

Two Worlds Collide: Navigating the Competing Regulatory Schemes of
Title IX and Special Education Law in K-12 Schools

By

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Abstract

Overall, there has been limited guidance from the federal government on how K-12 schools should implement their policies and practices to comply with Title IX and special education law. The lack of clear directives leaves K-12 schools with the task of identifying policies and processes that are the best practices in navigating the rights afforded under Title IX and special education law. The purpose of this study is to understand the legal landscape of federal court decisions that address sexual misconduct allegations in K-12 schools that implicate Title IX and special education law. Then, determining any guidance that can be gleaned from those federal court decisions that K-12 schools can utilize in developing policies and processes for handling matters involving allegations of sexual misconduct that implicate Title IX and special education law. This dissertation utilizes a qualitative research design, legal content analysis, and a conceptual framework that is adapted from the U.S. Sentencing Commission Federal Guidelines seven elements of a compliance program and the updated Department of Justice guidance that suggests the use of a Three-Question Analysis in compliance program review.

This dissertation starts with an introduction, statement of the problem, and explanation of the conceptual framework. Next, a thorough review of the literature with a detailed overview of the research design and methodology is provided. Finally, the findings from the study are presented followed by analysis and concludes with recommendations. This study is a first look at the use of federal court decisions to improve compliance programming with Title IX and when Title IX intersects with special education law. Moreover, this study showed the value in applying compliance theory to policy and process development in the K-12 realm. Most importantly, the

recommendations provide actual tools and strategies that schools can adapt for immediate use to begin the process of reviewing and implementing better compliance solutions in this area.

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Chapter 1: Dissertation Overview

1.1 Introduction

In the fall of 2021, high school students around the country staged protests and walkouts demanding more from their school districts in response to reports of sexual misconduct and adherence to Title IX. In Loudon County Virginia, students organized a multiple school walkout protest in response to a sexual assault that occurred at Loudon County High School (DiAntonio, 2021). The Charlotte-Mecklenburg School District's handling of a sexual assault drew national attention and student protests (De La Canal, 2021). The Madison Metropolitan School District saw multiple student walkouts in response to their handling of reports of sexual assault and misconduct (Beyer, 2021). While these protests have challenged the overall handling of allegations of sexual misconduct and support for survivors, a common theme has been the need for school districts to create and maintain a safe environment.

Title IX and its companion regulations, released in May 2020, outline how K-12 schools and higher education institutions must respond to and address reports of sexual misconduct. The May 2020 Title IX regulations made significant changes to the way schools are required to handle reports of sexual misconduct. The May 2020 Title IX regulations outline clear expectations for educational institutions regarding response structures, training of individuals responsible for response, educational institution liability, grievance procedures, related discipline, and appeal. At the same time, for K-12 schools, the May 2020 Title IX regulations created a much more detailed process for addressing sexual misconduct that does not necessarily align or address complications related to complying with special education law. This conflict between laws creates a more complex legal environment for K-12 institutions; they are required to comply with both Title IX and special education law. For example, the accommodation and

due process requirements outlined under Title IX, when combined with the procedural safeguards afforded under special education law, leaves K-12 schools with the task of navigating complex and, at times, contradictory regulatory schemes. An example of such a complexity is when there are sexual misconduct allegations against a student that is identified as having a disability as defined under Individuals with Disabilities Education Act (IDEA).

Under IDEA, school personnel must conduct a manifestation determination to assess whether the student's identified disability is directly related to the conduct in question (20 U.S.C. § 1414 *et. seq.* (2012)). There is a potential conflict between Title IX and special education law that could arise. For example, under Title IX a sexual misconduct incident may result in a suspension longer than ten days or emergency removal, but under IDEA the student's behavior may be a manifestation of the identified disability triggering additional protections under IDEA. In that scenario, the student identified as having a disability must be provided a manifestation determination meeting prior to actions that would otherwise be appropriate to be taken under Title IX. This requires the K-12 institution to have policies and procedures in place that provide school administrators and students a clear understanding of their rights and responsibilities. The complex legal considerations involved in addressing allegations of sexual misconduct when a student with a disability is the victim or the alleged perpetrator led to the research question, in light of the competing regulatory schemes of Title IX and special education law, what guidance can be gleaned from recent court decisions to improve K-12 sexual misconduct policies and processes.

1.2 Problem Statement

To date, there has been limited guidance from the federal government on how K-12 schools should implement their policies and practices to meet the regulatory requirements of

both Title IX and special education law. While the May 2020 Title IX regulations outline specific provisions for K-12 schools, the regulations only reference special education laws in one section related to emergency removal. The May 2020 Title IX regulations merely state, in reference to a provision providing for emergency removal of a student, that this provision is not to be construed to modify any rights under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), or the Americans with Disabilities Act (ADA) (34 C.F.R § 106.44(c) (2020)).

The lack of clear directives leaves K-12 schools with the task of identifying policies and processes that are the best practices in navigating the rights afforded in matters that implicate both Title IX and special education laws. There are several areas of concern where rights afforded under Title IX and its companion regulations are complicated by requirements under special education laws. This is the case regardless of whether the complainant or the respondent has been identified as having a disability. This guessing game by K-12 schools can lead to litigation and damages as well as settlements. While the monetary losses are a stark reality for school districts, the real cost is the lasting impact on the survivors of sexual misconduct for whom reality is forever changed.

The areas of complication for K-12 schools in navigating these two regulatory structures can be broadly grouped as supportive measures, timing issues, resolution and hearing process, and student discipline as outlined in the May 2020 Title IX regulations. The following figure creates a visual of some, not all, of the pressure points between Title IX and special education law when schools are addressing sexual misconduct matters:

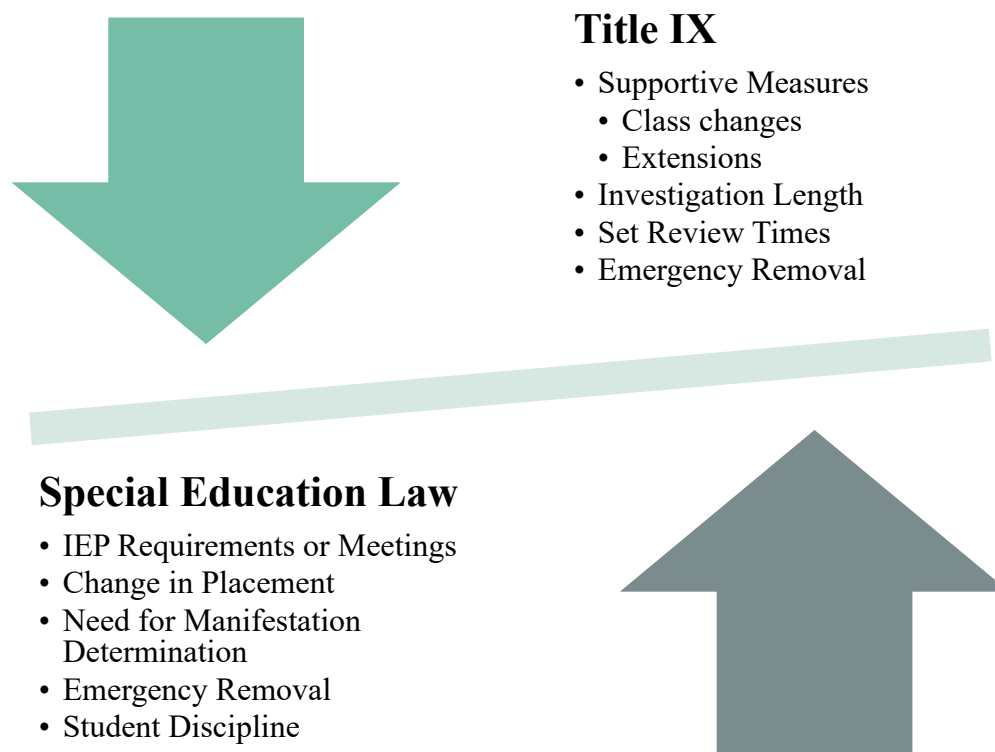


Figure 1: Title IX and Special Education Law Pressure Points

The next paragraphs delve into examining these pressure points and categories in more detail.

Title IX and its companion regulations require that supportive measures be provided to complainants and respondents in a Title IX matter. The supportive measures required to be provided under the May 2020 Title IX regulations may trigger the procedural safeguards outlined in IDEA and Section 504. For students who have been identified as having a disability, appropriate supportive measures under the May 2020 Title IX regulations may impact rights under special education law. For example, a supportive measure provided under Title IX may result in a change of placement, the need for disciplinary safeguard reviews, scheduling a manifestation determination, or requiring an Individualized Education Plan (IEP) Team meeting under special education law.

Another example is emergency removal of a student under Title IX and its companion regulations. The emergency removal provisions under the May 2020 Title IX regulations does not supersede the rights afforded to students under IDEA and Section 504 (34 C.F.R § 106.44(c) (2020)). Therefore, a school wanting to take the step of emergency removal will have to also comply with any rights afforded to the student identified as having a disability as defined in IDEA and Section 504. In addition, the due process provisions in the Title IX regulations take time, which may result in a longer process than is currently implemented in other disciplinary matters at an elementary or secondary school. The extra time needed to comply with the Title IX regulations due process procedures may result in a change of placement, which requires schools to follow the appropriate procedural safeguards under special education law if needed.

The resolution and hearing process itself under the May 2020 Title IX regulations requires K-12 schools to navigate both Title IX and special education law. The length of investigation and required due process can create timing issues that impact expectations of least restrictive environment and not engaging in a change of placement with all rights as outlined in special education law. In addition, the hearing process implemented by a K-12 school may result in accessibility issues not only for students identified with a disability, but also for parents who are participating. A K-12 school must take appropriate measures to make sure that the participants in the hearing, the K-12 school representatives and the parties, are notified that if a student's IEP is submitted as evidence during the hearing process, then the IEP will be available for the other party to review (34 C.F.R. pmbl., § 106 (2020)). After the conclusion of the hearing itself, the decision-maker is required to make a finding and recommendation as to discipline. If the respondent is a child with a disability, then additional steps need to be taken prior to the decision-maker making their recommendation to ensure that the K-12 school is in compliance

with special education laws. The Department of Education issued guidance that contained an example policy for cases involving a respondent with an IEP (U.S. Department of Education, 2021). The example policy suggests that the decisionmaker make a referral to the school so that a manifestation determination review can take place prior to taking disciplinary action. The result of the manifestation determination meeting is to be submitted within ten school days. If it is determined that the behavior at issue is not a manifestation of the student's disability and the decision is made to remove or reassign the student, then the principal is to consult with the IEP Team prior to taking disciplinary action.

While the complexities are evident, Title IX and its companion regulations are relatively quiet regarding specific guidance for K-12 schools in implementing policies and processes that comply with the competing regulatory schemes of Title IX and special education laws. This study examines the legal landscape of cases that have addressed sexual misconduct matters involving Title IX and special education law as well as explores the guidance that can be gleaned from recent court decisions to aid K-12 schools in developing policies and processes that comply with both Title IX and special education laws.

1.3 Research Questions

This dissertation seeks to answer the following research questions:

1. What is the legal landscape of court cases that have addressed sexual misconduct matters that implicate Title IX and special education law?
2. In light of the competing regulatory schemes of Title IX and special education law, what guidance can be gleaned from recent court decisions to improve K-12 sexual misconduct policies and processes?

It is important to note that the second research question is focused on guidance that can be gleaned from the court's application of the legal analysis categories being used in each court decision. Rather than offering fact patterns of all the cases in the dataset, I am most interested in the legal analysis being applied. For example, when analyzing a case to learn how a court may or may not have grappled with competing regulatory schemes between Title IX and special education law, the legal analysis categories utilized by the court will be especially informative. I am also taking this approach because it will provide the basis for the generalized understanding that will inform the recommendations to school administrators and policymakers. Moreover, by understanding the legal analysis categories being utilized, and how they are applied is the most insightful in determining guidance. The factual patterns of cases at times can provide useful context; however, it is the legal analysis categories and understanding the court's application of them that provides the most pertinent information for developing my recommendations. Finally, although the focus is on the legal analysis, I will draw upon case fact patterns to provide some illustrative examples when necessary.

1.4 Positionality

I am currently pursuing a Doctor of Philosophy degree in educational leadership and policy analysis with a focus on K-12. I also hold a juris doctorate and am a licensed attorney in Wisconsin, Pennsylvania, New Jersey, and Massachusetts. The focus of my career has been assisting higher education and K-12 educational institutions in the following: assessing organizational structure; developing policies and processes; creating and implementing compliance programming in Title IX, Title VII, Title VI, affirmative action, and other conduct-related matters; investigation and resolution of complaints of discrimination; and risk management. I also hold a Master of Education in higher education administration.

In my career, to date, I have had the opportunity to work with a small private liberal arts college, a small state university system, a large state university system, and with a company that served in interim roles and consulted with schools across the country in this area. I have also had the opportunity to consult with two urban K-12 school districts on addressing issues related to sexual misconduct, which at times highlighted the need for additional guidance when Title IX and special education laws were implicated. Currently, I serve as a Vice President at a private R1 institution with a medical school, with a portfolio that oversees Title IX, equal opportunity, and ADA/504 compliance and response. As a result of working in these various positions, I have viewed most controversies through a legal lens and from the school or university's perspective. I acknowledge that viewing matters this way may lead to bias when reading the cases included in the dissertation. I will be mindful of this potential for bias and will work to ensure that I view the legal issues that arise from both the student's perspective and the school's perspective.

1.5 Conceptual Framework

The purpose of this study is to determine the legal landscape of cases addressing sexual misconduct that implicates Title IX and special education law as well as determining any guidance that can be gleaned from court decisions that K-12 schools can utilize in developing policies and processes for handling matters involving allegations of sexual misconduct that involve allegations that implicate special education law and Title IX. More specifically, the guidance that can be gleaned from the court's application of the legal analysis categories being used in each court decision. The research design and method used was legal content analysis, which is further explained in detail in Chapter 3. My conceptual framework is adapted from the U.S. Sentencing Commission Federal Guidelines seven elements of a compliance program and the updated Department of Justice guidance that suggests the use of a Three-Question Analysis

in compliance program review. These concepts are thoroughly outlined in Chapter 2, as part of the literature review.

The U.S. Sentencing Commission Federal Guidelines outline seven elements of a compliance program (U.S. Sentencing Commission Guidelines Manual, 2021). The seven elements of a compliance program structure were developed for the private sector; however, they are generally applicable to the education environment. In applying the seven elements structure to the educational environment, the governance structure of a K-12 institution requires additional considerations. This is due in part to the nature of engaging in disciplinary actions and policy-making in multi-site educational governance structure. The U.S. Sentencing Commission Guidelines Manual provides a detailed description of the seven elements of a compliance program, parts of which are easily applicable to the K-12 educational environment; an understanding of the general themes allows for a broader application. The seven elements of a compliance program are delineated into general themes in the following figure:

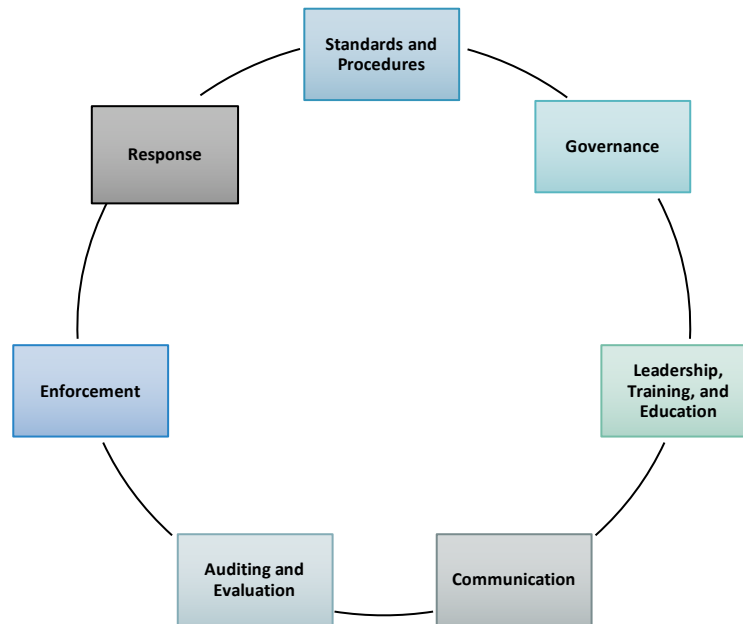


Figure 2: Seven Elements of a Compliance Program

As previously stated, the adaptation of the U.S Sentencing Commission Guidelines Manual seven elements of a compliance program to the K-12 educational environment requires additional consideration of K-12 school district organizational design (U.S. Sentencing Commission Guidelines Manual, 2021).. Generally, K-12 school districts are designed in the following general structure:

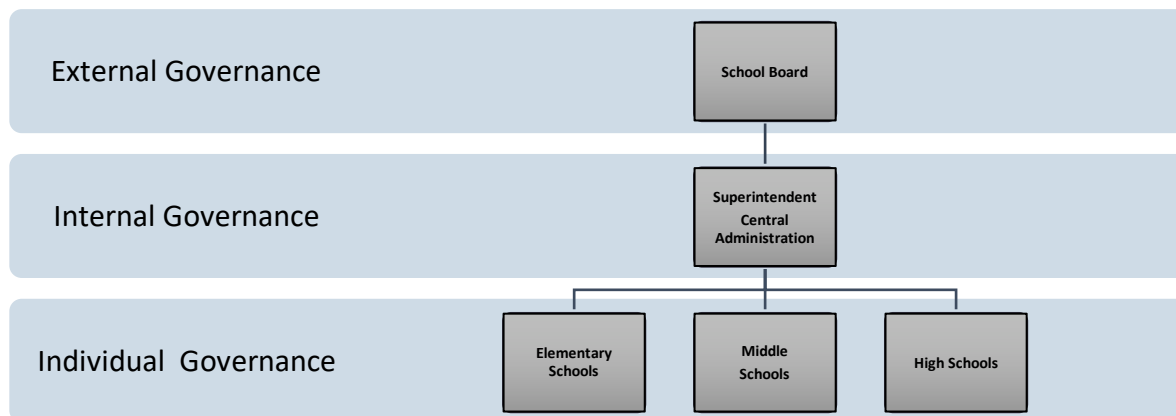


Figure 3: K-12 School District Design and Governance

For this study, I am focused on K-12 school governance structure for purposes of determining best practices for compliance program design, policies, and processes to achieve and create a culture of compliance. The figure above separates a K-12 school district into distinct governance levels based on organizational structure. For purposes of this study, I developed a three-part model of K-12 school district governance: external, internal, and individual. The school board represents external governance. A school board is typically not involved in the day-to-day operation of the schools in the district and instead is focused on funding, district performance, and policy. The superintendent engages in internal governance. The superintendent, who is the chief executive officer of the school district, and their central administrative officers determine policies and processes for the individual schools in the district. The individual schools are led by an administrative team with a principal at the helm. The principal is responsible for the

individual operation and governance of their specific school. This organizational structure creates three major offices of oversight with the individual schools having multiple offices of oversight.

The adaptation of the U.S. Sentencing Commission Guidelines Manual seven elements of a compliance program to the K-12 setting requires special consideration of the governance structure (U.S. Sentencing Commission Guidelines Manual, 2021). The seven elements stay the same, but in its application, the design of the compliance program must be aligned and formulated to encompass the nuances of the three-part model that is the organizational structure of a K-12 school district. The modification of the seven elements of a compliance program comes in determining best practices for implementing a compliance program based on the requirements outlined in the Title IX regulations and special education law. Based on the Title IX regulations, special education law, and the results of the legal content analysis of relevant federal court decisions reviewed in this study, I determined recommendations based on the legal landscape of this area and for developing related compliance programs for the K-12 setting that are cognizant of the three levels of governance unique to the K-12 organizational structure.

While the U.S. Sentencing Commission Guidelines Manual outlines the seven elements of a compliance program, the Department of Justice update to the guidelines provide insight into evaluating a compliance program once it has been implemented (Department of Justice, 2023). The Department of Justice outlined the following Three-Question Analysis for evaluating compliance programs:

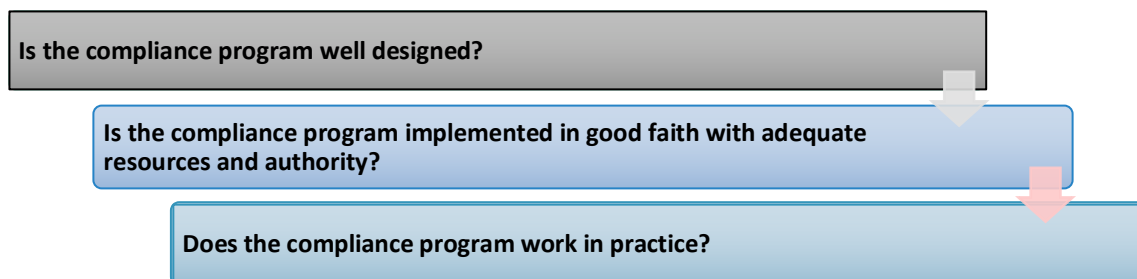


Figure 4: Three-Question Analysis for Evaluating Compliance Programs

I used the Department of Justice Three-Question Analysis and the seven elements of a compliance program as additional aspects of the legal content analysis and coding framework for this study. While the Department of Justice Three-Question Analysis for evaluating compliance programs will provide additional insight, I recognized that the text of the federal court decisions may not contain full answers to these questions. However, the conceptual framework using both the Department of Justice Three-Question Analysis and the U.S. Sentencing Commission Guidelines Manual seven elements of a compliance program, will provide for additional legal content analysis of the federal court decisions that specifically addresses compliance programs and their implementation. The goal in adding this conceptual framework is to provide K-12 schools with tools and best practices in developing their own compliance programming in Title IX that is cognizant of special education law expectations.

1.6 Conclusion

This chapter provided an overview of the problem statement and conceptual framework being utilized in this study. More importantly, this chapter introduced the research questions that will be addressed in this study. A review of the literature, specifically an in-depth review of the legal and regulatory environment combined with an understanding of organizational compliance theory and compliance program design, will provide the basis from which to perform the legal content analysis. This legal content analysis will also incorporate the Department of Justice

Three-Question Analysis and seven elements of a compliance program framework. The Literature Review is presented in Chapter 2.

Chapter 2: Literature Review

2.1 Introduction

This literature review explores the regulatory environments of Title IX and special education law as well as organizational compliance theory. A main focus of this literature review is a comprehensive review of the May 2020 Title IX regulations and special education law as well as related cases. This depth of regulatory and legal understanding is necessary to support the legal content analysis of cases to gain additional guidance for K-12 schools. In addition, there are few who have published on this intersection in the educational regulatory environment. Although several lawyers have highlighted the conflict between the May 2020 Title IX regulations and special education law, there has been only one scholarly article on the topic (Allen, n.d.; Lusk Albertson, 2020; Ostojic Rushing et al., 2020). This article identifies several of the issues presented by this intersection of laws but does not provide a comprehensive analysis of the litigation that has occurred in this area (Micek Vargas et al., 2023). An understanding of organizational compliance theory provides needed insight into developing policies and processes to assist K-12 schools in complying with these laws.

Given the general lack of literature on this topic and the need to understand the legal context, legal documents are the focus of the first section of this literature review. Thus, the first step was to examine statutory, regulatory, and case law related to Title IX and special education law. All legal research was completed using Nexis Uni and government websites. Nexis Uni is a major legal database that is used by legal scholars and those practicing in the legal field. In addition, the Department of Education and Department of Justice Guidance was reviewed

following searches on departmental websites. The second step was to review the U.S. Sentencing Commission Guidelines Manual, Department of Justice Three-Question Analysis Guidance, and organizational compliance theory. The U.S. Sentencing Commission Guidelines Manual has served as a hallmark for organizational regulatory compliance programming. The U.S. Sentencing Commission Guidelines Manual was reviewed on the U.S. Sentencing Commission website.

To connect compliance programming to the educational setting, I completed a multitude of searches on the Education Resources Information Center (ERIC) and ProQuest related to organizational compliance theory generally and organizational compliance theory specifically in educational organizations. All searches and terms are outlined in Appendix A. These searches identified Etzioni's Compliance Theory as a key starting point to understand how organizational compliance theory could assist and frame regulatory compliance with Title IX and special education law in the K-12 setting. This literature review is structured into three sections: legal and regulatory review, organizational compliance theory and program design, and conclusion and next steps.

2.2 Glossary of Legal Terminology

Term	Definition
Statute	A law enacted by a legislature.
Regulation	A rule or order issued by an administrative agency with the force of law.
Dear Colleague Letter	An official communication from a governmental agency that relays expectations around legal interpretation and policies regarding a particular law or regulation.

Guidance Document	A Guidance Document is an official communication from federal agencies that provide additional information related to how the agencies will interpret a law or regulation. These documents are not legally binding; however, they provide insight into how individuals should implement the law or regulation in practice.
Writ of Certiorari	A Writ of Certiorari is issued by the United States Supreme Court if, based on the review of a petition by a party, the case is accepted to be reviewed and heard by the court.

(Legal Information Institute, n.d.)

2.3 Legal and Regulatory Review

An in-depth understanding of Title IX and special education law is imperative to developing guidance for K-12 schools on how to navigate these competing regulatory schemes. This topic is divided into three sections: Title IX; Individuals with Disabilities Education Act; and Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. Each section provides an overview of the law, corresponding regulations, and related case law. An in-depth understanding of these laws is imperative to support the researcher's legal content analysis of cases to gain additional guidance for K-12 schools.

Title IX

Title IX of the Education Amendments of 1972 states: "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" (20 U.S.C. §§ 1681 *et. seq.* (emphasis added)). In relation to sexual misconduct matters, sex includes sexual harassment, sexual assault, dating violence, domestic violence, and stalking (34 C.F.R. § 106.30 (2020)). Title IX is modeled on Title VI of the Civil Rights Act of 1964, as amended, which prohibits federal funding recipients to discriminate on the basis of race, color, or national origin (Department of Justice, n.d.). However, Title IX is limited to education

programs or activities. In interpreting Title IX, Title VI is instructive, as legislative history indicates that Title IX is to be interpreted similarly to Title VI (*Cannon v. University of Chicago*, 1979). In addition, Section 504 of the Rehabilitation Act of 1973 prohibiting discrimination on the basis of disability in federally funded programs was also modeled after Title VI (*Alexander v. Choate*, 1985). In *Alexander v. Choate*, the Supreme Court noted that Section 504, Title VI, and Title IX are patterned after one another; therefore, interpretation and analysis under all three should be similar (1985).

On April 4, 2011, the Department of Education, Office for Civil Rights, released a “Dear Colleague” Letter that for the first time outlined clear agency guidance on how educational institutions were to resolve complaints of sexual misconduct (Department of Education, 2011). The April 4, 2011 “Dear Colleague” Letter and subsequent guidance were all rescinded in 2017 with the election of Donald Trump to the presidency and Betsy DeVos instituted as the Secretary of Education (Micek Vargas et al., 2023). In May of 2020, the Department of Education released Title IX regulations that outline the response, grievance, and resolution processes that schools are required to follow when addressing reports of sexual misconduct (34 C.F.R. § 106 *et. seq.* 2020; Micek Vargas et al., 2023). Unlike the April 4, 2011 Dear Colleague Letter, the May 2020 Title IX regulations have the force of law. Title IX and the corresponding regulations apply to any educational institution that is a recipient of federal funds. There are educational institutions that do receive federal funds or have filed for a Title IX exemptions. However, public K-12 schools generally are recipients of federal funds and therefore required to adhere to the Title IX and the corresponding May 2020 Title IX regulations. The Department of Education with support from the Biden Administration has issued a notice of proposed rulemaking (NPRM) to make changes to the May 2020 Title IX regulations. The NPRM were expected to be finalized in

the Fall of 2023, but have been delayed (Department of Education, 2023; Micek Vargas et al., 2023). At the time, due to the delay and unclear effective date, this literature review examined the May 2020 Title IX regulations. The key provisions of the May 2020 Title IX regulations for purposes of this literature review are focused on the organizational structure, policy, grievance, and response processes.

Role of the Title IX Coordinator. The May 2020 Title IX regulations outline the envisioned role and duties of the Title IX Coordinator (34 C.F.R. § 106.8 (2020)). The May 2020 Title IX regulations require that higher education and K-12 institutions designate a Title IX Coordinator that is responsible for coordinating compliance with Title IX and its accompanying regulations. The educational institution must notice “applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining agreements with the educational institutions” (34 C.F.R. § 106.8(a) (2020)). This also includes any individual, affiliated with the educational institution or attempting to access the educational institution. The institution must ensure that they are: 1) informing individuals who the Title IX Coordinator is, and 2) that the Title IX Coordinator receives reports of alleged sexual misconduct as defined under Title IX (34 C.F.R. § 106.8(a) (2020)). Educational institutions must create and disseminate a policy and grievance procedures related to Title IX that is in alignment with these regulations. In addition, educational institutions must publicize the contact information of the Title IX Coordinator.

The Title IX Coordinator has the authority to sign a formal complaint triggering the investigation of reported allegations of sexual misconduct (34 C.F.R. § 106.3(a)). The May 2020 Title IX regulations also make the Title IX Coordinator responsible for coordination of

supportive measures. The Title IX Coordinator is required to contact complainants to discuss supportive measures, inform complainants of their rights, and explain the process for filing a formal complaint (34 C.F.R. § 106.44(a) (2020)). The May 2020 Title IX regulations also make it clear that the Title IX Coordinator is expected to be involved in the response process, as it is stated that an educational institution may dismiss the formal Title IX complaint when “a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations” (34 C.F.R. § 106.45(3)(ii) (2020)). The Title IX Coordinator is also tasked with effectuating any remedies should there be a finding of responsibility that sexual misconduct occurred (34 C.F.R. § 106.45(7)(iv) (2020)).

The May 2020 Title IX regulations did not introduce a new concept of the role and responsibilities of Title IX Coordinators. While the Department of Education rescinded the Title IX Resource Guide and Dear Colleague Letter on Title IX Coordinators that had been released on August 26, 2020, those guidance documents are still instructive and envisioned similar functions and requirements of the role of Title IX Coordinator. While not binding, these rescinded guidance documents can be helpful in thinking about the role and functions of a Title IX Coordinator. Essentially, the role of Title IX Coordinator encompasses all facets of Title IX compliance (Department of Education, 2015). As outlined in the rescinded guidance, the Title IX Coordinator “should communicate with students, parents or guardians, and school employees to help them understand the recipient’s grievance procedures; train employees and students about how Title IX protects against sex discrimination; and provide consultation and information regarding Title IX requirements to potential complainants” (Title IX Resource Guide, 2015, p. 4). In addition, the rescinded guidance stated that the Title IX Coordinator was responsible for application and coordination of the process to ensure proper handling of complaints. Specifically,

the rescinded guidance indicated that this may include “informing all parties regarding the process, notifying all parties regarding grievance decisions and of the right to and procedures for appeal, if any; monitoring compliance with all of the requirements and timelines specified in the grievance procedures; and maintaining grievance and compliance records and files” (Title IX Resource Guide, 2015, p. 5).

Due to the many duties, roles, and requirements of the role of Title IX Coordinator, many colleges and universities as well as K-12 school districts have moved away from dual roles and established a separate standalone position of Title IX Coordinator or a hybrid role of Title IX Coordinator and other areas of related compliance, e.g. Title IX Coordinator and Equity Officer. The establishment of a standalone Title IX Coordinator position does not come without other organizational considerations, such as positionality within the educational organization, institutional hierarchy, reception of restructuring, and scope of role.

Supportive Measures and Accommodations. The May 2020 Title IX regulations provide for supportive measures that can be implemented to assist with the support and safety of the complainant and respondent in Title IX sexual misconduct matters (34 C.F.R. § 106.30 (2020)). These supportive measures are available to the complainant and respondent regardless of whether a formal complaint is filed. Supportive measures are services that support equal access to educational programming and include measures to protect the safety of the parties and the educational environment. Supportive measures are not to be punitive or disciplinary in nature. Supportive measures are to be offered in a manner that restores or preserves access to a schools’ education program without unreasonably burdening the other party. The May 2020 Title IX regulations provide examples of supportive measures, including but not limited to,

counseling, extensions of deadlines or course adjustments, modified class schedules, and restrictions on contact between the parties.

An additional safety measure that a school can take is to remove a student on an emergency basis. The May 2020 Title IX regulations provide schools with the additional tool and safety measure of emergency removal of respondents in specific circumstances regardless of whether the respondent is a student or an administrator (34 C.F.R § 106.44(c)-(d) (2020)). The emergency removal provision in the May 2020 Title IX regulations states that a student respondent may be removed from an educational program or activity on an emergency basis if the school conducts an individualized safety and risk analysis (34 C.F.R § 106.44(c) (2020)). To remove a student, the individualized safety and risk analysis conducted by the school must determine that an “immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal” (34 C.F.R § 106.44(c) (2020)). The individual that is removed must be provided notice and an opportunity to challenge that decision immediately following removal. The May 2020 Title IX regulations note that the provision allowing emergency removal is not to be construed to modify any rights under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), or the Americans with Disabilities Act (ADA). Despite this language, many conflicts remain between what is required under Title IX and its corresponding regulations and special education law.

The right for a school to utilize emergency removal under the May 2020 Title IX regulations was recently upheld in *Doe v. Keefer* (Modan, 2021; Supreme Court, 2021). The *Doe v. Keefer* matter involved the use of emergency removal under the May 2020 Title IX regulations in response to allegations of sexual assault. The respondent, John Doe, was a fifteen-year-old

student at San Ramon Valley Unified School District in California (Supreme Court, 2021). In *Doe*, the school district removed the student respondent based on allegations that he sexually assaulted his former girlfriend, Jane Doe, in a theater class at school. In addition, Jane Doe alleged that she heard of another student who was sexually assaulted by John Doe and that John Doe sent several provocative text messages to her, including pictures of his genitals. In response to Jane Doe's allegations, the school principal, Megan Keefer, met with John Doe and reviewed the allegations, which he denied. Principal Keefer provided John Doe with a "Notice of Title IX Emergency Removal of Student." The Notice outlined that he was being removed based on an individualized safety and risk analysis conducted by the school that found that he posed an immediate threat to the health or safety of a student or others based on the allegations of sexual assault of students on campus. John Doe was removed from the school and instructed to complete his schooling via independent study. John Doe immediately challenged the emergency removal. Subsequently, the school district extended the emergency removal to the start of the 2021-2022 school year, and he was permitted to enroll in virtual school.

John Doe challenged his emergency removal based on a lack of evidence showing that he was an immediate threat to the physical health or safety of a student or others and that the emergency removal was a violation of his due process rights (Supreme Court, 2021). John Doe asserted the holding from *Goss v. Lopez* where the U.S. Supreme Court found that students in public schools are entitled to sufficient procedural due process before a state can deprive them of a public education (1975). In addition, John Doe argued that there is no direction in the May 2020 Title IX regulations or from the courts on what showing is required to support emergency removal, so this leaves school districts free to impose whatever standards of review that they wish to apply. In this matter, Doe was removed based on allegations of sexual assault. Doe

argues that this limits the rights of students to access their educational program without the school district reviewing the allegations for veracity or deciding whether Doe was an actual threat to the safety of others. Doe's challenge was unsuccessful through the state courts and Doe petitioned the United States Supreme Court for a writ of certiorari. Justice Elena Kagan denied Doe's petition (Modan, 2021; Supreme Court, 2021).

Justice Kagan's denial confirmed the right of schools to use the tool of emergency removal when it is determined that a student poses a threat to the physical health or safety of others. For now, Kagan's denial also seemingly permits schools to remove a student based on allegations of sexual misconduct as long as the school conducts an individualized safety and risk analysis as outlined in the new Title IX regulations (34 C.F.R § 106.44(c) (2020)). However, the May 2020 Title IX regulations do not supersede the rights of students under federal disability laws, so in application schools must be mindful of the procedural safeguards afforded under IDEA, Section 504, and the ADA when employing emergency removal. If the student is entitled to the procedural safeguards under federal disability laws, then the school must adhere to those requirements in conjunction with utilizing emergency removal as outlined in the May 2020 Title IX regulations. In July 2021, the Department of Education released a guidance document on the May 2020 Title IX regulations that included guidance affirming the ability of schools to remove a student respondent during a Title IX grievance process if the school determines that the student is a threat to others (Department of Education, 2021). This guidance also confirmed that the emergency removal provision does not supersede the need for schools to comply with federal disability laws.

Grievance Process Requirements. A key focus of the May 2020 Title IX regulations are the explicit due process provisions regarding investigation of sexual misconduct complaints and

the subsequent hearing process required to make a finding of responsibility as to whether sexual misconduct occurred. The May 2020 Title IX regulations outline specific grievance process requirements, such as notice requirements, access to evidence provisions, specific review periods, hearing processes, and the requirement of cross-examination in hearings at higher education institutions. The grievance process for K-12 institutions is different than for higher education institutions. A key difference is related to the requirement of a live hearing. For elementary and secondary schools, there is not a requirement of a live hearing, but a school may provide one (34 C.F.R §106.45(b)(6)(ii) (2020)).

The May 2020 Title IX regulations require that complainants, those that are filing a complaint, and respondents, those that are alleged to have committed the misconduct, are treated equitably (34 C.F.R. § 106.45 (b)(1)(i) (2020)). The grievance process must be fulfilled prior to the imposition of any disciplinary sanctions outside of emergency removal or actions taken as part of supportive measures provided to either complainants or respondents. The design of such actions must be done in a manner that restores or preserves equal access to educational institutions' education program or activity during the pendency of the process. Generally, every complaint requires the educational institution to engage in an objective evaluation of all relevant evidence, inculpatory or exculpatory, and the provision of credibility determinations (34 C.F.R. § 106.45 (b)(1)(ii) (2020)). The May 2020 Title IX regulations outline that any individual involved in the grievance process, Title IX Coordinator, investigator, decisionmaker, or informal resolution provider, not have a conflict of interest or bias and those individuals must receive training related to Title IX, sexual harassment, bias, conflicts of interest, and the May 2020 Title IX regulations (34 C.F.R. § 106.45 (b)(1)(iii) (2020)). Any training completed by those administrators involved in the grievance process must be made publicly available for review. The

May 2020 Title IX regulations also outline the specific training to be received based on an individual's role in the process. For example, decisionmakers must receive training on how to serve impartially, avoidance of prejudgment, conflicts of interest, bias, and technology to be used at the hearing. Investigators must receive training on issues of relevance.

The May 2020 Title IX regulations require a presumption that the respondent is not responsible and reasonably prompt timeframes for resolution (34 C.F.R. § 106.45 (b)(1)(iv)-(v) (2020)). The grievance process must describe the range of disciplinary sanctions and remedies as well as the standard of evidence to be used in making a finding of responsibility (34 C.F.R. § 106.45 (b)(1)(vi)-(vii) (2020)). The standards of evidence permitted are preponderance of the evidence or the clear and convincing standard. An educational institution is permitted to choose between the two standards but must choose one and uniformly apply it to all cases regardless of whether the matter involves a student, teacher, staff member, or an individual attempting to access an education program or activity. In addition, the educational institution is required to provide the same standard of evidence to all formal complaints of sexual harassment. The grievance procedures must also outline the procedure and bases for appeal and describe supportive measures (34 C.F.R. § 106.45 (b)(1)(viii)-(ix) (2020)). The May 2020 Title IX regulations recognize legally recognized privileges and do not require that those privileges be impinged upon or waived as part of the process (34 C.F.R. § 106.45 (b)(1)(x) (2020)). While the May 2020 Title IX regulations outline these general premises of the required grievance process, it further breaks them down into specific requirements. The following sections will summarize the specific requirements of each step of the expected grievance process.

Notice Requirements. Once an educational institution has received a formal complaint, the educational institution must provide a written notice to the complainant and the respondent

that contains the following: 1) notice of the educational institution's grievance process, including informal resolution; and 2) notice of the allegations of sexual harassment/misconduct as defined in the regulations with sufficient detail to prepare a response (34 C.F.R. § 106.45 (b)(2)(ii) (2020)). The May 2020 Title IX regulations outline that sufficient details include the identity of the parties, the alleged conduct, and the date and location of the alleged incident, if known. The notice must also include a statement that the respondent is assumed not responsible for the alleged misconduct at the outset and any determination of responsibility will only occur at the conclusion of the grievance process. Further, the notice must reference the provisions in the educational institution's policies that prohibit knowingly making false statements. If, during the course of an investigation, the educational institution becomes aware of additional allegations against the same respondent that should be investigated, then the parties must be provided an amended notice that outline the additional allegations. An educational institution may also consolidate formal complaints against more than one respondent or a formal complaint made by one or more complainants against a respondent, where the allegations arise out of the same facts or circumstances (34 C.F.R. § 106.45 (b)(4) (2020)).

Dismissal of a Formal Complaint. The May 2020 Title IX regulations provide for discretionary and mandatory dismissal of formal complaints under specific circumstances (34 C.F.R. § 106.45 (b)(3)(i)-(iii) (2020)). The educational institution must dismiss a formal complaint where the conduct alleged: 1) would not constitute sexual harassment as defined in the regulations even if proven; 2) did not occur in the educational institution's education program or activity; or 3) did not occur in the United States. The educational institution may dismiss a formal complaint or any allegations therein, if at any time during the investigation or hearing: 1) the complainant withdraws their complaint or any allegations therein in writing to the Title IX

Coordinator; 2) the respondent is no longer enrolled or employed by the educational institution; or 3) there are specific circumstances that prevent the gathering of sufficient evidence to reach a determination. If an educational institution either discretionarily or mandatorily dismisses a formal complaint or any of the allegations therein, the parties must receive written notice and an explanation of the reasons for the dismissal along with the right to appeal that decision.

Investigation. Once an educational institution has a formal complaint and there is no identified reason to dismiss at the start of the process, then the formal complaint must be investigated. The burden of proof and the burden of evidence gathering rests on the educational institution (34 C.F.R. § 106.45 (b)(5)(i) (2020)). The educational institution must gather enough evidence to support a finding of responsibility as to the allegations in the formal complaint. As part of that evidence gathering, the May 2020 Title IX regulations note that the educational institution cannot access records that are otherwise protected by a legal privilege, such as physician, psychologist, or psychiatrist records, without that party's written voluntary consent to do so. The investigation must allow each party to participate and present fact and expert witnesses (34 C.F.R. § 106.45 (b)(5)(ii) (2020)). The educational institution is prohibited from restricting either party to discuss or gather and present evidence regarding the allegations in the complaint (34 C.F.R. § 106.45 (b)(5)(iii) (2020)).

Overall, the May 2020 Title IX regulations require that educational institutions provide equal opportunities for participation in the grievance process. The complainant and respondent must be provided with the same opportunities to have an advisor of their choice and the presence of that advisor at any point in the grievance proceeding cannot be prohibited; however, the educational institution can put limits and expectations in place for advisor participation in the proceeding as long as the application to the parties is equitable (34 C.F.R. § 106.45 (b)(5)(iv)

(2020)). The educational institution must provide written notice to the complainant and respondent of the date, time, location, participants, and purpose of all meetings, investigation interviews, and hearings with sufficient enough time for full participation and preparation (34 C.F.R. § 106.45 (b)(5)(v) (2020)).

The complainant and respondent must have an equal opportunity to review evidence that is directly related to the allegations outlined in the formal complaint and the investigation report (34 C.F.R. § 106.45 (b)(5)(vi)-(vii) (2020)). This includes any evidence gathered as part of the investigative process whether it is relied upon or not. The evidence must also be sent to each party's advisor. The parties must also have the opportunity to review the investigation report. In relation to the evidence and investigation report, the parties must have at least ten days to submit a written response to the evidence prior to the reports' finalization. Many educational institutions also provide the complainant and respondent with a draft of the investigation report as part evidence review section of the process. This aids in efficiency of the process by allowing for the educational institution to potentially address any identified issues whether that results in a notation to the report or an actual adjustment to the report itself.

Hearing. The May 2020 Title IX regulations outline specific hearing process requirements. Elementary and secondary schools are not required to have a live hearing but may choose to provide a live hearing (34 C.F.R §106.45(b)(6)(ii) (2020)). If a live hearing is provided by the elementary or secondary school, then the hearing must comply with the requirements outlined in the regulations (34 C.F.R. § 106.45 (b)(6)(i) (2020)). If the educational institution does not provide a live hearing, the decisionmaker must still provide the parties with the opportunity to submit written questions that a party would like to ask the other party or witness (34 C.F.R §106.45(b)(6)(ii) (2020)). Each submitted question is required to be reviewed by the

decisionmaker for relevance. If the question is deemed relevant, then the question may be asked. If the decisionmaker determines that the question is not relevant, then the decisionmaker must provide a reason for its exclusion. The decisionmaker must render their decision with reasoning, rationale, and proposed remedies (34 C.F.R. § 106.45(b)(7)(i)-(ii) (2020)). The decisionmaker cannot be the Title IX Coordinator or the investigator(s). The May 2020 Title IX regulations require that the decisionmaker(s)' written determination: 1) outlines the allegations in the formal complaint; 2) describes the procedural steps taken in addressing the formal complaint; 3) specific findings of fact that support the decisionmaker(s)' finding; 4) application of the findings to the educational institution's policy; 5) reasoning and rationale, including responsibility, disciplinary sanctions, and remedies; and 6) procedures and permissible bases for the parties to appeal (34 C.F.R. § 106.45(b)(7)(ii)(A)-(F) (2020)). The decisionmaker must issue the written determination to the parties at the same time. The parties then have the opportunity to appeal for specific reasons as outlined in the May 2020 Title IX regulations and the educational institution's grievance process.

Appeal. The May 2020 Title IX regulations identify the required bases of appeal that must be outlined in each educational institution's policy (34 C.F.R. § 106.45(b)(8)(i) (2020)). Appeal rights must be afforded to each party. The three required bases for appeal are: the right to appeal the decision for procedural irregularity; new evidence that was not available at the time of the hearing or dismissal; or allegations that a conflict of interest or bias impacted the outcome (34 C.F.R. §106.45(8) (2020)). In addition, each educational institution has the right to create additional bases for appeal as long as the rights are afforded to both parties. The parties may raise one or more bases for appeal. The May 2020 Title IX regulations state additional procedural requirements for an appeal. The individual serving as the appeal officer must be

different than the hearing decisionmaker. The appeal officer must provide each party the ability to provide a written statement in support of or challenging the outcome. The appeal officer must provide a written determination simultaneously to both parties.

Informal Resolution. While each educational institution cannot set a process that requires a party to waive the right to file a formal complaint or participate in the investigative process, the educational institution can provide an informal resolution process (34 C.F.R. § 106.45(b)(9) (2020)). The informal resolution process is voluntary, and the parties must submit their voluntary written consent to participate. The May 2020 Title IX regulations require specific elements that must be present in any institutional informal resolution process. The parties must receive a notice that contains the allegations, the requirements of the informal resolution process, any consequences of participating in the informal resolution process that impacts their rights to the formal grievance process, and that any time prior to a resolution the parties may withdraw from participation. The May 2020 Title IX regulations explicitly state that the informal resolution process is not permitted for matters where the allegations involve an employee sexually harassing a student.

Title IX Liability for Schools. Beyond compliance with the May 2020 regulations, the interpretation of Title IX and its companion regulations and how that relates to educational institution liability is an important consideration for K-12 schools. Individuals that feel that they have been discriminated against in violation of Title IX may file: a complaint with their school or institution; a complaint with OCR; or an action in federal court. The May 2020 Title IX regulations clarified when a K-12 school district or higher education institution becomes liable for violating Title IX. Educational institutions are deemed to have actual knowledge when the Title IX Coordinator or an official, who has the authority to engage in corrective measures, has

received a report of alleged sexual misconduct (34 C.F.R. § 106.30(a) (2020)). Prior to the May 2020 Title IX regulations, courts relied on decisions made by the United States Supreme Court (Supreme Court) to determine educational institutions Title IX liability (Micek Vargas, 2023; Thacker, 2011). In *Cannon v. University of Chicago*, the Supreme Court held that there is a private right of action for violations of Title IX (1979). A private right of action means that a citizen may bring a cause of action to enforce their rights under a federal law. The *Cannon* Court recognized that there are instances where judicial remedy may be appropriate in addition to or in lieu of an administrative remedy. Approximately thirteen years later, the Supreme Court held that sexual misconduct by a teacher towards a student may mean that the school district is liable and that money damages are available in a private action brought under Title IX (*Franklin v. Gwinnett County Public Schools*, 1992). In 1998, the Supreme Court decided *Gebser v. Lago Vista Independent School District* (1998). The *Gebser* Court held that for Title IX purposes liability attaches when an official with authority has actual knowledge and the school is deliberately indifferent. The *Gebser* standard of actual knowledge and deliberate indifference was extended to peer-to-peer harassment by the Supreme Court in *Davis v. Monroe* (1999; Micek Vargas, 2023; Thacker, 2011). In addition, the *Davis* Court ruled that to be liable the school must have “substantial control over both the harasser and the context in which the known harassment occurs” (1999, p. 645). The preamble to the May 2020 Title IX regulations discusses this standard at length and states that the regulations adopt the *Gebser/Davis* standard to assess Title IX liability (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 2020).

The May 2020 Title IX regulations, which adopt the case precedent outlined above, state that Title IX liability attaches when there is actionable sexual harassment, the school has actual

knowledge, the school exercises substantial control over the harasser and the context in which the harassment occurred, and the school is deliberately indifferent. The May 2020 Title IX regulations define actual knowledge as “notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school” (34 C.F.R. § 106.30 (2020)). Further, the May 2020 Title IX regulations outline that when a school receives a report of sexual misconduct it must respond promptly in a way that is not deliberately indifferent (34 C.F.R. § 106.44 (a) (2020)). The May 2020 Title IX regulations state that a school is deliberately indifferent “only if its response to sexual harassment is clearly unreasonable in light of the known circumstances” (34 C.F.R. § 106.44 (a) (2020); Micek Vargas, 2023). The May 2020 Title IX regulations require that this prompt response includes the Title IX Coordinator contacting the complainant(s) to discuss the availability of supportive measures, regardless of whether they file a formal complaint, and informing them of the process to file a formal complaint.

A recently decided case from the Third Circuit, *Hall v. Millersville University* (2022), tested the limits of when a school is liable for the actions of a non-affiliated third party. In this case, the sexual misconduct involved dating violence that ended with the murder of a student in her dorm room by her boyfriend on the Millersville University campus. The student’s boyfriend had no affiliation with Millersville University. The Third Circuit heard this on appeal from summary judgment granted to Millersville University by the lower court. The lower court determined that Millersville University did not have the requisite notice that it could be held liable under Title IX for deliberate indifference to known sexual harassment by a third-party

guest. The Third Circuit reversed the lower court and held that Millersville University had notice of potential Title IX liability for actions by a third-party guest.

Hall was a freshman student at Millersville University when she was murdered by her boyfriend Orrostieta in her dorm room (*Hall v. Millersville University*, 2022). The two started dating towards the end of Hall's senior year of high school and her family noted abusive behavior by Orrostieta during that time. Hall began attending Millersville University in the fall of 2014. Hall continued dating Orrostieta while attending Millersville University, and he often spent nights at her dorm room. There were multiple incidents of abusive conduct by Orrostieta that occurred on Millersville University's campus. On one such occasion, a resident assistant was made aware of potential abusive conduct and eventually Millersville University Police (MUP) were contacted to assist with Orrostieta's removal from campus. An MUP Officer removed Orrostieta from campus, but the MUP Officer did not file an incident report. After Orrostieta was removed from campus, the resident assistant provided Hall with an ice pack for an injury to her face from abusive conduct by Orrostieta and filed an incident report. The resident assistant's incident report was received by a Deputy Title IX Coordinator and another Millersville University administrator, but neither took any action in relation to the report. Hall's roommate called Hall's mother about the incident. Hall's mother called Millersville University and each time she was told nothing could be done without a complainant. Hall continued dating Orrostieta after this incident. On another night, at an ACACIA fraternity house party, Orrostieta physically assaulted Hall. Later that night, the two returned to her dorm room. Multiple residents in the dorm heard furniture moving and a woman screaming. The resident assistant knocked on the door, but there was no answer, and they did not pursue the matter. Orrostieta murdered Hall in her dorm room that night. Hall's parents then filed an action against Millersville University to

hold them liable under Title IX for their inaction. The lower court granted summary judgement in favor of Millersville University and the Halls appealed that decision to the Third Circuit.

In reviewing this matter on appeal, the *Hall* Court first had to determine whether Millersville University had notice that it could be held liable under Title IX for deliberate indifference to sexual harassment perpetrated by a third-party guest (2022). The *Hall* Court reviewed case law, Office for Civil Rights Guidance, and the Title IX regulations and determined that Millersville University had the requisite notice that they could be held liable. The *Hall* Court specifically cited the *Davis* decision as making it clear that a school could be held liable under Title IX for actions of a third party (2022; *Davis v. Monroe*, 1999). Even though the *Davis* decision involved peer-to-peer harassment, the *Hall* Court noted that the focus was not on the status of the perpetrator, instead the determination turned on whether the school had control over the harasser and the context of the harassment. In addition, the *Hall* Court, while not relying on it for its decision, reviewed Millersville University's Title IX Policy which stated that the policy covers the "conduct of employees, students, visitors/third parties, and applicants" (*Hall v. Millersville University*, 2022). The *Hall* Court having determined Millersville University had requisite notice, then reviewed the complaint under the six elements needed to find Title IX liability. The six elements of Title IX liability are: 1) the educational institution is a recipient of federal funds; (2) sexual harassment occurred; (3) recipient exercised substantial control over the harasser and the context in which the harassment occurred; (4) recipient had actual knowledge of the harassment; (5) recipient was deliberately indifferent to the harassment; and (6) the harassment was so severe, pervasive and objectively offensive that it deprived the complainant of access to the educational opportunities or benefits provided by the educational institution (2022).

The *Hall* Court determined that there were genuine issues of material fact to overcome Millersville University's motion for summary judgment.

This in-depth review of Title IX and its companion regulations provides the necessary background to understand the complexities that educational institutions are wrestling with in efforts to achieve compliance. For K-12 educational institutions, developing policies and procedures to comply with Title IX is further complicated by the additional processes and rights for students outlined in special education law. The next section of this literature review provides a detailed overview of special education law.

Special Education Law

There are three primary federal special education laws: the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and the Americans with Disabilities Act (ADA). The main focus of this section of the literature review is IDEA and Section 504, as IDEA and its companion regulations as well as Section 504, like Title IX, have detailed process rights for students as well as comprehensive compliance requirements. This section does not review ADA in-depth, as Section 504 and the ADA provide similar protections for students regarding placement and discipline and the ADA, while applicable, is not specifically focused on education.

Individuals with Disabilities Education Act (IDEA). IDEA guarantees the right to a free appropriate public education (FAPE) for every child with a disability utilizing an individualized education program (IEP) that includes educational and related services (20 U.S.C. § 1412(A)(1) and § 1414(d) (2012); Zirkel, P.A., 2015; Zirkel, P.A., 2020). There are specific procedural safeguards in IDEA and its corresponding regulations that provide for specific rights related to discipline of students with IEPs. IDEA contains specific language related to a school's

substantive and procedural duties in disciplinary matters, such as removal of a child from an educational setting, when a long-term becomes a change in placement triggering additional protections, and the ability for alternative placement or other types of discipline.

According to IDEA, all children with disabilities regardless of whether they are homeless, attending private schools, enrolled in school, or in the foster care system, be identified, located, and evaluated for special education and related services (20 U.S.C. § 1412 (a)(3) (2012); Zirkel, P.A., 2015). This is effectuated by the local school district through outlined policies and procedures. As to student evaluations, the school district is required to conduct a full and individual evaluation of the child, which considers not only academic performance but also non-academic performance. The school district must employ multiple assessment methods, including reviewing existing data and information provided by parents (20 U.S.C. § 1414 (a)-(c) (2012)). IDEA requires that once the school district finds the student eligible the school district must: conduct an assessment to determine educational needs, develop an IEP, and determine placement in the least restrictive environment (20 U.S.C. § 1414 *et. seq.* (2012)). Further, IDEA outlines that to the extent possible children identified with disabilities must be educated in the least restrictive environment (34 C.F.R. § 300.144 (2006); Micek Vargas, 2023). This means children with disabilities in public institutions, private institutions, or other care facilities, to the maximum extent appropriate, should be educated with children who are nondisabled. In addition, educational institutions are prohibited from removing children with disabilities from the regular educational environment unless, due to the type or severity of the child's disability, the child's educational needs cannot be satisfactorily met through supplementary aids or services. This is required whether the child is enrolled at a public or private school as well as if placement is in a care facility.

IDEA requires that in developing an IEP that the IEP team have all the required members, and that the IEP itself includes performance data, measurable annual goals, ways to measure progress, any need for related services, instructional placement, testing accommodations, initiation date and details of service delivery, and transition services (20 U.S.C. § 1414 *et. seq.* (2012)). While the IEP Team must consider the parental concerns of enhancing the education of a child, there is no requirement that school district maximize a child's education. A parent may also request an independent education evaluation (IEE) if they disagree with the school district's finding related to the assessment of the child or if the school district determines that an evaluation is not warranted (34 C.F.R. § 300.502 (b)-(c)). If a parent requests an IEE, the school district should provide or file for a due process hearing to defend the evaluation that was conducted. The school district must consider the IEE, but it is not required that the school district accept the findings or recommendations. Under IDEA, education includes supporting children with disabilities by planning for transition from K-12 to postsecondary opportunities including employment. IDEA requires that beginning no later than age 16 a child's IEP must include: 1) "appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;" and 2) "transition services needed to assist the child in reaching those goals" (20 U.S.C. § 1414 (d)(1)(A)(i)(VIII) (2012)). The failure to include transition planning in a child's IEP can be found to be a denial of FAPE. A child has a right to services until they graduate with a regular diploma, or until they age out at 21 depending on jurisdiction.

IDEA provides that parents have the ability to file a complaint challenging their child's "identification, evaluation, placement or the provision of FAPE" (20 U.S.C. § 1415 (b)(6)(A) (2012)). The methods of dispute resolution available under IDEA are resolution sessions,

mediation, due process hearings, and complaints filed with the state. Upon notice of a complaint, there is a mandatory resolution session that must be scheduled by the Local Education Authority (LEA) (20 U.S.C. § 1415 (f)(1)(B)(I)-(IV) (2012)). This step can be waived by agreement in writing by the LEA and the parents. In addition, the parties may also voluntarily enter mediation. If the mandatory resolution session or voluntary mediation are not successful, then the matter proceeds to a due process hearing. IDEA does not provide a private right of action, instead IDEA requires exhaustion of all administrative remedies prior to initiating action. It is worth noting that the courts have made exceptions to this requirement if the redress that the parents are seeking is not found within IDEA, such as non-educational or tort relief.

In addition, a parent may file a complaint to the state education authority for review of the school district's actions. As part of that process, any procedural notices are required to be in an understandable language. This means that a parent is entitled to notice in their native language unless it is not feasible (30 C.F.R. § 300.504 (d)(2006); 30 C.F.R. § 300.503(c) (2006)). If a parent is not provided notice in their native language and doing so was feasible, this could potentially be a violation of provisions of IDEA, but also raises the issue of a potential violation of Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination based on race, color, or national origin in programs or activities that receive federal funds (42 U.S.C. § 2000d et. seq.). The Supreme Court addressed this issue in *Lau v. Nichols* holding that Title VI prohibits actions that disproportionately affect those that are Limited English Proficient (LEP) as that would constitute national origin discrimination (1974). In addition, in 2015 the Department of Justice issued guidance outlining that a school must provide information in a language that is understandable to the parents, including but not limited to, report cards and special education and

related services information (Department of Education, 2015). This includes IEPs and educational records.

The Supreme Court first addressed the meaning of appropriate in terms of education in *Board of Education of Hendrick Hudson Central School District v. Rowley* (1982). The *Rowley* Court determined that appropriate means the instruction is tailored to the individual child's need and the IEP was reasonably designed to educationally benefit the child. There is not a requirement that the IEP maximize a child's potential Mead, J.F. & Paige, M.A., 2008). The *Rowley* Court outlined a two-part analysis to determine if the program is appropriate: 1) Was the program in the IEP developed consistent with the law; and 2) Is the IEP based on the unique educational needs of the child and reasonably calculated to confer educational benefits. The Supreme Court revisited this issue in *Endrew F. v. Douglas City School District RE-1* (2017). In the *Endrew F.* case, the Court addressed how to determine whether an IEP was reasonably calculated to provide an educational benefit. The *Endrew F.* Court held that a school must offer an IEP reasonably calculated to allow the child to make appropriate educational progress considering the child's circumstances. The *Endrew F.* Court instructed that courts are not to substitute their judgment for the recommendations of education professionals, but instead to focus on whether the school district can defend their decision with information that shows the child can make appropriate progress with the program outlined. This means each challenge should be viewed individually (Dietrick et al., 2019; Yell, M.C. & Katsiyannis, A., 2019).

IDEA provides additional safeguards when it comes to student discipline. A change of placement due to disciplinary removals occurs if the child with a disability is removed for more than ten consecutive days or there are a series of removals that constitute a pattern (34 C.F.R. § 300.536 (2006)). If the school does remove the child for more than ten days in a school year due

to discipline, then a series of safeguards in the regulations are triggered. A manifestation determination will need to be made to determine whether the conduct is a manifestation of the child's disability, which would effectively bar any disciplinary action (34 C.F.R. § 300.530(e) (2006); Micek Vargas, 2023). However, IDEA provides that regardless of whether there is a manifestation determination that the behavior was related to a child's disability, a child can be removed into an alternative educational setting for forty-five days if the conduct involves: 1) possession of a weapon at school, on the premises or at a school function; 2) knowingly possessing, using, selling, or soliciting a controlled substances at school, on the premises, or at a school function; and 3) infliction of serious bodily injury upon another person while at school, on the premises, or at a school function (20 U.S.C. § 1415(k)(1)(G) (2012); 34 C.F.R. § 300.530 (g) (2006)). The definition of serious bodily injury for purposes of IDEA is a bodily injury that involves: 1) substantial risk of death; 2) extreme physical pain; 3) protracted and obvious disfigurement; or 4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty (20 U.S.C. § 1415(k)(7) (2012)). Removal of a child due to a conduct code violation is considered a change in placement under IDEA. The LEA must notify the parents of the removal decision and provide the parents with a copy of the procedural safeguards notice required under IDEA (34 C.F.R. § 300.530 (h) (2006)).

Regardless of the result of the manifestation determination, the IEP team must meet to examine alternative placement to continue to provide the child with educational services, conduct a functional behavioral assessment, and determine any behavioral intervention services or modifications (34 C.F.R. § 300.530(d)(i)-(ii) (2006)). It should be noted that these protections extend to a child who has not been determined to have a disability when the school has actual knowledge that this is a child with a disability (34 C.F.R. § 300.534(a) (2006)). The regulations

outline that it is considered actual knowledge if the parent raised concerns or requested an evaluation or if school personnel raised concerns about the child (34 C.F.R. § 300.534 (b)(1)-(3) (2006)). If the child's behavior meets the definition of serious bodily injury, then the school can remove the child to an interim alternative educational setting for up to forty-five days (20 U.S.C. § 1415(k)(1)(G) (2012); 34 C.F.R. § 300.530 (g) (2006)). If a school chooses to remove the child, then the school must notify the parents of that decision and of all related procedural safeguards. The IEP Team would then have to meet to determine placement and the parents may request a hearing if they are not in agreement with that action. If the IEP Team and the parents are not in agreement with regard to placement, IDEA provides a "stay put" provision which requires that the student maintain the current educational placement during the pendency of any proceedings (20 U.S.C. § 1415(J) (2012)).

The Department of Education Office for Civil Rights released a guidance document titled "Supporting Students with Disabilities and Avoiding Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973" to aid schools in addressing disciplinary issues (Department of Education, 2022). This guidance document recognizes that in determining the appropriate placement for a child with a disability, if it is determined that the student's behavior is a manifestation of the child's disability, then the impact of that student's behavior on other students is a factor that K-12 schools must take into consideration. Further, if that student's disability-related behavior significantly impacts other students, then a change in placement or support services may have to occur to address the behavior and keep other students safe. The guidance makes clear that where there is a determination that the child's disability is the reason for the behavior, which means that that the school must address the behavior through other

means than student discipline, that the impact on other students must be part of the placement determination.

In matters involving harassment that would implicate Title IX and other civil rights laws, beyond addressing the needs of the student with a disability, the school must also address the needs of the student who experienced harassment with all the rights afforded to them (Yell et al., 2016) . For example, the student who experiences harassment must be provided access to supportive measures as outlined in Title IX. The guidance document recognizes that after analysis it may be that the impact of the behavior on other students requires that the student with a disability not be placed in the least restrictive environment; however, the school must navigate that determination with making sure that child with a disability still has access to a free and appropriate public education. This does not mean that the school could not later reassess and move the child into a less restrictive setting. It should be noted that if the manifestation determination completed by the school results in a finding that the behavior is not a manifestation of the child's disability, then the child may be disciplined appropriately in line with disciplinary processes used by the school district with all students.

As outlined above, the IDEA disciplinary requirements are complex and inconsistently applied by states (Kramarczuk Voulgarides et al., 2021; Micek Vargas et al., 2023). The inconsistent application of IDEA disciplinary requirements is further complicated when taking into consideration other legal requirements and laws.

Section 504 of the Rehabilitation Act and Americans with Disabilities Act. Section 504 of the Rehabilitation Act (Section 504) is a civil rights law that prohibits discrimination on the basis of disability by any recipient of federal funds (29 U.S.C. §794 (2012)). Section 504 requires that a student be provide reasonable accommodations that provide equal access to public

education when the student has a disability that impairs one or more major life activities (*J.D. v. Pawlet School District*, 2000). The Americans with Disabilities Act (ADA) also prohibits discrimination against individuals on the basis of their disability and extends that protection beyond recipients of federal funding (Pub. L. No. 101-336, 104 Stat. 327 (1990)).

Section 504 and the ADA provide similar protections for students regarding placement and discipline, but do not require a key requirement of IDEA which is exhaustion of administrative remedies before seeking redress through the courts (Zirkel, P.A., 2012). Section 504 and the ADA allow for an individual private right of action for alleged violations. In *Fry v. Napoleon Community Schools*, the Supreme Court held that exhaustion of administrative remedies, as required by IDEA, “is unnecessary where the gravamen of the plaintiff’s suit is something other than IDEA’s core guarantee of FAPE” (p. 155, 2017; Micek Vargas, 2023). The 9th Circuit reaffirmed that exhaustion of administrative remedies is not required as long as the claim is disability-based discrimination and harassment and does not allege a denial of FAPE under IDEA (*McIntyre v. Eugene School District*, 2020). In March 2023, in *Perez v. Sturgis Public Schools*, the Supreme Court held that IDEA’s exhaustion of administrative remedy requirement does not preclude a student from separately bringing a suit for a violation of the ADA or for compensatory damages (2023). The *Perez* Court noted that this is the case for any federal law protecting the rights of children with disabilities. The key factor being that the money damages are not an available remedy under IDEA. The *Perez* Court ruled that if the relief sought is not available under IDEA, then there is no exhaustion requirement.

This section provided an overview of the relevant special education laws and its companion regulations. It is imperative to understand the relevant special education laws and regulations along with Title IX and its companion regulations, in order to identify best practices

in navigating these, at times, competing structures. As previously stated, Title IX and its companion regulations are relatively quiet regarding specific guidance for K-12 schools in implementing policies and processes that comply with the competing regulatory schemes of Title IX and special education laws. To aid in identification of best practices, the next section of this literature review will outline compliance theory and compliance program design.

2.4 Organizational Compliance Theory and Program Design

An examination of organizational compliance theory, specifically Etzioni's (1959) theory of organizational compliance, aids in identifying ways organizations can create a culture of compliance laws and regulations through an understanding of organizational behavior. The next step is to take that understanding and use it to develop effective compliance programming. This section is separated into two sections: theory and program design. It should be noted that the idea of compliance is focused on adherence to law and regulations. The application of compliance theory and compliance program development to the educational setting, especially in the context of Title IX and special education law, requires moving beyond compliance to a holistic approach that takes into consideration the nuances and cultural environment that is unique to an educational institution.

Organizational Compliance Theory

Educational institutions face a unique set of challenges and have a complex organizational structure. The mission, vision, and purpose of an educational institution is vastly different than a traditional business entity. However, at their core, educational institutions are organizations and in that respect are like other businesses when it comes to the need to develop mechanisms to meet regulatory compliance. Amitai Etzioni (Etzioni), an organizational theorist, described organizations as "coordinated human efforts to realize a specific goal" (Etzioni, 1959,

p. 43). Etzioni asserts that an important factor for organizational goal attainment is the nature of the authority structure of the organization. Moreover, the organization's success in reaching goals depends on the compatibility of the organization's authority structure with the goals of the organization. As in any organizational authority structure, there must be an organizational leader. In addition, there are experts and managers. Etzioni discusses the difference between the expert and the manager. According to Etzioni, the role of the expert is "to create and institutionalize knowledge" and the role of the manager is to create or maintain organizational systems (Etzioni, 1959, p. 45).

Etzioni theorized that there are three ways that organizations effectuate power and control: normative, coercive, or remunerative/utilitarian (Etzioni, 1961; Sisaye, 2004; Warren et al., 1976). These three forms of power and control are associated with three types of compliance: 1) moral = normative; 2) alienative = coercive; and 3) calculative = remunerative/utilitarian.

Etzioni described normative power as the use of rituals and norms to elicit a positive response. Normative power is associated with upper-level management in an organization; however, translated to team structure it can result in the removal of hierarchical relationships and formation of collective team goals (Barker, 1993; Etzioni, 1961; Sisaye, 2004). Normative power shifts control from those in management roles to the workers and supports the idea of control sharing and mutual responsibility (Etzioni, 1961; Sisaye, 2004). However, as Sisaye (2004) notes, normative control is not effective alone and a combination of normative and coercive control is most effective. Etzioni (1961) defined coercive control as mechanisms that use economic or physical sanction, including force, to achieve employee compliance (Sisaye, 2004). The final method of compliance is remunerative or utilitarian. Remunerative control focuses on the idea that individual accountability is the most effective way to promote compliance through

material remunerative rewards (Etzioni, 1961; Sisaye, 2004). Essentially, the organization promotes compliance or performance using economic rewards, e.g. performance bonus for meeting a production quota. Etzioni noted that the type of control used by an organization is dependent on the type or purpose of the organization (Etzioni, 1964). In addition, organizations may use multiple types of control, but typically there is a predominant method. Etzioni found that colleges and universities typically employ normative power, and it may be, in part, related to the faculty being vested into the mission of the university.

As another type of educational institution, the K-12 setting lends itself to the normative type of control method. Like college and universities, there are high levels of investment by teachers and administrators to the success of the K-12 district, its schools, and the institutional environment. Beyond thinking about compliance structure, it is also important to consider the type of compliance expected and what is the goal. The regulatory environments of Title IX and special education law set specific compliance demands, but the bigger picture and the subject matter creates a need to move beyond compliance. In this respect, compliance is only the beginning with true organizational culture and environmental change as the goal. As Etzioni (1964) indicated, an organization may use multiple compliance methods and that seems fitting in K-12 educational institutions. There is a basic compliance function for K-12 schools in meeting the regulatory requirements of Title IX and special education laws through policy, processes, and practice. This lends itself to more coercive controls and discipline for failure to comply. However, the greater need is to change the organizational culture and environment, which requires normative control mechanisms to be instituted.

Another important aspect in determining the type of control mechanism that will be successful in the K-12 setting, is how the organization operates beyond structure. The concept of

“loosely coupled systems” is helpful in this synthesis (Stringfield, 2011; Weick, 1976). Karl Weick (1976) described educational organizations as “loosely coupled systems” (p. 1). Weick (1976) describes loosely coupled systems as organizations where coupled units are responsive to each other and to events, but each unit retains some of its own identity and separateness (Stringfield, 2011). For example, the central administrative positions of the school district and the individual school leadership or principals and teachers are loosely coupled. In this case, while all individuals may be working towards common school district goals, they are doing so independently even if some decisions and responses are collective. There is a unique level of autonomy in many ways, such as teachers controlling their classrooms regarding expectations for behavior and potentially curriculum compared to the school principal’s involvement or lack thereof compared to the superintendent of the school district.

Weick (1976) noted that law and policy are forces that are exerted on schools that themselves become loosely coupled from their intent as applied in practice. Viewing K-12 institutions with this idea in mind, is assistive in determining the best way to conceptualize and mechanize a centralized consistent policy, process, and practice. Further, these considerations will aid in determining the compliance program design for K-12 schools to comply with Title IX and special education laws.

Compliance Program Design

Before examining design, it is pertinent to consider the relationship between regulatory requirements and the development of adherence tools. Wafa Ben Khaled and Jean-Pascal Gond (2019) analyzed how external regulations shape the design of ethical tools in an organization. While the premise of their work was focused on business organizations, the concepts are applicable in this context of regulatory compliance in educational institutions. Similar to

educational institutions, businesses are required to adhere to a plethora of regulations and in response to numerous scandals and litigation, ethical tools to assist organizations in compliance have surfaced. Khaled and Gond (2019) define ethical tools as “the set of devices designed to formalise and regulate ethics in the workplace” (p. 655). The development of these ethical tools is a way for organizations to respond to institutional pressures as well as further compliance. The pressure felt around compliance can be legal as well as reputational. The use of various ethical tools is voluntary, as there is no absolute prescribed way of doing or achieving compliance. In the immediate, the May 2020 Title IX regulations outline what is required to be present in response, process, and resolution yet they do not provide an absolute way of accomplishing those goals. The design of a particular educational institution’s compliance program design related to Title IX and special education is in many ways left up to the institution.

Khaled and Gond (2019) developed a baseline model of ethical tools adoption. The ethical regulations are at the front and then stemming from that are two sections: 1) Ambiguity of ethical regulations; and 2) Legal sphere. From that, Khaled and Gond outline what they deem micro-processes: translating the regulations, multiple political dynamics, and materialization of the design of ethical tools (2019). The result of completing the microprocesses is adoption of ethical tools. This aligns with what educational institutions are asked to do regarding Title IX and special education law. Educational institutions must interpret the regulations and the law, translate that to leadership, navigate any political considerations, develop a tool to comply, and then adopt it in practice. Khaled and Gond (2019) note that ambiguity in the regulations allows organizations to construct their own meaning of compliance (Pérezts & Picard, 2015). In the context of Title IX and special education, this is exactly what is happening and corrective actions in compliance mechanisms are only undertaken through governmental guidance or litigation.

The connection between regulation and compliance are the individuals assigned with the task of interpretation and monitoring of compliance. Khaled and Gond (2019) assert the importance of recognition of those individuals charge with those tasks (Pérezts and Picard, 2015). According to studies in sociology of compliance, the professionals tasked with translating regulation to compliance are the nexus between the law and application. The idea is that these individuals overlap or fill the gap between the law and their organization. In the realm of Title IX, this individual is the Title IX Coordinator. Khaled and Gond (2019) note that the interpretation of the regulation depending on its impact on the organization can be political. Therefore, implementation of an ethical tool for compliance will be influenced by other members of the organization that may be competing for their own agenda and needs. From this design, adaptation and adoption of an ethical tool occurs.

While it may seem odd to look to the U.S. Sentencing Commission Guidelines Manual (Guidelines) for organizational compliance program design in education, the Guidelines provide an outline of expectations of an effective compliance and ethics program (U.S. Sentencing Commission Guidelines Manual § 8B2.1, 2021). The Guidelines outline seven elements of a compliance program that organizations should incorporate to show an exercise of due diligence and promotion of organizational culture that “encourages ethical conduct and a commitment to compliance with the law” (U.S. Sentencing Commission Guidelines Manual § 8B2.1(b), 2021).

The first three elements of the Guidelines are focused on establishing standards and procedures as well as leadership needs. The first element requires that the organization establish standards and procedures (U.S. Sentencing Commission Guidelines Manual § 8B2.1(b), 2021). The second element consists of three features: 1) the organization’s governing structure should be knowledgeable about the requirements and operation of the compliance program as well as

engage in its reasonable oversight; 2) the organization's leadership should support the compliance and ethics program and an individual should be assigned to oversee its operation; and 3) the compliance program leader should delegate duties to other leaders across the organization and institute regular reporting mechanisms on compliance functions along with making sure the organization provides adequate resources and support for the compliance program (U.S. Sentencing Commission Guidelines Manual § 8B2.1(b)(2), 2021). The third element outlines that the organization should make sure that the individual leading the compliance and ethics program is sound and supports ethical and compliant conduct (U.S. Sentencing Commission Guidelines Manual § 8B2.1(b)(3), 2021).

The final four elements of the Guidelines address communication, monitoring, and enforcement. The fourth element outlines that the organization must communicate its standards and procedures and offer training or other informational opportunities to leadership and other identified individuals that are responsible for the compliance and ethics program (U.S. Sentencing Commission Guidelines Manual § 8B2.1(b)(4), 2021). The fifth element outlines that organizations should take reasonable steps to: 1) ensure the compliance and ethics program is followed, including monitoring and auditing practices; 2) identify evaluative measures to determine effectiveness of the compliance and ethics program; and 3) create a mechanism for reporting, including confidential or anonymous reporting, as well as a mechanism for seeking guidance for organization members (U.S. Sentencing Commission Guidelines Manual § 8B2.1(b)(5), 2021). The sixth element states that the organization must take steps to promote and enforce the compliance and ethics program consistently by incentivizing adherence and implementing appropriate discipline for noncompliance or failure to take steps to prevent or detect noncompliance (U.S. Sentencing Commission Guidelines Manual § 8B2.1(b)(7), 2021).

The final element is that an organization must properly respond to noncompliance and take steps to prevent future noncompliance, which may include amending the compliance and ethics program (U.S. Sentencing Commission Guidelines Manual § 8B2.1(b)(7), 2021). The Guidelines also outline that periodic assessment of risk is necessary to identify any needed design changes or program modifications (U.S. Sentencing Commission Guidelines Manual § 8B2.1(c), 2021).

In March 2023, the U.S. Department of Justice updated its guidance on corporate compliance programs (Department of Justice, 2023). It should be noted that prosecutors are the intended audience of this guidance; however, the tenets used are instructional to educational institutions implementing compliance programming and planning for related regulatory requirements. The guidance outlines the three fundamental questions that a prosecutor should ask in making an individualized determination of whether a corporation's compliance program was effective at the time of the alleged offense. The three questions are:

- 1) Is the compliance program well designed?
- 2) Is the compliance program implemented in good faith with adequate resources and authority?
- 3) Does the compliance work in practice?

The first question is answered by evaluating risk management processes; policies and procedures; training and communications; confidential reporting structure and investigation process; third party management; and mergers and acquisitions (Department of Justice, 2023).

While mergers and acquisitions are not generally applicable to educational institutions, the other evaluating factors are applicable, and the detailed structures of those assessments are instructive in educational institutions developing compliance programming. The second question focuses on resource allocation and support for compliance including providing appropriate autonomy and

sufficient seniority to effectuate compliance. In evaluating the third question, a compliance program in practice is not evaluated based on whether there is misconduct. It is expected that misconduct will occur. The true answer to the question is whether there is evidence of continuous improvement made towards compliance through auditing; evaluation of response mechanisms, including investigation procedures; and analysis of resolution actions. These three questions may focus on prosecutor analysis, but these tenets are adaptable to the aid in assessment of compliance in the educational environment. This three-question framework will be used by the researcher to synthesize and analyze cases in the research dataset as well as in developing recommendations for schools in implementing compliance programming related to Title IX and special education.

The U.S. Sentencing Commission Guidelines Manual seven elements of a compliance program and the Department of Justice Three-Question Analysis provide the bases to develop a model that is adapted to the unique structure and governance found in K-12 educational institutions. This framework can then be used to develop compliance program design guidance and tools for K-12 educational institutions to utilize in creating their own compliance programming. An adapted compliance program framework will aid K-12 educational institutions in navigating the complexities of special education laws and Title IX and its companion regulations to achieve compliance.

2.5 Conclusion and Next Steps

This literature review highlighted the key aspects of the Title IX and special education law regulatory environments as well as a dive into organizational compliance theory and compliance program development. The literature review started with examining statutes, regulations, case law, and governmental guidance related to Title IX and special education law.

This step provided a deep understanding of what K-12 schools are navigating in reaching compliance. The review of organizational compliance theory and compliance program design provided insight into how K-12 schools could approach compliance with consideration of organizational characteristics and methods of control. Future research should further explore what can be learned from compliance programs in their application.

The next step is to review court decisions to identify further considerations and best practices in policy, process, and practice to comply with Title IX and special education law. While the Title IX regulations were released in May 2020, it is not necessary to limit cases reviewed to post-May 2020. The tenets of Title IX pre-May 2020, while not outlined in formal regulations, in practice remain somewhat substantially similar to post-May 2020 for purposes of reviewing how the courts interpret and analyze cases whose fact patterns implicate both sets of laws. This can be seen in the May 2020 Title IX regulations consistent reference to prior legal precedent. A legal content analysis methodological approach to reviewing federal court decisions will provide the insight needed to glean the additional considerations to be included in developing a compliance approach. The next section outlines the research design and methodology used to conduct a legal content analysis review of federal court decisions that involve Title IX and special education law.

Chapter 3: Research Design and Methodology

3.1 Introduction

As outlined in Chapter 2, the May 2020 Title IX regulations and special education laws provide very limited guidance for policy and process development for K-12 schools in addressing sexual misconduct allegations that implicate both Title IX and special education law. Specifically, the May 2020 Title IX regulation guidance is generally limited to acknowledging

that rights afforded under Title IX do not usurp rights afforded to students under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act (34 C.F.R § 106.44(c) (2020)).

The Department of Education has released guidance that in part provides some direction for K-12 schools in this area. This guidance, while not legally binding, offers insight into how the Department of Education may review K-12 policies or processes when issues are raised, or complaints are filed. Since the adoption of the May 2020 Title IX regulations, the Department of Education has issued question and answer documents as well as recent guidance regarding avoiding discriminatory student discipline under Section 504 (Department of Education, 2021; Department of Education, 2022). These guidance documents include model policies and language that will assist K-12 schools in drafting their policies and processes. While the May 2020 Title IX regulations and current Department of Education guidance may provide limited guidance, other sources of guidance can be found in federal court decisions addressing legal challenges where Title IX and special education law are both implicated.

The purpose of this study is to understand the legal landscape and determine any guidance that can be gleaned from federal court decisions that implicate Title IX and special education laws in addressing issues of sexual misconduct in K-12 schools and based on that guidance, identify ways that K-12 schools can improve their sexual misconduct policies and processes. As outlined in Chapter 1, this study purports to do so by answering the following research questions:

1. What is the legal landscape of court cases that have addressed sexual misconduct matters that implicate Title IX and special education law?

2. In light of the competing regulatory schemes of Title IX and special education law, what guidance can be gleaned from recent court decisions to improve K-12 sexual misconduct policies and processes?

To answer these questions, I reviewed federal court judicial opinions which provided additional insight into how the courts have interpreted the affordance of rights under Title IX and special education law. The way in which the federal courts have analyzed matters involving Title IX and special education law provides insight to K-12 schools in how they should approach addressing sexual misconduct issues. Specifically, the second research question is focused on the guidance that can be gleaned from the court's application of the legal analysis categories being used in each court decision. An understanding of the federal courts' use of the legal analysis categories will help K-12 schools to identify best practices and develop policies and processes that comply with both sets of laws. Further, the federal court decisions utilized analyses based on precedent rather than regulation as well as identified additional factors to consider in sexual misconduct compliance policy-making and process development.

This chapter explains the research method, rationale for the method chosen, research study design, data collection, and limitations. Section 3.2 provides an understanding of the research method. Section 3.3 explains the method, legal content analysis, and the rationale behind its use in detail. Section 3.4 describes the research design for this study. Section 3.5 addresses data collection. Section 3.6 explores reliability and validity of the method. This chapter closes with a discussion of the limitations of this study and a conclusion in Section 3.7.

3.2 Research Method

This study utilized legal content analysis as the research method. Legal content analysis combines qualitative content analysis with traditional legal research (First et al., 2015; Hall &

Wright, 2008; McCarthy, 2010). The use of traditional legal research aided in identifying and locating all sources of law in which insight can be obtained on interpreting and implementing these two competing regulatory schemes. Qualitative content analysis was used in breaking down the law and court cases in the dataset to better understand the legal implications of the courts' reasoning and analysis impacting policy-making and process development for K-12 schools. The combination of these two methods, traditional legal research and qualitative content analysis, will result in identification of themes that are specific areas of focus in policy-making and process development for K-12 schools to comply with Title IX and special education law.

A legal content analysis method is best suited for this study as my goal is to review a solid number of federal court decisions to narrow down areas of opportunity for policy and process improvement in the K-12 setting. There is not one source or one directive of guidance in the area of Title IX and special education. Instead, there are the May 2020 Title IX regulations, Department of Education and OCR guidance documents, and OCR resolution agreements from which schools determine best practice for their policies and processes. In addition, there are a multitude of scattered interpretations and directives that can be gleaned from federal court decisions that when combined and analyzed provide guidance to K-12 schools in developing policies and procedures in this area. This study is focused on understanding the federal court decisions and how guidance from those decisions can assist K-12 schools in developing their processes and protocols in this area. The goal of this study is aiding practitioners in addressing sexual misconduct matters as required by Title IX that trigger procedural protections under special education laws.

3.3 Explanation of Methodology

After assessing the legal landscape of cases that include Title IX and special education law, the main objective of this study is to understand what guidance can be gleaned from case law generally and how it can aid K-12 schools in developing policy and process improvements for addressing sexual misconduct matters that also require compliance with special education laws. More specifically, the guidance that can be ascertained from the court's application of the legal analysis categories being used in each court decision. When reviewing a court opinion to learn how a judge may or may not have grappled with the competing regulatory schemes between Title IX and special education law, understanding the legal analysis is especially informative. I am also interested in the legal analysis categories being utilized, because that will provide the basis for the overall understanding that will inform my recommendations to school administrators and policymakers. In the case of Title IX and rights under special education, schools' are required to implement policies that comply with specific language found in federal law and regulations. The act of policy-making requires review and incorporation of any state law, federal law, federal agency guidance, and regulations that are related to Title IX and special education. Schools are required to take these myriads of sources of instruction, organize them, and create processes and policies that meet compliance. Title IX and special education law take this a step further by establishing specific protections for participants as well as grievance procedure requirements. The companion instruction and interpretation of the May 2020 Title IX regulations is limited and is supplemented through additional guidance from the Department of Education. However, the courts play the ultimate role in interpretation of those rights and regulations and from its decisions, areas of opportunity for process and policy development can be identified.

A combination of traditional legal research and legal content analysis will provide an understanding of the directives and instructive language found in the various sources of law through a systematic method of reading and analysis (Hall & Wright, 2008). Traditional legal research is unique in that it does not fit into the typical research categories of research methods: qualitative or quantitative (Sughrue & Driscoll, 2012). Sughrue and Driscoll (2012) discussed legal content analysis as allowing “researchers to address legal questions to better assist practitioners in serving students and families” (p. 2).

Traditional legal research is the initial undertaking and provides the avenue to identify the sources of law to be analyzed. Russo (2006) noted that the researcher starts with a question and then looks to the courts to understand how that question would be handled by the courts. As there is not one source of law, researchers are required to review a multitude of legal sources to garner an understanding of all the legal implications of an action (Russo, 2006). According to Russo (2006), the three sources of law are primary, secondary, and research tools. Primary sources of law include the U.S. Constitution, federal statutes and regulations, state statutes and regulations, and federal and state case law. Secondary sources include law review articles, law restatements, and guidance documents. For this study, federal court case law, a primary source of law, is the focus of the legal content analysis. Specifically, the cases chosen were limited to federal circuit court decisions. There are three levels of court in the federal realm: district court, circuit court, and Supreme Court (U.S. Department of Justice, Offices of the United States Attorneys, n.d.). The federal district court is the trial court level, the circuit court serves as the court of appeals, and finally the U.S. Supreme Court. The United States is separated into twelve circuits which means that each circuit covers multiple states meaning that the circuit decisions are binding in that entire area. Federal circuit court cases were chosen, as these court decisions

are the most representative and provide the highest level of influence just under the U.S. Supreme Court. The U.S. Supreme Court hears less than 1% of appeals; therefore, the dataset would be too small to be instructive. Secondary sources of law, such as guidance documents from the Department of Education, statutes, and regulations, were reviewed as part of the literature review.

Legal content analysis is “a method to systematically read and analyze texts” commonly used to code judicial opinions (Hall & Wright, 2008, p. 67). Hall and Wright (2008) outline three components of legal content analysis: 1) selecting cases; 2) coding cases; and 3) analyzing cases. Salehijam (2018) reimagined the legal content analysis into five steps with material changes being incorporation of a first step of developing the research question and expanding the identification of the appropriate data set. The selection of cases must be reproducible, and these cases must have a high likelihood of answering the research question (Hall & Wright, 2008). Salehijam (2018) further defined selection criteria into data sampling or data sets. In this study, the sampling frame was limited to federal judicial opinions that had analyses that involved both Title IX sexual misconduct and special education laws. In addition, the data is limited to a sample. As Title IX and special education laws are federal law, it made sense to set this limitation. There are some states that have statutory law addressing Title IX as well as related state court cases; however, the research questions in this study are focused on providing broadly applicable ways to improve processes and policies for K-12 schools. The inclusion of state specific information would complicate this inquiry rather than aid in understanding. As discussed by Hall and Wright (2008), the goal of this study falls within a common use of legal content analysis: to review and identify trends in the case law and important factors that will aid K-12 schools in policy and process development (Hall & Wright, 2008).

To identify trends, judicial opinions must be coded. Hall and Wright (2008) provide four basic steps to coding: 1) create coding categories; 2) write the coding categories and instructions creating a codebook and test it; 3) adjust accordingly and test reliability; and 4) review the judicial opinions and code them with a final reliability test (Hall & Wright, 2008). The final step is case analysis. The case analysis and final reliability testing will identify any trends seen in the judicial opinions which can then be translated to guidance. Hsieh and Shannon (2005) identified three approaches to content analysis: conventional, directive, and summative. A conventional approach has the researcher reviewing the materials with coding created as part of the review. A directive approach starts with an understanding of prior research and review of data, along with coding, to find support for or disprove the theory. A summative approach requires the researcher to identify codes or keywords based on prior knowledge and then reviews the documents looking for occurrences. This study incorporates conventional and summative approaches to legal content analysis.

3.4 Research Study Design

This section outlines the specific procedures that will be taken to conduct the legal content analysis in this study. This study will combine the three-step process outlined by Hall and Wright (2008) and the expanded five-step process of Salehijam (2018) to set up the legal content analysis review. In line with Salehijam (2018), the first step is to develop a research question or questions. As stated above, K-12 schools are required to comply with the Title IX regulations and special education laws when addressing allegations of sexual misconduct. To aid K-12 schools, the research questions being examined in this study are: 1) What is the legal landscape of court cases that have addressed sexual misconduct matters that implicate Title IX and special education law; and 2) In light of the competing regulatory schemes of Title IX and

special education law, what guidance can be gleaned from recent court decisions to improve K-12 sexual misconduct policies and processes.

Salejham (2018) outlined the second step in content analysis as identifying a data set, which is similar to Hall and Wright's (2008) first step of selection of cases. This study will use a data sample of cases not a full data set. The cases will be limited to federal court decisions from the federal district courts or federal circuit courts of appeal. This limitation is an effort to combat the potential voluminous case law in Title IX and special education. The federal court decisions will be further narrowed by requiring that the selected cases will have to address both Title IX and special education law as part of the legal analysis. In addition, there will be consideration given to timeframe limitations. The original thought was to limit the federal court decisions to a timeframe including only post the May 2020 Title IX regulations; however, the setting of this firm limitation would be too great and mean that instructive analysis and information from prior federal court decisions would be lost. In addition, there was a risk, due to length of litigation, that there would not be a large enough sample set. Plus, while the May 2020 Title IX regulations may have been in effect at the time of the decision, that does not necessarily mean that the federal court decisions would be addressing factual patterns and issues that occurred after the release of the May 2020 Title IX regulations. Moreover, there was no guarantee that the federal court decisions would rely on the May 2020 Title IX regulations rather than or in addition to precedent. Further, the May 2020 Title IX regulations solidified the required response for K-12 and higher education institutions to allegations of sexual misconduct, but schools were still required to address sexual misconduct issues prior to the release of the regulations. For that reason, review of federal court decisions prior to the release of the May 2020 Title IX regulations is still instructive and persuasive.

All federal court decisions utilized in the dataset were found using the electronic case search database Nexis Uni. Nexis Uni is a major legal database that is used by legal scholars and those practicing in the legal field. A table of search terms used to identify cases for the dataset is included as Appendix A. Every case chosen as part of the dataset will be shepardized to make sure that the decision is still good law, meaning it is valid and citable. Shepardizing is the act of reviewing the case law history and subsequent treatment of the decision to make sure of its value as precedent (Legal Information Institute, n.d.).

Once the federal court decisions for the data sample were determined, the next step was to develop the coding and codebook for the legal content analysis. This study employed Hall and Wright's (2008) four step coding process: 1) create coding categories; 2) write the coding categories and instructions creating a codebook and test it; 3) adjust accordingly and test reliability; and 4) review the federal court decisions and code them with a final reliability test. The first step was to create the coding categories and instructions to develop the codebook. In developing the codebook, I identified general case characteristics related to research question one. This included questions related to the sex and role of participants, enrollment in special education, locations of incidents, types of incidents, numerosity of incidents, legal analysis categories, reasoning, outcome. I added additional codes related to the Department of Justice Three-Question Analysis for evaluating compliance programs and the U.S. Sentencing Commission Guidelines Manual seven elements of a compliance program (Department of Justice, 2023; U.S. Sentencing Commission Guidelines Manual, 2021). I recognized that each federal court decision may not provide insight into all three questions or the seven elements of a compliance program; however, I incorporated the Department of Justice Three-Question Analysis in an effort to gain insight into K-12 compliance programming that was in

consideration of examining research question two. In addition, I added in the seven elements of a compliance program to identify areas of the compliance programming currently employed that may need attention.

As discussed above, the process used to develop the codebook used Hall and Wright (2008) four step coding process with the approach to coding being both conventional and summative (Hseih & Shannon, 2005). I started by doing a cursory review of a few cases to think about different coding schemes that would assist in answering the research questions in this study. From this initial review, I developed an initial series of codes that aligned with general characteristics of the federal court decisions that I determined would be insightful for schools addressing sexual misconduct. I also identified codes based on my prior knowledge as an attorney and practitioner in this area. I followed the four steps to coding outlined by Hall and Wright (2008) in that I created coding categories, developed an understanding of how to employ the coding scheme, made adjustments as needed, and then coded the federal court decisions in accordance with the codebook. The final codebook for this study is outlined in the table below and includes the addition of the Department of Justice Three-Question Analysis for evaluating compliance programs as well as the review for compliance program elements (Department of Justice, 2023; U.S. Sentencing Commission Guidelines Manual, 2021):

Table 1: Codebook Terms

Label	Variable
Circuit	Open
District Court	Open
Case Name	Open
Month Decided	Open

Date Decided	Open
Year Decided	Open
State of Decision	Open
Citation	Open
Title IX	Y, N, NA
Regulations	Regulations or Pre-Regulations
IDEA	Y, N, NA
504	Y, N, NA
ADA	Y, N, NA
Sex of Complainant	F, M, Unknown
Age of Complainant	High School, Middle School, Elementary, K-8, K-12, Pre-K, Other, or Unknown
Complainant Enrolled in Special Education at Incident	Y, N, Unknown
Complainant Role	Student, Students, Teacher, Administrator, Staff, or Third Party
Sex of Respondent	F, M, Unknown
Respondent Enrolled in Special Education at Incident	Y, N, Unknown
Allegations	Sexual Assault, Sexual Harassment, Gender-based Harassment, Physical Assault, Bullying, Sex Discrimination, Other
Location	School, Off-Campus, Other

Incident	Single, Multiple
Student Discipline	Y, N, NA
§ 1983	Y, N, NA
Tort Action	Y, N, Unknown
Legal Analysis Categories	1) Bad Faith 2) Davis Standard 3) Deliberate Indifference 4) Disability Discrimination 5) FAPE 6) Qualified Immunity 7) Exhaustion of Remedies IDEA 8) Title VII 9) Fry Standard 10) Office with Authority 11) Actual Knowledge 12) Child Find 13) IDEA Due Process 14) Retaliation 15) Severe, Pervasive, and Objectively Offensive Standard 16) Failure to Reasonably Accommodate 17) Failure Sex-based Harassment 18) Other
Outcome	Open
Reasoning	Open
Decision For	Student, School, Third-Party, or Split
Three-Question Analysis	1. Is the compliance program well-designed? 2. Is the compliance program implemented in good faith with adequate resources and authority? 3. Does the compliance program work in practice?
Compliance Program Element	1) Standards and Procedures 2) Governance 3) Leadership, Training, and Education 4) Communication 5) Auditing and Evaluation 6) Enforcement 7) Response
Notes	Open

After establishing the codebook terms, I reviewed each federal court decision in the dataset and coded it accordingly. The conceptual framework I outlined in Chapter 1, the U.S. Sentencing Commission Guideline Manual seven elements of a compliance program and the Department of Justice Three-Question Analysis, was coded and analyzed in my presentation of findings in Chapter 4 and discussion of research question two and recommendations in Chapter 5 (Department of Justice, 2023; U.S. Sentencing Commission Guidelines Manual, 2021). The conceptual framework provided support to the practitioner guidance I developed in my recommendations.

3.5 Data Collection

This section discusses steps taken in data collection for this study. The first step was to determine the parameters of the data set. My initial inclination was to run a case search using Nexis Uni to see the general number of cases and determine the best point to begin narrowing the results. My dataset was limited to federal court cases. All cases have a decision date that is clearly identified. The first search I ran used the date range of April 1, 2011 to December 29, 2023. The Department of Education released the Dear Colleague Letter that outlined major expectation changes to processing of sexual misconduct cases on April 4, 2011 (Department of Education, 2011). The specific search terms used were “Title IX and special education.” I chose these search terms, as I wanted to make sure to pull the widest swath of opinions. This Nexis Uni search resulted in 403 cases. This was far too large of a dataset and also included over twelve years of case law. I considered narrowing to cases post-release of the May 2020 Title IX Regulations; however, upon reflection I determined that many of the cases, regardless of limiting to post-regulation, would involve cases with incidents that occurred prior to May 2020. Also, I realized that the cases may or may not directly discuss the May 2020 Regulations.

Ultimately the May 2020 Title IX regulations were of no consequence, as the federal court decisions in the dataset focused on case law precedents rather than specific regulatory language. This observation was in line with an issue highlighted in earlier chapters of this dissertation that the May 2020 Title IX regulations do not provide clear direction in matters that implicate both Title IX and special education laws. Further, the interpretation of an individual's rights under those two sets of laws requires an analysis of court precedent due in part to the dearth of regulatory language to assist. I chose to narrow the case law data set to a five year window to provide insight into cases and incidents that occurred prior to the release of the May 2020 Title IX regulations as well as the most current cases decided at the writing of this study. A five year window provided enough cases to garner practical recommendations for practitioners and also allowed for at least one case from each circuit except for the D.C. Circuit. A wide representation from each circuit was important to understand how these matters were being addressed among the separate federal circuits.

The final search run on Nexis Uni used the general search terms outlined above with the date range of January 1, 2019 to January 31, 2024. This search resulted in 185 total federal court cases. To narrow the dataset even further, I determined inclusionary and exclusionary criteria and then conducted a preliminary review. The inclusionary and exclusionary criteria utilized in this study are outlined below:

Table 2: Inclusionary and Exclusionary Criteria

Inclusionary Criteria	Exclusionary Criteria
<ol style="list-style-type: none"> 1. Federal District Court or Circuit Court 2. Decided January 1, 2019 to January 31, 2024 3. Sexual misconduct involving two students or student and a staff member 4. At least one party has a disability and 	<ol style="list-style-type: none"> 1. Outside the scope of the research questions 2. Employment cases involving sexual harassment 3. Employment cases involving sex discrimination

<p>is receiving services under IDEA, 504, or ADA</p> <p>5. Cases could involve school programming or transportation services</p>	<p>4. Transgender access to bathrooms or athletic program matters</p> <p>5. Allegations of sexual abuse by a teacher not implicating Title IX</p> <p>6. Title IX as an add-on claim without sexual misconduct</p> <p>7. Cases outside the timeframe or federal courts</p>
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The preliminary review consisted of a brief review of the federal court decision with an eye towards the case facts and claims raised with consideration of inclusionary and exclusionary criteria. This preliminary review narrowed the case dataset to a total of sixty-five (65) cases. An additional review highlighted duplications, as there were some matters and individual claims that resulted in multiple partial actions and motions opinions. In those cases, each opinion was reviewed and the most recently decided opinion was chosen. After this third review, the cases were narrowed to a final dataset of forty-two (42) total cases consisting of thirty-nine (39) federal district court cases and three (3) federal circuit court cases. A breakdown of the federal district court decisions in the dataset is in the table below:

Table 3: Case Dataset by Circuit

Circuit	District Court	Total
10th Circuit	U.S. District Court for the Western District of Oklahoma	1
	U.S. District Court for the Northern District of Oklahoma	1
	U.S. District Court for the Eastern District of Oklahoma	1
	U.S. District Court for the District of Colorado	2
10th Circuit Total		5

11th Circuit U.S. District Court for the Northern District of Georgia, Atlanta Division 1

U.S. District Court for the Northern District of Alabama, Western
Division 1

U.S. District Court for the Northern District of Alabama, Southern
Division 1

11th Circuit Total 3

1st Circuit U.S. District Court for the District of Massachusetts 3

U.S. District Court for the District of Maine 2

1st Circuit Total 5

2nd Circuit U.S. District Court for the Southern District of New York 2

2nd Circuit Total 2

3rd Circuit U.S. District Court for the Western District of Pennsylvania 1

U.S. District Court for the Eastern District of Pennsylvania 1

3rd Circuit Total 2

U.S. District Court for the Southern District of West Virginia,

4th Circuit Huntington Division 1

4th Circuit Total 1

U.S. District Court for the Western District of Texas, San Antonio

5th Circuit Division 1

U.S. District Court for the Western District of Texas, Austin Division 1

U.S. District Court for the Southern District of Texas, Houston Division 3

5th Circuit Total **5**

6th Circuit U.S. District Court for the Southern District of Ohio, Eastern Division 1

U.S. District Court for the Middle District of Tennessee, Nashville 1

U.S. District Court for the Eastern District of Michigan, Southern
Division 1

U.S. District Court for the Eastern District of Kentucky, Northern
Division 1

U.S. District Court for the Eastern District of Kentucky, Central Division 1

6th Circuit Total **5**

7th Circuit U.S. District Court for the Western District of Wisconsin 1

U.S. District Court for the Southern District of Indiana, Indianapolis
Division 2

U.S. District Court for the Northern District of Illinois, Eastern Division 1

7th Circuit Total **4**

U.S. District Court for the Western District of Missouri, Western

8th Circuit Division 1

U.S. District Court for the Northern District of Iowa, Central Division 1

U.S. District Court for the Eastern District of Missouri, Eastern Division 1

8th Circuit Total		3
9th Circuit	U.S. District Court for the Western District of Washington	2
	U.S. District Court for the Northern District of California	1
	U.S. District Court for the District of Oregon	1
9th Circuit Total		4
Grand Total		39

The three (3) federal circuit court cases consisted of two cases in the fifth circuit and one (1) case in the fourth circuit. The next table outlines the total federal court decision dataset by circuit and case name.

Table 4: Total Case Dataset by Circuit and Case Name

Circuit	Case Name	Total
10th Circuit	Stevens v. Berryhill Bd. of Edu.	1
	Robert R. v. Jefferson Cnty. Sch. Dist.	1
	Nation v. Piedmont Indep. Sch. Dist. No. 22	1
	Morrow v. McCurtain Cnty. Indep. Sch. Dist. No. 11	1
	Doe v. Brighton Sch. Dist. 27J	1
10th Circuit Total		5

11th Circuit	Walker v. Tuscaloosa Cty. Sch. Bd.	1
	Doe v. Fulton Cty. Sch. Dist.	1
	A.H. v. Jackson-Olin High Sch.	1
11th Circuit Total		3
1st Circuit	Roe v. Lincoln-Sudbury Reg'l Sch. Dist.	1
	Raymond v. Me. Sch. Admin. Dist. 6	1
	McCann v. York Sch. Dep't.	1
	Doe v. Gavins	1
	Doe v. Dennis-Yarmouth Reg'l Sch. Dist.	1
1st Circuit Total		5
2nd Circuit	T.J. ex rel. B.W. v. Bd. of Educ.	1
	Cianciotto v. New York City Dep't of Educ.	1
2nd Circuit Total		2
3rd Circuit	D.M. v. E. Allegheny Sch. Dist.	1
	A.T. v. Oley Valley Sch. Dist.	1
3rd Circuit Total		2
4th Circuit	Webster v. Chesterfield Cnty. Sch. Bd.	1
	Doe v. Cabell Cnty. Bd. of Educ.	1
4th Circuit Total		2

5th Circuit	Smith v. Comal Indep. Sch. Dist.	1
	J.G. v. Bryan Indep. Sch. Dist.	1
	I.M. v. Houston Indep. Sch. Dist.	1
	Hernandez v. Fort Bend ISD	1
	Fisher v. Moore	1
	Doe v. Dallas Indep. Sch. Dist.	1
	C.M. v. Cedar Park Charter Acad. PTO	1
<hr/> 5th Circuit Total		7
6th Circuit	Torres v. Stewart Cnty. Sch. Sys.	1
	N.P. v. Kenton Cty. Pub. Sch.	1
	M.S. v. Rochester Cmty. Sch. Dist.	1
	E.M.J. v. Garrard Cty. Bd. of Educ.	1
	Doe v. Ohio Hi-Point Sch. Dist. Bd. of Educ.	1
<hr/> 6th Circuit Total		5
7th Circuit	Vargas v. Madison Metro. Sch. Dist.	1
	L.W. v. Roman Catholic Archdiocese of Indianapolis, Inc.	1
	E.C. v. Cmty. Sch. Corp. of E. Hancock Cnty.	1
	Doe v. Bd. of Educ.	1
<hr/> 7th Circuit Total		4
<hr/>		

8th Circuit	S.S. v. Raytown Quality Sch. Dist.	1
	Gullion v. Manson Northwest Webster Sch. Dist.	1
	Doe v. Wentzville R-IV Sch. Dist.	1
8th Circuit Total		3
9th Circuit	W.S. v. Mollala River School Dist.	1
	M.P.G. v. Antioch Unified Sch. Dist.	1
	L.K.M. v. Bethel Sch. Dist.	1
	Berg v. Bethel Sch. Dist.	1
9th Circuit Total		4
Grand Total		42

The two (2) federal appeal court cases in the 5th Circuit are *Doe v. Dallas Indep. Sch. Dist.* and *Fisher v. Moore* (2019; 2023). The fourth circuit federal appeals court is *Webster v. Chesterfield Cnty. Sch. Bd.* (2022). The total federal court decision dataset, after application of the inclusionary and exclusionary criteria outlined in Table 2, was forty-two (42) cases.

3.6 Reliability and Validity

To address reliability and validity, I used peer debriefing to ensure consistency when examining cases to establish credibility (Lincoln & Guba, 1985). Peer debriefing allows the researcher to see multiple ways to identify codes and interpret the data. Peer debriefing is commonly known as analyst triangulation or external audit. The coding scheme will be tested on two cases and then those cases will be reviewed by an additional person, the reviewer, to make

sure that the coding is reliable and results valid. I chose a peer reviewer who is another doctoral student in the Education Leadership and Policy Analysis program at the University of Wisconsin-Madison, who also holds a juris doctor and has experience working as an attorney in the field of education law.

The peer reviewer chose two cases randomly. The peer reviewer examined the federal court decisions using the codebook and instructions I provided. The peer reviewer completed the review and indicated that the results were consistent with my coding; therefore, the code instructions appeared to be reliable and consistent. A final reliability and validity test was performed. I performed the final reliability and validity test using two separate cases and once again the codebook and coding delivered consistent results. The next step was to review the codebook and separate the notes section. I also reviewed all open coded sections to conduct an analysis to identify themes. Once the themes were determined, then I separated the federal court decisions into those themes. I used those themes, in addition to the other codebook sections, in my discussion of the research questions and recommendations outlined in Chapter 5.

3.7 Method Limitations and Conclusion

Prior to speaking to specific limitations of legal content analysis, it is important to acknowledge that Title IX and special education law are complex regulatory schemes and compliance is only one consideration. Institutions of higher education and K-12 schools are attempting to address sexual misconduct, which is complex in and of itself. While compliance is important, other factors such as trauma-informed practices, experience of process participants, and prevention education are important to addressing this systemic issue. Compliance with the regulations is the floor of addressing this issue and educational institutions should truly be reaching towards the ceiling.

As stated above, legal content analysis is the appropriate research method to answer the two research questions addressed in this study; however, that does not mean there were no limitations to this study. The review of federal court decisions provided valuable insight into how the requirements under Title IX and special education law and their companion regulations are ultimately interpreted when tested in the courts. A limitation to using legal content analysis as the research method is that the data is limited to what is provided by the court in its written opinion. An area that would provide insight, but not necessarily into the specific research questions addressed in this study, is conducting interviews with administrators currently doing this work in the K-12 setting. The experience of those administrators and how their schools have set-up their organizational structure would be informative in developing and providing recommendations. However, this study was focused on the actual legal requirements and interpretation of those legal requirements for consideration in development of K-12 school policy and process guidance.

Another limitation is with forty-two (42) cases in the dataset, it was not feasible to report all of the fact patterns of each case. Instead, I reviewed the legal analysis categories that the courts used in cases that involved Title IX and special education law. However, I will draw upon case fact patterns to provide illustrative examples when necessary. An additional potential limitation to this study is selection of the case data sample. The exclusion of state judicial opinions may result in some K-12 schools, especially those with specific state laws in this area, having to do additional analysis.

This chapter outlined the research method of legal content analysis as the best approach to addressing the two research questions in this study. The focus of this chapter was to describe the research design and specific tenets of this research method in detail. In the next chapter, I

provide insight into the findings from conducting the legal content analysis. These findings will be used to answer the research questions and support recommendations for K-12 schools in developing policies and processes to address issues of sexual misconduct that comply with Title IX and special education law.

Chapter 4: Findings

4.1 Introduction

As outlined in Chapter 3, the purpose of this study is to understand the legal landscape and determine any guidance that can be gleaned from federal court decisions that implicate Title IX and special education laws in addressing issues of sexual misconduct in K-12 schools. Specifically, guidance that can be ascertained from the court's application of the legal analysis categories being used in each court decision. Then, based on that guidance, this dissertation identifies ways that K-12 schools can improve their sexual misconduct policies and processes. As outlined in Chapter 1, this study purports to do so by answering the following research questions:

1. What is the legal landscape of court cases that have addressed sexual misconduct matters that implicate Title IX and special education law?
2. In light of the competing regulatory schemes of Title IX and special education law, what guidance can be gleaned from recent court decisions to improve K-12 sexual misconduct policies and processes?

These two research questions were answered by reviewing federal court decisions to gain insight into how the courts have interpreted the affordance of rights in matters that involve Title IX and special education laws. As noted, the second research question was particularly focused on guidance that could be gleaned from the court's application of the legal analysis categories being

used in each court decision. For example, it will be interesting to learn if the court uses a separate Title IX legal analysis and a separate analysis focused on special education or whether the court reviews the competing regulatory schemes through some hybrid analysis of Title IX and special education law together. The courts' interpretation and analysis of legal analysis categories will assist K-12 schools in identifying best practices and developing policies and processes that comply with both sets of laws.

This chapter presents the findings from this study. In Section 4.2, the general data findings will be discussed in detail. The general data findings detail the characteristics of the complainant(s) and respondent(s). Section 4.3 explores data findings for analysis of research question one and two. This section is divided into two major areas: legal landscape data findings and compliance program findings. The legal landscape data is further categorized into: litigation outcome data, incident specific data, and legal claims data. The findings specific to the federal courts' analysis of the intersection of Title IX and special education is reviewed in Section 4.4. This chapter ends with a conclusion in Section 4.5.

4.2 General Data Findings

I conducted initial data analysis that would provide general data points that would be considered in support of my research questions analysis and recommendations. In coding the data, female and male were used as sex markers. Individuals were coded as female or male based on the pronouns or categorical language used by the court in its decision. I recognize that there are limitations to this language and it is not inclusive of all sex and gender identities. For purposes of this study, sex refers to sex assigned at birth. The Gay, Lesbian, and Straight Education Network (GLSEN) defines sex assigned at birth as "the sex that the medical community labels a person when they are born" (GLSEN, n.d.). However, it is acknowledged

that the court may have erred or made inaccurate assumptions regarding the gender(s) of the parties involved. GLSEN outlines two definitions related to gender: gender identity and gender attribution. Gender identity is how one identifies or sees themselves and gender attribution is how others assign or see your gender. In this study, the use of female and male for study is reflective of the courts' assumption (gender attribution) and the courts' common use of anonymized references in lieu of identifying information for minors involved in legal matters.

The general data findings examined data related to characteristics of the complainant(s) and respondent(s). The use of complainant(s) and respondent(s) is not the same as plaintiff, defendant, appellant, and appellee. Complainant(s) is a term used in the Title IX arena to denote the individual bringing the complaint. Essentially, the complainant is the individual that is the survivor of the alleged violence. The term respondent(s) is the counterpart to the complainant. The respondent(s) is the individual who is alleged to have perpetrated the violence and is the one who the complaint is filed against. The majority of the federal court decisions reviewed in the dataset involved litigation against school administrators, school districts, and school boards. The goal in gathering this data was to develop an understanding of the types of complainant(s) and respondent(s) that were appearing in litigation. For example, sex distribution, involvement in special education, and role within the organizational structure. These characteristics assist with identification of patterns and awareness of common identities. The subsequent figures help create a general picture of the individuals involved in the matters included in the federal court decision dataset.

The distribution of sex of the complainant(s) in the dataset consisted of twenty-one (21) males and twenty (20) females with one matter involving complainant(s) that were females and males.

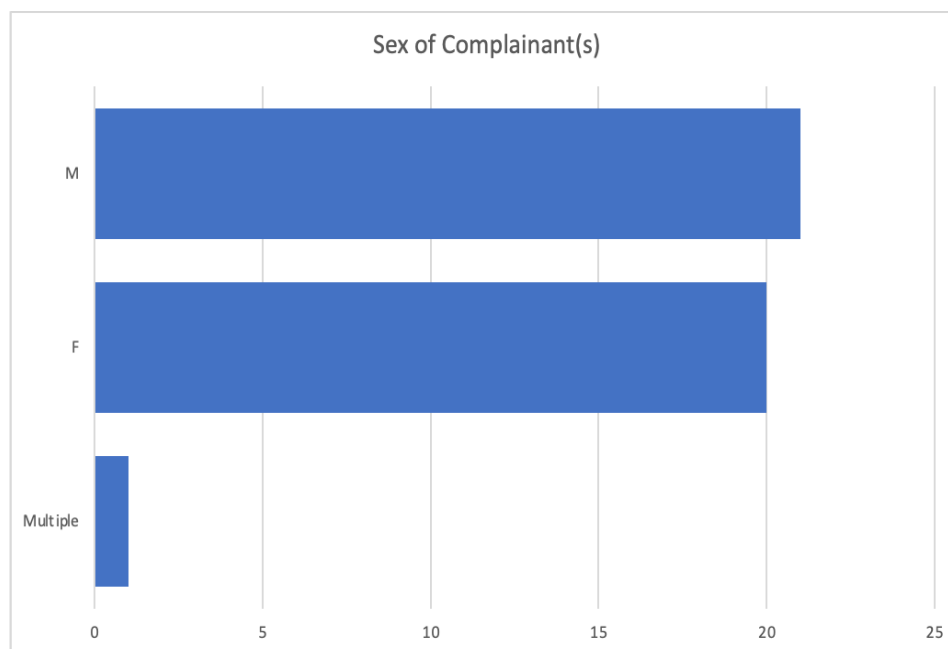


Figure 5: Distribution of Sex of Complainant(s)

The typical age of complainant(s) at time of the incident(s) was high school with twenty (20) cases. The second highest age group was middle school with nine (9) cases followed by those in the “other” category. The “other” category consists of any age of a student that was clearly defined in the federal court decision or if the age fell outside high school, middle school, or elementary school. For example, some of the federal court opinions referred to Pre-K, K-8, or K-12 and some of the cases happened in post-high school special education transition programming. If the incidents occurred across schools, as in misconduct occurred for multiple years across school ages, then they were coded as multiple. The cases that coded as NA or not applicable, those matters involved complainant(s) that were not students.

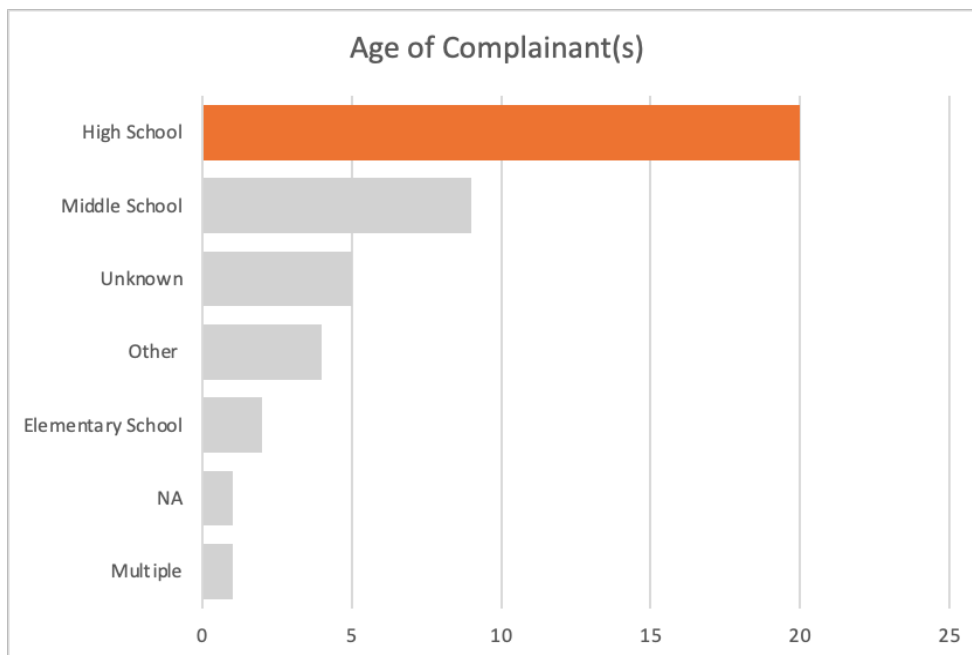


Figure 6: Age of Complainant(s)

The distribution of sex of the respondent(s) in the dataset consisted of twenty-eight (28) males and five (5) females. In addition, there were five (5) cases in which the sex of the respondent was unknown and four (4) cases in which there were multiple respondents.

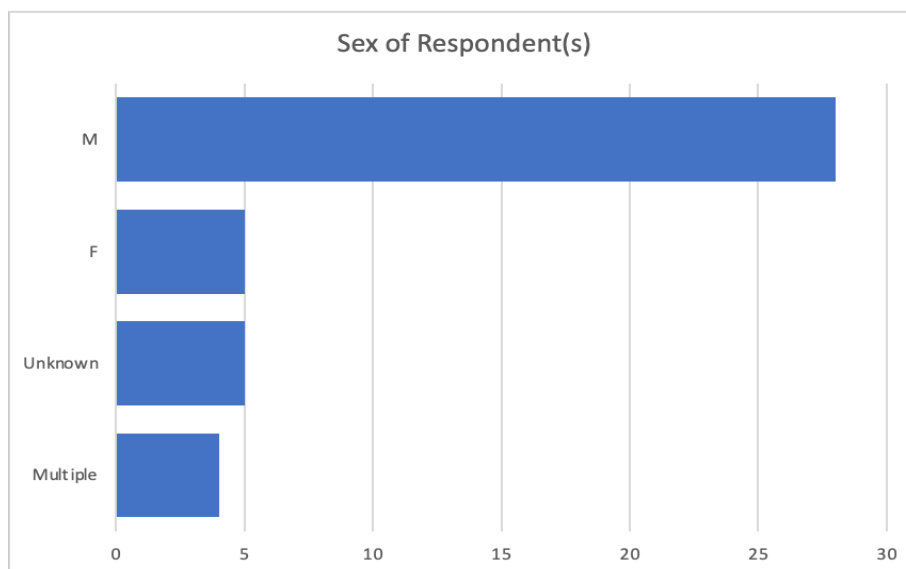


Figure 7: Distribution of Sex of Respondent(s)

The most common role of the complainant(s) is student and the majority were enrolled in special education at the time of the incident(s). Out of the forty-two (42) cases, the complainant was a student thirty-seven (37) times with three (3) cases involving multiple students. The two (2) outlying cases involved a third party complainant and a staff complainant.

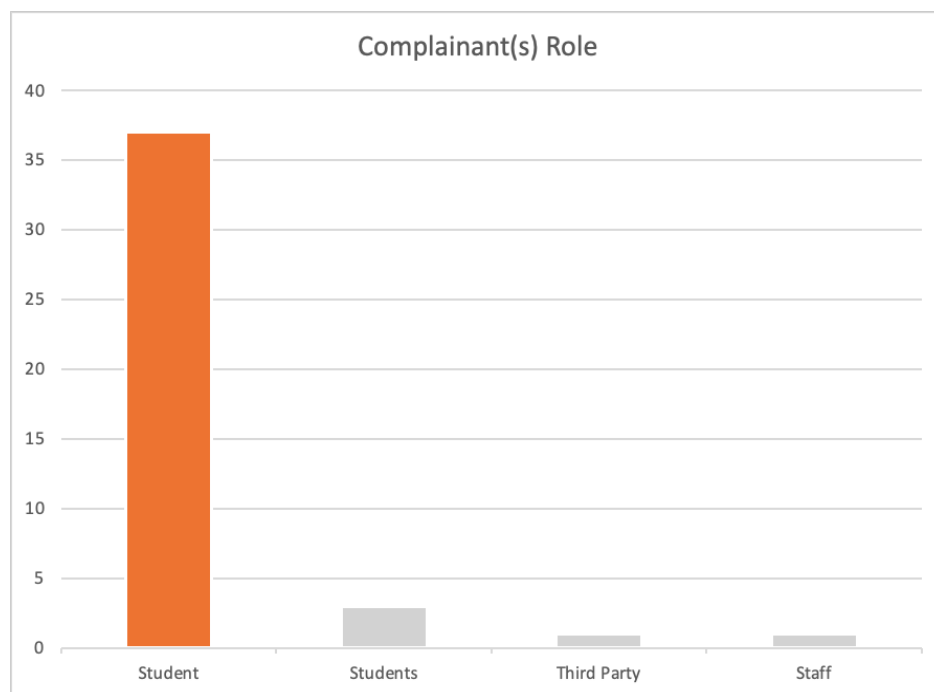


Figure 8: Complainant(s) Role

Thirty-five (35) of the complainant(s) were enrolled in special education at the time of the incident(s) compared to six (6) that were not with one matter involving where enrollment in special education was not applicable.

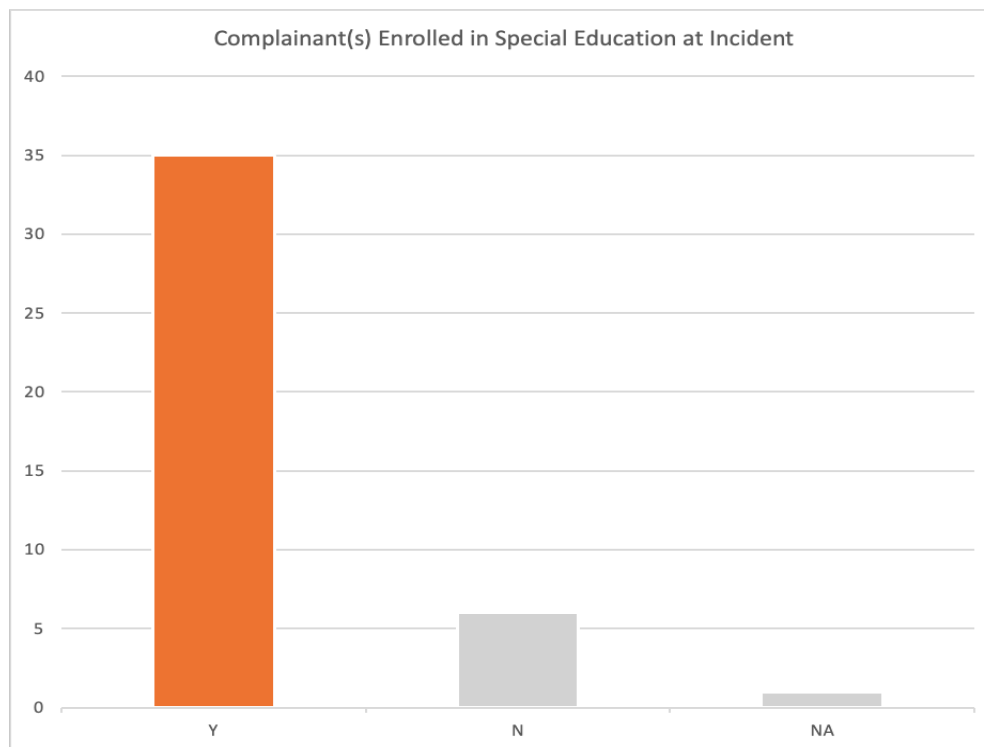


Figure 9: Complainant(s) Enrolled in Special Education at Incident

Similar to the complainant(s), the most common role of the respondent(s) was student. In the dataset, there were twenty-two (22) cases where the role of respondent was student and fifteen (15) cases where the role of respondent involved multiple students. There were also three (3) respondents whose role was a staff member. The remaining two (2) respondents were a teacher and a third-party.

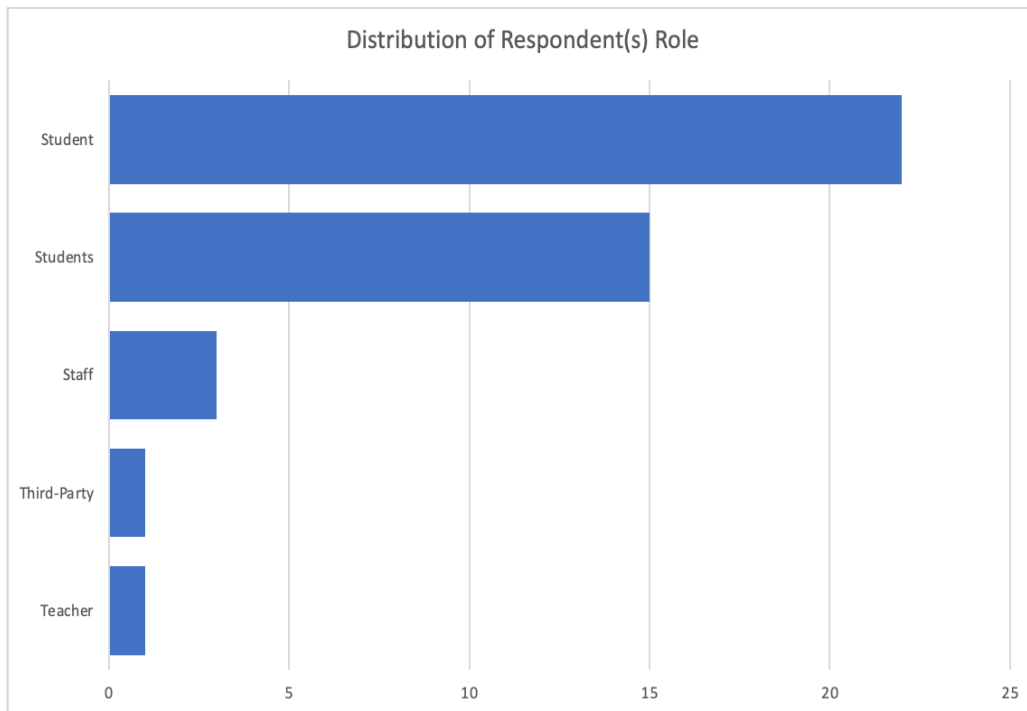


Figure 10: Respondent(s) Role

The majority of the respondents, sixteen (16), were enrolled in special education, but it is worth noting that the second highest number was unknown with fourteen (14) respondents. In addition, in two (2) cases there were multiple respondents where at least one (1) respondent was not enrolled in special education. There were five (5) cases where the respondent was a student and not enrolled in special education. The remaining five (5) respondents are coded as not applicable as their role was that of staff, teacher, or third-party.

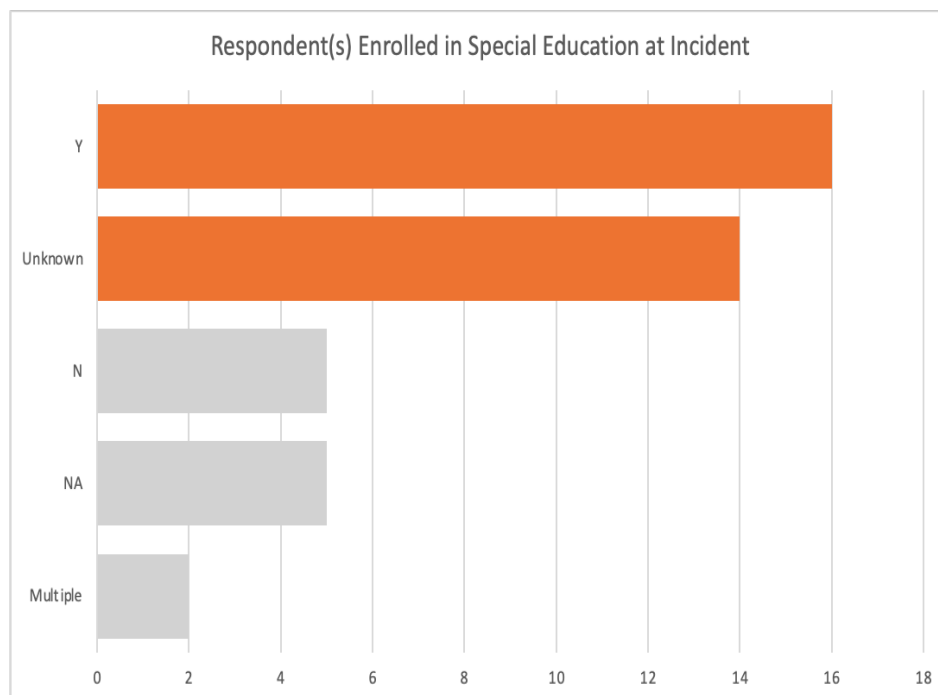


Figure 11: Respondent(s) Enrolled in Special Education at Incident

These basic data points provided a general picture of the types of complainants and respondents that appeared in the dataset of cases. With this background understanding, the data can be further explored in relation to the research questions this study purports to answer.

4.3 Data Findings for Research Question Analysis

This section reviews the data points that were specifically gathered to answer the two research questions outlined in this study. The first subsection focuses on data findings related to the legal landscape, which explores the federal court decision dataset by understanding how the courts have addressed sexual misconduct matters that implicate Title IX and special education law. This first subsection will review data points specific to the federal court decision results, areas of litigation, legal analysis categories, and the courts' reasoning and analysis. The second subsection reviews the federal court decision dataset related to compliance programming. Subsection two, compliance program findings, examines the federal court decision dataset using the conceptual framework that I am applying in this study that has been adapted from the U.S.

Sentencing Commission Federal Guidelines seven elements of a compliance program and the Three-Question Analysis for reviewing a compliance program from the Department of Justice (Department of Justice, 2023; U.S. Sentencing Commission Guidelines Manual, 2021). While the general data findings and subsection one will provide the discussion points for answering research question one, a combination of the general data findings, subsection one, and subsection two will be used to answer research question two. Research question two asks in light of the competing regulatory schemes of Title IX and special education, what guidance can be gleaned from recent court decisions to improve K-12 sexual misconduct policies and processes.

Data Findings Legal Landscape

The goal of data-gathering regarding the legal landscape was to analyze the federal court decision dataset to understand general characteristics of claims and litigation. The general data findings focused on the characteristics of the complainant(s) and respondent(s). This subsection moves beyond complainant(s) and respondent(s) to review data points regarding litigation characteristics, such as location, number of incidents, legal claims, legal analysis categories, the courts' reasoning and analysis, and outcomes of litigation. By focusing on the reasons and circumstances of litigation, my goal was to create an overall picture of the facts and circumstances that caused schools to face litigation regarding allegations of violations of rights under Title IX and special education law. In addition, this review aided in identifying patterns found in the litigation filings, so I could understand ways that certain actions or inaction by the school may be challenged under Title IX and special education law.

Legal Claims Data.

The dataset was determined by including federal court decisions that were identified using the keywords Title IX and special education laws. However, not all cases addressed Title

IX and special education laws in the same litigation strategies. Each case chosen using the inclusionary and exclusionary criteria had some aspect of Title IX and special education laws, the individual cases may have been focused on particular claims under one or multiple laws. I also noted additional legal claims for awareness of what other legal claims aggrieved individuals were pursuing in addition to Title IX and special education laws.

The majority of cases involved allegations of violations of Title IX, which was followed by Section 504. The total number of Title IX cases addressing legal claims alleging violations of Title IX was thirty-five (35). The total number of Section 504 claims was twenty-six (26). The total number of ADA cases was twenty (20). The least amount of legal claims involved IDEA with eight (8).

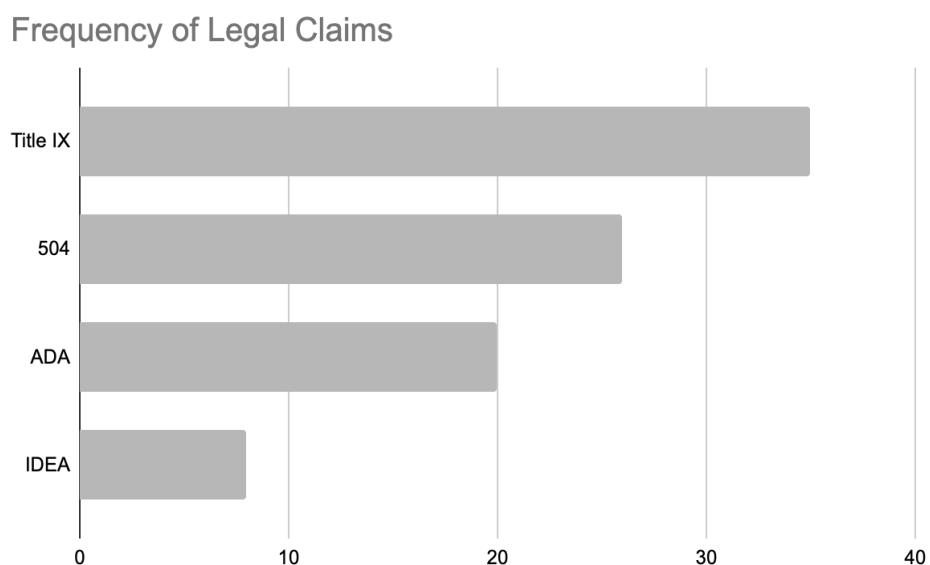


Figure 12: Frequency of Legal Claims

The next step was to review how often these legal claims were used in combination with each other to understand what is commonly filed. The majority of the cases included legal claims of violations of Title IX, Section 504, and ADA with eleven (11) cases. The second highest number of cases involved matters that only alleged violations of Title IX. The third highest

combination was legal claims of alleged violations of Title IX and 504. There was one case included that did not directly address claims under Title IX and special education laws. While this would have typically been a case that was excluded; however, this case was included as the original action included a Title IX claim and was instructive in addressing issues involving prior knowledge of the sexual misconduct history of a student.

Table 5: Comparison of Legal Claims

Title IX	IDEA	504	ADA	Total
Y	N	Y	Y	11
Y	N	N	N	10
Y	N	Y	N	5
N	N	Y	Y	4
Y	Y	Y	Y	3
Y	Y	N	N	3
Y	Y	Y	N	2
N	N	N	Y	1
N	N	Y	N	1
Y	N	N	Y	1
N	N	N	N	1

As stated in Chapter 3, I used the past five (5) years as the timeframe to include cases that involved incidents that occurred prior to as well as after the release of the May 2020 Title IX regulations. The majority of the federal cases in the dataset involved incidents that occurred prior to the May 2020 Title IX regulations. The number of cases involving pre-regulation incidents was thirty-six (36). There were only two (2) cases that involved incidents that occurred after the

release of the May 2020 Title IX regulations. There were four (4) cases where Title IX was not the examined legal claim of the opinion, so those are reflected as not applicable.

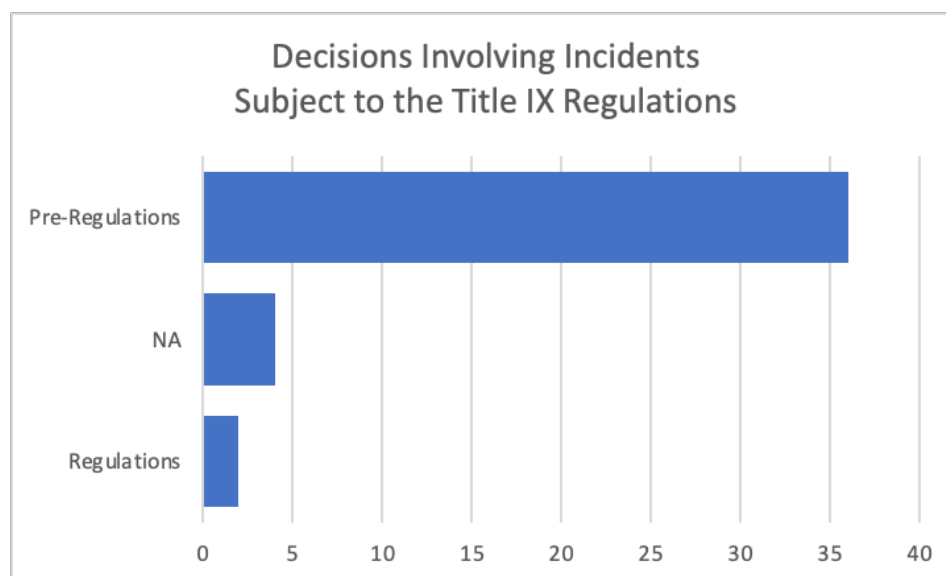


Figure 13: Decisions Involving Incidents Subject to the Title IX Regulations

Another aspect of the underlying legal claims explored was any legal claims outside of Title IX and special education laws that were filed. The two other types of legal claims that were filed alongside Title IX and claims under special education law were § 1983 and tort claims. There were twenty-seven (27) cases that also addressed underlying § 1983 claims. There were twenty-four (24) cases that contained tort claims. While § 1983 and tort claims were not included in the data analysis discussion for the research questions, as this study focused on Title IX and special education law, identifying potential legal claims is important to understand typically seen legal strategies in litigation.

Incident Specific Data.

The next step was to review the federal cases to identify potential patterns in incident specific data. While the general data set reviewed in section 4.2 covered the characteristics of

complainant(s) and respondent(s), the incident specific data will cover the location and number of incidents, allegation patterns, and interaction with student discipline.

The majority of incidents occurred in school. A total of thirty-one (31) incidents occurred at school. There were five (5) cases with multiple incidents. The cases of multiple incidents included cases with multiple at school incidents and a combination of at school and off-campus locations. I separated the categories of “other” to identify specific locations where litigation was brought. There were two (2) incidents that involved bus transportation, two (2) incidents that occurred in school programming, and one incident on a school field trip. In addition, there was a single case that involved an entirely off-campus incident.

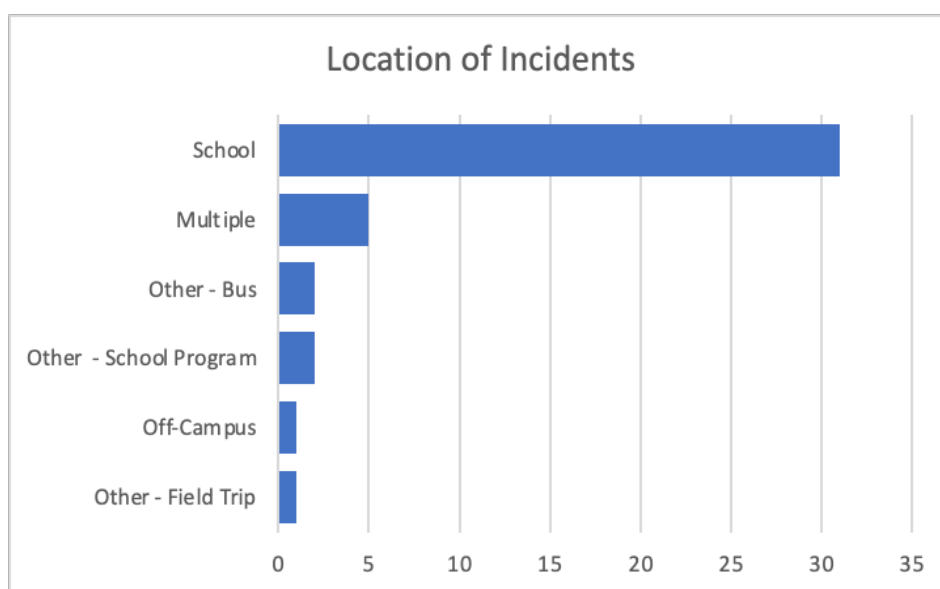


Figure 14: Location of Incidents

Most of the cases in the dataset involved multiple alleged incidents of sexual misconduct or related discrimination. Of the forty-two (42) cases in the dataset, twenty-eight (28) cases involved multiple alleged incidents and fourteen (14) single incident cases.

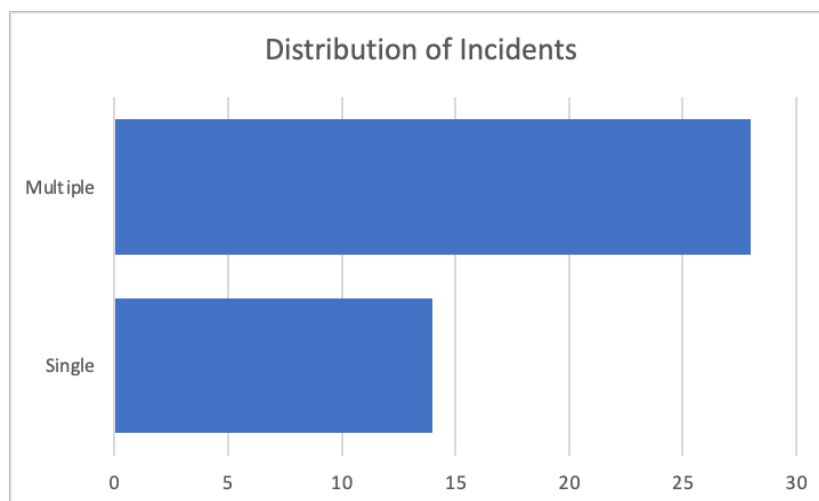


Figure 15: Distribution of Incidents

A review of the federal cases in the dataset identified only ten (10) cases that also involved issues related to student discipline. There were twenty-four (24) cases where student discipline was not at issue and eight (8) cases that student discipline was not applicable. In the cases coded as not applicable, the respondent(s) were not students or student issues were not at issue.

The types of allegations were coded into the following categories: sexual assault, sexual harassment, gender-based harassment, physical assault, bullying, sex discrimination, and other. The inclusion of physical assault, while it does fall under Title IX per se, I determined to be an important factor to include in understanding the full spectrum of allegations seen in litigation. The following table outlines the type and frequency of allegations that appeared in the case dataset. After Table 6, Figure 16 shows the type and frequency of allegations by percentage of the allegation combinations.

Table 6: Types and Frequency of Allegations that Appear in Case Dataset

Allegation	Code	Total Count
Sexual Assault	SA	16
Sexual Assault, Sexual Harassment	SA, SH	7

Sexual Harassment, Bullying	SH, B	4
Sexual Harassment	SH	3
Sexual Assault, Bullying	SA, B	3
Sexual Assault, Sexual Harassment, Physical Assault, Bullying	SA, SH, PA, B	3
Gender-based Harassment, Bullying	GBH, B	2
Sexual Harassment, Gender-based Harassment, Physical Assault, Bullying	SH, GBH, PA, B	1
Sexual Assault, Sexual Harassment, Physical Assault, Sex Discrimination	SA, SH, PA, SD	1
Sexual Harassment, Physical Assault	SH, PA	1
Sexual Harassment, Physical Assault, Bullying	SH, PA, B	1

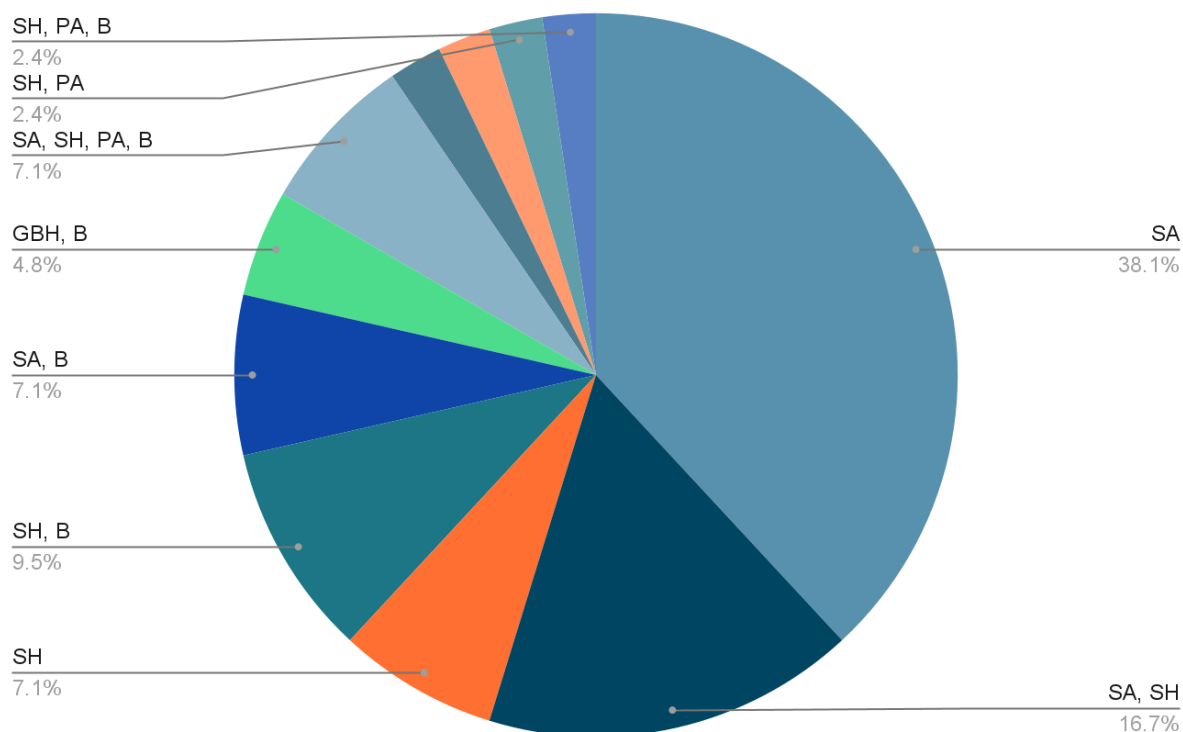


Figure 16: Types and Frequency of Allegation Combinations in Case Dataset by Percentage

As seen in Table 6 and Figure 16, the most common allegation was sexual assault by itself. A further review of the allegations indicated that the most common appearing allegation was sexual assault followed by sexual harassment. The third highest appearing allegation was bullying. The table below reflects the number of appearances of each allegation in the case dataset.

Table 7: Allegation Occurrences in Case Dataset

Allegation	Occurrences
Sexual Assault	30
Sexual Harassment	21
Bullying	14
Physical Assault	7
Gender-based Harassment	3
Sex Discrimination	1

The number of appearances of each allegation provides insight into the commonality of each allegation for consideration in developing school administrative actions. This can lead to specific policy adjustments and to specific training for responding to and preventing sexual assault for administrators and staff. Also, this awareness provides the school with the opportunity to address prevention training topic needs for its students.

Litigation Outcome Data.

The final data reviewed for research question one, which also supports a focus of the analysis for research question two, is related to litigation outcomes. The codebook included variables focused on aspects of litigation. I used open coding for reviewing specific results for each legal analysis category claimed and the courts' reasoning.

In this section, the first data point I explored were legal analysis categories. Legal standards are the basis on which a court examines a cause of action. For example, if the court is reviewing a Title IX case, then the court reviews the claims under the legal standards used in Title IX cases. I broke down the legal standards into legal analysis categories to provide a deeper analysis. For example, Title IX cases are reviewed under the *Gebser* Court and *Davis* Court standards (1998; 1999). As outlined in Chapter 2, the *Gebser* Court held that for Title IX purposes liability attaches when an official with authority has actual knowledge and the school is deliberately indifferent. The *Gebser* standard of actual knowledge and deliberate indifference was extended to peer-to-peer harassment by the Supreme Court in *Davis v. Monroe* (1999; Thacker, 2011; Micek Vargas, 2023). In addition, the *Davis* Court ruled that to be liable the school must have “substantial control over both the harasser and the context in which the known harassment occurs” (1999, p. 645). Instead of reviewing the cases in the dataset by the collective standard, I looked at each individual part of the standard and labeled them legal analysis categories, such as actual knowledge, deliberate indifference, and so on.

I reviewed the cases and identified the repeated legal analysis categories used by the courts in their analysis and reasoning. When analyzing a court decision to review how a court may or may not have grappled with competing regulatory schemes between Title IX and special education law, the legal analysis categories utilized by the courts will be especially informative. It will be interesting to observe if the court applies the typical Title IX legal analysis categories and the typical special education legal analysis categories in some sort of combined or hybrid fashion. The legal analysis categories were coded using the following variables: 1) Bad Faith; 2) Davis Standard; 3) Deliberate Indifference; 4) Disability Discrimination; 5) FAPE; 6) Qualified Immunity; 7) Exhaustion of Remedies IDEA; 8) Title VII; 9) Fry Standard; 10) Official with

Authority; 11) Actual Knowledge; 12) Child Find; 13) IDEA Due Process; 14) Retaliation; 15) Severe, Pervasive, and Objectively Offensive Standard; 16) Failure to Reasonably Accommodate; 17) Failure Sex-based Harassment; and 18) Other. Also, I added two variables that referenced the Davis Standard and Fry Standard, as I was interested in seeing when these were applied in whole by the court. The below table provides the frequency of the legal analysis categories in the dataset, which is followed by a visual pie graph.

Table 8: Frequency of Legal Analysis Categories

Legal Analysis Categories	Total
Deliberate Indifference	30
Disability Discrimination	17
Actual Knowledge	11
Exhaustion of Remedies IDEA	9
Severe, Pervasive, and Objectively Offensive Standard	5
Davis Standard	4
Official with Authority	4
Other	4
Bad Faith	3
FAPE	3
Fry Standard	3
Failure Sex-based Harassment	3
Qualified Immunity	2
Retaliation	2
Failure to Reasonably Accommodate	2
Title VII	1
IDEA Due Process	1

Child Find	0
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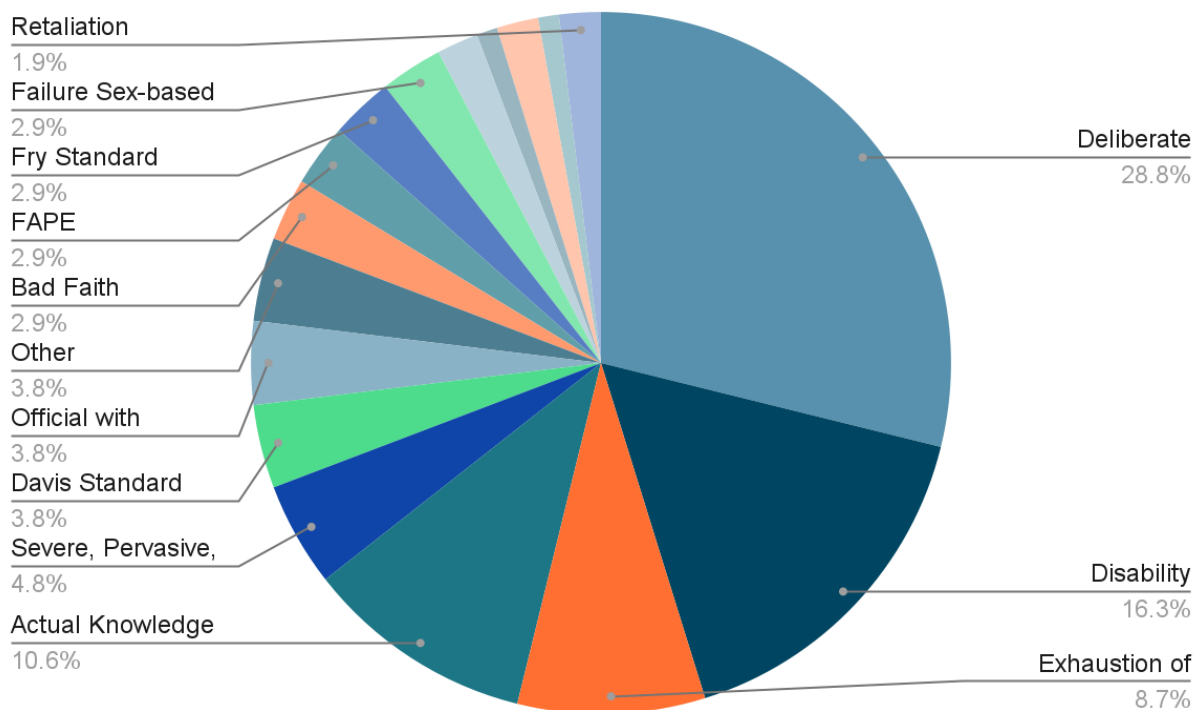


Figure 17: Frequency of Legal Analysis Categories by Percentage

The most common legal analysis category examined by the court was deliberate indifference.

The next section of data reviewed the reasoning and analysis used by the courts' in determining their final outcome.

The goal in this initial review was to understand key takeaways from the courts' analysis, as I was focused on the guidance that can be gleaned from the court's application of the legal analysis categories used in each court decision. For this reason, I used open coding for this part of my review. In reviewing the cases, some of cases contained similar analysis or takeaways, so in those instances I chose one of cases to highlight and reference. While not all of the cases are represented in the following table, I focused on making sure that the major premises in each of

the legal analysis categories were represented. In some of the cases, I did choose to highlight a more fact-specific aspect of the courts' analysis rather than a commonality in this particular table. The use of not applicable was used in the table to denote that while I identified that the legal analysis category was referenced by the court it may not have been addressed thoroughly analyzed by the court. For the legal analysis categories that are denoted as "not applicable," I found that the cases in the dataset did not contain a case that addressed that legal analysis category, the case mentioned the legal analysis category but it was not examined, or there were not key takeaways. The absence of use of a legal analysis category is also an important data point regarding what is analyses are being used by the courts in litigation.

Rather than offering specific fact patterns of all the cases in the dataset, I focused on the legal analysis category being applied. The legal analysis categories provided the basis for the generalized understanding that informed the recommendations to school administrators and policymakers. However, the factual patterns of some cases, at times, can provide useful context; therefore, a discussion of select fact patterns within a few illustrative cases occurs after the table of key takeaways in the court's reasoning. The key takeaways in the court's reasoning by the legal analysis categories and takeaways are outlined in Table 9 (*A.H. v. Jackson-Olin High Sch.*, 2019; *A.T. v. Oley Valley Sch. Dist.*, 2021; *Berg v. Bethel Sch. Dist.*, 2022; *C.M. v. Cedar Park Charter Acad. PTO*, 2019; *Cianciotto v. New York City Dep't of Educ.*, 2022; *D.M. v. E. Allegheny Sch. Dist. 27J*, 2023; *Doe v. Bd. of Educ.*, 2020; *Doe v. Brighton Sch. Dist. 27J*, 2021; *Doe v. Cabell Cnty. Bd. of Educ.*, 2023; *Doe v. Dallas Indep. Sch. Dist.*, 2019; *Doe v. Dennis-Yarmouth Reg'l Sch. Dist.*, 2022; *Doe v. Fulton Cty. Sch. Dist.*, 2021; *Doe v. Gavins*, 2023; *Doe v. Ohio Hi-Point Sch. Dist. Bd. of Educ.*, 2022; *Doe v. Wentzville R-IV Sch. Dist.*, 2023; *E.C. v. Cmty. Sch. Corp. of E. Hancock Cnty.*, 2023; *E.M.J. v. Garrard Cty. Bd. of Educ.*, 2019; *Fisher*

v. Moore, 2023; *Gullion v. Manson Northwest Webster Sch. Dist.*, 2021; *Hernandez v. Fort Bend ISD*, 2019; *I.M. v. Houston Indep. Sch. Dist.*, 2021; *J.G. v. Bryan Indep. Sch. Dist.*, 2019; *L.K.M. v. Bethel Sch. Dist.*, 2020; *L.W. v. Roman Catholic Archdiocese of Indianapolis, Inc.*, 2022; *M.P.G. v. Antioch Unified Sch. Dist.*, 2023; *M.S. v. Rochester Cmty. Sch. Dist.*, 2023; *McCann v. York Sch. Dep't.*, 2019; *Morrow v. McCurtain Cnty. Indep. Sch. Dist. No. 11*, 2023; *N.P. v. Kenton Cty. Pub. Sch.*, 2023; *Nation v. Piedmont Indep. Sch. Dist. No. 22*, 2019; *Raymond v. Me. Sch. Admin. Dist. 6*, 2019; *Robert R. v. Jefferson Cnty. Sch. Dist.*, 2022; *Roe v. Lincoln-Sudbury Reg'l Sch. Dist.*, 2021; *S.S. v. Raytown Quality Sch. Dist.*, 2021; *Smith v. Comal Indep. Sch. Dist.*, 2023; *Stevens v. Berryhill Bd. of Edu.*, 2024; *T.J. ex rel. B.W. v. Bd. of Educ.*, 2019; *Torres v. Stewart Cnty. Sch. Sys.*, 2023; *Vargas v. Madison Metro. Sch. Dist.*, 2019; *W.S. v. Mollala River School Dist.*, 2019; *Walker v. Tuscaloosa Cty. Sch. Bd.*, 2019; *Webster v. Chesterfield Cnty. Sch. Bd.*, 2022).

Table 9: Key Takeaways Related to the Courts' Choice and Application of Legal Analysis Category

Legal Analysis Category	Key Takeaways	Case Name and Circuit
Deliberate Indifference	<p>Principal was an official with authority that could reasonably have been found to not take appropriate action on the report of bullying or the doctor's findings, as they had actual knowledge and no investigation was undertaken for over a year yet they were quick to relay her punishment for conduct violations.</p> <p>Reasonable jury could find that failure to reevaluate or convene the IEP team before making a change in placement and failure to update the IEP equals a failure to act despite knowledge of a violation of a federally protected right. In addition, failure to reevaluate or revise IEP and instead take disciplinary action while the student was in a psychiatric facility could be a</p>	<p>A.T. v. Oley Valley Sch. Dist. – 3rd Cir.</p> <p>A.T. v. Oley Valley Sch. Dist. – 3rd Cir.</p>

	<p>violation. Also, at the due process hearing the administrator "bluffing" on discipline and no legal authority to require a 45 day drug and alcohol program - plus failure to conduct a manifestation determination.</p> <p>Failure to report or take any action regarding reports may equal deliberate indifference.</p> <p>School admitted that the sexual harassment policy adopted was not applied to special education students, so those students were treated differently. Also, goes to equal protection claims.</p> <p>Deliberate Indifference for unsupervised lunch - the school could not have actual knowledge that sexual harassment could occur - not more than negligent; Title IX liability can occur after student withdraws from school.</p> <p>School district had knowledge of previous history and the school made the choice to remove the bus monitor plus the bus driver's failure to respond.</p> <p>No action is sufficient for deliberate indifference when there is actual knowledge.</p> <p>Repeated allegations with notice may be deliberate indifference.</p> <p>The Complainant argues that prior sexual misconduct history at former school was not shared and that the school was deliberately indifferent in accepting the transfer - cannot be held liable as complainant would have had to have been attempting to access the education/program for Title IX to apply - so former school is not liable. Current School is not liable, because once they had knowledge they took steps to safeguard the complainant.</p>	<p>C.M. v. Cedar Park Charter Acad. PTO – 5th Cir. and Cianciotto v. New York City Dep't of Educ. – 2nd Cir.</p> <p>Berg v. Bethel Sch. Dist. – 9th Cir.</p> <p>Doe v. Dennis-Yarmouth Reg'l Sch. Dist. – 1st Cir.</p> <p>Doe v. Fulton Cty. Sch. Dist. – 11th Cir.</p> <p>Doe v. Gavins – 1st Cir.</p> <p>Doe v. Ohio Hi-Point Sch. Dist. Bd. of Educ. – 6th Cir.</p> <p>E.C. v. Cmty. Sch. Corp. of E. Hancock Cty. – 7th Cir.</p>
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	<p>The school may have violated reporting and recordkeeping norms, but they responded promptly - avoids deliberate indifference.</p> <p>School had knowledge, helped delete evidence of misconduct, did not discipline all participants, failed to provide accommodations or support measures, failed to take preventative measures, abuse continued, failed to report to the police, failed to indicate how to file a formal complaint, interviewed without his parents, and school did not have a Title IX Coordinator.</p> <p>Deliberate indifference requires intent.</p> <p>Prior behavioral history that is non-sexual does not constitute actual knowledge. School acted on the report, while the investigation is alleged inadequate that does not constitute deliberate indifference - court suggested that may be negligence.</p> <p>Inaction or failure to recognize notes as harassment leaves enough facts in dispute for deliberate indifference claims.</p> <p>School is not deliberately indifferent for not suspending the students; Supportive measures does not result in deliberate indifference when allowing for alternative class arrangements; Change in place is not deliberate indifference; School is not deliberately indifferent by not institute a particular remedial measure as long as they provide a suitable one; Request for only female drivers was not followed, but not required and not deliberate indifference.</p> <p>Failure to supervise made him more vulnerable, undergo, and be subjected to harassment by another student.</p> <p>A school knowing that there were previous behavioral issues took no steps to train staff or inform them of the student's behavioral issues</p>	<p>Guillion v. Manson Northwest Webster Sch. Dist. – 8th Cir.</p> <p>L.W. v. Roman Catholic Archdiocese of Indianapolis, Inc. – 7th Cir.</p> <p>M.P.G. v. Antioch Unified Sch. Dist. – 9th Cir.</p> <p>Morrow v. McCurtain Cnty. Indep. Sch. Dist. No. 11 – 10th Cir.</p> <p>Robert R. v. Jefferson Cnty. Sch. Dist. – 10th Cir.</p> <p>Roe v. Lincoln-Sudbury Reg'l Sch. Dist. – 1st Cir.</p> <p>S.S. v. Raytown Quality Sch. Dist. – 8th Cir.</p> <p>Smith v. Comal Indep. Sch. Dist. - 5th Cir.</p>
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	<p>may be deliberate indifference.</p> <p>Delay in informing parents that respondent was not returning to school is not deliberate indifference and no evidence that the delay was in an effort to sabotage or negatively impact the Plaintiffs' claims.</p>	<p>W.S. v. Mollala River School Dist. – 9th Cir.</p>
<p>Disability Discrimination</p>	<p>There must be a showing of a nexus or connection between the purported disability and school's discriminatory actions.</p> <p>For associational disability claims, the parents must show they suffered a direct injury and in this case the direct injuries were towards the child.</p> <p>A school taking almost immediate action to provide accommodation does not support a discrimination claim.</p> <p>Reasonable that a jury could find that the student would not have suffered mistreatment but for his disability, as the school knew that the student was disabled and required constant supervision and care, that the student was with the employee due to that need for supervision, and the school knew that due to his disability he would not be able to report abuse to his parents.</p> <p>State-Created Danger claims a failure to follow the IEP is not an intention to harm or discriminate.</p> <p>The respondent was removed from school - the respondent's potential of return to the school does not equal intentional discrimination based on disability - it is too speculative.</p> <p>General statistical data related to increased risk in special education classrooms does not support discrimination claims.</p>	<p>D.M. v. Allegheny Sch. Dist. – 3rd Cir.</p> <p>D.M. v. Allegheny Sch. Dist. – 3rd Cir.</p> <p>Doe v. Brighton Sch. Dist. 27J - 10th Cir.</p> <p>Doe v. Cabell Cnty. Bd. of Educ. – 4th Cir.</p> <p>Doe v. Dennis-Yarmouth Reg'l Sch. Dist. – 1st Cir.</p> <p>Hernandez v. Fort Bend ISD – 5th Cir.</p> <p>M.P.G. v. Antioch Unified Sch. Dist. – 9th Cir.</p>

	<p>School discounted the reports due to heightened fear and stemming from bullying and harassment resulting in a failure to act; failure to fully investigate and address complaint was based on disability; physical assault by a student does not result in a district not being potentially liable for discrimination based solely on his disability.</p> <p>As to discrimination allegations related to participation in the football program, the court stated that there were not specific enough allegations addressing removal from the football team. The court inquired regarding the element of "otherwise qualified" as there were no facts pleaded regarding requirements to stay or make the team.</p> <p>Parents can exert rights for economic damages for care of their son, but not for individual damages - ADA/504 does not permit claims for parents like has been held under IDEA.</p> <p>Plaintiff argues that they were discriminated against due to failure to conduct a manifestation determination prior to discipline; however, the minimal time the student was removed from school is not a significant change in placement.</p> <p>The Court noted that the Plaintiff must show a link between the harassment and the peer's knowledge of their disability.</p> <p>A refusal to make sure to have staff to cover could be viewed as discriminatory.</p>	<p>McCann v. York Sch. Dep't. – 1st Cir.</p> <p>N.P. v. Kenton Cty. Pub. Sch. – 6th Cir.</p> <p>Robert R. v. Jefferson Cnty. Sch. Dist. – 10th Cir.</p> <p>Torres v. Stewart Cnty. Sch. Sys. – 6th Cir.</p> <p>Vargas v. Madison Metro Sch. Dist. – 7th Cir.</p> <p>Doe v. Dennis-Yarmouth Reg'l Sch. Dist. – 1st Cir.</p>
Actual Knowledge	<p>School bus driver was the sole school employee present and had supervisory and safety management requirements under state law.</p> <p>School did not have actual knowledge as parents did not report at any of their meetings.</p> <p>Prior behavioral history that is non-sexual does not constitute actual knowledge.</p>	<p>Doe v. Fulton Cty. Sch. Dist. – 11th Cir.</p> <p>J.G. v. Bryan Indep. Sch. Dist. – 5th Cir.</p> <p>Morrow v. McCurtain Cnty. Indep. Sch. Dist. No. 11 – 10th Cir.</p>

	<p>School was allegedly aware of previous incidents of harassment in its programs/activities including acts by the alleged perpetrator meets actual knowledge.</p> <p>School was aware of the student's history of sexual behavior with other kids.</p> <p>School had actual knowledge because "actual knowledge only takes one administrator with authority" to take corrective action. In this case, multiple individuals were notified.</p> <p>Person with Authority was aware - Assistant Principal and failure to explain how someone with authority didn't know when explicit videos were shown in class.</p>	<p>S.S. v. Raytown Quality Sch. Dist. - 8th Cir.</p> <p>Smith v. Comal Indep. Sch. Dist. - 5th Cir.</p> <p>N.P. v. Kenton Cty. Pub. Sch. – 6th Cir.</p> <p>Robert R. v. Jefferson Cnty. Sch. Dist. – 10th Cir.</p>
Exhaustion of Remedies IDEA	<p>No need to exhaust administrative remedies for Title IX where FAPE is not in question.</p> <p>Arguing education and non-educational injuries does not circumvent the exhaustion requirement; however, the holding from Supreme Court in Perez says that no exhaustion requirement since seeking damages as relief. A relief that IDEA does not provide.</p> <p>The focus of the complainant's action is not grounded in FAPE, but on the allegation that the school failed to stop the sexual assault means that no exhaustion is required.</p> <p>Exhaustion is attached to issues related to FAPE and not required for discrimination.</p>	<p>Doe v. Dallas Indep. Sch. Dist., 5th Cir. App.</p> <p>Stevens v. Berryhill Bd. of Educ. - 10th Cir.</p> <p>Raymond v. Me. Sch. Admin. Dist. 6 - 1st Cir.</p> <p>Doe v. Dennis-Yarmouth Reg'l Sch. Dist. - 1st Cir.</p>
Severe, Pervasive, and Objectively Offensive Standard	<p>A third party bringing an action based on actions towards another fails to show denial of equal access to educational opportunities, while they may have had anxiety there is not a nexus to an effect on education.</p> <p>A single case of sexual assault can meet severe, pervasive, and objectively offensive standard.</p>	<p>Smith v. Comal Indep. Sch. Dist. - 5th Cir.</p> <p>S.S. v. Raytown Quality Sch. Dist. - 8th Cir.</p>

	<p>There is not a need to plead multiple instances of sexual assault for there to be a Title IX claim.</p> <p>Allegations consisting of one incident of being punched in the genitals and a referral to penis size does not meet the severe and pervasive requirement.</p> <p>Court stated that the facts alleged, "see her underwear, asking her to kiss him, etc" was enough and not gender-neutral teasing to meet severe, pervasive, and objectively offensive standard.</p>	<p>Roe v. Lincoln-Sudbury Reg'l Sch. Dist. - 1st Cir.</p> <p>Nation v. Piedmont Indep. Sch. Dist. No. 22 - 10th Cir.</p> <p>Doe v. Gavins - 1st Cir.</p>
Davis Standard	Not Applicable	Not Applicable
Official with Authority	<p>A special education teacher has a duty to report and can send the student to the principal, but is not authorized to take disciplinary action. Therefore, she is not an appropriate person or an official with authority.</p> <p>A special education teacher is not an official with authority and there is no vicarious liability under Title IX to hold the school board accountable.</p> <p>Principal was an official with authority that could reasonably have been found to not take appropriate action on the report of bullying or the doctor's findings. They had actual knowledge and no investigation was undertaken for over a year yet they were quick to relay her punishment for conduct violations.</p>	<p>I.M. v. Houston Indep. Sch. Dist. - 5th Cir.</p> <p>Doe v. Bd. of Educ. - 7th Cir.</p> <p>A.T. v. Oley Vally Sch. Dist. - 3rd Cir.</p>
Other	<p>The respondent was enrolled in an after school program and the school's knowledge of respondent's behavioral issues means that the school had control over the harasser and the context in which the harassment occurred.</p> <p>No need for sexual harassment to be ongoing after initial complaint to bring a claim under Title IX.</p>	<p>Smith v. Comal Indep. Sch. Dist. - 5th Cir.</p> <p>W.S. v. Mollala River School Dist. - 9th Cir.</p>

	A single instance is rarely going to result in denial of access, typically it requires a systemic effect. Another factor was that the plaintiff continued to attend the school program.	Walker v. Tuscaloosa Cty. Sch. Bd. - 11th Cir.
Bad Faith	<p>Two incidents of sexual assault, the school was aware of the first sexual assault at the time of the second sexual assault. The guardians made multiple requests for a paraeducator to monitor and support the student and that was denied. The facts as pleaded were sufficient for bad faith or gross misjudgement.</p> <p>A student was bullied based on perceived sexual orientation not their disability. Plaintiff's argument that intentional denial of FAPE by the school district fails, because there were no facts to support that the school district acted in bad faith or gross misjudgement.</p>	<p>Doe v. Wentzville R-IV Sch. Dist. - 8th Cir.</p> <p>T.J. ex rel. B.W. v. Bd. of Educ. - 2nd Cir.</p>
FAPE	The gravamen of the complaint was not FAPE, allegations focus on lack of response so it was allowed to proceed.	McCann v. York Sch. Dep't. - 1st Cir.
Fry Standard	The Court applied the Fry test and found that a restroom could be brought if it occurred in another public facility other than a school and that a non-student could bring the same claim.	Raymond v. Me. Sch. Admin. Dist. 6 - 1st Cir.
Failure Sex-based Harassment	<p>Court acknowledges that Title IX covers same-sex sexual harassment, but here the incident alleged is sexual.</p> <p>Perceived failure to conform to gender stereotypes and gendered-name calling root of allegations of harassment and bullying in this matter.</p>	<p>Smith v. Comal Indep. Sch. Dist. - 5th Cir.</p> <p>McCann v. York Sch. Dep't. - 1st Cir.</p>
Qualified Immunity	State-created danger exception not created by the 5th Circuit.	Fisher v. Moore - 5th Cir. App.
Retaliation	Complainant alleges that allowing the respondent to stay in school and not discipline him was retaliation. Title IX does not require schools to "expel every student accused of sexual harassment to protect themselves from liability." Complainants do not have a right under Title IX	Morrow v. McCurtain Cnty. Indep. Sch. Dist. - 10th Cir.

	to make particular demands. School's explanation of the delay of assessment until after the student was not in crisis was plausible and not retaliatory.	Doe v. Brighton Sch. Dist. 27J - 10th Cir.
Failure to Reasonably Accommodate	Plaintiff failed to show that based on her disability she was particularly vulnerable to sexual assault to warrant adult supervision at all times as a reasonable accommodation. Plaintiff's must provide evidence of failure to reasonably accommodate.	Vargas v. Madison Metro. Sch. Dist. - 7th Cir. J.G. v. Bryan Indep. Sch. Dist. - 5th Cir.
Title VII	Hostile work environment only if there is a failure to take action.	Webster v. Chesterfield Cnty. Sch. Bd. - 4th Cir. App.
IDEA Due Process	The Court used the Title II ADA Test - just because there may also be an IDEA claim for FAPE does not mean automatic exclusion of ADA claim.	A.H. v. Jackson-Olin High School - 11th Cir.
Child Find	Not Applicable	Not Applicable

After putting the table together of key takeaways, it became apparent that the courts reviewed Title IX and special education laws separately. I examine this further in Section 4.4 of this chapter. I also noticed that there were several cases that appeared more than once with key takeaways and under more than one legal analysis category. Specifically, there was one case that appeared five times: *Smith v. Comal Indep. Sch. District* (2023 U.S. Dist. LEXIS 152326 (W.D. Tex. 2023)). There were five (5) cases that appeared with key takeaways in three (3) legal analysis categories and nine (9) cases that appeared with key takeaways under two (2) legal analysis categories. As the *Smith* case involved a review and with key takeaways under five (5) legal analysis categories, I conducted a thorough review of key facts of this case, as it may

provide further insight into the courts handling of multi-claim legal analyses the presented with key takeaways.

In the *Smith* case, the Complainant was the four year-old daughter of a physical education teacher in the school district (*Smith v. Comal Indep. Sch. District*, 2023). The Complainant's mother was a physical education teacher at the school. The Complainant was with her mother after school and on her way to the bathroom was stopped by the Respondent, a student enrolled in special education. The Respondent was alleged to have stopped the Complainant from going to the gym and directed her to the bathroom. The Respondent then told the Complainant that she needed to defecate and then the Respondent wiped her using force. The Respondent was believed to be unsupervised for forty-five minutes and had done this to one other child. The Complainant and her mother filed through the school's grievance processes and were unsuccessful in a finding of responsibility towards the administration. They then brought a Title IX lawsuit. The school district claimed that the allegations were insufficient to sustain a claim under Title IX. The *Smith* Court conducted a thorough analysis under Title IX by reviewing actual knowledge, control, sex-based discrimination, severity standard, and deliberate indifference. The *Smith* Court decided in favor of the school district; however, did so without prejudice so that the Complainant and her mother could potentially amend their complaint to two of the elements of a Title IX claim that were not met in these pleadings and refile.

In concluding its reasoning and analysis, the *Smith* Court moved through each element of the legal analysis under Title IX, which provide insight into the way that courts move through the elements of claims (*Smith v. Comal Indep. Sch. District*, 2023). The Complainant and her mother pled that the school district had knowledge based on the known history of misconduct of the Respondent and the *Smith* Court agreed. The school district argued that they did not have

substantial control, because this occurred in an after school program. The Complainant and her mother asserted that the Respondent was enrolled in their district in special education and it was the school district's after-school program. The *Smith* Court found in favor of the Complainant. The next legal analysis category argument was that the behavior was based on sex; however, in this case the alleged behavior was not clearly sexual but plausibly could be sexual and the court left room for the Complainants to amend their complaint. The school district also argued that the allegations as pled did not meet the severe, pervasive, and objectively offensive legal analysis category. The *Smith* Court indicated that the Complainant and her mother may have alleged sexual harassment, but they also needed to show that it interfered with her access to an educational program or activity. The *Smith* Court found that they did not show an impediment to the educational program or activity, therefore they would need to amend their complaint. The final legal analysis category reviewed was deliberate indifference, which requires a showing that the school district's response was "clearly unreasonable in light of known circumstances" (*Smith v. Comal Indep. Sch. District*, 2023). The *Smith* Court reasoned that the Respondent's prior behavioral history, failure of the school to train or notify staff, and the fact that the Respondent was under the control of the school district in their after school program were sufficient to support a deliberate indifference claim to move forward.

This case was instructive because analysis of the court's opinion provided clear instructions for school district's to follow and also provided insight into the impact of having a Respondent enrolled in special education. While in this case, the Respondent's enrollment in special education was not an area of focus. It was surprising to see no acknowledgement of the alleged behavior being considered a manifestation of the Respondent's disability. The *Smith*

Court did not address this at all (2023). Based on this opinion, it appears that the Complainant's rights were paramount in reviewing the Title IX claim elements.

For the five (5) cases that involved three (3) legal analysis categories, I developed the following table to look for patterns in their key facts. This table is divided into the case name, key facts, and legal analysis categories. The review and key fact analysis solidified the need to incorporate special education personnels' experience with the Title IX process in the recommendations in Chapter 5.

Table 10: Key Facts of Multi-Legal Analysis Key Takeaways Cases

Case Name	Key Facts	Legal Analysis Categories
Doe v. Dennis-Yarmouth Reg'l Sch. Dist. – 1st Cir.	<ul style="list-style-type: none"> • Complainant and Respondent both students enrolled in special education • Complainant and Respondents had IEPs that required one-to-one assistants • Sexual misconduct occurred when students were not supervised • Investigation not conducted because personnel thought conduct was mutual 	<ul style="list-style-type: none"> • Deliberate Indifference • Disability Discrimination • Exhaustion of Remedies IDEA
McCann v. York Sch. Dep't. – 1 st Cir.	<ul style="list-style-type: none"> • Complainant had a 504 plan • Respondents were students bullying based on perceived sex/gender non-conformance • Repeated reports to the school district with no action • Resulted in physical violence 	<ul style="list-style-type: none"> • Disability Discrimination • FAPE • Failure Sex-based Harassment
Morrow v. McCurtain Cnty. Indep. Sch. Dist. No. 11 – 10 th Cir.	<ul style="list-style-type: none"> • Complainant had an IEP • Sexual misconduct occurred at school in the locker room • Allegations that administrator did not take proper response steps 	<ul style="list-style-type: none"> • Deliberate Indifference • Actual Knowledge • Retaliation

	<ul style="list-style-type: none"> • Respondent allegedly engaged in sexual misconduct with another student after this incident • No disciplinary action taken against the Respondent 	
Robert R. v. Jefferson Cnty. Sch. Dist. – 10 th Cir.	<ul style="list-style-type: none"> • Complainant and Respondent both enrolled in special education • Sexual misconduct occurred at school and was ongoing with parents raising continual issues with the Respondent’s behavior towards Complainant • Allegations that administrators did not take proper response steps and had a lack of training 	<ul style="list-style-type: none"> • Deliberate Indifference • Disability Discrimination • Actual Knowledge
S.S. v. Raytown Quality Sch. Dist. - 8 th Cir.	<ul style="list-style-type: none"> • Complainant enrolled in special education • Sexual assault due to failure to supervise in a restroom • Allegations that administrators did not take proper response steps • Administrators were aware that Respondent had a history of engaging in harassing behavior towards other student including the Complainant 	<ul style="list-style-type: none"> • Deliberate Indifference • Actual Knowledge • Severe, Pervasive, and Objectively Offensive Standard

These five (5) cases show some similarities in factual pattern. A common allegation was that there was a failure to supervise by the school, especially when there is an Individualized Educational Plan (IEP) or a known need for paraeducator supervision. In addition, repeated behavior of the Respondent(s) as well as knowledge of prior history of misconduct was a

common factor used to support the legal claims and in the courts review under the legal analysis categories. Further, the failure to act or perceived failure to act by school personnel was a repeated occurrence. These findings aided in developing themes from the coding of the federal court decision dataset.

I conducted a secondary review of the total federal court decision dataset and identified five (5) repeating themes in the courts' reasoning and analysis. I labeled the themes: Action, Nexus, History, Authority, and Separation. These themes are defined in Table 11.

Table 11: Five Themes of the Courts' Reasoning

Theme	Defined
Action	Schools' action or inaction to reports of sexual misconduct.
Nexus	Existence of a nexus between the alleged discrimination and disability for disability discrimination cases.
History	Schools' knowledge of prior behavioral history.
Authority	Connection between actual knowledge and an official with authority to take disciplinary action.
Separation	Exhaustion of remedies under IDEA and relief sought under 504 and ADA.

After identifying the five (5) themes, I went back to the codebook and examined the court decisions by theme to ascertain if there were any patterns of agreement or conflict by the courts. This was an important step, so that I had an understanding of overall areas of agreement and areas of conflict between the circuits. Schools' policies and processes must be in alignment with their circuit, so it is imperative to understand where that may not align in thinking about overall best practices and recommendations. I outlined the findings by the five (5) themes, case name, and circuit. All of the circuits were in agreement on these five (5) major themes and there was no

conflict. It is worth noting that not every federal circuit is represented in each theme. My findings are reflected in Table 12.

Table 12: Five Themes Applied to the Courts' Reasonings in the Case Dataset

Theme	Case Names and Circuit	Circuits in Agreement
Action	Ciancitto v. New York City Dep't of Educ. - 2nd Cir. Doe v. Brighton Sch. Dist. 27J - 10th Cir. Doe v. Gavins - 1st. Cir. Doe v. Ohio Hi-Point Sch. Dist. Bd. of Educ. - 6th Cir. E.M.J. v. Garrand Cty. Bd. of Educ. - 6th Cir. Gullion v. Manson Northwest Webster Sch. - 8th Cir. L.W. v. Roman Catholic Archdiocese of Indianapolis, Inc. - 7th Cir. McCann v. York Sch. Dep't - 1st Cir.	1st, 2nd, 6th, 7th, 8th, 10th
Nexus	D.M. v. E. Allegheny Sch. Dist. - 3rd Cir. Doe v. Dennis-Yarmouth Reg'l Sch. Dist. - 1st Cir. Vargas v. Madison Metro. Sch. Dist. - 7th Cir.	1st, 3rd, 7th
History	Doe v. Fulton Cnty. Sch. Dist. - 11th Cir. Doe v. Wentzville R-IV Sch. Dist. - 8th Cir. E.C. v. Cmty. Sch. Corp. of E. Hancock Cnty - 7th Cir. Morrow v. McCurtain Cnty. Indep. Sch. Dist. No. 11 - 10th Cir. S.S. v. Raytown Quality Sch. Dist. - 8th Cir. Smith v. Comal Indep. Sch. Dist. - 5th Cir. Walker v. Tuscaloosa Cty. Sch. Bd. - 11th Cir.	5th, 7th, 8th, 10th, 11th

Authority	Doe v. Bd. of Educ. - 7th Cir. I.M. v. Houston Indep. Sch. Dist. - 5th Cir. N.P. v. Kenton Cty. Pub. Sch. - 6th Cir. Robert R. v. Jefferson Cnty. Sch. Dist. - 10th Cir.	5th, 6th, 7th, 10th
Separation	A.H. v. Jackson-Olin High School - 11th Cir. C.M. v. Cedar Park Charter Academy PTO - 5th Cir. McCann v. York Sch. Dep't - 1st Cir. Raymond v. Me. Sch. Admin. Dist. 6 - 1st Cir. Stevens v. Berryhill Bd. of Edu. - 10th Cir. Doe v. Dallas Indep. Sch. Dist. - 5th Cir. App.	1st, 5th, 5th Cir. App., 10th Cir., 11th

The final data point reviewed was the courts' final outcome in each case in the dataset. The court decided in favor of the school and the student evenly with seventeen (17) cases in favor of each. The court also arrived at a split decision, meaning partially in favor of the school and the student, in eight (8) cases. This data point was identified to see generally the success of schools and students in these cases. The outcome of the cases was not overly important to the research questions.

In this study, the focus was more on the courts' use and application of the legal analysis categories rather than the outcome of the particular case. This is because federal court opinions were used, and they were reviewing whether claims under specific laws may move forward. The cases were not deciding the ultimate outcome of whether there was a violation of law, instead the focus was on whether the claim should move forward. In addition, I was only reviewing the courts' decisions with regard to specific claims under Title IX, ADA, and 504. Many of the cases involved additional legal claims under other federal and state laws. Any decision in favor of the

school generally meant granting of a dismissal; however, that does not stop a student from refileing should they choose to or that the other legal claims did not move forward. A better indicator was a breakdown of the legal reasoning and application of the legal analysis categories seen in light of the five (5) themes, which is further discussed in Chapter 5.

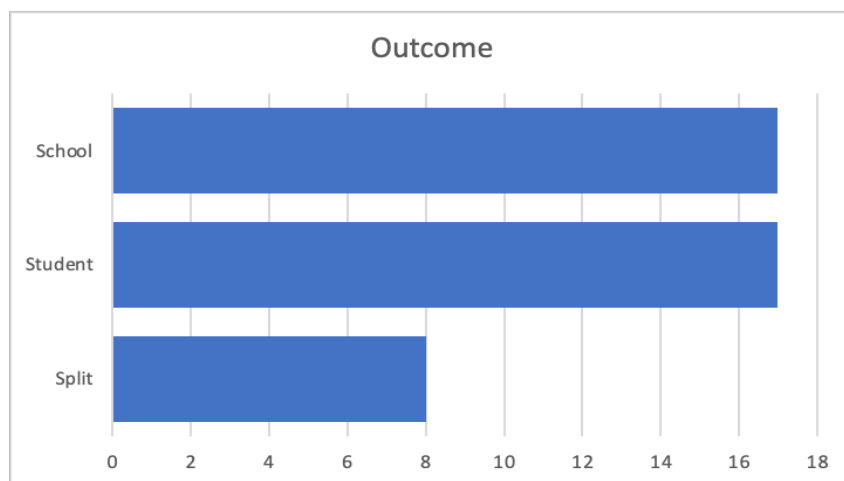


Figure 18: Frequency of Outcome

The data points examined in this first section aid in understanding the legal landscape of federal court cases that addressed sexual misconduct matters that implicate Title IX and special education law to aid K-12 schools in addressing issues of sexual misconduct. The data in this section aided in analysis of research question one and two. The data points focused on litigation characteristics, such as location, number of incidents, legal claims, legal analysis categories, and outcomes of litigation. These data points provided a better understanding of the issues schools are facing in litigation involving alleged violations of Title IX and special education laws. The final section of data reviewed is focused on case data that assisted with ascertaining what is learned from the federal court decisions and applying it to the adapted conceptual framework related to compliance theory and programming.

Compliance Program Findings

This section explores the case dataset using the Department of Justice Three-Question Analysis and the U.S. Sentencing Commission Guidelines Manual seven elements of a compliance program (Department of Justice, 2023; U.S. Sentencing Commission Guidelines Manual, 2021). The second research question asks what guidance can be gleaned from recent federal court decisions to improve K-12 sexual misconduct policies and processes. The general data findings and legal landscape data findings provide insight for research question two. However, to fully answer this question, this section employs the conceptual framework that I am applying in this study that has been adapted from the U.S. Sentencing Commission Guidelines Manual seven elements of a compliance program and the Department of Justice Three-Question Analysis for reviewing a compliance program. In developing the codebook and reviewing the cases, I created two specific coding categories to identify areas in compliance programming at the schools involved in litigation that were at issue using the standard compliance program elements found in the U.S. Sentencing Commission Guidelines Manual. To further my thought process, I utilized Department of Justice Three-Question Analysis and general compliance theory as part of the compliance program analysis.

For each case in the dataset, I completed the Department of Justice Three-Question Analysis (Department of Justice, 2023). The three questions are:

1. Is the compliance program well designed?
2. Is the compliance program implemented in good faith with adequate resources and authority?
3. Does the compliance [program] work in practice?

As outlined in Chapter 2, the first question in the Department of Justice Three-Question Analysis is answered by evaluating risk management processes; policies and procedures; training and communications; confidential reporting structure and investigation process; third party management; and mergers and acquisitions (Department of Justice, 2023). The second question focuses on resource allocation and support for compliance including providing appropriate autonomy and sufficient seniority to effectuate compliance. The third question requires assessing whether there is evidence of continuous improvement made towards compliance through auditing; evaluation of response mechanisms, including investigation procedures; and analysis of resolution actions.

In applying the Department of Justice Three-Question analysis, I had to determine the best way to assess the framework with the courts' opinions that were not focused on compliance from this lens. This led me to a factor analysis, essentially what characteristics was I seeing or not seeing in the courts' discussion and analysis based on the Department of Justice's assessment answers. For example, the Department of Justice states that to answer the first question of the analysis the focus should be on evaluating risk management processes; policies and procedures; training and communication; confidential reporting structure and investigation process; third party management; and mergers and acquisitions (Department of Justice, 2023). The language in the courts' analysis did not directly tie to these themes or language, so I looked for key indicators while knowing that not every case was going to provide a glimpse into every aspect of the Department of Justice Three-Question Analysis.

To illustrate, in reviewing the facts and analysis provided by the court I looked for indicators that there was a policy referenced and whether the court indicated that the school leaders followed the policy. I was interested in whether there were any issues raised with the

policy. In employing the Department of Justice Three-Question Analysis, it became apparent that some of the questions were not applicable, which was acknowledged by coding as not applicable (NA). This was most often the case for question two, which is often not explored by the court in determining their outcome. The third question resulted in the most number of “no” determinations. This was not surprising because the compliance program was working in practice, then in most cases the schools would not have found themselves in litigation at the federal court level. The table below provides further insight into factors that were included but not limited to in analyzing the three questions:

Table 13: Three-Question Analysis Factors

Three-Question Analysis	Yes	No	NA
1. Is the compliance program well designed?	<ul style="list-style-type: none"> • Policy exists and was followed • Investigation Conducted • Administrator response • Required reporting • Involvement of Title IX Coordinator 	<ul style="list-style-type: none"> • Policy is unclear or has gaps • Lack of understanding by school personnel of responding to reports 	<ul style="list-style-type: none"> • No reference to a policy • No comments about policy or response • No mention of training, reporting process, or investigation
2. Is the compliance program implemented in good faith with adequate resources and authority?	<ul style="list-style-type: none"> • Mention of Superintendent or authority overseeing process • Funded training 	<ul style="list-style-type: none"> • Allegations of bad faith • Purposeful lack of response • Comments related to underfunded resources 	<ul style="list-style-type: none"> • No reference to funding or lack of resources
3. Does the compliance [program] work in practice?	<ul style="list-style-type: none"> • Investigation process was thorough and followed 	<ul style="list-style-type: none"> • Issues with investigation process • Identified concerns with 	<ul style="list-style-type: none"> • No reference or issues related to investigation or resolution

	<ul style="list-style-type: none"> • Policy adherence and no issues were raised • No identified issues with the resolution process as implemented 	<p>policy or grievance process</p> <ul style="list-style-type: none"> • Improper or lack of understanding of response requirements 	
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While Table 13 is not all-encompassing, it provides insight into how the cases were analyzed under the Department of Justice Three-Question Analysis.

Applying the Department of Justice Three-Question Analysis to the case dataset, I found the most common result was: 1) N 2) NA 3) N with fifteen (15) cases. The second highest result was yes to all three questions with ten (10) cases and then no to all three questions with nine (9) cases. The remaining combinations and case numbers were: 3, 2, 1, and 1.

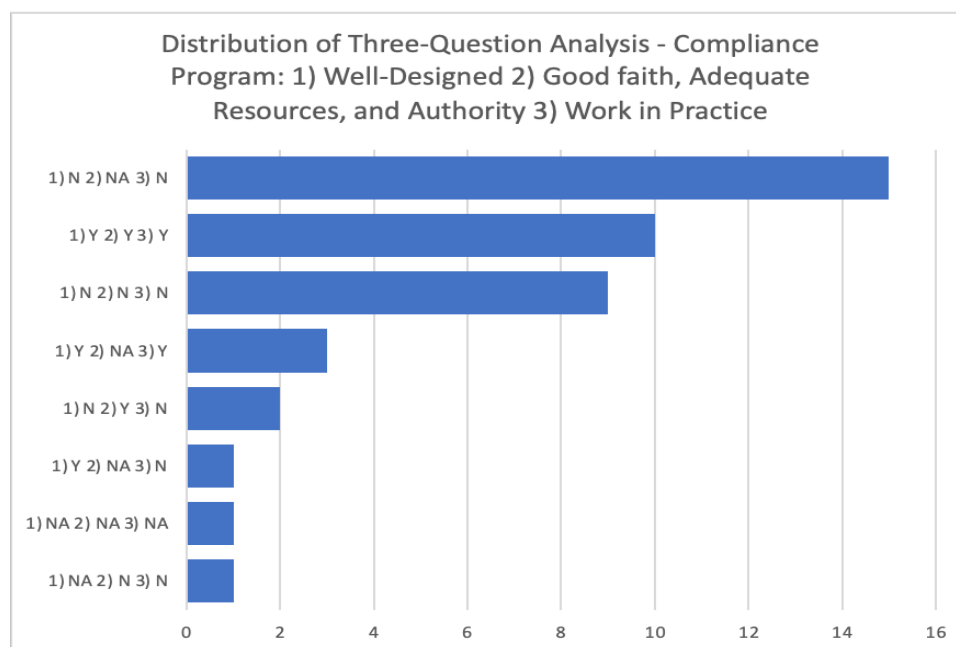


Figure 19: Distribution of Answers to Three-Question Analysis

The most common answer to question one was no. This was also the case with question three. I realized after review that the vast majority of the schools' compliance programming presented

opportunities for improvement, especially in the areas covered by question one and question three. Question three produced the most ‘no’ answers. The third question, in terms of the case dataset, really turned on investigation and resolution procedures as well as lack of response. As previously outlined in this chapter, deliberate indifference was the most common legal analysis categories examined (Table 8). Deliberate indifference was applied to allegations made that the school was aware and did not respond. This could also be reviewed as not understanding response requirements; therefore, it aligns that the most number of “no” responses would fit in question three. Question one produced the second most ‘no’ answers. There were repeated issues with policies and procedures as well as training and communication. Again, the areas covered by question one presented with a plethora of areas of opportunity which directly tie to the recommendations outlined in Chapter 5. The most common answers for each question is provided in the following graph:

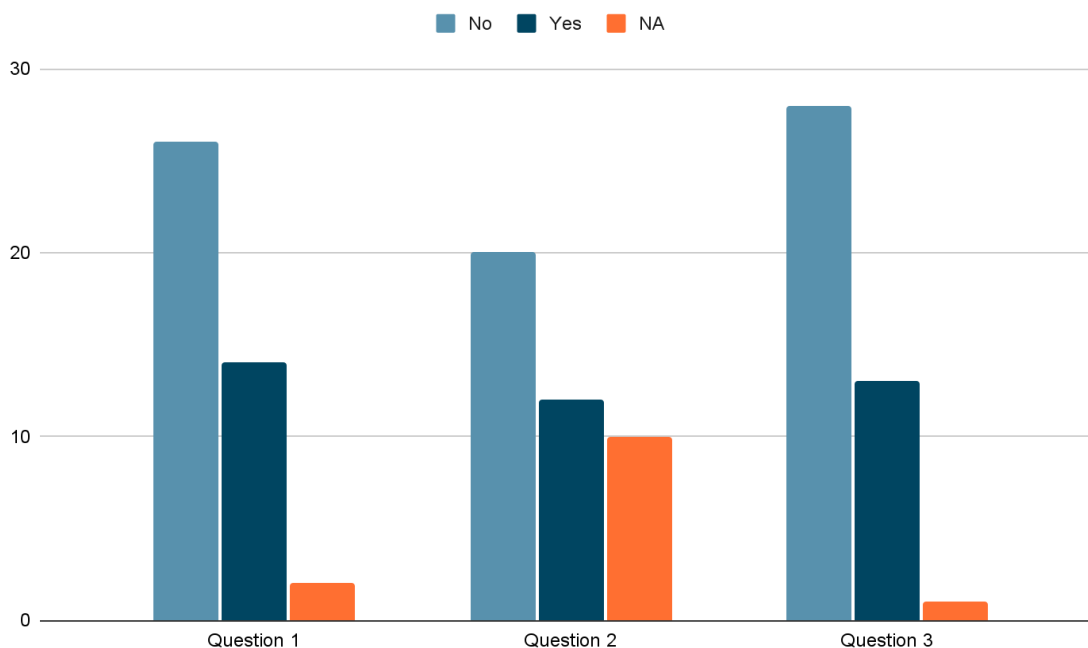


Figure 20: Frequency of Answers to Three-Question Analysis

The next step was to review the case dataset in light of the seven elements of a compliance program as outlined by the U.S. Sentencing Commission Guidelines Manual (2021). As outlined in Chapter 2, the seven elements of a compliance program for purposes of this study have been labeled as: 1) standards and procedures; 2) governance; 3) leadership, training, and education; 4) communication; 5) auditing and evaluation; 6) enforcement; and 7) response. Similar to the three-question analysis, I reviewed each case in light of these elements and identified which particular area was implicated by each case as well as those not applicable when those elements were not referenced or discussed by the court. In doing that analysis, the goal was to establish patterns or areas of focus that are ripe for improvement in K-12 Title IX compliance programming.

After review of the case dataset, the most common combination of compliance program elements that appeared in the federal court opinions were: 1) standards and procedures; 3) leadership, training, and education; and 7) response with a total of twenty-three (23) cases (U.S. Sentencing Commission Guidelines Manual, 2021). There were three (3) combinations that each had two (2) cases, but beyond that each combination was singular to each case. Beyond identifying the most common combination, I was more focused on the elements that appeared most often. The element most at issue was response with thirty-seven (37) occurrences closely followed by standards and procedures with thirty-six (36). The breakdown of overall occurrence is depicted in the table and graph below:

Table 14: Compliance Program Element Frequency

Compliance Program Element	Occurrence
Response	37
Standards and Procedures	36

Leadership, Training, and Education	35
Auditing and Evaluation	8
Communication	5
Enforcement	5
Governance	3

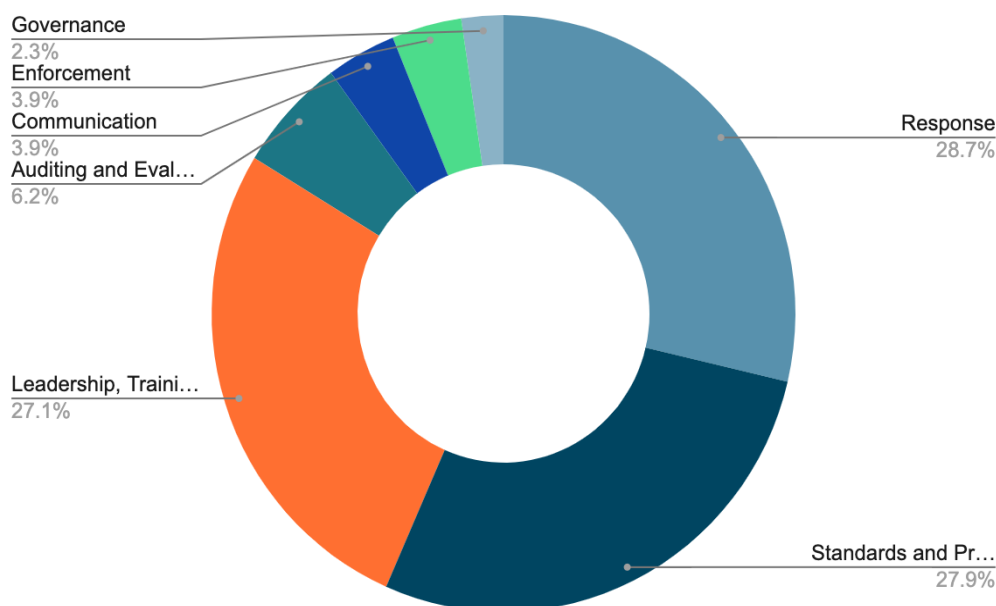


Figure 21: Percentage of Compliance Program Occurrence Analysis

The Department of Justice Three-Question Analysis and categorizing the cases dataset into the U.S. Sentencing Commission Guidelines Manual seven elements of a compliance program provides the requisite insight to provide recommendations for designing a Title IX compliance program in a K-12 setting (Department of Justice, 2023; U.S. Sentencing Commission Guidelines Manual, 2021). As noted in Chapter 2, the seven elements of the compliance program stay the same, but in its application, the design of the compliance program must be aligned and formulated to encompass the nuances of the organizational structure of a K-12

school district as well as the requirements outlined in the competing regulatory structures of Title IX and special education law.

4.4 Findings Related to Intersection of Title IX and Special Education Law

As outlined in Chapter 1, a motivating factor to engaging in this study was to better understand how the federal courts' were navigating the intersection of the rights afforded under Title IX and special education in addressing issues of sexual misconduct. This understanding of the federal courts' analysis is imperative, as prior to the May 2020 Title IX regulations the courts were left to navigate Title IX without instruction. The reliance of the federal court's own precedent will more likely than not continue as the May 2020 Title IX regulations or the upcoming changes to them, no matter how detailed, are unable to address every situation presented in litigation.

As I reviewed the federal cases, it became apparent that the federal courts' generally engaged in separate analysis of the facts and allegations under Title IX and special education law. The cases were often divided into separate sections of analysis by implicated law. For example, the court would conduct their analysis of the Title IX claim in one subsection of the opinion and then create a Section 504 subsection and conduct an analysis (*Cianciotto v. New York City Dep't of Educ.*, 2022). The table is arranged by case and then columns to denote separate analysis under Title IX and Special Education Law, Combined Analysis, and Hybrid or New Analysis. I marked the column with an X by analysis type and if the case did not contain claims under Title IX and special education law I marked NA. The findings are illustrated in the following table:

Table 15: Case Dataset by Title IX and Special Education Law Analysis

Case Name	Separate Analysis Under Title IX and Special Education Law	Combined Analysis	Hybrid or New Analysis
A.H. v. Jackson-Olin High Sch.	X		
A.T. v. Oley Valley Sch. Dist.	X		
Berg v. Bethel Sch. Dist.	NA	NA	NA
C.M. v. Cedar Park Charter Acad. PTO	X		
Cianciotto v. New York City Dep't of Educ.	X		
D.M. v. E. Allegheny Sch. Dist.	X		
Doe v. Bd. of Educ.	X		
Doe v. Brighton Sch. Dist. 27J	X		
Doe v. Cabell Cnty. Bd. of Educ.	X		
Doe v. Dallas Indep. Sch. Dist.	X		
Doe v. Dennis-Yarmouth Reg'l Sch. Dist.	X		
Doe v. Fulton Cty. Sch. Dist.	X		
Doe v. Gavins	X		
Doe v. Ohio Hi-Point Sch. Dist. Bd. of Educ.	X		
Doe v. Wentzville R-IV Sch. Dist.	X		
E.C. v. Cmty. Sch. Corp. of E. Hancock Cnty.	NA	NA	NA
E.M.J. v. Garrard Cty. Bd. of Educ.	NA	NA	NA
Fisher v. Moore	NA	NA	NA
Gullion v. Manson Northwest Webster Sch. Dist.	X		
Hernandez v. Fort Bend ISD	X		
I.M. v. Houston Indep. Sch. Dist.	NA	NA	NA
J.G. v. Bryan Indep. Sch. Dist.	X		
L.K.M. v. Bethel Sch. Dist.	NA	NA	NA
L.W. v. Roman Catholic Archdiocese of Indianapolis, Inc.	X		
M.P.G. v. Antioch Unified Sch. Dist.	NA	NA	NA

M.S. v. Rochester Cmty. Sch. Dist.	NA	NA	NA
McCann v. York Sch. Dep't.	X		
Morrow v. McCurtain Cnty. Indep. Sch. Dist. No. 11	X		
N.P. v. Kenton Cty. Pub. Sch.	X		
Nation v. Piedmont Indep. Sch. Dist. No. 22	NA	NA	NA
Raymond v. Me. Sch. Admin. Dist. 6	X		
Robert R. v. Jefferson Cnty. Sch. Dist.	X		
Roe v. Lincoln-Sudbury Reg'l Sch. Dist.	NA	NA	NA
S.S. v. Raytown Quality Sch. Dist.	X		
Smith v. Comal Indep. Sch. Dist.	NA	NA	NA
Stevens v. Berryhill Bd. of Edu.	X		
T.J. ex rel. B.W. v. Bd. of Educ.	X		
Torres v. Stewart Cnty. Sch. Sys.	X		
Vargas v. Madison Metro. Sch. Dist.	NA	NA	NA
W.S. v. Mollala River School Dist.	NA	NA	NA
Walker v. Tuscaloosa Cty. Sch. Bd.	X		
Webster v. Chesterfield Cnty. Sch. Bd.	X		

In the forty-two (42) cases in the dataset, thirteen (13) cases did not involve claims pled under both Title IX and special education law being examined by the courts. Of the twenty-nine (29) cases where the courts were examining claims under both Title IX and special education law, all of the courts engaged in separate analysis. Specifically, the federal courts' approached singular analysis rather than analyzing Title IX and ADA/504 together. This is a "finding" in an of itself and provides insight into the approach that the federal courts' will take in their decision-making process.

To illustrate, in one case that involved two high school students, both of whom were enrolled in special education, where one student allegedly sexual harassed the other student in a restroom, litigation was brought arguing violations of Title IX and Section 504 (*Doe v. Dennis-Yarmouth Reg'l Sch. Dist.*, 2022). The Court reviewed the Title IX and Section 504 claims separately, though deliberate indifference was the standard analyzed, and found both claims to survive. A part of the underlying premise of the complaint was the same under both Title IX and Section 504, failure to follow the students' IEPs which required that both have one-to-one supervision. So, even with similar premise the Court conducted separate analyses. This “finding” will be further explored in Chapter 5.

It is abundantly clear that K-12 schools need to be mindful that each claim will be processed individually for compliance as outlined in Table 15. A deeper review of the data analysis supports this notion and is further discussion in Chapter 5, Section 5.2. The individual processing will require separate legal compliance reviews as well as collaboration between administrative stakeholders. The understanding that the federal courts' will approach each claim separately is instructive in thinking about how to approach policy-making, process development, and compliance program creation.

4.5 Conclusion

This chapter provided a general overview of the legal landscape of the cases and the data that was gleaned from federal court decisions that involve Title IX and special education laws in addressing issues of sexual misconduct in K-12 schools. In doing so, the legal analysis category applied by the courts was highlighted. Further, this chapter explored the data in light of compliance theory and programming. The next chapter takes a deeper dive into the data analysis in answering the research questions and provides recommendations for K-12 schools in

addressing sexual misconduct as well as meeting compliance obligations through compliance programming.

Chapter 5: Data Analysis and Recommendations

5.1 Introduction

As stated in Chapter 1, there has been limited guidance from the federal government on how K-12 schools should implement their policies and practices to meet the regulatory compliance requirements of Title IX and special education laws. When the May 2020 Title IX regulations were released, there was only specific language regarding the intersection between Title IX and special education laws in one section related to emergency removal. The May 2020 Title IX regulations state in a provision involving emergency removal, that the provision is not to be construed to modify any rights under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), or the Americans with Disabilities Act (ADA) (34 C.F.R § 106.44(c) (2020)). Upon review of the federal court decisions in the dataset, the emergency removal provision was not analyzed in a meaningful way for this study due to the timing of incident or emergency removal was not at issue. This leaves K-12 schools to determine their individual approach to policies and processes in navigating the rights afforded in matters that involve Title IX and special education law. The lack of clarity can result in litigation, monetary damages, and distrust in the school districts themselves. Not to mention, the lasting impact on the survivors, students, and community.

As previously stated, the purpose of this study is to understand the legal landscape and determine any guidance that can be gleaned from federal court decisions that implicate Title IX and special education laws in addressing issues of sexual misconduct in K-12 schools and based on that guidance, identify ways that K-12 schools can improve their sexual misconduct policies

and processes. As outlined in Chapter 1, this study purports to do so by answering the following research questions:

1. What is the legal landscape of court cases that have addressed sexual misconduct matters that implicate Title IX and special education law?
2. In light of the competing regulatory schemes of Title IX and special education law, what guidance can be gleaned from recent court decisions to improve K-12 sexual misconduct policies and processes?

These questions were answered by reviewing federal court judicial opinions to gain insight into how the courts have interpreted the affordance of rights in matters that involve Title IX and special education laws. More specifically, the second research question is focused on guidance that can be gleaned from the court's application of the legal analysis categories being used in each court decision. Understanding the legal analysis categories being utilized and how they are applied is the most insightful in determining guidance. In addition, the federal court decisions were reviewed to identify patterns in litigation both in characteristics of litigants and fact patterns as well as the legal reasoning utilized by the courts. Additional data points gathered regarding compliance programming through the use of the Department of Justice Three-Question Analysis for evaluating compliance programs and categorizing the case dataset into the U.S. Sentencing Commission Guidelines Manual seven elements of a compliance program (Department of Justice, 2023; U.S. Sentencing Commission Guidelines Manual, 2021). The compliance lens provides the requisite insight to provide recommendations for designing a Title IX compliance program in a K-12 setting. Based on the Title IX regulations, special education laws, and the results of the legal content analysis of relevant federal cases from this study, I will provide recommendations for best practices and developing a compliance program for the K-12

setting that is cognizant of the three levels of governance unique to the K-12 organizational structure (Figure 3).

This chapter takes the next step in the legal content analysis to review the data gathered to identify further considerations and best practices in policy, process, and practice to comply with Title IX and special education law. In addition, this chapter reviews the data in consideration of compliance theory and provide compliance programming recommendations for K-12 schools. Section 5.2 focuses on the intersection of Title IX and special education law. Section 5.3 provides insight into research question one. Section 5.4 discusses research question two. Section 5.5 reviews recommendations for K-12 schools' to improve their policies and processes. Section 5.6 explores the study's implications and future directions for research. A conclusion is outlined in Section 5.7.

5.2 Intersection of Title IX and Special Education Law

As outlined in Chapter 1 and reiterated throughout this study, a motivating factor for engaging in this study was to better understand how the federal courts' were navigating the intersection of the rights afforded under Title IX and special education law in addressing issues of sexual misconduct. These two regulatory structures are complex and prior to the May 2020 Title IX regulations, and even after, the courts, but more importantly schools, were left to navigate compliance with Title IX and special education law without detailed instruction. This study looked to the courts for additional guidance for schools.

A review of the federal court decision dataset showed that the courts largely relied on their own precedent rather than looking to the regulations even in cases addressing sexual misconduct that reviewed incidents that occurred after the May 2020 Title IX regulations were instituted. It appears more likely than not that the federal court's reliance on court precedent over

regulatory language will continue, which makes an understanding of the federal courts' approach and analysis all the more imperative for school administrators. Moreover, it is unlikely that any upcoming regulatory language would be able to address the complex real-life fact patterns that are addressed by the court.

As discussed in Chapter 4, as I reviewed the federal court decision dataset I noticed that the courts' engaged in separate analysis of the facts and allegations under each law (Table 15). As noted, I wondered if courts would adopt some hybrid analysis with regard to the legal analysis categories when examining the competing regulatory schemes; the courts did not take this approach. The federal courts separated each count by law, which is in line with legal opinion writing, so this looked like, for cases involving multiple counts, the court conducting an analysis under the elements of the Title IX claim and then separately under a new section engaging in their analysis under the elements of a disability discrimination claim (Table 15). This finding was not surprising; however, I thought I would find that in cases where there is a clear overlap between the disability discrimination, alleged misconduct, and Title IX that would result in some discussion undertaken by the courts. It is worth noting that this could be due to not the "right" facts being litigated, which meant that the court did not have to engage in that particular analysis. An additional possibility is that there is a disconnect between the courts and educational policy. This could be a result of lack of judicial understanding of the implications of these laws and practice. The issue is that lawyers, schools, and practitioners are seeing the potential conflicts between Title IX and special education law (see, e.g., Lusk Albertson, 2020; Allen, n.d.; Ostojic Rushing et al., 2020), but the court is not or does not feel it is necessary to address it.

An overlapping analysis was a potential possibility in one case, but the court indicated that it did not need to be addressed as the result was not a change in placement for the student. In

Torres v. Stewart Cnty. Sch. Sys., the Middle District of Tennessee in Nashville reviewed a matter that involved allegations of violation of the Section 504 on behalf of a student that was a Respondent in a sexual misconduct matter (2023). In this instance, the student was not enrolled in special education; however, he was treated as such as the school district was on notice of his disabilities. The student's mother refused special education services, which is why he was not enrolled. This student filed a suit against the school district, in part, for violation of Section 504. As part of that claim, the student stated that he was assigned to an alternative placement and should have had a manifestation determination. The *Torres* Court reasoned that as the change was implemented for no more than four days, despite the initial assignment of 112 days, that there was not a need for a manifestation determination (2023). This case may not have resulted in a review of the school district's decision to implement a removal, but it is evidence that this is a potential issue that could arise in the future.

Overall, I thought I would find that issues related to student discipline and emergency removal would be a more pertinent in the federal court decisions. As identified in Chapter 4, a review of the cases identified only ten (10) cases that also involved issues related to student discipline. In the total federal court dataset, there were twenty-four (24) cases where student discipline was not at issue and eight (8) cases that student discipline was not applicable meaning that the respondents were not students or student issues were not at issue. While this did not prove to be a thoroughly examined issue in the federal court decisions thus far, I believe that this will be an emerging issue moving forward. This is contemplated in the May 2020 Title IX regulations as well as in the 2024 Title IX regulations effective August 1, 2024. That said, K-12 schools need to be mindful of how Title IX and special education law intersect when it comes to student discipline.

As outlined in the following discussion of the research questions in this chapter, claims under Title IX and special education law are often filed together when a student enrolled in special education law is involved. There is no indication that this will change in litigation moving forward. This study's finding that the federal courts approach each claim separately is instructive in thinking about how to approach policy-making, process development, and compliance program creation. An understanding of how the federal courts are approaching these claims and analysis are assistive for K-12 schools in designing compliance programming.

5.3 Discussion: Research Question One

Research question one asks what is the legal landscape of court cases that have addressed sexual misconduct matters that implicate Title IX and special education law. I pursued answering this question by reviewing cases and coding general factors of the litigation itself. The total dataset was forty-two (42) cases.

Characteristics of Complainant(s) and Respondent(s)

In the general data findings, I looked at the data related to characteristics of the complainant(s) and respondent(s). As noted in Chapter 4, the use of complainant(s) and respondent(s) is not the same as plaintiff, defendant, appellant, and appellee. Complainant(s) is a term used in the Title IX arena to denote the individual(s) bringing the complaint, and the respondent(s) is the individual(s) who is alleged to have perpetrated the violence and is the one who the complaint is filed against. The breakdown of the sex of complainant(s) was close to evenly split between males (21) and females (20) with one case involving multiple complainant(s) (Figure 4). The most common age of the complainant(s) was high school (Figure 5). Respondent(s) were majority male (28) with females representing only five (5) respondent(s). The remaining respondent(s) were either unknown (5) or involved multiple respondent(s) (3)

(Figure 6). Respondent(s) ages, if students, were aligned with the ages of complainant(s). I did not identify any cases where students were involved with sexual misconduct matters outside of their school age grouping. The most common role of the complainant(s) and respondent(s) was student and the majority were enrolled in special education at the time of the incident (Figure 7; Figure 10). The table below outlines the most common characteristics of the complainant(s) and respondent(s) in the federal case dataset in this study.

Table 16: Most Common Characteristics Complainant(s) and Respondent(s)

Complainant(s)	Respondent(s)
Male or Female High School Student Enrolled in Special Education	Male High School Student Enrolled in Special Education

This picture of the most common characteristics of complainant(s) and respondent(s) is helpful in understanding areas of opportunity for schools in current school structures and programming.

Analysis of Legal Claims

The next area of data involved legal claims. The types of claims being filed provided insight into litigation strategies that schools should be prepared to receive and defend. Allegations of Title IX violations were the highest number of claims filed followed by Section 504 and ADA (Figure 11). The litigation strategies in cases involving Title IX and special education law involved multiple claims being filed. Most of the cases in the federal decision dataset involved cases that brought claims under Title IX, Section 504, and ADA (Table 5). In addition, most of the cases also involved § 1983 or tort actions. I did not examine this data any further, as this study was focused on Title IX, Section 504, and ADA. While this study reviewed actions under Title IX, ADA, and Section 504, generally it is helpful to know what potential

companion claims are being filed along with those claims. This is a potential area for future study to gather an understanding of the intersection of Title IX, Section 504, and ADA with other federal and state law claims.

The takeaway from this study is that schools should be prepared to see multiple claims in litigation and that Title IX, Section 504, and ADA claims are often filed together. This was confirmed in this study, as a review of the federal court decisions dataset showed that the vast majority of cases involved claims under Title IX, Section 504, and ADA (Table 5). As discussed in Chapter 2, Section 504 and the ADA provide similar protections for students regarding placement and discipline. This confirms that it is imperative that the handling of sexual misconduct is in consideration of Title IX and special education law, as a potential violation under Title IX will also be an alleged violation of rights afforded under 504 and the ADA.

Another interesting finding was that most of the cases, regardless of the timing of the May 2020 Title IX regulations, did not involve analysis under the May 2020 Title IX regulations. The federal court decisions in the dataset mostly involved incidents that occurred prior to the release of the May 2020 Title IX regulations (Figure 13). In the two cases that involved incidents that occurred after the release of the May 2020 Title IX regulations, the regulations were not examined as part of the courts' analysis. This finding confirmed that the limited language in the May 2020 Title IX regulations may have affected the need for the court to acknowledge or reference the regulations, so the reliance on court precedent was paramount.

Analysis of Incident Specific Data

The next step was to get an understanding of the incident specific data that was seen in the federal court decision dataset. The vast majority of incidents happened at school (28) or a combination of school and off-campus (5) (Figure 14). The federal court decision dataset showed

that most of the cases involved multiple incidents (28) rather than a single incident and did not involve challenges to student discipline (Figure 15). While a few of the cases addressed discipline choices by the school as factors to be reviewed in deliberate indifference or discrimination, the focus of the litigation was not on the student discipline itself. The most common allegation was sexual assault either as the sole allegation or in combination with other allegations (Figure 16; Table 7). This raises two important issues for schools, one is not surprising in that it was expected that most of the incidents occurred at school, but the other, sexual assault, is indicative of prevention, supervision, and programming needs.

My initial thought was that sexual harassment would be the most prevalent allegation; however, after reviewing a few of the cases it became apparent that sexual assault was going to be the most common allegation. I believe this is the case for multiple reasons: 1) the serious investment to bring litigation would more likely than not require egregious conduct; and 2) the complainant(s) and respondent(s) being enrolled in special education. It became apparent through the multitude of court analyses and factual backgrounds that sexual assault, as a more clearly defined term, was easier for those in special education to identify as occurring rather than nuanced behaviors that often give rise to a sexual harassment claim. This is not to mean that sexual harassment is not happening, but that in identification of behavior that meets the definition of sexual harassment, when there are potential additional barriers, such as those related to physical and intellectual disability, more likely than not would be more difficult for the victim/survivor.

Analysis of Legal Analysis Categories and Court Outcomes

The final data analysis points in looking at the legal landscape are related to legal analysis categories and court outcomes. By far, the most common legal analysis category

reviewed by the federal courts in this dataset was deliberate indifference followed by disability discrimination (Table 8). This points to a factor that is in constant question, whether or not the school knew and failed to address the sexual misconduct. Deliberate indifference is the idea that the school purposefully with intent failed to address the sexual misconduct and thwart continuing misconduct or opportunities for misconduct (*Davis v. Monroe*, 1999). The legal content analysis showed that this is the area of not only common, but more likely than not the easiest challenge to plead for litigants. The easiest to plead in the sense of a litigant saying that actions or inaction by the school was due to the school being deliberately indifferent to the sexual misconduct. In thinking about recommendations, it will be important that schools key in on their policies and processes to combat deliberate indifference claims. This is further explored in Section 5.4 of this chapter, in the discussion of the five themes, specifically the action theme. Interestingly, the court decision outcomes were split evenly between the schools and the students (Figure 18). This data point provides little insight except that claims have been pled with enough support to allow for cases to move forward and that schools are consistently found with some level of liability.

5.4 Discussion: Research Question Two

The second research question focuses on the guidance that can be gleaned from recent court decisions to improve K-12 sexual misconduct policies and processes that intersect Title IX and special education law. To answer this question, I reviewed all data gathered in Chapter 4, which includes general data, legal claims data, incident specific data, litigation outcome data, and compliance program data. As noted, I was most interested in the legal analysis categories examined by each court and each court's reasoning with regard to the competing regulatory schemes.

Analysis Key Findings and Theme Development

In Chapter 4, I addressed this section of data in two ways: key findings and theme development. The key findings in the federal courts' reasoning were open coded by legal analysis categories to allow for a thorough review of the language and tenets that the federal courts were relying on in making their determinations. I used the key takeaways from all of the legal analysis categories to identify five themes: action, nexus, history, authority, and separation (Table 11). It should be noted that not all cases fit into these five themes, but I was looking for overall patterns. The cases that did not fit into these five themes, while outliers, contained valuable general information. The use of the themes technique was further necessitated by the federal courts approach to analysis which did not include specific language or discussion about the conflicts outlined in Chapter 1 between Title IX and special education law. It is worth noting that while there may not have been specific discussion or language, the courts in this case dataset were often conducting separate analysis under Title IX and special education law (Table 15). For purposes of overall recommendations, I looked at the five identified themes to consider overall tenets for K-12 schools to build their policies and processes for compliance with Title IX and special education law.

In Chapter 4, I defined the five themes (Table 10). Action is the premise of whether the school took action on reports of sexual misconduct. There was a repeated premise that taking some type of action was better than taking no action at all. The quality of the action taken was often given grace by the court as long as it was reasonable. Nexus is in reference to their being a need for a nexus between the alleged discrimination and the disability for disability discrimination cases. Many of the cases dealt with discrimination claims and the courts focused on the requirement of a nexus between the discrimination and the disability. There must be a

showing that the alleged discrimination by the school has to be because of the student's disability. The tie to disability is key. Even in a matter that dealt with peer-to-peer harassment there was a need to show the nexus between the discrimination and the disability through knowledge of the disability. History addresses how the existence of prior behavioral history of students impacts the courts' analysis. The history theme includes any behavioral history of students, which may include misconduct, sexual misconduct, and conduct that has been determined to be a manifestation of the student's disability. The existence of behavioral history was navigated by the courts in many of the cases. The impact on actual knowledge analysis was great if the prior behavioral history included sexual misconduct. If there was a history of prior sexual misconduct, then schools were on notice which leaned towards actual knowledge. Authority refers to the connection between actual knowledge and an official with authority to take disciplinary action. The authority to discipline was reviewed and this indicator seemed to turn on larger disciplinary abilities. Teachers, while they can discipline in the classroom, were not deemed to have discipline capabilities expected of an official with authority. Therefore, officials with authority must have expansive discipline capabilities. The last theme was separation. Separation focuses on the underlying claim being separate from exhaustion of remedies requirements under IDEA. To avoid exhaustion, the courts looked to two points: FAPE and relief sought. If the challenge did not involve allegations of a violation of FAPE or the relief sought was not available under IDEA, then exhaustion was not a factor.

I present my analysis of the dataset in light of the five themes below:

Table 17: Analysis of the Five Themes

Theme	Analysis
Action	There was a repeated premise that taking some type of action was better than taking no action at all. The quality of the action taken was often given grace by the courts as long as it was reasonable.
Nexus	Many of the cases dealt with discrimination claims and the courts focused on the requirement of a nexus between the discrimination and the disability. There must be a showing that the alleged discrimination by the school has to be because of the student's disability. The tie to disability is key. Even in a matter that dealt with peer-to-peer harassment there was a need to show the nexus between the discrimination and the disability through knowledge of the disability.
History	The existence of behavioral history was navigated by the courts in many of the cases. The impact on actual knowledge analysis was great if the prior behavioral history included sexual misconduct. If there was a history of prior sexual misconduct, then schools were on notice which leaned towards actual knowledge.
Authority	The authority to discipline was reviewed and this indicator seemed to turn on larger disciplinary abilities. Teachers, while they can discipline in the classroom, were not deemed to have discipline capabilities expected of an official with authority. Therefore, officials with authority must have expansive discipline capabilities.
Separation	To avoid exhaustion, the courts looked to two points: FAPE and relief sought. If the challenge did not involve allegations of a violation of FAPE or the relief sought was not available under IDEA, then exhaustion was not a factor.

The analysis of the five themes provides key factors for schools in developing policies and processes. I reflect these factors in my recommendations. The five themes work similar to a checklist by which schools can make sure that their policies and processes are in line with the major themes seen in litigation involving Title IX and special education. A table of example questions that can be used by schools for analysis is below:

Table 18: Five Themes Question Chart

Theme	Analysis
Action	<ul style="list-style-type: none"> • Is there training involving how and when to report? • What are the steps to reporting? • How or when are reports communicated to leadership? • How are reports and subsequent actions documented?
Nexus	<ul style="list-style-type: none"> • Are there provisions in the school district policy for assessing this nexus when addressing reports of misconduct? • What additional steps are required when receiving a report that may also involve disability discrimination? • How are reports of disability discrimination handled outside of sexual misconduct?
History	<ul style="list-style-type: none"> • Does the Title IX policy address behavioral history and ways to include as part of the assessment? • What steps are being taken to make administrators aware of prior behavioral history of students including incoming transfer students? • Are there additional steps needed to support student safety when past behavioral history is known? • How does past behavioral history impact response?
Authority	<ul style="list-style-type: none"> • Does the school district's policies clearly identify Officials with Authority? • How are administrators notified of their identification as Officials with Authority and the additional responsibilities? • What training is provided to Officials with Authority?
Separation	<ul style="list-style-type: none"> • Does the policy include an assessment to address concerns of sexual misconduct specifically when the student is enrolled in special education? • Are there ways to improve understanding or additional training on the difference between limitations under IDEA and rights under Title IX for school personnel?

Further, consideration of these five themes in policy and process development will aid schools in navigating the areas of complication, highlighted in Chapter 1, of the competing regulatory structures of Title IX and special education law. Specifically, complications seen in supportive measures, timing issues, resolution and hearing process, and student discipline as outlined in the May 2020 Title IX regulations in consideration of requirements under special education law. Additionally, these themes are helpful in looking at guidance based on compliance programming standards.

In Chapter 1, I outlined a three-part governance model that I developed for K-12 schools. The three-part model of K-12 school district governance consisted of three governance tiers: external, internal, and individual (Figure 3). The school board represents external governance, as they are not involved in the day-to-day operation of the schools. The superintendent engages in internal governance, in collaboration with their central administrative officers, and determines policies and processes for the individual schools in the district. The individual schools are led by an administrative team with a principal at the helm, who is responsible for the individual operation and governance of their specific school. This organizational structure creates three major offices of oversight with the individual schools having multiple offices of oversight. In relation to compliance programming, the external governance should be focused on making sure that actions are taken to be in compliance and that a compliance program with policies are developed. The internal governance should center on developing and implementing the compliance program as well as creating the policies and procedures. The individual governance areas should be focused on implementation of the policies and response.

Analysis Compliance Program Design

As discussed in depth in Chapter 2, educational institutions have a unique set of challenges and a complex organizational structure. Educational institutions also have a myriad of regulatory compliance needs including Title IX and special education law. Amitai Etzioni (Etzioni), an organizational theorist, theorized three ways that organizations effectuate power, one of which is normative (Etzioni, 1961; Sisaye, 2004; Warren et al., 1976). Etzioni (1961) described normative power as the use of rituals and norms to elicit a positive response and shifts control from those in management roles to the workers. Normative power also supports the idea of control sharing and mutual responsibility (Etzioni, 1961; Sisaye, 2004). Etzioni found that colleges and universities typically employ normative power. As a similar organization in purpose, education, applying the concept of normative power makes sense in the K-12 setting.

In the K-12 setting, the regulatory environments of Title IX and special education law set specific compliance demands which are met through policy, processes, and practice. While aspects of this need lends itself to more coercive controls and discipline for failure to comply, there is a greater need to change the organizational culture and environment, which is more in line with normative control mechanisms. In thinking about creating a normative system, understanding the organizational structure was key.

As noted in Chapter 2, the organizational structure of K-12 schools has been described as “loosely coupled systems” (Stringfield, 2011; Weick, 1976). Karl Weick (1976) described loosely coupled systems as organizations where coupled units are responsive to each other and events, but each unit retains some of its own identity and separateness (Stringfield, 2011). This coincides with the governance model I explained earlier (Figure 3). This unique multi-level layer

of autonomy must be considered when developing a centralized system of consistent policies and processes that comply with Title IX and special education law.

To apply these premises of organizational compliance theory, I looked to compliance program design. Wafa Ben Khaled and Jean-Pascal Gond (2019) discussed, as summarized in Chapter 2, how ethical tools have been developed out of the need for organizations to comply with regulations. Title IX and special education law set forth the regulatory requirements and expectations, but the design of the ethical tools and the compliance program design has been left to the schools. Khaled and Gond (2019) developed a baseline model of ethical tools adoption that has the ethical regulations at the front with two sections: 1) Ambiguity of ethical regulations; and 2) Legal sphere. Khaled and Gond then outline microprocesses translating the regulations, multiple political dynamics, and materialization of the design of ethical tools (2019). This is what is seen in the area of Title IX and special education law. In the immediate case, educational institutions must interpret the regulations and the law, translate that to leadership, navigate any political considerations, develop a tool to comply, and then adopt it in practice.

To apply theory to practice, I used the conceptual framework of the compliance program guidance in the U.S. Sentencing Commission Guidelines Manual and Department of Justice Three-Question Analysis guidance (Department of Justice, 2023; U.S. Sentencing Commission Guidelines Manual, 2021). As outlined in Chapter 4, I created two specific coding categories to identify areas in compliance programming that are opportunities for improved policies and processes for compliance in Title IX and special education law. One of the coding areas was specific to the Department of Justice Three-Question Analysis and the other to the seven elements of a compliance program in the U.S. Sentencing Commission Guidelines Manual.

The Department of Justice Three-Question Analysis asks: 1) Is the compliance program well designed; 2) Is the compliance program implemented in good faith with adequate resources and authority; and 3) Does the compliance [program] work in practice (Department of Justice, 2023). The most common answer to questions one and three was “no” (Figure 20). This means that the majority of the schools' compliance programming presented opportunities for improvement. In relation to question one, there were repeated issues with policies and procedures as well as training and communication. Overall, question three produced the most “no” answers, in this context related to investigation and resolutions procedures (Figure 20).

Then, I reviewed the federal court decision dataset in light of the seven elements of a compliance program as outlined by the U.S. Sentencing Commission Guidelines Manual (U.S. Sentencing Commission Guidelines Manual, 2021). As outlined in Chapter 2, the seven elements of a compliance program for purposes of this study have been labeled as: 1) standards and procedures; 2) governance; 3) leadership, training, and education; 4) communication; 5) auditing and evaluation; 6) enforcement; and 7) response. I reviewed each case with these elements in mind and identified which particular area(s) was implicated by each case. My goal was to establish patterns or areas of focus that are ripe for improvement in K-12 Title IX compliance programming development. As stated in Chapter 4, I found that the most common combination of program elements was: 1) standards and procedures; 3) leadership, training, and education; and 7) response with a total of twenty-three (23) cases (Figure 21; Table 14). There were three combinations that each had two (2) cases, but beyond that each combination was singular to each case. Beyond identifying the most common combination, I looked at the elements that appeared most often. The element most at issue was response with thirty-seven (37) occurrences closely followed by standards and procedures with thirty-six (36) (Figure 21; Table 14).

Upon review, the results of the compliance programming review resulted in similar areas of opportunity identified using the Department of Justice Three-Question Analysis and the seven elements of a compliance program (Department of Justice, 2023; U.S. Sentencing Commission Guidelines Manual, 2021). The top results included the similar areas of policies and procedures, training, and resolutions (Figure 20; Figure 21; Table 14). These identified compliance areas should be addressed and kept in the forefront by schools developing compliance programs related to Title IX and special education.

5.5 Recommendations

This section provides recommendations for policy-makers, school administrators, and school districts on complying with and navigating the competing regulatory structures of Title IX and special education. It should be noted that these recommendations were developed based on this study. In April 2024, the Department of Education released updated Title IX regulations with an effective date of August 1, 2024 (34 C.F.R. § 106 *et. seq.* (2024)). A cursory review showed minor impact on the findings of this study. As identified in this study, regardless of the May 2020 Title IX regulations being in effect the federal courts relied on precedent in their analysis and not the language of the regulations. In the April 2024 Title IX regulations, the Department of Education acknowledges the intersection and complexity of compliance with Title IX and rights afforded under special education law (Department of Education, 2024). The April 2024 Title IX regulations contain two sections of additional language under the areas of grievance procedures and supportive measures that requires K-12 Title IX Coordinators to consult with one or more members of a student with a disability's IEP team to determine how to comply with the requirements of IDEA and Section 504 (34 C.F.R. § 106.8(4)(e) (2024); 34 C.F.R.

§106.44(g)(6)(i) (2024)). These recommendations align with that requirement of the new regulations.

Based on the results of this study, legal and regulatory requirements, and the literature review, I developed five recommendations: 1) Conduct a Title IX Program Assessment; 2) Identify and Develop an Action Plan for Areas of Opportunity; 3) Develop and Implement a Compliance Plan; 4) Create Communication Trees and Workflows; and 5) Establish Robust Training Programs for Policy and Protocol. This section is further divided into subsections representing the five recommendations.

Recommendation 1: Conduct a Title IX Program Assessment

The first recommendation is to undertake a thorough Title IX Program Assessment. Title IX is at the center of sexual misconduct, so the assessment of a school's Title IX compliance and response programming that also evaluates and incorporates understanding of Title IX's intersection with special education law is paramount. Conducting a Title IX Program Assessment is supported by the general data and analysis of the federal court decisions.

In Chapter 4, the Department of Justice Three-Question Analysis data showed that in the majority of cases there were areas of opportunity for improvement of aspects of the compliance programs design and application (Figure 19; Figure 20; Table 13). As previously stated, my goal was to establish patterns or areas of opportunity in K-12 Title IX compliance programming development. The data analysis showed that the most common combination of program elements was: 1) standards and procedures; 3) leadership, training, and education; and 7) response with a total of twenty-three (23) cases (Figure 21; Table 14). The element most at issue was response with thirty-seven (37) occurrences closely followed by standards and procedures with thirty-six (36) (Figure 21; Table 14). The Title IX Program assessment was designed with those areas

specifically in mind, especially focused and separated into areas related to standards and procedures, response (grievance process), and leadership training and education.

Further, conducting a Title IX Program Assessment will aid the K-12 schools in identifying areas of opportunity for improving their Title IX Compliance program or establishing a detailed compliance program that complies with Title IX and special education law. For example, as discussed and presented in Chapter 4, the most common legal analysis category that appeared in the federal court decision dataset was deliberate indifference by schools to reports to incidents of sexual misconduct (Table 8). This is also reflected in the identified theme of action, which acknowledged that there was a repeated premise that taking some type of action was better than taking no action at all (Table 11). In the realm of compliance programming, the Department of Justice Three-Question Analysis coding of the federal court decisions identified that a compliance program that worked in practice was most often at issue (Department of Justice, 2023; Figure 19; Figure 20). The Title IX Program Assessment is designed with not only file and case audits, but also interviews with school personnel that interact in various ways with Title IX and special education. In addition, a Title IX Program Assessment that is conducted with an eye towards the theme of action will provide additional focus on addressing areas of opportunity to improve compliance programming and limit liability in the area of deliberate indifference. Other areas of ripe for specific consideration in this area are history and authority. In developing the Title IX Program Assessment, the design of the assessment, including interview questions, policy reviews, and record reviews, should be done in consideration of the themes identified (Table 17). An additional consideration is to use the questions identified by themes from this study outlined in Table 18, which also address the overall understanding from the analysis done

of the legal analysis categories used by the courts in their decisionmaking process. This will provide a checklist on design as well as support qualitative assessment questions.

The Title IX Program Assessment should be conducted by a subject matter expert that can review the school's current policies, processes, and organizational structure. This assessment should be designed using a combination of policy review, records auditing including case auditing, and interviews with administrators working in key areas. The interviewees should include and are not limited to superintendents, principals at multiple levels, district Title IX coordinator, deputy Title IX coordinators, individuals with Title IX response duties, director of special education, school psychologists, and other individuals that may be dictated by school policy or procedure. As part of the assessment, an understanding of how reports of sexual misconduct matters that involve students enrolled in special education are handled is imperative. It may be upon review that additional communications and workflows need to be developed. The goal for the school should be to have a consistent, efficient, and knowledgeable response to all reports of sexual misconduct.

I developed a template Title IX Assessment for use in higher education institutions that I adapted for K-12 settings (Figure 22; Harebo, S.E., 2022). The overall structure is similar for K-12 schools; however, the additional section area regarding special education is a change. After completing the coding and data analysis of the federal court opinions, it was clear that an entire section needed to be added to review how those working in the area of Title IX were interacting with special education personnel. As outlined in Chapter 4, the courts conducted separate analysis under each claim despite the overlap, so it became imperative that there needed to be an additional full section to address special education law requirements directly.

The template Title IX Program Assessment is structured using elements of compliance theory, compliance program design, and regulatory and legal requirements. The recommended Title IX Program Assessment is broken down into two areas: 1) conducting the Title IX Program Assessment; and 2) analysis and writing the Title IX Program Assessment.

In conducting the Title IX Program Assessment, the assessor should work with the school to identify the key individuals who are involved in the Title IX and special education processes. In addition, the assessor should request and conduct a file and policy review. The school policy will identify areas of need and improvement as well as missing components. For example, if the current Title IX policy and process does not establish the communication line and expectations when a participant is enrolled in special education, then that is a need that should be addressed. The assessor should develop questions that are based on the seven elements of a compliance program (U.S. Sentencing Commission Guidelines Manual, 2021). It is imperative that an understanding of individuals', at varying levels of the organization, knowledge and experience with Title IX standards and procedures, responsibilities/governance, training, education, communication/reporting, evaluation, enforcement, and response mechanisms. In addition, requesting past case files, redacted as needed, should give an understanding of the school's policies and processes in practice. This file review is integral to understanding what is working, if a process is compliant, and where adjustments are required.

The analysis and writing portions of the assessment are paramount for the school. The goal of the assessment should be identifying areas of opportunity, but also highlighting aspects of the compliance program that the school is doing well. The goal of the assessment is to better the process through change management, which can be overwhelming if the school is presented only with negatives. This is the basis for using the term areas of opportunity, instead of language

indicating non-compliance. The written assessment should be consistent with the regulations and be aligned with compliance theory. The recommended template for conducting a Title IX

Program Assessment structure is outlined below:

Title:
Introduction
<ul style="list-style-type: none"> I. Organizational Structure <ul style="list-style-type: none"> A. Role and Responsibilities of the Title IX Coordinator <ul style="list-style-type: none"> 1. Regulatory and Guidance Language 2. Observations - Role of Title IX Coordinator at school or district 3. Opportunities - e.g. restructure options, reimagining the role B. Organizational Structure <ul style="list-style-type: none"> 1. No guiding language - look at other similarly situated schools and how they are addressing it 2. Observations - Overall organizational structure 3. Opportunities
<ul style="list-style-type: none"> II. Title IX Process and Compliance (grouped by the Formal Complaint Process in Regulations) <ul style="list-style-type: none"> A. Intake and Supportive Measures <ul style="list-style-type: none"> 1. Regulatory and Guidance Language <ul style="list-style-type: none"> a) Special education needs 2. Observations 3. Opportunities B. Initial Assessment, Title IX Coordinator Signed Complaints, and Dismissal of Formal Complaints, Emergency Removal <ul style="list-style-type: none"> 1. Regulatory and Guidance Language <ul style="list-style-type: none"> a) Special education needs 2. Observations 3. Opportunities C. Notice, Investigation, and Informal Resolution <ul style="list-style-type: none"> 1. Regulatory and Guidance Language <ul style="list-style-type: none"> a) Special education needs 2. Observations 3. Opportunities D. Hearing and Appeals <ul style="list-style-type: none"> 1. Regulatory and Guidance Language <ul style="list-style-type: none"> a) Special education needs 2. Observations 3. Opportunities

<ul style="list-style-type: none"> III. Communication <ul style="list-style-type: none"> A. Communication Plans <ul style="list-style-type: none"> 1. Observations 2. Opportunities
<ul style="list-style-type: none"> IV. Training and Education <ul style="list-style-type: none"> A. Leadership Training and Education <ul style="list-style-type: none"> 1. Observations 2. Opportunities B. Staff Training and Education <ul style="list-style-type: none"> 1. Observations 2. Opportunities
<ul style="list-style-type: none"> V. Special Education <ul style="list-style-type: none"> A. Special Education Regulatory Needs <ul style="list-style-type: none"> 1. Observations 2. Opportunities

Figure 22: Title IX Program Assessment Template

In conducting the assessment, as outlined in Chapter 4 and with the identification of themes in the courts use of legal analysis categories, particular attention should be paid to identification of a nexus between the discrimination and the disability through knowledge of the disability in assessing reports of sexual misconduct. Another area to be mindful of is behavioral history and its impact on actual knowledge. I suggest utilizing Table 18, which provides examples of questions that should be incorporated based on the themes found from the cases, in developing the interview questions for interviewees identified for the assessment. This Title IX Program Assessment structure will provide the school with the information needed to understand the current state of their policies and processes as well as direction in creating an improvement action plan.

A Title IX Program Assessment is a much needed first step of understanding for schools in complying with Title IX and related special education law requirements. Once school administrators and policy-makers have a baseline to work from, the next step is to take action. A

coordinated strategic action plan takes the identified areas of opportunities and moves the organization towards change. Recommendation 2 addresses the identification and development of an action plan for areas of opportunity realized through the Title IX Program Assessment.

Recommendation 2: Identify and Develop a Strategic Action Plan for Areas of Opportunity

The areas of opportunity identified in the Title IX Program Assessment will provide the starting points for schools to develop a written strategic action plan. Even if schools do not undertake a thorough Title IX Program Assessment, recommendation two can still be utilized with a review of materials and an understanding of the regulatory requirements. For example, Table 8 identified the most common legal analysis category applied in the case dataset was deliberate indifference. In constructing the strategic action, school administrators should incorporate taking action and responding to reports as a focus area. The strategic action plan, similar to a strategic plan, should identify policy and process modifications to bring the school into compliance. The U.S. Sentencing Commission Guidelines Manual seven elements of a compliance program can provide the necessary framework in writing the strategic action plan (2021). The seven elements of a compliance program for purposes of this study have been labeled as: 1) standards and procedures; 2) governance; 3) leadership, training, and education; 4) communication; 5) auditing and evaluation; 6) enforcement; and 7) response. The strategic action plan can dissect the Title IX Program Assessment into seven sections representing the seven elements. In addition, the strategic action plan should be implemented with a timeline and accountability for its completion.

As the school develops the written strategic action plan, consideration of the findings in this study would be beneficial in thinking about approach and prioritization of tasks. The utilization of the five themes and subsequent questions will provide a way to make sure the

strategic plan is addressing key takeaways from litigation in this area as well as issues identified by reviewing the legal analysis categories (Table 17; Table 18). While the Title IX Compliance Program should be developed with considerations in overall compliance needs, particular attention to areas of policy and process that involve students enrolled in special education, especially of high school age, could be prioritized. This is in response to the findings in Chapter 4 that identified characteristics of the majority of complainants and respondents as being of high school age and enrolled in special education (Table 16). In addition, developing communication strategies and relationship building between special education administrators and the Title IX Coordinator may be an immediate proactive step towards improving processes and response.

This study showed that the three most common legal analysis categories were deliberate indifference, disability discrimination, and actual notice (Figure 17; Table 8) Two of the five themes from this study, action and history, are ripe for expedient remedy (Table 17). As stated above, the courts' seemed to rely on the premise that action is better than no action even if the court thought that the school's action were ineffective or in error (Table 17). The analysis from the case dataset showed that it is imperative that school administrators take action on reports of sexual misconduct. As highlighted in Table 9, the action does not have to be perfect, but action must be taken. A review of Title IX Compliance Program steps to improve expediency of response with the expectation of some type of action will be taken, even if the action is as basic as providing information regarding rights, resources, and supportive measures. The theme of history is an additional area that can be addressed expeditiously. This may be through improved communication channels between the Title IX Coordinator and special education administrators, as previously stated, as well as improved behavioral history communication overall.

Recommendation 3: Develop and Implement a Compliance Program

After reviewing the cases and conducting the data analysis from coding in Chapter 4, it was clear that the lack of a solid compliance program in this area led to litigation and allegations of mishandling of sexual misconduct reports. The third recommendation is to create a compliance program specifically for Title IX that incorporates the needed intersection with special education law and related personnel. The reliance solely on a policy and process documents needs to be expanded to think about this in terms of a full compliance program as discussed by Etzioni and other compliance theorists as well as the seven elements of a compliance program (Etzioni, 1961; Khaled & Gond, 2019; Sisaye, 2004; U.S. Sentencing Commission Guidelines, 2021). This includes adapting the requirements of the school's Title IX policy into standard operating procedures for case handling that pays particular attention to the key findings of this study from the coding of the cases as well as development of the themes (Table 9; Table 17; Table 18). A standard operating procedure is a natural outgrowth from a compliance plan that details implementation of the policy and provides step-by-step instructions on how to move through a sexual misconduct report from receipt to resolution. This will aid schools in improving consistency and efficiency. Moreover, the entire Title IX Compliance Program should be written out and fully developed with the seven elements of a compliance program found in the U.S. Sentencing Commission Guidelines Manual and in consideration of the findings of this study outlined above with a focus on making sure it addresses concerns identified in the key takeaways and themes from the federal court analysis of allegations under the legal analysis categories (2021; Table 9; Table 17; Table 18).

As analyzed above, this study showed that particular attention should be paid to elements: 1) standards and procedures; 3) leadership, training, and education; and 7) response (Figure 21;

Table 14). Once the Title IX Compliance Program is developed, regular policy reviews and case audits should be implemented as discussed in element five of a compliance program (U.S. Sentencing Commission Guidelines Manual, 2021). A scheduled cyclical auditing process will highlight compliance issues, training needs, and opportunities for improvement and is supported by the U.S. Sentencing Commission Guidelines Manual (2021).

Recommendation 4: Create Communication Protocol and Workflows

This recommendation is in response to the issues regarding communication and workflows identified in the study. As outlined in the study, the most common legal analysis category applied was deliberate indifference (Figure 17; Table 8). Often this was related to alleged inaction to reports of sexual misconduct by the school. A way to combat issues related to lack of response and lack of action is to create communication trees and workflows. Another legal analysis category that was consistently reviewed by the courts was actual knowledge (Figure 17; Table 8). Improving communication between school administrators as it relates to response to sexual misconduct will aid in addressing issues related to actual knowledge.

Communication protocols are an important tool for an organization to make sure that issues are being addressed. The first step is to establish a protocol of the different types of notifications required based on incident factors. For example, if there is a sexual misconduct matter it should be immediately reported to the Title IX Coordinator. This can happen directly, through online reporting, or through dispersed Deputy Title IX Coordinators depending on the schools Title IX compliance program. In addition, depending on the role of the respondent it may be in the best interest to inform district leadership. Additional factors for the communication tree are whether the matter involves students enrolled in special education, incident location, and role of complainant. In developing a communication protocol, it is important to be aware of how to

keep the information as private as possible out of respect for the complainants privacy and comfort in continuing to access the school's education program, education activity, or employment.

A workflow is an extremely valuable tool to aid in understanding policies and processes. This workflow is also an opportunity to incorporate a separate section that specifically addresses sexual misconduct matters that may intersect with special education law. An example of a Title IX workflow that incorporates special education developed from the federal court decision dataset analysis and the themes identified from this study's dataset is below:

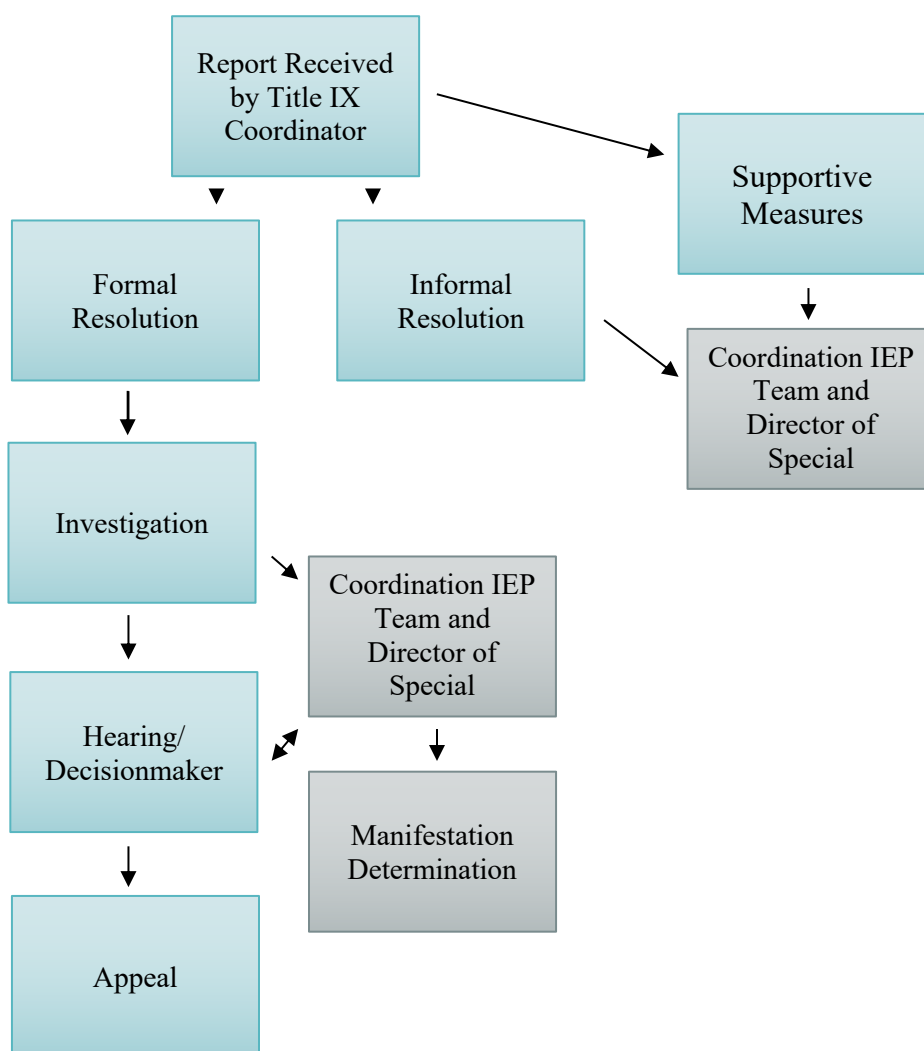


Figure 23: Title IX and Special Education Report Response Workflow

This Title IX workflow incorporates special education at two important points: supportive measures and disciplinary stages.

The federal court data analysis indicated that overall there was a lack of consistency or clear understanding of the handling of reports of sexual misconduct. For example, in *L.W. v. Roman Catholic Archdiocese of Indianapolis, Inc.* (2022) the school had knowledge and failed to provide accommodations, take preventative measures, indicate how to file a formal complaint, preserve evidence, interview a minor with their parents present, and identify a Title IX Coordinator. This was not the only case where the fact pattern outlined a need for better understanding on the overall handling of reports of sexual misconduct and requirements under Title IX (Table 10; Table 14). Additional complications arise, as outlined in this study, in navigating reports of sexual misconduct when either the party has been identified and is part of a special education program (Table 10; Table 14). In the federal case dataset, allegations were reviewed by the courts under the legal analysis categories identified in Table 8 and Figure 17 related to failure to follow IEP process requirements, enforce IEP plans generally related to supervision, and conduct manifestation determinations prior to change in placement or discipline (*A.T. v. Oley Valley Sch. Dist.*, 2021; *Doe v. Dennis-Yarmouth Reg'l Sch. Dist.*, 2022; *Roe v. Lincoln-Sudbury Reg'l Sch. Dist.*, 2021; *S.S. v. Raytown Quality Sch. Dist.*, 2021; Table 9; *Torres v. Stewart Cnty. Sch. Sys.*, 2023). This workflow is created with that in mind. This workflow will need a lot more specificity, but was developed to create a general framework. The special education personnel were added in two points that were identified in the data from the study. As previously discussed student discipline and the needed manifestation determination were identified as an area of overlap. By inserting a touchpoint in that area, the goal is make sure the process and related workflow addresses any issues.

As outlined in Chapter 1, there are complexities in providing the supportive measures required in the May 2020 Title IX regulations when also adhering to the safeguards in special education law. Further complexities arise in the disciplinary phase of the required Title IX grievance process if the respondent is enrolled in special education. The goal in coordinating with the IEP team and Director of Special Education at these two points allows the two subject matter experts, the Title IX Coordinator and the special education teams, to collaborate in addressing sexual misconduct matters and compliance with both sets of laws.

Developing communication strategies and relationship building between special education administrators and the Title IX Coordinator will improve process and response. This study found that the three most common legal analysis categories were deliberate indifference, disability discrimination, and actual notice (Figure 17; Table 8). The Title IX workflow addresses those areas of concern by requiring collaboration between Title IX and special education administrators. It is crucial to involve members of the IEP Team and special education administrators at the early stages of the Title IX response process when a student with a disability is involved. This allows for a collaborative response mindful of both the requirements under Title IX and special education law. Further, the Title IX workflow addresses the two of the five themes identified in the federal courts' decision dataset. As previously stated the five themes found are: action, nexus, history, authority, and separation (Table 14). The Title IX workflow provides the outline of the action the K-12 schools will take and addresses nexus by incorporating special education administrators into the process.

In addition to this Title IX workflow, improved communication strategies overall are imperative to mitigating the potential for allegations of deliberate indifference, actual knowledge and failure to act, and disability discrimination. All three of these were found to be the most

common legal analysis categories used by the federal courts in the decisionmaking process (Figure 17; Table 8). As each K-12 school internal organizational structure is slightly different it is important that communication lines between Title IX and special education administrators are written, detailed, and that reporting requirements are understood. Under the May 2020 Title IX regulations, any employee in the K-12 setting is required to report allegations of sexual harassment (34 C.F.R. 106.30 (a) (2020)). Therefore, it is prudent to have communication and reporting plans well-developed and have employees trained and comfortable with their use. This aligns with the results of the compliance programming review that identified the top results included policies and procedures, training, and resolutions (Figure 21; Table 14). The importance of training is discussed in Recommendation 5.

Recommendation 5: Establish Robust Training Programs for Policy and Protocol

As outlined in the compliance program analysis, the training element appeared at a high rate (Figure 21; Table 14). While the May 2020 Title IX regulations contain training requirements for those involved in the Title IX process, it is imperative that teachers, staff, and other members of the school community understand the policy and process. As discussed in Recommendation 4, this is even more important for individuals involved with students enrolled in special education. As seen in the federal court decisions, allegations in the cases involved failure to follow IEP process requirements, enforce IEP plans generally related to supervision, and conduct manifestation determinations prior to change in placement or discipline (*A.T. v. Oley Valley Sch. Dist.*, 2021; *Doe v. Dennis-Yarmouth Reg'l Sch. Dist.*, 2022; *Roe v. Lincoln-Sudbury Reg'l Sch. Dist.*, 2021; *S.S. v. Raytown Quality Sch. Dist.*, 2021; Table 9; *Torres v. Stewart Cnty. Sch. Sys.*, 2023). As outlined in Chapter 1, there are areas of complication in navigating the competing regulatory structures of Title IX and special education law. Specifically, the potential

impact of Title IX's regulatory requirements of supportive measures, timing issues, resolution and hearing process, and student discipline when schools are also required to comply with special education law.

Every school has a training calendar for compliance in Title IX, as that is what is required by the May 2020 Title IX regulations. In addition, training was an identified area in the seven elements of a compliance program of the federal court decision dataset (U.S. Sentencing Commission Guidelines Manual, 2021; Figure 21; Table 14). My recommendation is to increase from an annual training or cyclical training to a series of trainings throughout the school year. To be clear, this is not a series of hour-long training. Instead, ten to fifteen minutes on Title IX, the interaction between Title IX and special education, or a quick overview of the protocol scattered throughout the year as part of already scheduled professional development or meetings will provide constant interaction with the Title IX space, Title IX protocols, and interaction between Title IX and special education requirements. This can be furthered by clear protocol materials, as suggested in recommendation 4, that can be reviewed and kept as part of these mini-trainings. The goal is to increase school community members' knowledge to avoid inaction or actions, deliberate indifference, inconsistent with the school's policies and processes.

5.6 Study Implications and Future Directions for Research

The implications of this study are broad. Every K-12 school in the United States that receives federal financial assistance is required to comply with Title IX absent a waiver from the Department of Education. In addition, public school districts are required to also comply with special education law. This study was in direct response to the dearth of guidance and regulatory instruction in implementing a Title IX compliance program that also complies with special education law. This study confirmed that compliance with Title IX and special education law is

complex for K-12 schools and that additional guidance in developing compliance programming can be gleaned from federal court decisions. Moreover, the findings suggest that compliance theory, the U.S. Sentencing Commission Guidelines Manual seven elements of a compliance program, and the Department of Justice Three-Question Analysis are useful frameworks in assessing and developing compliance programs in the K-12 space (2021; 2023).

Indeed, this study will assist K-12 schools in better understanding the legal landscape of the intersection of Title IX and special education law. Moreover, the tools provided in the recommendations supply a basis for K-12 schools to develop and implement a Title IX compliance program that adheres to the regulatory and process requirements for handling sexual misconduct matters generally under Title IX as well as those that intersect with special education. Moreover, implementation of the recommendations from this study will assist K-12 schools in hopefully avoiding and preparing for common litigation.

As discussed in Chapter 3, there are limitations to this study. One limitation is the use of legal content analysis as the research method, as the data is limited to what is provided in the courts' written opinions. An area for future research would be a qualitative study with K-12 administrators currently doing this work in the K-12 setting. The exploration of practical experience would provide a wealth of information. Another area for future research would be a follow-up study to understand how the tools developed in this study worked in application and how the tools could be adjusted and improved. It would also be beneficial to expand this study to incorporate or focus on state judicial opinions, especially in jurisdictions that have specific state laws regarding addressing sexual misconduct in schools, to better understand compliance program creation and develop tools specific to schools in those areas.

As outlined earlier in this chapter, another area of research will be the impact of the updated Title IX regulations that were released April 19, 2024. The April 2024 Title IX regulations have an effective date of August 1, 2024 (34 C.F.R. § 106 *et. seq.* (2024)). While this study was conducted prior to their release, it is anticipated that there will be minor impact on the underlying findings and value of this study. As identified in this study, regardless of the May 2020 Title IX regulations being in effect the federal courts relied on precedent in their analysis and not the language of the regulations. A cursory review of the April 2024 Title IX regulations shows acknowledgement by the Department of Education of the intersection and complexity of compliance with Title IX and rights afforded under special education law (Department of Education, 2024). In the April 2024 Title IX regulations, there are two sections of additional language under grievance procedures and supportive measures that requires that in the K-12 space the Title IX Coordinator is required to consult with one or more members of a student with a disability's IEP team to determine how to comply with the requirements of IDEA and Section 504 (34 C.F.R. § 106.8(4)(e) (2024); 34 C.F.R. §106.44(g)(6)(i) (2024)). These changes as well as any other major changes will have to be addressed in the policy-making and processes implemented by the schools as well as updating their Title IX Compliance Program.

5.7 Conclusion

As previously stated and outlined in this dissertation, there has been limited guidance from the federal government on how K-12 schools should implement their policies and practices to meet the regulatory requirements of both Title IX and special education law. The lack of clear directives and best practices leaves K-12 schools with the task of identifying policies and processes that are the best practices in navigating the rights afforded in matters that implicate both Title IX and special education laws. This potentially opens K-12 schools to litigation and

damages as well as settlements. While the monetary losses are an important consideration, the ultimate cost is the lasting impact on survivors and the school community.

This study was conducted in response to those issues and provides insight into the legal landscape and gathers additional guidance ascertained from analyzing federal court decisions to provide recommendations and tools to improve policies, processes, and compliance programming in the area of Title IX and its intersection with special education law. This study is significant in that there is little research in this area. This study provides a first look at the use of federal court decisions to improve compliance programming with Title IX and when Title IX intersects with special education law. In addition, this study showed the value in applying compliance theory to policy and process development in the K-12 realm. Further, the recommendations provide actual tools and strategies that schools can adapt for immediate use to begin the process of reviewing and implementing better compliance solutions in this area.

Appendix A: Table of Search Terms – Literature Review

Database/Website	Terms
Nexus Uni	“Title IX” “Title IX liability” “Section 504” “IDEA” “Manifestation Determination” “actual knowledge”
Educational Research Information Center (ERIC)	“compliance theory” “Etzioni” “organizational theory and education” “compliance and education” “Regulation and compliance and education”
ProQuest	“compliance theory” “Etzioni” “organizational theory and education” “compliance and regulation”
Department of Education, Department of Justice, and U.S. Sentencing Commission	“Title IX” “IDEA” “Section 504” “compliance” “compliance program”

Appendix B: List of Cases in Dataset

Case Name	Year Decided	Citation
A.H. v. Jackson-Olin High Sch.	2019	2019 U.S. Dist. LEXIS 58190 (N.D. Ala. 2019)
A.T. v. Oley Valley Sch. Dist.	2021	2021 U.S. Dist. LEXIS 234429 (E.D. Pa. 2021)
Berg v. Bethel Sch. Dist.	2022	2022 U.S. Dist. LEXIS 46689 (W.D. Wash. 2022)
C.M. v. Cedar Park Charter Acad. PTO	2019	2019 U.S. Dist. LEXIS 70005 (W.D. Tex. 2019)
Cianciotto v. New York City Dep't of Educ.	2022	600 F. Supp. 3d 434 (S.D.N.Y. 2022)
D.M. v. E. Allegheny Sch. Dist.	2023	2023 U.S. Dist. LEXIS 29882 (W.D. Pa. 2023)
Doe v. Bd. of Educ.	2020	611 F. Supp. 3d 516 (N.D. Ill. 2020)
Doe v. Brighton Sch. Dist. 27J	2021	2021 U.S. Dist. LEXIS 179455 (D. Colo. 2021)
Doe v. Cabell Cnty. Bd. of Educ.	2023	2023 U.S. Dist. LEXIS 164306 (S.D.W. Va. 2023)
Doe v. Dallas Indep. Sch. Dist.	2019	941 F.3d 224 (5th Cir. 2019)
Doe v. Dennis-Yarmouth Reg'l Sch. Dist.	2022	578 F. Supp. 3d 164 (D. Mass. 2022)
Doe v. Fulton Cty. Sch. Dist.	2021	2021 U.S. Dist. LEXIS 54237 (N.D. Ga. 2021)
Doe v. Gavins	2023	2023 U.S. Dist. LEXIS 172621 (D. Mass. 2023)
Doe v. Ohio Hi-Point Sch. Dist. Bd. of Educ.	2022	2022 U.S. Dist. LEXIS 54987 (S.D. Ohio 2022)
Doe v. Wentzville R-IV Sch. Dist.	2023	2023 U.S. Dist. LEXIS 65703 (E.D. Mo. 2023)
E.C. v. Cmty. Sch. Corp. of E. Hancock Cnty.	2023	2023 U.S. Dist. LEXIS 160026 (S.D. Ind. 2023)
E.M.J. v. Garrard Cty. Bd. of Educ.	2019	413 F. Supp. 3d 598 (E.D. Ky. 2019)
Fisher v. Moore	2023	73 F.4th 367 (5th Cir. 2023)
Gullion v. Manson Northwest Webster Sch. Dist.	2021	2021 U.S. Dist. LEXIS 14846 (N.D. Iowa 2021)
Hernandez v. Fort Bend ISD	2019	2019 U.S. Dist. LEXIS 156620 (S.D. Tex. 2019)
I.M. v. Houston Indep. Sch. Dist.	2021	2021 U.S. Dist. LEXIS 223696 (S.D. Tex. 2021)
J.G. v. Bryan Indep. Sch. Dist.	2019	2019 U.S. Dist. LEXIS 127736 (S.D. Tex. 2019)
L.K.M. v. Bethel Sch. Dist.	2020	2020 U.S. Dist. LEXIS 227400 (W.D. Wash. 2020)
L.W. v. Roman Catholic Archdiocese of Indianapolis, Inc.	2022	2022 U.S. Dist. LEXIS 19341 (S.D. Ind. 2022)

M.P.G. v. Antioch Unified Sch. Dist.	2023	2023 U.S. Dist. LEXIS 156574 (N.D. Cal. 2023)
M.S. v. Rochester Cmty. Sch. Dist.	2023	2023 U.S. Dist. LEXIS 179144 (E.D. Mich. 2023)
McCann v. York Sch. Dep't.	2019	365 F. Supp. 3d 132 (D. Me. 2019)
Morrow v. McCurtain Cnty. Indep. Sch. Dist. No. 11	2023	2023 U.S. Dist. LEXIS 21070 (E.D. Okla. 2023)
N.P. v. Kenton Cty. Pub. Sch.	2023	2021 U.S. Dist. LEXIS 184260 (E.D. Ky. 2021)
Nation v. Piedmont Indep. Sch. Dist. No. 22	2019	2019 U.S. Dist. LEXIS 157983 (W.D. Okla. 2019)
Raymond v. Me. Sch. Admin. Dist. 6	2019	2019 U.S. Dist. LEXIS 80868 (D. Me. 2019)
Robert R. v. Jefferson Cnty. Sch. Dist.	2022	2022 U.S. Dist. LEXIS 162315 (D. Colo. 2022)
Roe v. Lincoln-Sudbury Reg'l Sch. Dist.	2021	2021 U.S. Dist. LEXIS 57206 (D. Mass. 2021)
S.S. v. Raytown Quality Sch. Dist.	2021	2021 U.S. Dist. LEXIS 150718 (W.D. Mo. 2021)
Smith v. Comal Indep. Sch. Dist.	2023	2023 U.S. Dist. LEXIS 152326 (W.D. Tex. 2023)
Stevens v. Berryhill Bd. of Edu.	2024	2024 U.S. Dist. LEXIS 95 (N.D. Okla. 2024)
T.J. ex rel. B.W. v. Bd. of Educ.	2019	2019 U.S. Dist. LEXIS 171583 (S.D.N.Y. 2019)
Torres v. Stewart Cnty. Sch. Sys.	2023	2023 U.S. Dist. LEXIS 174026 (M.D. Tenn. 2023)
Vargas v. Madison Metro. Sch. Dist.	2019	2019 U.S. Dist. LEXIS 84299 (W.D. Wis. 2019)
W.S. v. Mollala River School Dist.	2019	2019 U. S. Dist. LEXIS 225867 (D. Or. 2019)
Walker v. Tuscaloosa Cty. Sch. Bd.	2019	2019 U.S. Dist. LEXIS 199260 (N.D. Ala. 2019)
Webster v. Chesterfield Cnty. Sch. Bd.	2022	38 F.4th 404 (4th Cir. 2022)

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