

THE HISTORY OF TITLE IX: AN OVERVIEW

CARA TUTTLE BELL, JD

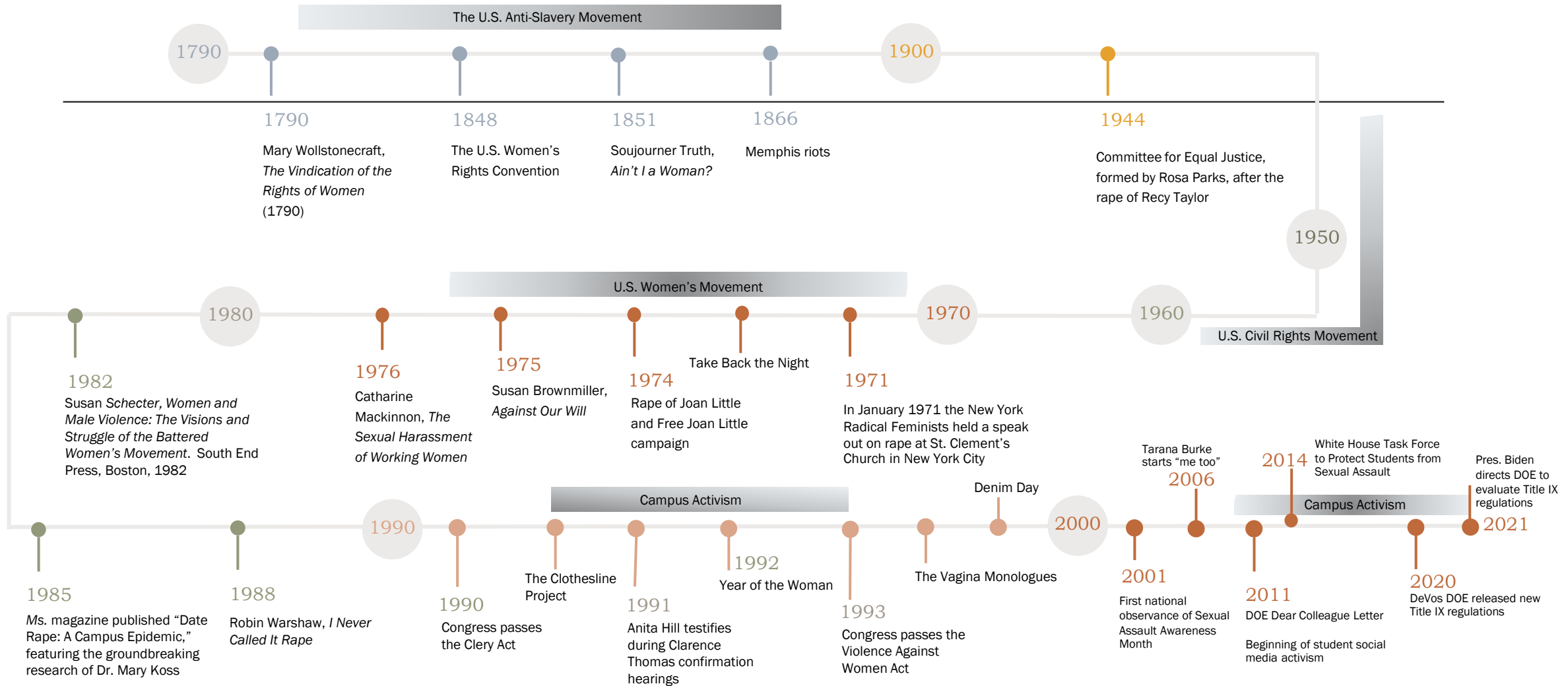
DIRECTOR, VANDERBILT UNIVERSITY
PROJECT SAFE CENTER FOR SEXUAL
MISCONDUCT PREVENTION AND
RESPONSE

“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.”

Title IX of the Education Amendments of 1972

ANTI-RAPE ACTIVISM TIMELINE

HIGHLIGHTS 1790-2020





LAYING THE GROUNDWORK

Bernice Sandler

Repeatedly rejected for jobs for “coming across too strong as a woman,” joined the Women's Equity Action League (WEAL) as the Chair of the Action Committee for Federal Contract Compliance. From 1969 to 1971, she worked with the Women's Equity Action League to file sex discrimination charges against 250 schools. In 1970, she filed a class-action lawsuit against all universities in the United States. Sandler worked with members of Congress as the Educational Specialist for the House of Representatives Special Subcommittee on Education. She soon wrote the first federal policy report in education about discrimination based on gender.

Edith Green

Served as a Representative in the House as a Democrat from Oregon for 20 years. Nicknamed “Mrs. Education” and “the Mother of Higher Education.” As chair of the Subcommittee on Higher Education of the Education and Labor Committee, Green presided over seven days of hearings about Title IX, in which a wide range of witnesses explained the various ways women faced discrimination in postsecondary education. She set the tone for the proceedings when she exclaimed, “Let us not deceive ourselves. Our educational institutions have proven to be no bastions of democracy.”¹



BIRCH BAYH

U.S. Senator from Indiana. Long championed gender equality and credited his first wife Marvella for his understanding and passion for the issue.



“My wife, Marvella Hern Bayh, was probably the most important thing that had ever happened in my life. When we had started talking over lunch, it was clear that both of us wanted to make a difference with our lives, but we weren’t quite sure what. She had been the first girl elected Student Body President of Garfield High School in Enid, Oklahoma. She was a straight-A student. She was elected Governor of Girl’s State, President of Girl’s Nation, and got Harry Truman’s autograph in the Rose Garden between her junior and senior year in high school. Her dream was to be admitted to the University of Virginia. Her request was returned, “Women need not apply.”

This was the first time she had been told she could not do something, not because she was not qualified, but because she happened to be a young woman. You can imagine in the twenty-six-and-a-half wonderful years we spent together I got a masters degree in the importance of equality for women, a factor that had never entered my mind before.”

Excerpt from a speech delivered at Women Rock: *Title IX Academic and Legal Conference* held at Cleveland State University on March 28-31, 2007.



PATSY MINK

Graduated from law school in 1951, passed the bar but unable to find work due to being a woman and in an interracial marriage. She decided to go into private practice and soon founded Oahu Young Democrats in 1954. She became the first Japanese-American woman to practice law in her home state of Hawaii. She was elected to Hawaii State Senate in 1962 before being elected to the U.S. House of Representatives in 1964. In the 1990s, she formed the Congressional Asian Pacific American Caucus.

In 2002, Title IX was renamed the Patsy T. Mink Equal Opportunity in Education Act

Patsy Takemoto Mink (D-Hawaii), the first woman of color elected to Congress

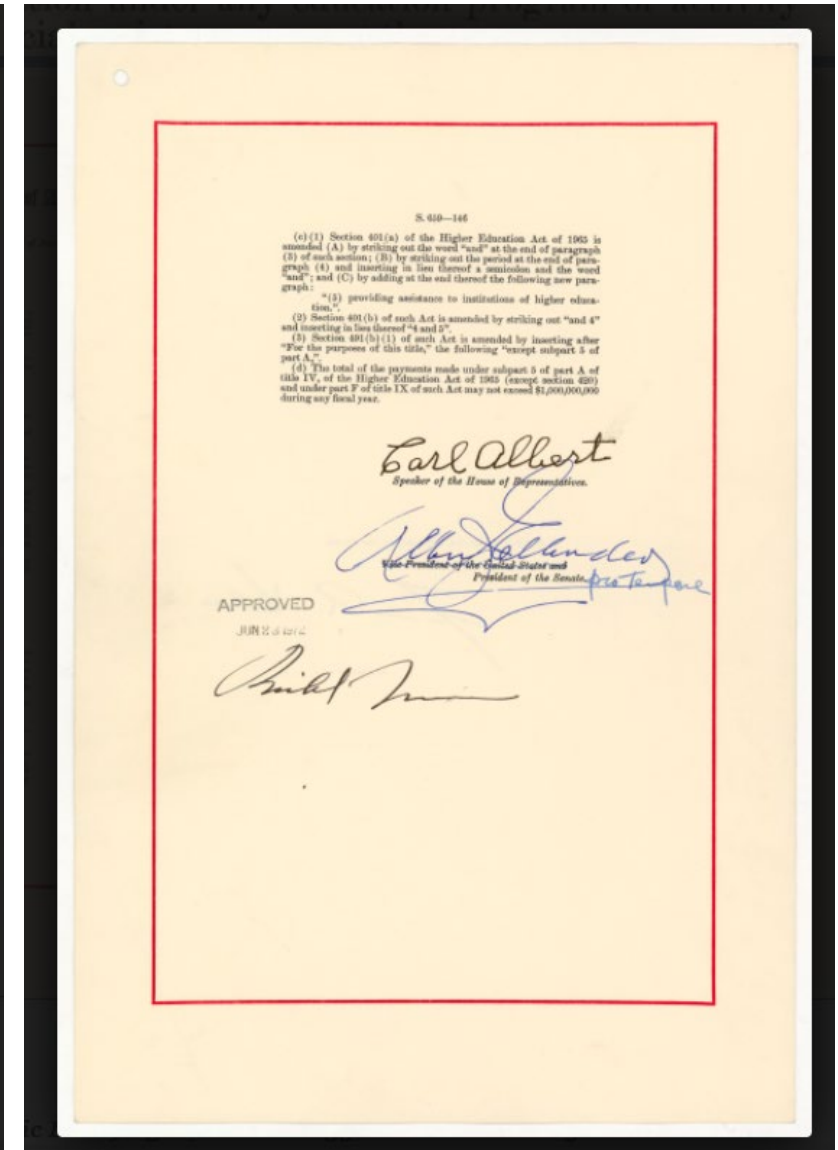
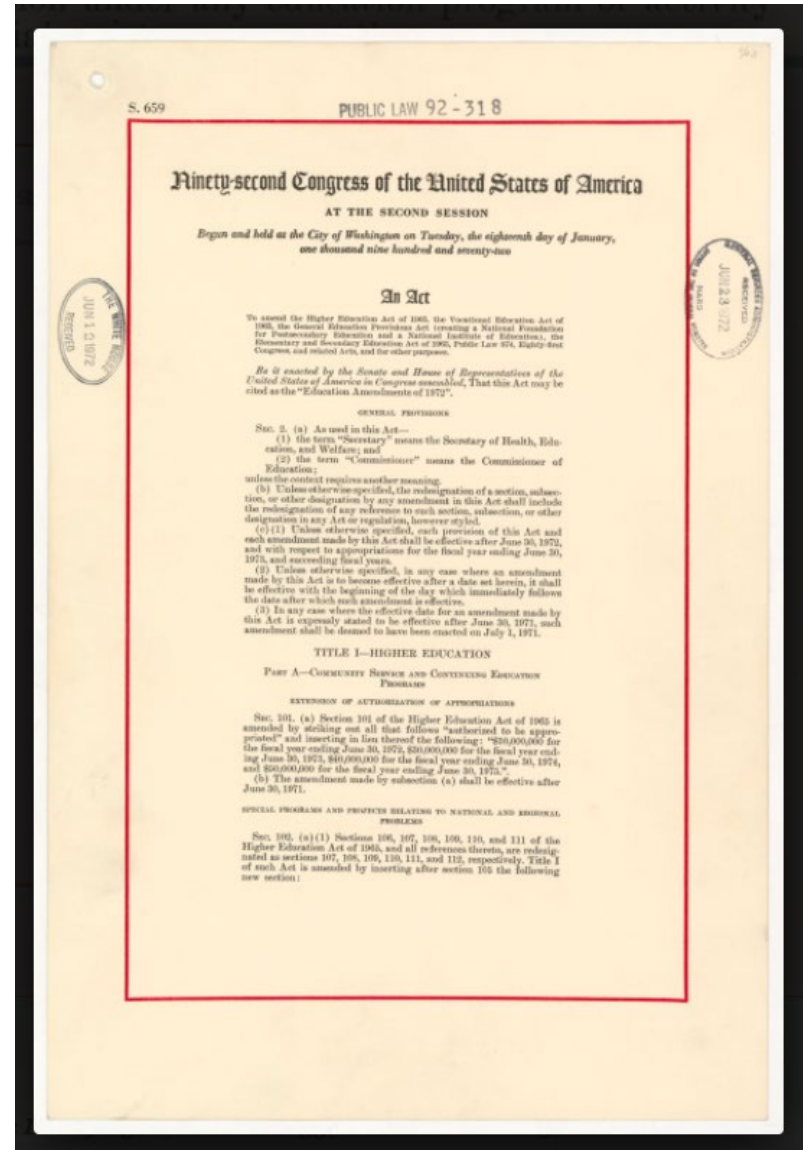


1972

June 23, 1972

Title IX of the Education Amendments of 1972 is

enacted by Congress and is signed into law by President Richard Nixon, prohibiting sex discrimination in any educational program or activity receiving any type of federal financial aid.





1975

Congress reviews and [approves Title IX regulations and rejects the following resolutions](#) and bills that had been advanced in an attempt to disprove the athletics regulations²:

- *June 5, 1975*: Sen. Jesse Helms condemns Title IX in its entirety (S.Con.Res.46).
- *June 17, 1975*: Rep. James G. Martin disapproves of Title IX in its entirety (H.Con.Res.310) and specifically as it pertains to intercollegiate athletics (H.Con.Res.311).
- *July 16, 1975*: Sens. Paul Laxalt, Carl T. Curtis and Paul J. Fannin disapprove of the application of Title IX to intercollegiate athletics (S.Con.Res.52).
- *July 21, 1975*: Sen. Helms introduces “a bill to amend Title IX of the Education Amendments of 1972, and to preserve academic freedom” (S. 2146) in an attempt to prohibit the application of Title IX regulations to athletics in situations in which participation in those athletic activities are not a required part of the institution’s curriculum. Sen. Helms would reintroduce S. 2146 as S. 535 in 1977, though neither would be passed.

The Department of Health, Education and Welfare creates legislation regarding Title IX. High schools and colleges are given three years, and elementary schools one year, to comply.



1976-1979

February 17, 1976

NCAA files [a lawsuit challenging the legality of Title IX](#). The suit would be dismissed in 1978.

July 15, 1977

Sens. Tower, Dewey F. Bartlett, and Roman Hruska introduce S. 2106, proposing to exclude revenue-producing sports from Title IX coverage. The bill dies in committee before reaching the Senate floor.

July 21, 1978

Deadline for high schools and colleges to comply with [Title IX athletics requirements](#).

December 11, 1979

The Department of Health, Education, and Welfare issues final policy interpretation on [“Title IX and Intercollegiate Athletics.”](#) Rather than relying exclusively on a presumption of compliance standard, the final policy focuses on each institution’s obligation to provide equal opportunity and details the factors to be considered in assessing actual compliance: participation, benefits and treatment, and athletic financial assistance. This also marks the creation of the “three-prong test” (sometimes called the [“three-part test”](#) or “equal accommodations test”) still used today to gauge participation compliance.



1980s

May 4, 1980

The U.S. Department of Education (ED) begins operating after its creation a year earlier and is given oversight of Title IX through the Office for Civil Rights (OCR).

The 2nd U.S. Circuit Court of Appeals, in *Alexander v. Yale University*, recognizes sexual harassment as a form of sex discrimination prohibited by Title IX.

February 28, 1984

[*Grove City v. Bell* limits the scope of Title IX](#), effectively taking away coverage of athletics except for athletic scholarships. The Supreme Court concludes that Title IX only applies to specific programs (i.e., a school's office of student financial aid) that receive federal funds.⁹ Under this interpretation, athletic departments are not necessarily covered.

March 22, 1988

[The Civil Rights Restoration Act of 1987](#) is enacted into law over the veto of President Ronald Reagan.¹⁰ This act reverses *Grove City v. Bell*, restoring Title IX's institution-wide coverage. If any program or activity in an educational institution receives federal funds, all of the institution's programs and activities must comply with Title IX.

September 6, 1988

[*Haffer v. Temple University* Title IX athletics lawsuit](#) won by plaintiff female athletes gives new, stronger direction to athletic departments regarding their budgets, scholarships, and participation rates of male and female athletes.¹¹

The Three-Part Test

The regulation implementing Title IX requires institutions to provide equal athletic opportunities for members of both sexes and to effectively accommodate students' athletic interests and abilities.¹ The Department's 1979 "Intercollegiate Athletics Policy Interpretation" (1979 Policy Interpretation),² published on December 11, 1979, sets out a three-part test that OCR uses as part of determining whether an institution is meeting its Title IX obligations. An institution is in compliance with the three-part test if it meets any one of the following parts of the test:

1. The number of male and female athletes is substantially proportionate to their respective enrollments; or
2. The institution has a history and continuing practice of expanding participation opportunities responsive to the developing interests and abilities of the underrepresented sex; or
3. The institution is fully and effectively accommodating the interests and abilities of the underrepresented sex.

The Three-Part Test, continued:

What is required for an institution to comply with Part Three?

As stated in the 1996 Clarification and as discussed in the Dear Colleague letter, the Office of Civil Rights considers a multitude of indicators in the context of evaluating the following three questions to determine whether an institution is in compliance with Part Three.

1. Is there unmet interest in a particular sport?
2. Is there sufficient ability to sustain a team in the sport?
3. Is there a reasonable expectation of competition for the team?

If the answer to all three questions is “Yes,” the Office of Civil Rights will find that an institution is not fully and effectively accommodating the interests and abilities of the underrepresented sex and therefore is not in compliance with Part Three.



Expansion of Title IX to Address Sexual Misconduct

1980 – The 2nd U.S. Circuit Court of Appeals, in *Alexander v. Yale University*, recognizes sexual harassment as a form of sex discrimination prohibited by Title IX.

1981 – The OCR issues a policy memo that, for the first time, lists sexual harassment as a form of discrimination under Title IX.

1992 – The U.S. Supreme Court, in *Franklin v. Gwinnett County Public Schools*, says a student subjected to “coercive intercourse” is a victim of sex discrimination, eligible for monetary damages under Title IX.

1997 – OCR issues sexual harassment guidance for schools on how to deal with victims and suspects, detailing grievance procedures, response, prevention and First Amendment rights.

1998 – The U.S. Supreme Court, in *Gebser v. Lago Independent School District*, establishes a three-prong liability standard for schools: The sexual harassment must be severe enough to undercut educational opportunities, someone in authority must have “actual knowledge” of the harassment and be “deliberately indifferent” in responding.

1999 – The U.S. Supreme Court, in *Davis v. Monroe County Board of Education*, affirms that schools must address student-on-student sex harassment, including sexual assault, under Title IX.

2001 – OCR updates its 1997 guidance on Title IX, saying schools risk losing federal funding if they don’t follow the guidelines for investigating student sexual harassment complaints.



Expansion of Title IX to Address Sexual Misconduct

2006 – In a letter to more than 20,000 school districts, colleges and universities, OCR reiterates their Title IX responsibilities to stop student sexual harassment, prevent its recurrence and remedy its effects.

2008 – OCR publishes a [pamphlet](#) noting that sexual harassment includes “criminal” conduct and that schools are not relieved of Title IX obligations simply by notifying police.

2009 – The White House Council on Women and Girls is created by executive order to focus on issues ranging from equal pay to violence. OCR begins tracking sexual violence complaints as a distinct form of harassment.

2011 – OCR issues another letter , focusing on student-on-student sexual violence. It recommends schools use a civil litigation standard of proof in investigating cases and warns of lost federal funding if they fail to prevent and address such abuse.

2014 – The Council on Women and Girls creates a task force to protect students from sexual assault and a website of resources. OCR issues further guidance on the Title IX responsibilities of all schools, elementary to university level.

2016 – The task force launches an [online toolkit](#) for elementary and secondary school districts that helps create policies that distinguish “sexual misconduct” from bullying and harassment.



Increased Awareness, Activism, and Scrutiny

2010-2017 Significant increase in scrutiny by the Department of Education and the media. Hundreds of investigations opened by the Department's Office of Civil Rights. Widespread student activism.

April 4, 2011

ED [issues a policy guidance](#) which makes clear that Title IX's protections against sexual harassment and sexual violence apply to all students, including athletes. It addresses athletics departments in particular in its requirement that schools to use the same procedures that apply to all students to resolve sexual violence complaints involving student athletes.

April 24, 2013

OCR issues [a Dear Colleague letter](#) reminding schools and institutions that retaliation is a violation of federal law.

May 13, 2016

[ED and DOJ issue guidance](#) on protecting transgender students under Title IX.

February 22, 2017

OCR rescinds Title IX guidance on transgender students issued on May 13, 2016.





Title IX at 50, Title IX in Flux



2020-Today

2022 Marks 50 Years of Title IX

August 14, 2020

Secretary of Education Betsy DeVos [enacts several changes to Title IX](#) regarding sexual harassment and misconduct that threaten to discourage reporting by survivors and stretch schools' resources.

January 20, 2021

President Joe Biden releases [Executive Order 13988](#), "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation," which states, "All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation."

March 8, 2021

President Biden releases [Executive Order 14021](#), "Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity."

Coming in April 2022

The Department of Education will propose revised Title IX rules in Spring 2022. Public hearings have already occurred, which may expedite the process, which last took 18 months from proposal to issuance.



Cara Tuttle Bell, JD, MA

*Director, Vanderbilt University Project Safe Center for
Sexual Misconduct Prevention and Response
Senior Lecturer, Women's and Gender Studies,
College of Arts and Science*

cara.tuttle.bell@Vanderbilt.edu
(615) 875-0660

    @caratuttlebell