employees sometimes struggle, will highlight some of the scenarios the KASB attorneys are asked to engage on, and will highlight some of the relevant law useful to navigating your day job.



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Fees and Funds

Laura: "Where did you get the money for this?"

Steve Urkel: "From my stay-away fund. Every year, my relatives send me money in hopes that I won't visit them."

- Found at: <https://www.thyquotes.com/steve-urkel/>

***Steve Urkel in Family Matters - Found at: <https://www.thyquotes.com/steve-urkel/>

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School Funds: Petty Cash

- The board of education of any school district may authorize, by separate resolutions, the establishment of petty cash funds from which to make needed expenditures for school district purposes in emergencies.
- Every such resolution shall specify the general purpose for which the petty cash fund is to be established, authorize an employee of the school district to administer the petty cash fund, and designate an amount of moneys, not to exceed \$1,500, to be maintained in the petty cash fund.
 - From K.S.A. 72-1177



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School Funds: Petty Cash

- (b) The employee authorized to administer any petty cash fund established by any resolution provided for in this section shall keep a record of all receipts and expenditures from the fund, and shall, from time to time, and at the end of each school year, prepare a statement for the board of education showing all receipts, expenditures, and the balance in the petty cash fund. The petty cash fund shall be replenished by payment from the appropriate funds of the school district to the petty cash fund upon proper claim. If the board of education is satisfied with the report, the board may restore the fund to its original amount. The fund shall be kept separate from all other funds and be used only for authorized expenditures and itemized receipts shall be taken for each expenditure. No part of the fund may be loaned or advanced against the salary of any employee. All employees entrusted with the administration of petty cash funds under authority of this statute shall be bonded by the school district.

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School Funds: Activity

- **72-1178. School activity funds.**
 - (a) The board of education of any school district may authorize, by separate resolutions, the establishment of school activity funds from which to make needed expenditures for the payment of expenses attributable to activities in which pupils of the district may participate directly or indirectly. Every such resolution shall specify the general purpose for which the fund is to be established and shall authorize an employee of the school district to administer the fund.
 - (b) The employee authorized to administer any school activity fund established by any resolution provided for in this section shall keep a record of all receipts and expenditures from the fund, and shall, from time to time, and at the end of each school year, prepare a statement for the board of education showing all receipts, expenditures, and the balance in the fund. The fund shall be kept separate from all other funds and be used only for authorized expenditures, and itemized receipts shall be taken for each expenditure.

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School Funds: Activity

72-1178. School activity funds.

- (c) All moneys received from the sale of admissions to activities which the school district sponsors shall be credited to school activity funds in accordance with policies and procedures adopted by the board of education.
- Such moneys shall not be considered to be moneys of the school district for the purposes of [K.S.A. 72-8202d](#), and amendments thereto.
- (d) The provisions of [K.S.A. 12-105b](#), and amendments thereto, shall not apply to claims against any school activity fund established by any resolution provided for in this section.
- (e) As used in this section, the term "activities" means activities, events, and competitions in such fields as athletics, music, forensics, and dramatics, and other interschool or intraschool extracurricular activities in which pupils may participate directly or indirectly.

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School Funds: Student Fees

- The board of education of any school district may purchase, for the use of the pupils of the district, any of the following:
- (a) Workbooks and materials which are supplemental to textbooks used in specific courses;
- (b) specialized clothing and towels for use in physical education, shop, and science courses;
- (c) musical instruments for use in band or orchestra;
- (d) instructional materials for the use of technology in specific courses; and
- (e) materials or supplies which are consumed in specific courses or projects or in which the pupil may retain ownership upon completion of such courses or projects.
 - [Kan. Stat. Ann. § 72-3352](#)



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School Funds: Textbook Fees



- Each school district may provide the pupils in said district with **textbooks** free of cost.
 - [Kan. Stat. Ann. § 72-3344](#)
- Whenever the parents or guardian of any child attending any of the public schools are unable to purchase textbooks or provide rental fees for said child, the board of education of the district in which said child resides shall, if written application is made and said board finds the application meritorious, furnish said child with the regular adopted textbooks free of cost.
 - [Kan. Stat. Ann. § 72-3345](#)

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School Funds: Supplemental Fees

- (a) The board of education of any school district may prescribe, assess and collect fees and supplemental charges for: (1) The use, rental or purchase by pupils of any of the items designated in K.S.A. 72-3352, and amendments thereto, to offset, in part or in total, the expense of purchasing such items; and
- (2) participation in activities, or the use of facilities, materials and equipment, which participation or use is not mandatory, but optional to pupils, whether incidental to curricular, extracurricular or other school-related activities.
- (b) Moneys received by a board of education under this section shall be deposited in the textbook and student materials revolving fund of the school district.
 - [Kan. Stat. Ann. § 72-3353](#)
- Whenever the parents or guardian of any pupil of the school district are unable to provide the fees and supplemental charges assessed and collected under authority of subsection (a) of K.S.A. 72-3353, the board of education shall, if written application is made and said board finds the application meritorious, waive said fees and supplemental charges if the items for which said fees and supplemental charges are assessed and collected are necessary for the completion of the basic requirements of courses of study offered in the school district.
 - [Kan. Stat. Ann. § 72-3354](#)

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I (We), _____, hereby request the Board of Education of Unified School District No. _____ to waive the following fees which have been assessed for (name of child).

TEXTBOOK RENTAL \$ _____

SUPPLEMENTAL FEES* \$ _____

TOTAL \$ _____

Please check if applicable: (attach supporting documents for each category that applies)

_____ Student is eligible based on income verification.
In support of this application, I state that our annual family income is \$ _____. There are currently (fill in number) persons living in the household, including (fill in number) children in school. I am unable to pay these fees for the following reason(s):

_____ Student receives Supplemental Security Income as a Qualified Child with Disabilities

_____ Family receives TANF (currently qualified for financial assistance or food stamps)

_____ Student is in Foster Care (under Kansas or local governmental supervision)

_____ Student is in State Custody

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How Do You Document This?

Supplemental fees which can be waived include only those for items which are necessary for the completion of the basic requirements of course of study (e.g., shop fees, science lab fees, etc.)

In lieu of income verification, attach supporting documents to this form for each special category that applies.

- For TANF (financial assistance or food stamps) attach a letter of decision covering the current period from Workforce Services.
- For SSI (QUALIFIED CHILD WITH DISABILITIES), attach the benefit verification letter from Social Security.
- For State custody or foster care provide the "youth in custody required intake form" and/or "school enrollment letter" provided by the case worker from DCF or the Juvenile Services Division of the Kansas Department of Corrections. This form and all supporting documents will be destroyed after the approval process is complete.

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School Funds: Fraud



- You are the gatekeeper for financial practices of your school.
- Make sure you are familiar with your policy on how finances are handled, and PLEASE report anything that doesn't seem right about how money is being used.

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School Funds

- K.S.A. 21-6005. Misuse of public funds. (a) Misuse of public funds is knowingly using, lending or permitting another to use public money in a manner not authorized by law, by a custodian or other person having control of public money by virtue of such person's official position.
- (b) (1) Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is:
 - (A) \$100,000 or more is a severity level 5, nonperson felony;
 - (B) at least \$25,000 but less than \$100,000 is a severity level 7, nonperson felony;
 - (C) at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony; and
 - (D) less than \$1,000 is a class A nonperson misdemeanor.
- (2) Upon conviction of misuse of public funds, the convicted person shall forfeit the person's official position.
- (c) As used in this section, "public money" means any money or negotiable instrument which belongs to the state of Kansas or any political subdivision thereof.

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Scenario: Why order one when two will do?

- District employee takes school equipment home for personal use and utilizes district accounts to purchase items for personal use at home and for the employee's spouse.



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Free Speech May Still Cost You

Clarence: "Yo, you a serious little nerd."

Steve Urkel: "No, I AM a serious little nerd. You see, I use verbs. Verbs are our friends. They help move along our sentences."

****Steve Urkel in Family Matters - Found at:
<https://www.thyquotes.com/steve-urkel/>*

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Speech Not Entitled to Protection



- Speech that incites others into imminent lawless action.
 - *Brandenburg v. Ohio*, 395 U.S. 444 (1969).
- Fighting words.
 - *New Hampshire v. Chaplinsky*, 315 U.S. 568 (1949).
- Obscenity.
 - *Miller v. California*, 413 U.S. 15 (1973).
- Libel and defamatory speech.
 - *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).
- True threats.
 - *Watts v. United States*, 394 U.S. 705 (1969).
 - “True Threats” encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.

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Policy IIBGC:

Staff members are discouraged from creating personal social networking accounts to which they invite current or future students to be friends. Employees taking such action do so at their own risk. **All employees shall be subject to disciplinary action if their conduct relating to use of technology or online resources violates this policy or other applicable board policy, statutory, or regulatory provisions governing employee conduct or the protection of student record information; or if it impairs the staff member's job performance or effectiveness in the work setting.** District staff shall endeavor to protect the health, safety, and emotional well-being of students and confidentiality of student record information both in the school setting and in their online actions. Conduct in violation of this policy, including, but not limited to, conduct relating to the use of technology, social networking, or online resources, may form the basis for disciplinary action up to and including termination from employment.

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The Decision Tree for Staff Speech

- Is the employee speaking on a matter of public concern?
 - If no, speech is not protected.
 - If yes, go on to next level.
- Is the employee speaking as a citizen or pursuant to official duties?
 - If pursuant to official duties, speech is not protected.
 - If as a citizen, go on to next level.
- Balance of the employee's and the government's interests
 - Does it materially interfere with the operation of the school?



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Scenario: An Open Apology

- Teacher posts an apology to his wife and kids on his social media account, seeking their forgiveness for years of his infidelity, sex addiction, rage, and aggressive behavior.



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Scenario: Social and Emotional Blogging



- Teacher blogging about years of struggles with depression, suicidal ideation, substance abuse, and self harm.
- Although she claims to be sober for some time, she wants to continue the blog to help those struggling with the same issues.

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Scenario: Interesting Use of Advisory Time

- Substitute teacher direct messages 7th grade students during the school day asking where to buy drugs and get nudes.
- *I'm mostly just checking to see if you're awake, but, yes, this happened.*



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Keeping Students Safe

Laura: "Hide-and-seek, that's it."

Steve Urkel: "Oh, great, my parents play this with me all the time. Once, I found them in Milwaukee living under an assumed name."

***Steve Urkel in Family Matters, Season 1 Episode 14 - Found at:
<https://www.thyquotes.com/steve-urkel/>

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- **General rule** – there is no constitutional violation where the state fails to protect an individual from third party harm
 - State created danger is an exception to this general rule
 - State created danger used to impose a constitutional "duty to protect" upon school districts and employees if they create or enhance the danger to an individual from action of others

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Legal elements vary, third party private acts may be deemed "under color of state law" for §1983 claim if certain requirements met:

Harm was foreseeable;

There was an affirmative state action that created risk or increased risk to victim;

There was a relationship between the school district and the student that created a special danger to victim as opposed to the public at large; and

School district culpability-typically deliberate indifference-school employees used their authority to create an opportunity for 3rd party or private harm or rendered the individual more vulnerable to the danger.

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Scenario: It truly is a Saws All!

- Teacher leaves wood shop for 15 minutes while the students are sawing wood with a band saw for their carpentry projects.
- During that time, a student removes a guard and accidentally cuts off several of his fingers.
- Did we meet our duty of care?



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“in loco parentis” or “parens patriae”



- Best interests of child
- School personnel stand “in place of parents”
- Always keep parents informed, unless you believe sharing that information endangers the child
 - See Child Abuse Section
- Cooperate with parents
- Our role is not to judge parents
- Public relations with parents



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Child Abuse Reporting



- Teachers, school administrators, and other school employees have a statutory duty to report known or suspected child abuse involving students in the school.
 - Includes physical, mental, emotional, sexual abuse or neglect
- Report to DCF, or if DCF is not open, to law enforcement.
- Law provides immunity from civil liability so long as the report was made without malice.
- Failure to report is a class “B” misdemeanor.





K.S.A. 38-2209(d)

Access to or disclosure of information pursuant to K.S.A. 2013 Supp. 38-2210 through 38-2213, and amendments thereto, is not required if the person or entity in possession of a record or report has reason to believe the person requesting such information may harm a child or other person as a result of such access or disclosure. The court may enter an order compelling or prohibiting access to, or disclosure of information.

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Maintaining Professional Ethics

"Edo, cheating is like wearing your grandmother's underpants. Sure, it may cover your hiney, but if you make a habit of it, you've got a serious problem."

****Steve Urkel in Family Matters - Found at:
<https://www.thyquotes.com/steve-urkel/>*

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Responsibilities to Student:	Responsibilities to District:	Responsibilities to Profession:
<ul style="list-style-type: none"> Refrain from disclosing confidential or damaging information that affects the student Make reasonable effort to protect the student from conditions detrimental to learning, health or safety Maintain professional relationships with students both inside and outside the classroom Refrain from soliciting, encouraging, participating or initiating inappropriate written, verbal, electronic, physical, sexual or romantic relationship with students <p>Appropriate conduct includes, but is not limited to the following:</p> <ul style="list-style-type: none"> Keeping in confidence information about students that has been obtained in the course of professional service Creating, supporting and maintaining a challenging learning environment for all students Advocating for fair and equitable opportunities for all children Nurturing the intellectual, physical, emotional, social and civic potential of all students Embodying for students the characteristics of honesty, diplomacy, tact and fairness Fulfilling all mandatory reporting requirements for child abuse Fulfilling the roles of mentor and advocate for students in a professional relationship. A professional relationship is one where the educator maintains a position of teacher/student authority while expressing concern, empathy and encouragement for students Providing professional education services in a nondiscriminatory manner Maintaining a professional relationship with parents of students and establish appropriate communication related to the welfare of their children <p>Inappropriate conduct includes, but is not limited to the following:</p> <ul style="list-style-type: none"> Sharing confidential information concerning student academic and disciplinary records, health and medical information, family status/income and assessment/testing results unless disclosure is required or permitted by law Failure to provide appropriate supervision of students and reasonable disciplinary actions Engaging in harassing behavior on the basis of race, gender, national origin, religion or disability Furnishing tobacco, alcohol or illegal/unauthorized drugs to any student or allowing a student to consume alcohol or illegal/unauthorized drugs Committing any act of child abuse Committing any act of cruelty Committing any act of cruelty to children or any act of child neglect 	<ul style="list-style-type: none"> Adhere to conditions of contractual obligations with professional practice Fulfill reporting requirements honestly and accurately Appropriately use funds, personnel, property and equipment committed to his or her charge Refrain from falsifying any documents related to the employment process Conduct school district business through established procedures <p>Appropriate conduct includes, but is not limited to the following:</p> <ul style="list-style-type: none"> Maximizing the positive effect of school funds through judicious use of said funds Modeling for students and colleagues the responsible use of public property Insuring that school policies or procedures are not impacted by gifts or gratuities from any person or organization <p>Inappropriate conduct includes, but is not limited to the following:</p> <ul style="list-style-type: none"> Revealing confidential health or personnel information concerning colleagues unless disclosure serves lawful professional purposes or is required by law Harassing others by knowingly making false statements about a colleague of the school system Being on school premises at a school-related activity involving students while documented as being under the influence of, possessing or consuming alcoholic beverages. A school related activity includes, but is not limited to, any activity that is sponsored by a school or a school system of any activity designed to enhance the school curriculum such as club trips, etc. which involve students Fabricating, misrepresenting, omitting or intentionally reporting information submitted to local, state, federal, and/or other governmental agencies Using school property without the approval of the local board of education/governing body Submitting fraudulent requests for reimbursement of expenses or for pay Fabricating, misrepresenting, omitting or intentionally reporting reasons for absences or leave Tutoring students assigned to the educator for remediation unless approved by the local school board Fabricating records or directing or coacting others to do so 	<ul style="list-style-type: none"> Demonstrate conduct that follows generally recognized professional standards Fulfill all of the terms and obligations detailed in the contract Maintain appropriate licensure for professional practice and employment Provide accurate information to state department Abide by all federal, state and local laws and employing school board policies <p>Appropriate conduct includes, but is not limited to the following:</p> <ul style="list-style-type: none"> Encouraging and supporting colleagues in developing and maintaining high standards Insuring that institutional privileges are not used for personal gain Maintaining diligently the security of standardized test supplies and resources Follow mandatory reporting requirements <p>Inappropriate conduct includes, but is not limited to the following:</p> <ul style="list-style-type: none"> Harassment of colleagues Inappropriate language on school grounds or any school-related activity Accepting gifts or favors or offering gratuities that impair professional judgment or to obtain special advantage Violating confidentiality agreements related to standardized testing including copying or teaching identified test items, publishing or distributing test items or answers, discussing test items and violating local school board or state directions for the use of tests Being under the influence of, possessing, using or consuming illegal or unauthorized drugs Fabricating, misrepresenting, omitting or intentionally reporting employment history, professional qualification, criminal history, licensure or re-licensure A plea of guilty,nolo contendere or having been otherwise found guilty of: any crime punishable as a felony; any crime involving a minor; any crime involving a theft; any crime involving drug related conduct; any crime defined in any section of article 36 of chapter 21 of the Kansas statutes annotated; or any attempt as defined by K.S.A. 21-3301 and amendments thereto, to commit any crime specified in this subsection

Records and Confidentiality

Eddie: "Urkel, why don't you ever knock?"

Steve Urkel: "Well, if I did, nobody would ever let me in."

***Steve Urkel in Family Matters - Found at:

<https://www.thyquotes.com/steve-urkel/>



FERPA – Can I Disclose
Information About Students?



KOMA – Do We Discuss This
In Open Meeting?



KORA – Do I Have To Disclose
This Record?

**How does
this all work
together?**

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Family Educational Rights and Privacy Act

- Default status that all non-directory information is confidential and cannot be disclosed without student (guardian) consent.
- In an emergency, FERPA permits school officials to disclose without consent education records, including personally identifiable information from those records, to protect the health or safety of students or other individuals. At such times, records and information may be released to appropriate parties such as law enforcement officials, public health officials, and trained medical personnel. This exception is limited to the period of the emergency and generally does not allow for a blanket release of personally identifiable information from a student's education records.
- SROs/Law Enforcement Unit v. Law Enforcement Officers
 - Legitimate Educational Interest
 - Who keeps the records?



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Kansas Open Meetings Act

➤ K.S.A. 75-4317 *et seq.*

- Default status that all conversation concerning matters concerning the school district must take place in open meeting unless specifically exempted to be removed to executive session.

➤ Proper Motion to go into executive session.

- Statutory Justification
 - K.S.A. 75-4319(b)(1) – Attorney-Client Privilege
 - K.S.A. 75-4319(b)(12) – Discuss Matters Relating to Security Measures
- Subject-matter to be discussed.
- Time and place open meeting will resume.



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Kansas Open Records Act



➤ K.S.A. 45-215 *et seq.*

- Default status that all records are open to the public unless specifically exempted.

➤ K.S.A. 45-221(a)(1).

- Records the disclosure of which is specifically prohibited or restricted by federal law or state statute...

➤ K.S.A. 45-221(a)(12).

- Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

➤ K.S.A. 45-221(a)(20).

- Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

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What about Confidentiality?

- A school counselor, who is in a counseling relationship with a student, has an ethical and legal obligation to keep information contained within that relationship. Confidentiality is the ethical and legal term ascribed to the information communicated within the counseling relationship, and it must be maintained unless keeping that information confidential leads to foreseeable harm. "Serious and foreseeable harm is different for each minor in the school setting and is determined by students' developmental and chronological age, the setting, parental rights and the nature of harm" (ASCA, 2016, A.2.e).
- Exceptions to confidentiality exist, and students should be informed when situations arise in which school counselors have a responsibility to disclose information obtained in counseling relationships to others to protect students, themselves or other individuals.
- *The School Counselor and Confidentiality*
 - (Adopted 1974; reviewed and reaffirmed 1980; revised 1986, 1993, 1999, 2002, 2008, 2014, 2018)
 - American School Counselor Association (ASCA) Position

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Maintaining Appropriate Relationships

Laura: "How long have we known each other?"

Steve Urkel: "Nine years, three months, two weeks, four days, six hours, eight minutes, and fourteen seconds... fifteen seconds... sixteen seconds."

****Steve Urkel in Family Matters - Found at:
<https://www.thyquotes.com/steve-urkel/>*

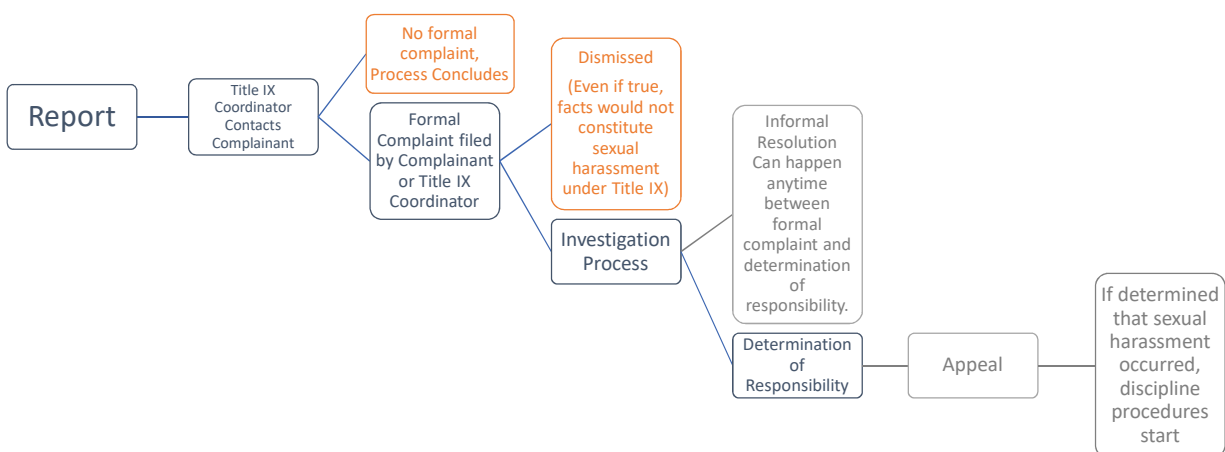
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Summary of Title IX Changes in 2020

- No changes to existing regulations related to athletic participation, employment, or single-sex education
- Defines sexual harassment
- Provides terminology and definitions for use in Title IX complaints
 - Specific roles of Title IX Coordinator, Investigator, Decision-Maker
 - Requirements of Determination of Responsibility
- Requires response when district has “actual knowledge” of sexual harassment
- Provides due process rights to accusers and accused persons in sexual harassment investigation and decision making, as well as outlining the procedure for response:
 - Mandates provision of supportive measures during investigation process
 - Prohibits retaliation

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Formal Complaint Investigation Process



Sexual Harassment Definition

- Sexual harassment shall include conduct on the basis of sex involving one or more of the following:
 - (1) a district employee conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcomed sexual conduct;
 - Quid pro Quo
 - (2) unwelcomed conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's educational program or activity; or
 - Hostile Environment
 - (3) sexual assault, dating violence, domestic violence, or stalking.
 - VAWA definitions

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VAWA “Big Four”

Sexual Assault

- an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Dating Violence

- violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.

Domestic Violence

- includes crimes of violence committed by a person who is a current or former spouse, partner, person with whom the victim shares a child, or who is or has cohabited with the victim as a spouse or partner, by a person similarly situated to a spouse of the victim under Kansas or applicable federal law, or by any other person against an adult or youth victim having protection from such person's acts by Kansas or applicable federal law.

Stalking

- engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or to suffer substantial emotional distress.

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Education Program and Activities

- “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution”
 - Think similar to “nexus to school” consideration in student discipline.
 - “In the United States”

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Scenario: Putting the Xs in Xbox Live

- 3rd through 5th graders are in a friend group that plays Xbox live together. It is comprised of one boy and 4 girls. The boy adds another person to the group, who turns out to be an adult male from Pennsylvania. This person starts sending pictures of his genitalia to the players.
- Parents report it to the school and demand they investigate it under Title IX and take action.
- Is this a Title IX issue? What can we do?



Scenario: The Dildo Show



- Students on a school trip took it upon themselves to keep a lower classman male awake throughout the night by periodically touching him with a sex toy and asking if he wanted them to check his oil.
- Where does this fall on the spectrum of where we can and cannot get involved?

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Scenario: Staying Connected

- Teacher friended former students after they graduated and made comments on their pictures commenting on their bodies and looks.
- Texted female students he thought may be having a hard time due to family issues, etc. and offered support.
- Rumors are that he has been intimate with several.



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Scenario: A Forbidden Love Triangle

District administration receives word that a former student is in a polyamorous relationship with two of her former teachers, with whom she lived part of her senior year, while still a minor.

While the parent of the former student did not believe anything was going on between them at the time the student moved in, the district does a quick search of emails and files for anything inappropriate among the three.

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The U.S. Supreme Court Interpreted Title VII Protections to Extend to LGBTQ Workers

- The court considered two sets of cases. The first concerned a pair of lawsuits from gay men who said they were fired because of their sexual orientation: Bostock v. Clayton County, Ga., No. 17-1618, and Altitude Express Inc. v. Zarda, No. 17-1623.
- The case on gender identity, R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission, No. 18-107, was brought by a transgender woman, Aimee Stephens, who was fired from a Michigan funeral home after she announced in 2013 that she was a transgender woman and would start working in women's clothing.
- The question for the justices was the meaning of a statute, Title VII of the Civil Rights Act of 1964, which bars employment discrimination based on race, religion, national origin and sex. They had to decide whether that last prohibition — discrimination based on sex — applies to many millions of gay and transgender workers.
- Justice Gorsuch wrote that it did.
- “An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex,” he wrote.
- “It is impossible,” Justice Gorsuch wrote, “to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”

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**Kluge v. Brownsburg Community School Corporation
(U.S. District Court, Southern District of Indiana, 2021)**

- US District Court in Indiana found that a transgender student's name preference (and the school's risk of a Title IX complaint) was of greater importance than the teacher's sincerely-held religious belief in objection to school policy that required staff to use preferred names of transgender students. Court granted summary judgment to the school.



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Pamela Ricard v. U.S.D. 475 Geary County, KS School Board et al., Case No. 5:22-cv-04015-HLT-GEB (U.S. District Court for District of Kansas) (Filed 5/9/22)

- Plaintiff Pamela Ricard brings constitutional claims against Defendants stemming from Plaintiff's opposition to the District's policies that
 - (1) **require her to refer to students by preferred first name and pronouns** ("Preferred Names and Pronouns Policy") **and**
 - (2) **prohibit her from referring to a student by the student's preferred names and pronouns in her communications with the student's parents unless the student requests the administration or counselor to do so** ("Communication with Parents Policy").
- Plaintiff moved for a preliminary injunction on her free speech, free exercise, and due process claims.
- Because the District affirmatively stated that Plaintiff's current practice would not be deemed a violation of the Preferred Names and Pronouns Policy, the Court finds that Plaintiff is unlikely to experience irreparable harm from enforcement of that policy before the Court rules on the merits in this case and denies a preliminary injunction on the Preferred Names and Pronouns Policy on that basis. But the Court finds that Plaintiff has made a sufficient showing that her free exercise claim merits a preliminary injunction of the Communication with Parents Policy, so the Court enjoins Defendants in the manner set forth below.

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Pamela Ricard v. U.S.D. 475 Geary County, KS School Board et al., Continued...

Plaintiff was suspended and disciplined for not using one student's preferred name and because both students felt discriminated against based of Plaintiff not using the preferred name. Plaintiff returned from her suspension on April 15, 2021. The principal gave Plaintiff a formal written reprimand for violating three board policies. These policies did not have any specific guidance for handling a social transition for transgender students. But Plaintiff was nevertheless found to have violated those policies because her behavior was "against the guidance provided by building leadership via email on March 31, 2021 and the building's weekly newsletter on April 4, 2021." Six days later, the Principal emailed school staff diversity training on gender identity, gender expression, and guidance on "Use of Preferred Names and Pronouns." Several months later, in September 2021, the board formally amended its policies such that "[s]tudents will be called by their preferred name and pronouns" (i.e., the Preferred Names and Pronouns Policy).

On October 8, 2021, teachers were informed that the superintendent emailed parents and guardians the previous day to tell them that students would be referred to by their preferred name and pronouns, but the District would "not communicate this information to parents unless the student requests the administration or counselor to do so, per Federal FERPA Guidance" (i.e., the Communication with Parents Policy).

Plaintiff currently has two new transgender students in her class. One student told Plaintiff of a preferred name and preferred pronouns in fall 2021 and the other informed Plaintiff in March 2022. Plaintiff refers to both students by their preferred first names, but she avoids using their preferred pronouns to be consistent with her religious beliefs. Plaintiff does not generally use pronouns in class for any student and avoids the use of pronouns. But she does occasionally use pronouns when referring to students in class. Plaintiff has had to email one of the transgender student's parents regarding that student's performance in school. Because the student has not authorized the district to disclose the student's transgender status to the student's parents, Plaintiff used the student's legal name and biological pronouns in the email. Plaintiff believes that addressing students one way at school and a different way when speaking to their parents is dishonest. Being dishonest violates her sincere religious beliefs.

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Pamela Ricard v. U.S.D. 475 Geary County, KS School Board et al., Cont.

- The District counters that its policy does not require Plaintiff to use any student's name or pronouns in conversations with parents—it merely prohibits Plaintiff from revealing to a student's parents a preferred name or pronouns the student is using at school if the student has not authorized the parents to know. Thus, argues the District, Plaintiff can simply refer to students in conversation with parents as "your child" or "your student," never referring to the child by name or pronoun. But Plaintiff has testified to her belief that having a conversation with parents about a child, and not disclosing the name and pronouns used at school, is itself a form of "conceal[ment]"—a material omission if you will—given Plaintiff's belief that parents have a fundamental right to control the upbringing of their children. Moreover, it is simply unrealistic to suppose that a teacher can communicate with parents about their child and never refer to the child by name or pronoun...
- Like her challenge to the Preferred Names and Pronouns Policy, Plaintiff contends the Communication with Parents Policy violates her free speech and free exercise rights under the First Amendment, and her due process rights under the Fourteenth Amendment. The Court finds that Plaintiff is entitled to a preliminary injunction based on her free exercise rights. Therefore, the Court declines to address Plaintiff's free speech and due process arguments at this time; it will instead address those matters in the ordinary course of the litigation.

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Pamela Ricard v. U.S.D. 475 Geary County, KS School Board et al., Case No. 5:22-cv-04015-HLT-GEB (U.S. District Court for District of Kansas) (Filed 5/9/22)

- THE COURT THEREFORE ORDERS that Plaintiff's motion for a preliminary injunction is GRANTED IN PART and DENIED IN PART. The Court denies a preliminary injunction on the Preferred Names and Pronouns Policy based on statements made by the District that Plaintiff's current practice would not be deemed a policy violation.
- THE COURT FURTHER ORDERS that Defendants are ENJOINED from disciplining Plaintiff for referring to a student by the student's preferred name and pronouns in her communications with the student's parents within the regular course of her duties. The Court relies on Plaintiff's statements that she does not intend to communicate with a parent for the sole purpose of disclosing a student's preferred name and pronouns. This injunction terminates on May 18, 2022, or at the conclusion of Plaintiff's contractual responsibilities to the District, whichever is later.



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Two Executive Orders Issued by President Biden's Administration

Jan. 2021

In January 2021, President Biden signed the Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.

- The order states children should have an environment where they may be educated without fear that access to participate in school sports and use school facilities, like restrooms and locker rooms, will be refused due to their sexual orientation or gender identity.
- It also says adults are entitled to the pursuit of employment, housing, and health care without the worry of or exposure to discrimination that is based on sexual orientation or gender identity, including dressing in a manner that is not consistent with sex-based expectations. President Biden further ordered that agencies with governance over areas related to these matters should review existing regulations and guidance to comply with the expectations set forth.

In March 2021 came the Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity.

- This order says protection from discrimination related to sexual orientation or gender identity is codified in Title IX law and orders the U.S. Secretary of Education to review all regulations, policies, and guidance under the law to ensure consistency with these protections. It specifically references a review of the guidance issued regarding changes to Title IX regulations in 2020 under the Trump administration.
- It suggests additional enforcement actions may be necessary and advised the Department of Education to address high rates of discrimination against LGBTQ+ individuals and revise all applicable policies to ensure fair and equitable treatment for all.

Mar. 2021

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Interpretation Station

- On June 22, 2021, the Department published in the Federal Register an “Interpretation” of Title IX.
 - “Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County.” 86 Fed. Reg. 32637 (June 22, 2021).
- The Interpretation took effect upon publication. The Department recognized that the Interpretation represented a change in position, explaining the purpose of the Interpretation was “to make clear that the Department interprets Title IX’s prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity” in light of the Bostock decision.
- The Interpretation states that the Department **“will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive Federal financial assistance from the Department”** and that the Interpretation **“will guide the Department in processing complaints and conducting investigations.”**

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Stop, collaborate, and listen notice



- Subsequently, on June 23, 2021, the Department issued a “Dear Educator” letter to directly notify those subject to Title IX of the Department’s Interpretation.
 - “Letter to Educators on Title IX’s 49th Anniversary” (June 23, 2021)
- The “Dear Educator” letter reiterates that “Title IX’s protection against sex discrimination encompasses discrimination based on sexual orientation and gender identity” and explains that the Department “will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity.”

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But...

State of Tennessee v. U.S. Dept. Of Education, 21-cv-308
(E.D. Tenn. July 15, 2022)

Federal District Court case joined by Kansas Attorney General sought an injunction against implementing "Dear Colleague" letter and associated documents.



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And, their wish was granted.

- Plaintiffs' Motion for Preliminary Injunction is GRANTED and Defendants' Motion to Dismiss is DENIED. Accordingly, it is hereby ordered that Federal Defendants and all their respective officers, agents, employees, attorneys, and persons acting in concert or participation with them are ENJOINED and RESTRAINED from implementing the Interpretation, Dear Educator Letter, Fact Sheet, and the Technical Assistance Document against Plaintiffs.
- This preliminary injunction shall remain in effect pending the final resolution of this matter, or until further orders from this Court, the United States Court of Appeals for the Sixth Circuit, or the Supreme Court of the United States.



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And this means...



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Questions?



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