

TacTIX 2026

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High-Level Overview

- ▶ Challenge to two state laws that separate school sports teams by “biological sex,” effectively prohibiting transgender females from playing on girls’ and women’s athletic teams.
- ▶ Ninth Circuit found the Idaho law violated the Equal Protection Clause; the Fourth Circuit found the West Virginia law violated Title IX.
- ▶ The Supreme Court upheld the laws.

State Laws

Idaho

- Fairness in Women's Sports Act
- Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex
- Law provides that if the sex of an athlete on a female team is challenged, the athlete's sex must be medically verified
- Idaho previously allowed participation by transgender girls and women if they had undergone hormone therapy to suppress testosterone for a year

West Virginia

- Save Women's Sports Act
- Requires students to participate on single sex girls' and women's teams on the basis of their biological birth sex
- Law provides that female teams are not open to males if they involve competitive skill or it is a contact sport; anyone can compete on a male or co-ed team
- Previously allowed participation by transgender athletes if, after individualized review, the school determined it would not impact fair competition

Little v. Hecox

Plaintiff

- Lindsay Hecox, student at Boise State University
- Tried out for track and field, played club soccer

Ninth Circuit

- The law violates the Equal Protection Clause of the Fourteenth Amendment
- Heightened (intermediate) scrutiny applies because law classifies by sex and transgender status
- Important government interests of fair competition
- But the means is not substantially related to this interest, not clear that transgender women who suppress testosterone have physiological advantages over cisgender women; Act applies whether or not the athlete has gone through puberty and at all levels of competition

B.P.J. v. West Virginia

Plaintiff

- Becky Pepper Jackson, middle/high school student
- On the track and cross-country teams

Fourth Circuit

- The law violates Title IX; disputed facts prevent summary judgment on the the Equal Protection claim
- Heightened (intermediate) scrutiny applies to EPC claim because law classifies by sex and transgender status
- Important government interests of fair competition and safety
- Facts are disputed about whether transgender girls like BPJ possess an inherent biologically-based competitive advantage over cisgender girls, summary judgment improper
- The law violates Title IX, separate teams for boys and girls are permitted, but BPJ treated differently from people to whom she is similarly situated



**When Title
IX uses the
term “sex,”
it means**

_____.

"Sex" under Title IX

Kavanaugh (majority)

"The term 'sex' in the 1972 Title IX statute, the 1974 Javitz Amendment, and the 1975 Title IX regulations cannot plausibly be interpreted to refer to anything other than biological sex."

Thomas

"Sex is an immutable 'biological' characteristic; it is binary."

Gorsuch

"As it is now, the term 'sex' was commonly understood then to mean biological sex."

Sotomayor

"The majority could, and should, have ... proceed on the assumption that sex in Title IX refers only to biological distinctions between male and female."

Jackson

Agrees with Sotomayor. "But there is reason to doubt the soundness of the concession that Title IX's reference to 'sex' means *only* sex assigned at birth."

**Separating
teams based
on sex at
birth without
exceptions is**

_____.

Javits Amendment and Regulations

- ▶ The 1975 Title IX regulations require that schools provide “equal athletic opportunity for members of both sexes” and authorize “separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.”
- ▶ **Kavanaugh** (majority): “Separate sports teams for biological males and biological females are reasonable: Given the inherent physical differences between the sexes, allowing only biological females to play on women’s and girls’ teams can reduce the risk of physical injury and ensure fair competition.”



***Bostock* is**
in
the Title IX
context.

Bostock Impact

Kavanaugh (majority)

- “Title VII concerns employment, whereas Title IX as relevant here focuses on sports. The two factual contexts are vastly different. ... In the workplace, Title VII generally requires that men and women be treated without regard to their sex. In the sports context, by contrast, Title IX authorizes separate men’s and women’s sports teams.”

Gorsuch

- Different treatment based on being transgender is discrimination on the basis of sex under Title IX as well as Title VII, but Title IX allows sports teams restricted by sex (not unlawful).

Sotomayor

- “[S]ex-separated sports teams [are] not unlawful under Title IX ... That does not mean, though, that Bostock has nothing to say about Title IX more broadly.”
- “[T]here are plenty of contexts outside of athletics in which Title IX applies and does not allow sex distinctions.” Excluding transgender students from participation in such programs and activities would be sex discrimination under *Bostock* and would be unlawful under Title IX.”



**The Court's
decision means
_____ for
transgender
athletes' access
to private
spaces.**

Explanation

- ▶ Nothing in the opinion or any of the concurrences/dissents directly addresses transgender athletes' access to bathrooms, locker rooms or other single-sex spaces.
- ▶ However, the majority opinion and Justice Gorsuch's concurrence both rely on language in *Bostock* saying the court did "not purport to address bathrooms, locker rooms, or anything else of the kind" to explain why *Bostock* was inapplicable to their analysis.
- ▶ Justice Gorsuch goes farther noting the Court stressed in *Bostock* "that policies concerning 'sex-segregated bathrooms, locker rooms, and dress codes'—and, one might add, school-sponsored sports teams—were not before us."

**To determine
whether the WV
and Idaho laws
violate the Equal
Protection
Clause, the Court
must apply
_____ scrutiny.**

Straight from the Court

- ▶ The West Virginia and Idaho laws authorize separate female and male sports teams. And the laws limit women's and girls' sports teams to biological females. In doing so, the laws make a sex-based classification that triggers intermediate scrutiny.

Explanation

- ▶ In writing, there's consensus that intermediate scrutiny should apply to sex-based classifications. The application to this situation, though, shows some disagreement. Justice Sotomayor argues the majority is not really applying an intermediate scrutiny analysis.
- ▶ B.P.J. also argued that transgender status or gender identity was its own classification requiring heightened scrutiny. The majority declined to decide this, but notes in dicta that several justices had opined such a classification would only merit rational-basis review.
- ▶ Justice Thomas's concurrence has essentially one point to make and it's this. Without overtly saying so, he rejects the idea that the laws are a "sex-based" classification and offers his opinion that "transgender status is not a suspect class requiring heightened, equal-protection scrutiny." He would apply rational basis.

**States must
show the law is
_____ related
to achieving
a(n) _____
government
objective.**

Straight from the Court

- ▶ So the equal protection questions become: What are the States' interests in maintaining separate teams for males and females, and in limiting female teams to biological females?
- ▶ And is the States' sex-based classification—that is, the limitation of women's and girls' sports teams to biological females—substantially related to those interests?

States' Interests

Kavanaugh (majority)

- “The States start with the undisputed proposition that biological males generally possess inherent physical advantages in sports—in height, weight, strength, speed, endurance, jumping ability, and the like...Therefore, the States say, limiting women’s and girls’ sports to biological females (i) helps prevent serious physical injuries to female athletes and (ii) preserves opportunities for female athletes to fairly compete and succeed.”

Sotomayor

“West Virginia argues that its sex classification substantially furthers its important interests in ensuring competitive fairness and safety in girls’ and women’s sports. As the State conceded below, however, it has no interest “in protecting one girl’s ranking in any competition or ‘in ensuring that cisgender girls do not lose ever to transgender girls.’” 98 F. 4th, at 560. Rather, the focus is on when the participation of transgender girls is actually unfair or unsafe for others.” *Ibid.*

States' Interests

Kavanaugh (majority)

- “And more broadly, the States articulate the objective of promoting “equal athletic opportunities for the female sex”—that is, to provide opportunities for biological women and girls to compete only against other biological women and girls.”

Sotomayor

- “The majority, for its part, adds a third interest: “provid[ing] opportunities for biological women and girls to compete only against other biological women and girls.” *Ante*, at 16. That misrepresents West Virginia’s stated legislative interest. Its law seeks “to promote equal athletic opportunities for the female sex,” defined as “biological females.” ... “Whether competition ‘only against other biological women and girls,’ *ante*, at 16, is substantially related to promoting equal opportunity, however, is the very question posed by this case, not a separate legislative interest West Virginia has sought to pursue.”

Explanation

- ▶ A sex-based classification can only survive an equal protection challenge where it is substantially related to an important government objective (intermediate scrutiny).
- ▶ The government objectives the states argued for here are safety for “biological females” in sport and “competitive fairness,” and the majority agrees the laws are closely tailored enough to survive.
- ▶ Sotomayor notes that part of the intermediate scrutiny analysis requires “an exceedingly persuasive justification” for letting the sex-based classification stand and that overbreadth in drafting the law can lead to an equal protection violation. Which leads us to our next question...



**A substantial
relationship
might not
exist if it does
not apply to**

_____.

Straight from the Court

Kavanaugh (majority)

Classifications are evaluated based on relationship to the “general problem,” not based on its application to an individual case or person

Plaintiffs’ “as applied” challenge looks at the fit to a “specific subclass or individual” – that a relationship does not apply to an “especially large subclass” may demonstrate there is not a sufficient relationship.

“But as long as the relationship is sufficient as a general matter, the State is not constitutionally required to grant individualized exemptions to specific athletes or subclasses.”

Sotomayor

“This Court has held that a sex classification violates equal protection when there is an incongruity between the sex classification in general and its application to a discrete subclass.” And it has done so “even if the classes of people [at issue] are themselves small”

“If a State includes a discrete subclass in an overbroad classification when exempting them would not unnecessarily jeopardize the government interest the State wishes to further, that can show that the State’s choice to use the classification is not actually in service of those interests, but rests on discriminatory generalizations instead.”



**States and
schools _____
classify
transgender
athletes
according to their
gender identity.**

Reading the Tea Leaves

Kavanaugh (majority)

““Especially on medical and scientific matters where there is serious debate and disagreement, it can be difficult for courts to meaningfully evaluate the considered policy judgments of the lawmakers who have scrutinized the medical evidence and scientific data before them, and have made a reasoned decision.”

Thomas

“Sex is an immutable ‘biological’ characteristic; it is binary.”

Gorsuch

“Title IX does not clearly and unambiguously alert funding recipients that they are prohibited from sponsoring sports teams restricted to biological women or girls.”

Sotomayor

“B. P. J. does not dispute that, for the purposes of this case, ‘sex’ in Title IX means ‘biological sex,’ or sex identified at birth. Nor does she dispute that ‘sex’ is used in the same way in the 1974 Javits Amendment, and its accompanying regulations, which expressly authorize, but do not require, sex-separated sports teams.”

Jackson

“Title IX makes room for individuals to live in the gender they choose; it cares not just about sex assigned at birth but also about individuals’ ability to match (or not) their gender presentation to their gender identity.”

**The Court's decision
_____ transgender
students' rights
under Title IX to be
free from
discrimination and
harassment in
contexts other than
sex-separate sports.**

Title IX Treats Sports Differently

Kavanaugh

Much of the Majority's reasoning was limited to "in the sports context"

"[B]ecause Title IX permits separate teams, the only question here is whether schools may limit women's and girls' sports to biological females"

"No student-athlete on either side of the issue, whether a biological female or transgender, deserves to be ostracized or vilified."

Gorsuch

"Here, though, we face the question whether it qualifies as discrimination under Title IX for a federal funding recipient to sponsor sports teams restricted to biological women or girls alone...Title IX anticipates and approves single-sex living accommodations and sports teams in school settings; it does not treat them as unlawful discrimination."

Sotomayor

BPJ's Title IX claim "fails because Title IX allows this sex distinction"

In contrast, Title IX prohibits "mandatory sex-segregated classes or extracurricular activities like chess club, theater, and student government," as well as "on-campus harassment, discrimination in admissions and expulsions, and much, much more."

What about the 14th Amendment?

Kavanaugh

"When analyzing the relationship between the classification based on biological sex and the asserted interests, the sports context is again crucial."

Sotomayor

"The majority applies its diminished view of equal protection to the sports context today, relying on the parties' concessions that the State's asserted interests will be furthered in most applications, given the particularly close relationship between sex, sports, and those interests. One can only hope that the same misguided approach does not and will not extend to other contexts tomorrow, when any of these considerations are missing."

Bonus Match

**Biological
sex is**

Government Definitions

Federal Government

"Female" means a person belonging, at conception, to the sex that produces the large reproductive cell.

"Male" means a person belonging, at conception, to the sex that produces the small reproductive cell.

EO 14168

West Virginia

"Biological sex" means an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth.

W. Va. Code § 18-2-25d

Idaho

Sex verified by healthcare provider
"relying only on one (1) or more of the following: the student's reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels"

Idaho Code § 33-6203

Texas

"Female" ...mean[s] an individual whose biological reproductive system is developed to produce ova.

"Male" ...mean[s] an individual whose biological reproductive system is developed to fertilize the ova of a female.

Tex. Gov't Code
§ 311.005

Medical and Scientific Facts About Biological Sex

- Biological sex is a label assigned by a medical professional at birth based on physical characteristics (genitalia) and other biological determinants. Gender, a sociological and legal construct that varies by culture, is a complex topic that goes beyond the scope of this resource.
- Sexual differentiation occurs during fetal development and is driven by genetic and hormonal factors. This process determines the development of male or female physical traits but can result in a spectrum of outcomes due to variations in genetic and hormonal influences.
- Chromosomal and genetic factors matter. While XX and XY chromosomes are often associated with female and male sexes, variations such as XXY, XYY, and others also occur in an estimated 1 in 1,500 to 1 in 2,000 live births, which amounts to approximately 200,000 to 330,000 Americans based on the current population.
- Primary sex characteristics (genitalia and reproductive organs) and secondary characteristics (e.g., body hair and breast development) are shaped by genetics and hormones. These traits can vary widely among individuals, even within the same chromosomal sex.
- It is not uncommon for individuals to have atypical combinations of chromosomes (e.g., those with Klinefelter syndrome, a common condition that results when a person assigned male at birth has an extra copy of the X chromosome instead of the typical XY), hormones, or anatomy that challenge the binary model of sex assignment. Such natural variation, which is neither a disease nor a disorder requiring medical intervention, illustrates the complexity of biological sex.

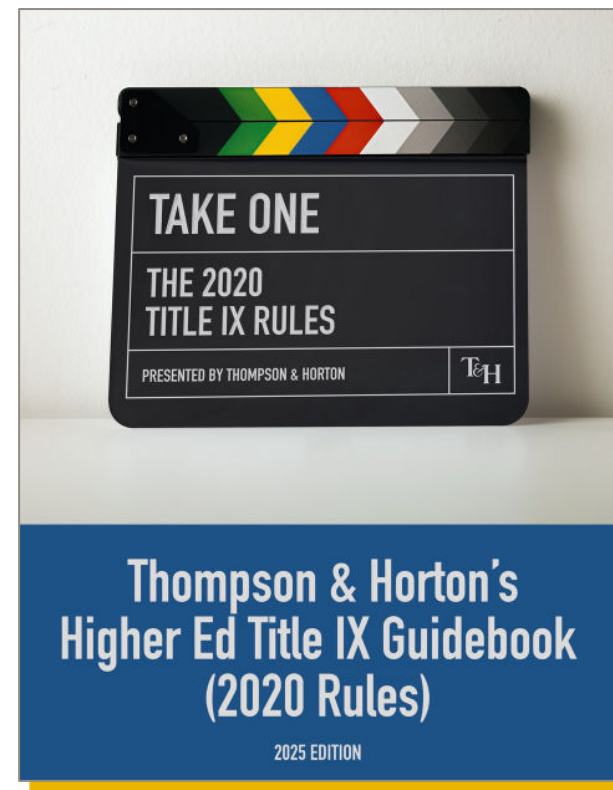
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IX or other civil
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can call _____.**





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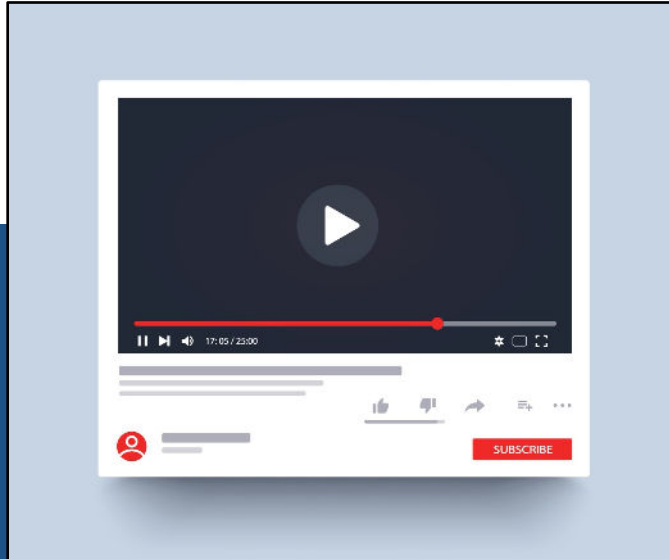


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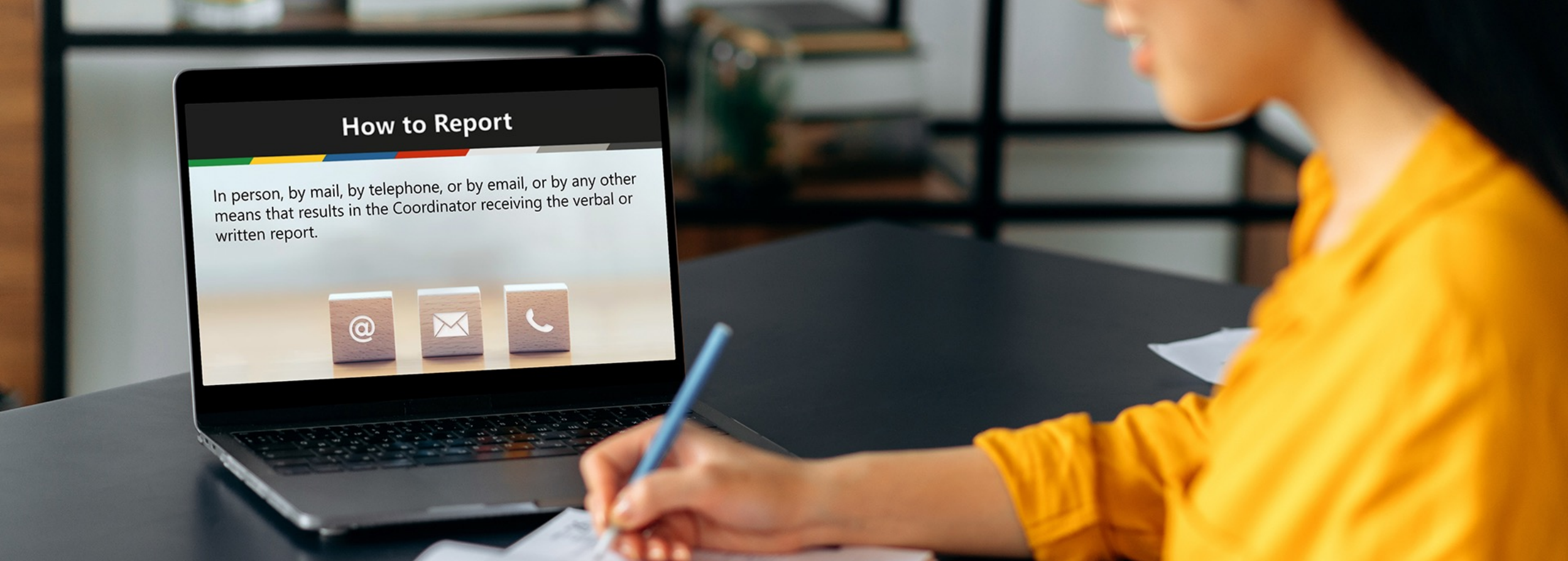
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K-12

STRAIGHT TO THE OFFICE

**A CAMPUS ADMINISTRATOR'S
GUIDE TO TITLE IX**



CLASS IS IN SESSION

TITLE IX GRIEVANCE PROCESS FOR TEAM MEMBERS

K-12

Thompson & Horton's
Virtual Title IX K-12
Basic Training
September 15th
10:00-2:30
[Register Here](#)

A red fire alarm bell is mounted on a light-colored wall. The bell is circular with a black rim and a silver-colored center. Below the bell is a grey rectangular control box with a metal arm and a small ball at the end. To the right of the bell, a wooden door is partially visible.

COORDINATOR TRAINING

BELL TO BELL COMPLIANCE

MANAGING TITLE IX
FROM FIRST REPORT
TO RESOLUTION

K-12

Thompson & Horton's
Virtual Title IX K-12
Coordinator Training

September 1st

10:00-5:00

[Register Here](#)

TITLE IX TWISTS AND TURNS



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Higher Education
Virtual Title IX Training
September 22, 2026
10:00-2:30
titlex@thlaw.com

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K-12

4th Tuesday of the month

- ▶ Register at thlaw.com/k12alliance
- ▶ Email titleix@thlaw.com
- ▶ Use the QR code



Higher Ed

4th Wednesday of the month

- ▶ Register at thlaw.com/higheredalliance
- ▶ Email titleix@thlaw.com
- ▶ Use the QR code



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