



Legal Update

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Today's Presentation

- > 1. Title IX rules status
- > 2. Transgender sports rules – change on the horizon?
- > 3. New Virginia statutes
- > 4. Superintendents' indemnification terms – recent case impacts

Title IX Status

Title IX Regulations

- > In April 2024, the U.S. Department of Education issued revised Title IX regulations
- > Scheduled to go into effect on August 1, 2024
- > Changed the rules for schools dealing with sex discrimination and harassment complaints



Title IX Regulations

Key Terms

1. No more hearing requirement (back to “discipline as usual”)
2. Return of the single investigator and decision-maker model (no appeals required)
3. Everyone needs training
4. Requires investigation, adjudication, and remediation of sex orientation and gender identity complaints

Title IX Regulations

- > 26 states, including Virginia, sued DOE to stop enforcement of new Title IX regulations
- > Primary argument: DOE has overstepped its bounds
 - Regulations based on prohibition of discrimination “on the basis of sex” in 1972 Education Amendments Act
 - Congress did not intend for “sex” to mean “gender identity”



Title IX Regulations

- > June 2024: U.S. District Judge Danny Reeves in Kentucky stops enforcement of Title IX in seven states, including Virginia
 - “The new rule contravenes the plain text of Title IX by redefining ‘sex’ to include gender identity”
 - “There are two sexes: male and female.... The defendants made this concession during oral arguments on the plaintiffs’ motion for injunctive relief. The parties have agreed to little else.”



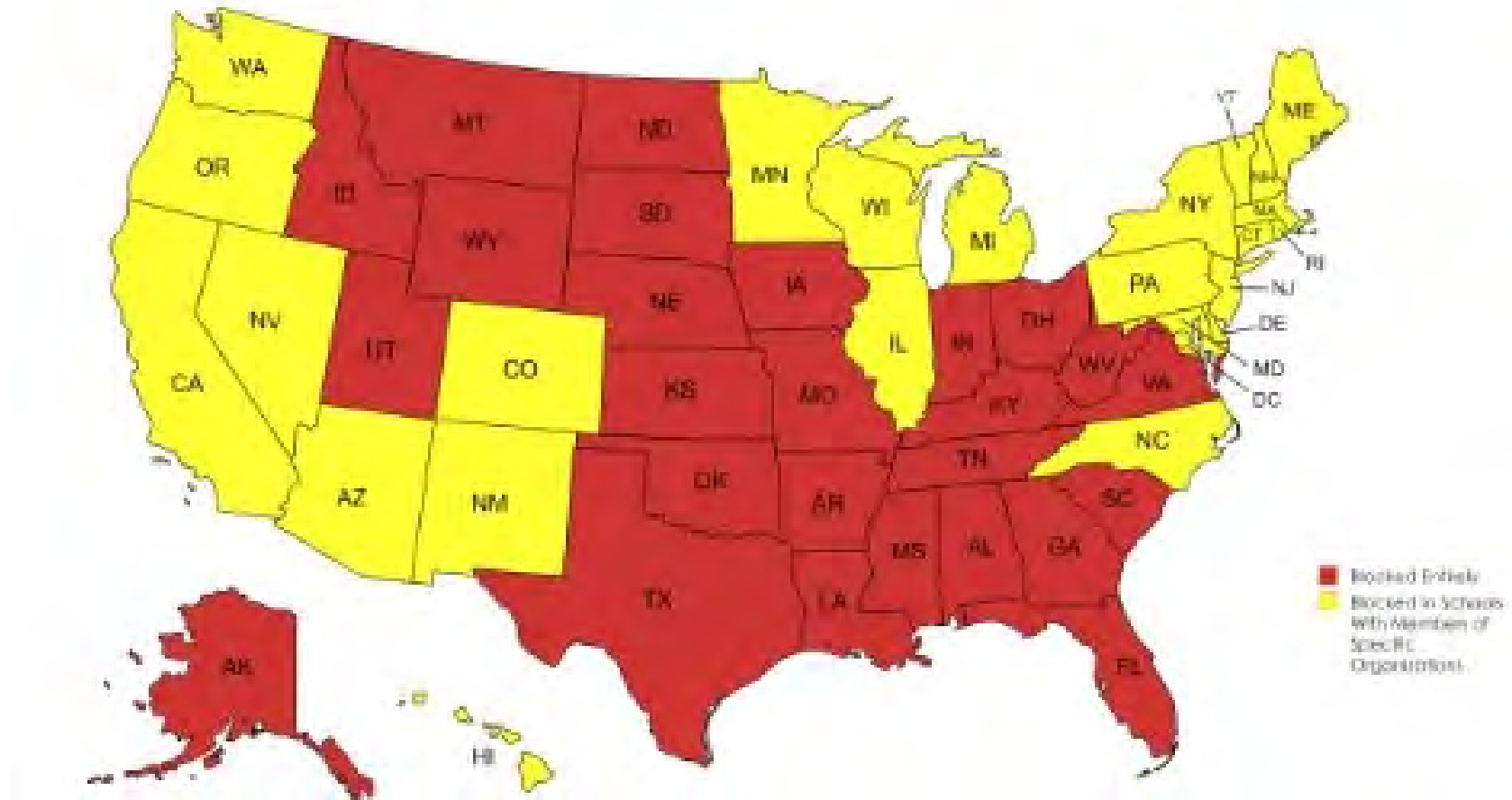
Title IX Regulations

- > Judge Reeves order doesn't cancel Title IX regulations.
 - Just prevents regulations from going into effect while litigation continues.
- > Viability of law depends on final order from Judge Reeves.
 - Expected in a few months.
 - But it will probably be appealed.

Title IX Regulations

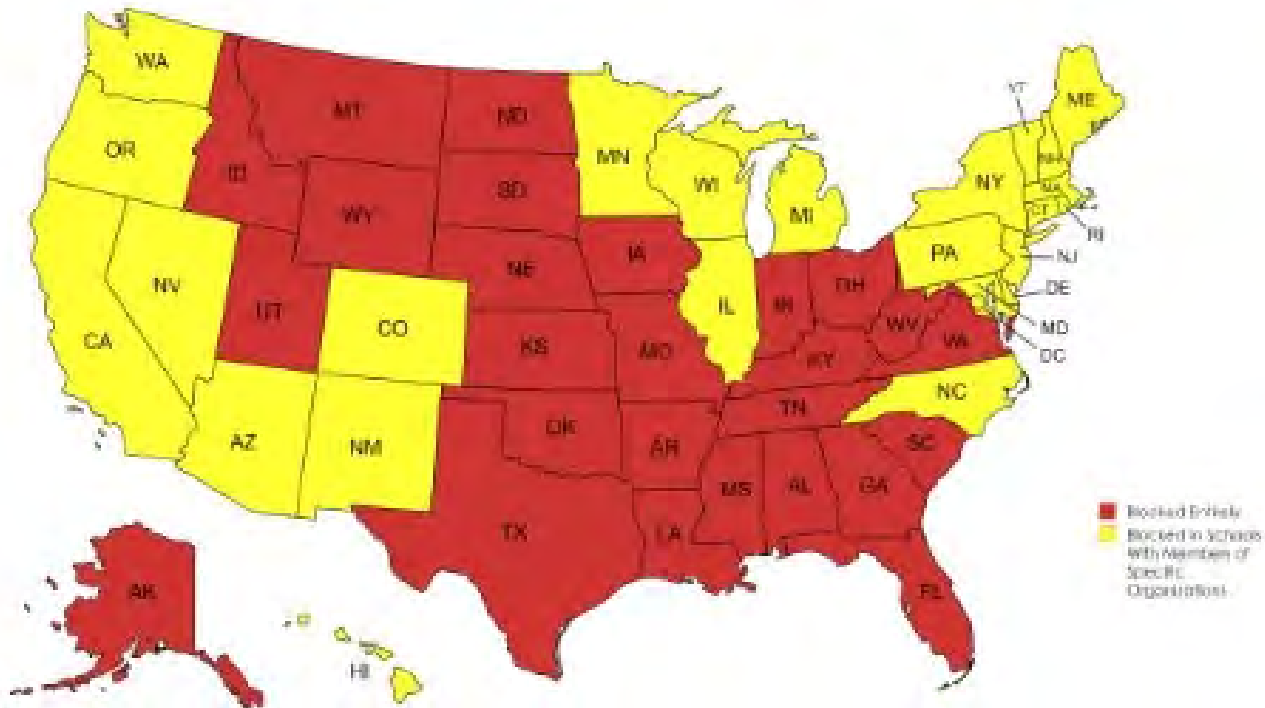
- > Judges Reeves order halts enforcement in seven states
- > Other judges' orders halt enforcement in other states (26 in total)
- > DOE allowed to enforce the law in the other 24 states

Title IX Regulations

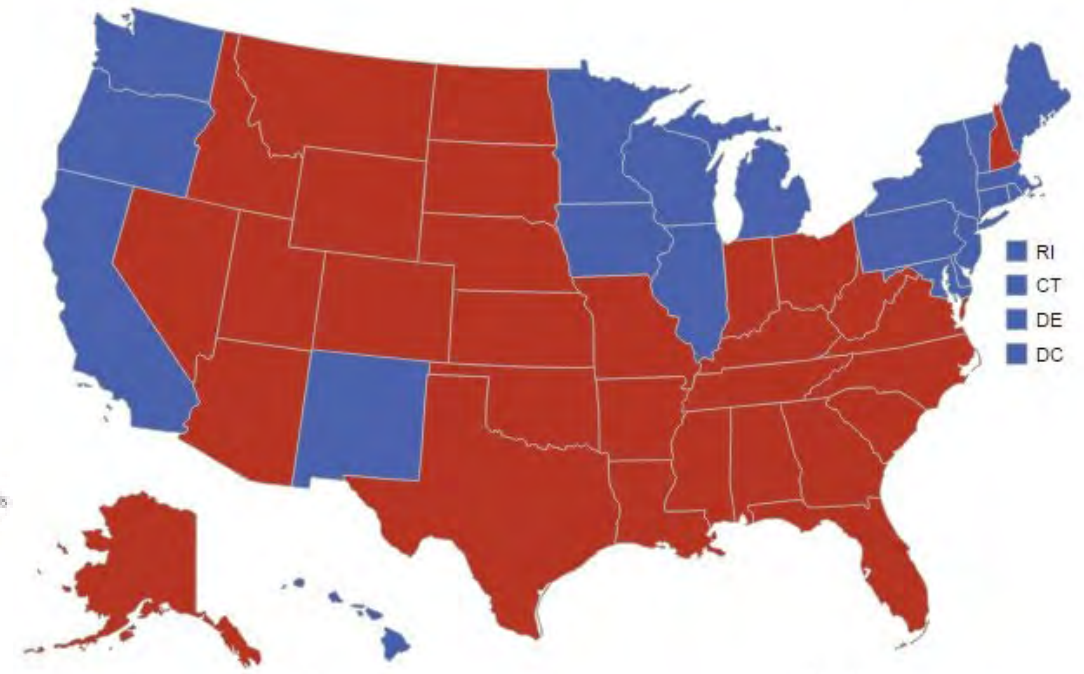


Title IX Regulations

2024 – Title IX Enforceability



2000 – Electoral College



Title IX Regulations

What Should Your Division Do?

- > DOE cannot enforce new rules in Virginia
- > But school divisions can choose to adopt them anyway
- > Will allow for quick compliance if the rules survive legal challenge
- > But if Donald Trump wins election, these new rules will probably be jettisoned

Transgender Sports Rules

Transgender Students – Sports

- > Current state of play:
 - VHSL provides an application process for schools to make waiver requests on behalf of transgender students
 - VHSL Rule – Maybe
 - VDOE Model Policies prohibit sex-based separation according to gender identity
 - State-wide Policy – Never

Transgender Students – Sports

Proposed Federal Rule

- > Issued in April 2023
- > Would supersede VHSL rule and VDOE Model Policies (if in conflict)
- > Allows schools to deny transgender participation if:
 - This is necessary to further an important educational objective (e.g., safety, competitiveness)
 - School limits harm to those denied
- > So: Proposed Federal Rule – Maybe



Transgender Students – Sports

Proposed Federal Rule

- > Biden administration purposely stalled implementation before run up to election
- > Signaled that it would be part of a second Biden term, but no longer part of the first term
- > Will it also be part of a Harris first term?



New Virginia Statutes

Procurement – In-State Preference

- > In the case of procurement of goods by manufacturers:
 - If the lowest bidder is not a resident of Virginia and the bid of any Virginia resident is within 10% of such bid, the Virginia bidder shall be granted the option to match the price of the lowest bidder.
 - If the lowest bidder is not a Virginia resident and the low bidder's state allows a resident a percentage preference *greater* than 10%, then the Virginia resident will get this percentage preference.



Procurement – In-State Preference

- > Law is designed to boost Virginia manufacturers
- > But could it raise the price of contracts for school divisions?
- > Inter-state tariffs?
- > Rule expires in July 2027

Superintendent Indemnification

Superintendent Indemnification

- > Former Loudoun Superintendent indicted for alleged criminal retaliation in 2022
- > Case is on-going
- > Superintendent's lawyer sued school board in April 2024, in the middle of the case, because board refused to pay superintendent's legal fees
- > School board argues it doesn't have to pay fees that arise after it terminated superintendent



Superintendent Indemnification

- > This case is largely a dispute about the meaning of the contract between the school board and the law firm in which the school board agreed to pay fees
- > But it also presents interesting questions about the indemnification term in superintendents' contracts

Superintendent Indemnification

> Standard language:

“The Board hereby indemnifies...the Superintendent...from any and all demands, claims, damages, suits, actions, and legal proceedings brought against the Superintendent...

- for any incident or activity arising out of and within the scope of her duties as Superintendent...
- undertaken in good faith, in accordance with the law, and within the scope of her official authority.”

Superintendent Indemnification

- > Translation – the Board will pay your legal fees if you are sued because of your work as superintendent (and will pay for damages if you lose the lawsuit)
 - Applies even if lawsuit arrives after your term ends
 - Does not apply if you acted in bad faith or broke the law

Superintendent Indemnification

- > Carve out for intentional breaking of the law is sensible
- > But what if you don't know if you are breaking the law?
 - What if the law is unclear?
 - Examples: masking rules, Title IX, IEPs

Superintendent Indemnification

- > Options for mitigating this issue
 - More fully define “in accordance with the law” in contract
 - Consult with Board counsel when making decisions in areas with ambiguous rules
 - Secure Board approval in similar circumstances

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