

# Law Related Education

The newsletter of the Illinois State Bar Association's Committee on Law Related Education

## Creating a Respectful and Open World for Natural Hair

BY MADONNA T. LECHNER

On May 27, 2023, Texas Governor Greg Abbott signed into law the CROWN Act, found at section 25.902 of the Texas Education Code. CROWN is an acronym for Creating a Respectful and Open World for Natural Hair. The Act took effect September 1, 2023. The legislation governs public

schools in Texas. It prohibits discrimination against students in those schools on the basis of hair texture or hairstyle historically associated with race. This includes braids, locs, and twists.

Barbers Hill Independent School District

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## Billie Constant Receives Chair Certificate of Appreciation

Judge O'Gara recently presented Billie Constant with the 2022-2023 Chair Certificate of Appreciation. ■



## Creating a Respectful and Open World for Natural Hair

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(ISD), in Mont Belvieu, Texas, enforces a dress and grooming code for students. The District Superintendent Greg Poole holds that being an American requires conformity. He contends that school districts with traditional dress codes are safer and achieve higher academic performance. The ISD student handbook states, in part:

... Male students' hair will not extend, at any time, below the eyebrows or below the ear lobes. Male students' hair must not extend below the top of a t-shirt collar or be gathered or worn in a style that would allow the hair to extend below the top of a t-shirt collar, below the eyebrows, or below the ear lobes when let down ...

Darryl George is a black male student at Barbers Hill High School (BHHS). Darryl wears his hair in locs as an expression of his black identity and culture. The hair of Darryl's stepfather, father and other family members are tied and sewn into Darryl's locs. His hair falls below his ear lobes when let down. Darryl keeps his hair twisted up while in school. BHHS continues to discipline Darryl for violation of the ISD hair-length policy. Since August 31, 2023, Darryl has been assigned to in-school suspension or to a disciplinary alternative education program.

Darryl and his mother (Darresha George) maintain that Darryl's hair style harms no one and causes no distraction in the classroom. They hold that the ISD hair-length policy for male students is racially discriminatory.

On September 23, 2023, Ms. George, individually and as next friend to Darryl, filed a Federal civil rights lawsuit in the Houston Division of the Southern District of Texas against the ISD and against the Texas Governor, among others. She claims that the ISD and the State of Texas continue to violate Darryl's rights under the 14th Amendment Equal Protection Clause of the U.S. Constitution, Title VI of the Civil Rights Act of 1964 and the Texas CROWN Act. Subsequently, Ms. George filed a request with the Houston Division to transfer the case to the Galveston Division. Her request

was granted and the case was transferred to the Galveston Division.

In the suit, Ms. George claims that Governor Abbott has protected the ISD's improper actions and violations of the CROWN Act. She argues that the ISD is improperly punishing Darryl for violating a dress and grooming code that is unconstitutional and that is not proper under the CROWN Act. She asserts that the ISD's enforcement of its dress and grooming code has a disparate impact on black male student with locs, braids, twists, and other protected hair styles. She notes that nonminority students have been allowed to have long hair and/or hair that is against the ISD dress code and grooming policy. It is Ms. George's position that the ISD grooming policy pretextually focuses on hair length but is aimed at hair styles that express black identity and culture.

Ms. George has asked the Federal District Court to compel ISD to cease subjecting black students with protected hair styles from hair length requirements that, in her view, violate the CROWN Act *et al.* ■

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*Madonna T. Lechner was an Investigator and Team Leader with the Office for Civil Rights, U.S. Department of Education, from 1973 through 2007.*

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# City of Chicago Violates the Americans With Disabilities Act and Section 504 of the Rehabilitation Act

BY THERESA LECHNER

On March 31, 2023, United States District Judge Elaine E. Bucklo, for the Northern District of Illinois, entered a Memorandum Opinion and Order. Therein, Judge Bucklo found the City of Chicago did not provide meaningful access to pedestrian signals to blind and low-vision individuals.<sup>1</sup> The underlying complaint was brought by Plaintiffs, the American Council of the Blind of Metropolitan Chicago and several of its individual members. The Defendant is the City of Chicago (“City”).

The Plaintiffs sought class certification pursuant to Federal Rule 23. In doing so, the Plaintiffs identified over 60,000 (and pursuant to a later Order over 65,000) Chicagoans as blind or visually impaired. This went undisputed by the City. Plaintiffs argued class certification was appropriate, in part, because it was a type of class action brought to vindicate members’ civil rights. In a separate Memorandum Opinion and Order dated March 4, 2022, Judge Bucklo granted Plaintiffs’ Motion for Class Certification.<sup>2</sup>

The Plaintiffs sought declaratory and injunctive relief under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Plaintiffs sought meaningful access to blind and low-vision individuals through the installation of Accessible Pedestrian Signals (“APS”). Blind and low-vision individuals cannot rely on the visual cues provided by traditional traffic signals and crosswalks.<sup>3</sup> As such, crossing the street and locating the street are more difficult and hazardous for blind and low-vision individuals.

APS allows blind and low-vision individuals to navigate the city more safely through (1) a locator tone emitted, (2) a raised arrow on the pushbutton to indicate the direction of travel, and (3) a percussive

audio cue that indicates the start and duration of the walk.<sup>4</sup> Judge Bucklo noted, at the time briefing concluded, no more than 30 of the City’s roughly 2,800 signalized intersections had been equipped with APS despite 15 years of planning and assurances.<sup>5</sup>

Title II of the Americans with Disabilities Act provides “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Section 504 of the Rehabilitation Act provides “[n]o otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).<sup>6</sup> Judge Bucklo found the City is required to ensure it operates signalized intersections in a manner that is readily accessible to and usable by individuals with disabilities.<sup>7</sup>

An analysis of “meaningful access” followed with Judge Bucklo noting “[t]he core purpose of the Rehabilitation Act is to ensure that disabled individuals have ‘meaningful access’ to public benefits.”<sup>8</sup> (internal citation omitted). Judge Bucklo found the City’s liability is “...based on its past and present failure to provide ‘meaningful access’ to its network of existing facilities and to ensure that newly constructed signals are designed and constructed in such a manner as to be ‘readily accessible’ by blind individuals.”<sup>9</sup> Judge Bucklo granted Plaintiff’s Motions for Summary Judgment on the issue of the City’s liability.<sup>10</sup> ■

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1. March 31, 2023 Memorandum Opinion and Order, page 20.
2. March 4, 2022 Memorandum Opinion and Order, pages 1-8.
3. March 31, 2023 Memorandum Opinion and Order, page 3.
4. *Id.* at 6.
5. *Id.* at 8 and 16.
6. *Id.* at 10.
7. *Id.* at 14.
8. *Id.* at 15.
9. *Id.* at 27-28.
10. *Id.* at 36.

# Title IX: Over 50 Years Old and Lookin' Good—But What Have You Accomplished, What Remains, and Where Will You Lead Us Next?

BY SHARON L. EISEMAN

## What Is the Primary Tenet of Title IX and How Did it Become a Law?

**“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 educational program or activity receiving federal financial assistance.”**

This summary of the primary intent of Title IX arose from an initiative that trailblazer Representative Patsy Mink of Hawaii, the first woman of color elected to Congress, conceived and presented to Congress in the 1970's to specifically focus on assuring equal rights for women and girls not specifically covered in the 14<sup>th</sup> Amendment of the Constitution which, you might be surprised to learn or recall, does not specify gender equality in various areas of life. With data submitted to Congress by Dr. Bernice Sandler on behalf of the Women's Equity Action League (WEAL) reflecting substantial numbers of complaints of sex discrimination in employment circa 1969 that she had helped women file under Executive Order 11246. Rep. Mink recognized that females of all ages had been sidelined for years in achieving access to opportunities in many fields of endeavor which had received federal funds, including education institutions and in the sports 'arena'—in both the training aspect and participation in competitive sports, whether in local elementary and high schools and throughout professional sports of every kind. (For further details re: the founding and work of WEAL, see “TITLE IX AT 50: A Report by the National Coalition for Women and Girls in Education”)

Such gender inequality adversely affecting girls and women had also been evident in workplaces across all businesses and at all levels of employment therein. In connection with these exclusion phenomena, it was well known that their male counterparts did not face such barriers, thus making the barriers faced by females across age groups clear evidence of gender inequality. Given such a landscape, it was easy to conclude these inequalities were also intentional since all the facts, such as salary differentials between the genders, were well known.

Once Rep. Mink raised this issue of endemic gender discrimination in Congress, she worked closely with various branches of the Federal government on refining her concepts regarding how to make such a federal law effective in assuring equality of access and treatment, irrespective of gender, in education and other public service arenas, which led to her introduction of Title IX into Congress. This life, economy, and culture changing piece of legislation, having been in gestation for a while, was 'born' on June 23, 1972, when President Richard M. Nixon signed and 'delivered' Title IX of the existing Civil Rights Act into law—thereby creating a lexicon for conduct that has brought us to this moment of observing—and also evaluating—the impact of Title IX on those it intended to benefit, as well as assessing what more might need to be done to reach the Title IX goal of achieving gender and racial equity across the designated areas.

Readers of this piece might be touched to learn that Congress renamed the Act as the PATSY T. MINK EQUAL OPPORTUNITY IN EDUCATION ACT following Rep. Mink's death in 2022, and she was also

posthumously awarded the Medal of Freedom.

## How Far Does Title IX 'Reach' in its Coverage and What Entities Are Authorized to Enforce the Act When Violations Occur or Are Alleged?

The Act has a broad reach across many entities, and persons connected to such entities, that fall within the designation of an 'education program or activity receiving federal financial assistance' which includes, among many others, universities, early childhood education programs, public schools, school districts, the state, research and related programs, and medical institutions like hospitals, medical schools, and medical centers. Persons covered include students, parents, or participants in programs of any of the identified institutions. Please see 20 U.S.C. 1681. However, see *Waid v. Merrill Area Pub. Schs.*, 91 F.3d 857 (7<sup>th</sup> Cir. 1996), for how a Title VII 'pre-emption' issue was addressed. (The *Waid* court examines whether a person alleging gender-based employment discrimination can simultaneously pursue remedies under both federal and state law, in this case per Title IX, the Equal Protection Clause of the Fourteenth Amendment, employment relief under the state of Wisconsin's fair employment law, and via administrative procedures, or whether the legal precedent of preemption or preclusion would be applied to limit the plaintiff's remedies. (This concept should also apply when addressing allegations of race-based discrimination in the institutions subject to Title IX.)

## Proposed Amendments to Title IX and What They Mean

To celebrate, in the present, the half century of Title IX's impact in protecting students and athletes from gender discrimination, the U.S. Department of Education recently proposed a set of amendments to the law intended to provide guidance to educational institutions at all levels in implementing Title IX protections. Per the Department's recent announcement, the changes will "Advance Title IX's goal of ensuring that *no person* experiences sex discrimination, sex-based harassment, or sexual violence in education" no matter that person's sexual orientation or gender identity, or because of pregnancy, and that the covered institutions must fully investigate reports of homophobic or transphobic slurs against students and athletes.

In addition, under the proposed amendments educational institutions and sports-related entities must take steps to protect students and athletes from such actions as bans on transgender girls in sports and denial of student access to restrooms consistent with gender identity. Moreover, the Biden administration, which advocated for such groups, noted that these amendments, if they are incorporated into law following the comment period, would 'restore' protections from sexual harassment and assault, including sex-based discrimination targeting LGBTQI+ students and the wider community, thereby overriding changes implemented by the Trump administration. Those amendments can be found on the Department of Education website via this link: <https://www.ed.gov>, and once you are there, type in 'Enforcement'. That part of the DOE website will offer you numerous areas of Title IX to explore.

## What Legal Recourse Does a Victim of Discrimination as Defined Under Title IX Have to Obtain Justice Following a Violation of This Law? And What Rules Apply to School Disciplinary Hearings Against Students?

Any lawyers practicing in this field should, of course, be aware that the lawsuit alleging a Title IX violation will be brought

in Federal Court which is the proper jurisdiction for such matters, whether the defendant entity is a professional or college-based team, or an entity that provides training in a specific field of sports, or an educational institution through which the accuser has suffered any form of gender discrimination. However, the Civil Rights Act provides an option for an aggrieved complainant via a special statutory process allowing, via a request, resolution of a complaint by means of arbitration or mediation. Thus, that option should at least be considered for the client.

In any proceeding, the nature of the claim(s) to be brought on behalf of a complainant can range from gender-based harassment and assault, including liability for "deliberate indifference" as an unreasonable response to "actual knowledge" of harassment, to gender discrimination, in regard to access to facilities, programs, and other resources in the 'arena' of sports through limiting access to programming, facilities, and other resources available to others. This general approach is part of the framework to assist the lawyer in obtaining as much detail as possible re: the actions of the entity being sued and the student facing discipline so that the precise nature of the violation(s) being claimed or being challenged can be determined and therefore cited in the complaint to be filed or in the response to a complaint that has been filed.

In such an assessment for the plaintiff, it may be relevant to determine whether the institution to be named as the defendant or one of the defendants may, due to its nature, be held to a different standard than is imposed elsewhere, and whether particular employees or other staff in decision-making positions, and/or consultants not on the 'payroll' but involved in the actions being challenged, may have been implicit in any of the acts of misconduct against the plaintiff accuser. That information will help determine whom to name.

Due to each matter consisting of many factual details possibly involving a number of persons in varied positions in the entity, it is important for legal counsel to obtain as much information as possible from his/her/their potential client.

## In a Successful Court Proceeding, What Remedies Are Available to a Plaintiff? And Is Mediation or Arbitration Available to Address an Alleged Title IX Violation?

In 2022 changes to Title IX complaint procedures, one of the additions now available to higher education institutions for resolving a Title IX matter is the option for an 'informal resolution' under specific circumstances. Such a resolution might be considered similar to a settlement of a complaint or claim in other types of litigation or dispute that allows concerns of each of the parties to be addressed. It may also replace a court process for litigants who may agree with the basis for the availability of participating in such an informal process which was implemented to resolve an expressed concern about whether the due process rights of both parties were being observed in the proceedings.

As an interesting aside, in past instances where a complaint alleging sexual assault had been filed by a student or an employee at a federally funded educational institution against another student, an administrative official, or a teacher, a new guidance resolution, identified as a "Dear Colleague" letter, was proposed in 2011 by Vice President Joe Biden and Secretary of Education Arne Duncan, followed by additional guidance in 2014. This letter was intended to apply a 'preponderance of the evidence' standard as used in other civil cases, and discouraged institutions from allowing cross-examination. One outcome of such a means to address those allegations was that schools began to treat sexual assault allegations more seriously. However, those initiatives were rescinded in 2017 by the DOE, but new regulations were proposed.

## What Can We Learn From Beneficiaries of Title IX Protections in the Field of Sports and What Comes Next Across the Landscape of All Populations Identified as 'Protected' Under Title IX?

Sadly, despite the presence of Title IX and its proposed amendments, gender abuse and inequities persist. As recently as 2018, an 'independent' investigation of Paul Riley, the coach of the North Carolina Courage Team,

which is part of the National Women's Soccer League (NWSL), confirmed allegations of systemic harassment and sexual coercion involving Coach Riley for at least the past decade—despite his denial of the accusations. After the allegations were first made, Coach Riley was fired. In addition, it was reported that NWSL Commissioner Lisa Baird had 'stepped down.' Such an action suggests that the NWSL may need new leadership who is fully cognizant, and respectful, of the prevailing laws protecting women in sports from gender discrimination and abuse.

### Links to Articles and Material re: Title IX

For an article on 'Title IX of the Education Amendments of 1972; the Voluntary Resolution Agreement between the Department and the Board of Trustees of Michigan State University and MSU Health team, and more, you may access the following site via: [www.hhs.gov/ocr/index.htm](http://www.hhs.gov/ocr/index.htm) which is the Health and Human Services website.

- For articles on women in sports, in particular, including a nice piece entitled 'What you need to know about Title IX ahead of its 50<sup>th</sup> anniversary', and '50 Years of Title IX: We're Not Done Yet', and more, check out the site of the Women's Sports Foundation which appears to be hosted by NU (Northwestern University) at [NUSports.com](http://NUSports.com), accessible via [www.NUSports.com](http://www.NUSports.com).
- Also of interest is the Report by the National Coalition for Women and Girls in Education on TITLE IX AT 50 from the National Coalition for Women and Girls in Education entitled 'Gender-and Race-Conscious Programs', and available at [www.ncwge.org](http://www.ncwge.org).
- Check out an article by Adam J. Sheppard entitled "What are students' due process rights in school disciplinary proceedings?" published in The Chicago Daily Law Bulletin: <https://www.chicagolawbulletin.com>
- "The New Provisions in Title IX Regulations-Taking the Right Steps for a Successful Informal Resolution"

by Adrienne Publicover, Esq./JAMS Mediator Jams at [www.jamsadr.com/JAMSADRInsights](http://www.jamsadr.com/JAMSADRInsights)

- "Generations of Women Lawyers Pay It Forward by Advocating for Title IX" by Cynthia L. Cooper, NY independent journalist and Member of the ACLU Commission on Women in the Profession at <https://www.americanbar.org>
- <https://www.news.northwestern.edu/stories/2022/09/northwestern-events-to-celebrate-title-ix> . This link will take you to the report presented in the fall of 2022 by Northwestern Medill Assistant Prof. Melissa Isaacson on 'The dawn of Title IX a half century later and the long road to gender equity' as part of the University's program on "Title IX at 50: Past, Present, Future".
- '**Sports On the Lips**', is a website created and managed by gender equality advocate Shellie Wilson, to reach females in sports, particularly at the collegiate level, to educate them as to their rights under Title IX and help connect them to opportunities for entry into the field of professional sports.■

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*Written with support from Hon. Deborah Gubin (ret.), as well as the Decalogue Society of Lawyers December 6, 2022, Title IX CLE Program Panelists Adam Sheppard, Charlie Wysong, and Shellie Wilson, and Program Moderator Helen Bloch*