



INSTITUTIONAL COMPLIANCE  
SOLUTIONS

BACK TO SCHOOL

**WEBINAR**

*August 8, 2024*

# BEFORE WE GET STARTED

- Materials
- Overview
- Virtual environment
- Recording
- Not legal advice



# ABOUT US

---

## OUR MISSION

To provide the best Care and Support for our clients, Community Partners, employees, contractors, collaborators, vendors, and all others who encounter our company.

## GOAL

To assist schools and districts in providing a safe and healthy learning and working environment for students, faculty and staff.



# THE CURRENT TITLE IX LITIGATION LANDSCAPE

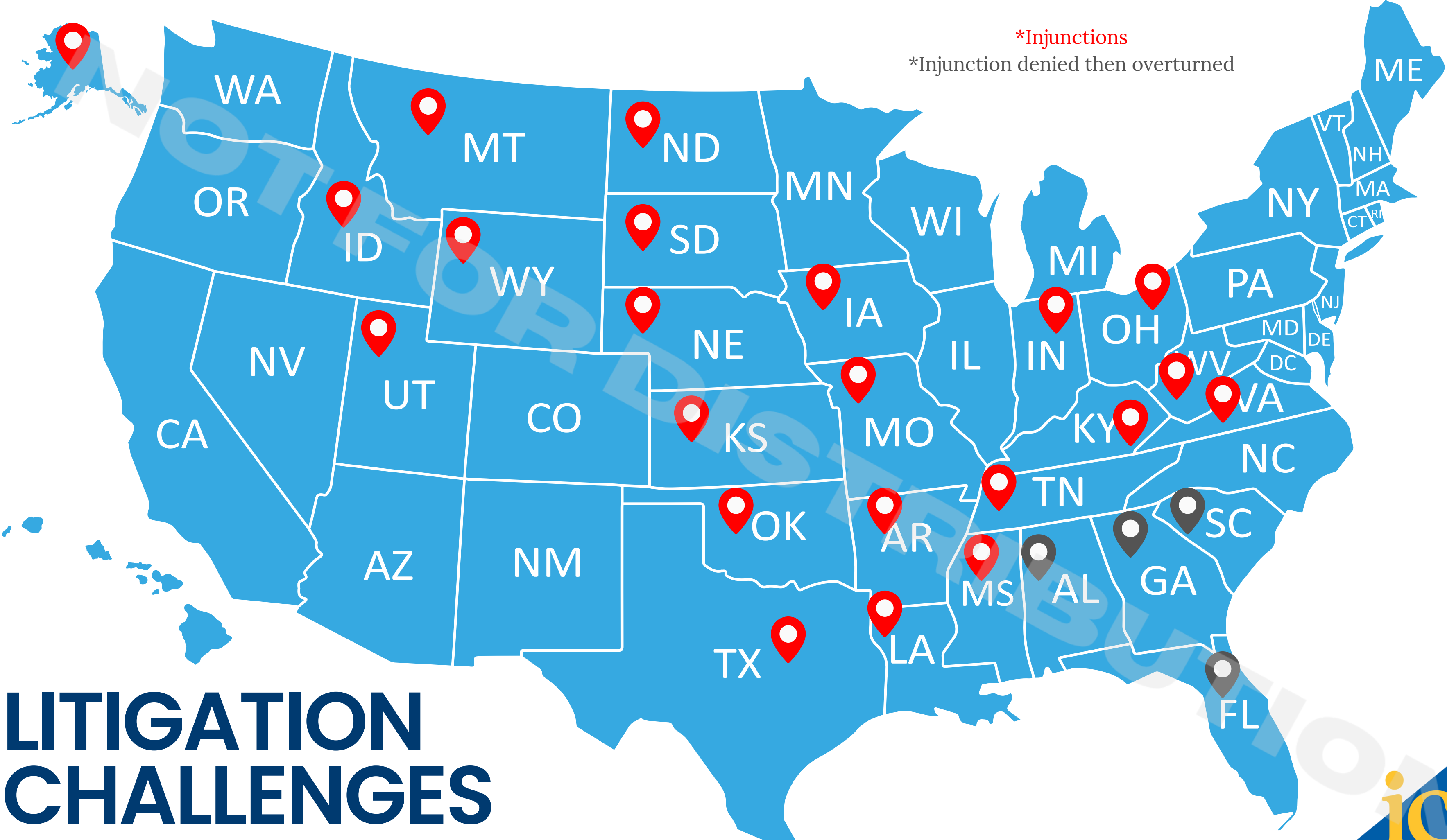
**Manager: How's the work going on?**

**ME: Just Going with the Flow!**



# LITIGATION TIMELINE





\*Injunctions

\*Injunction denied then overturned

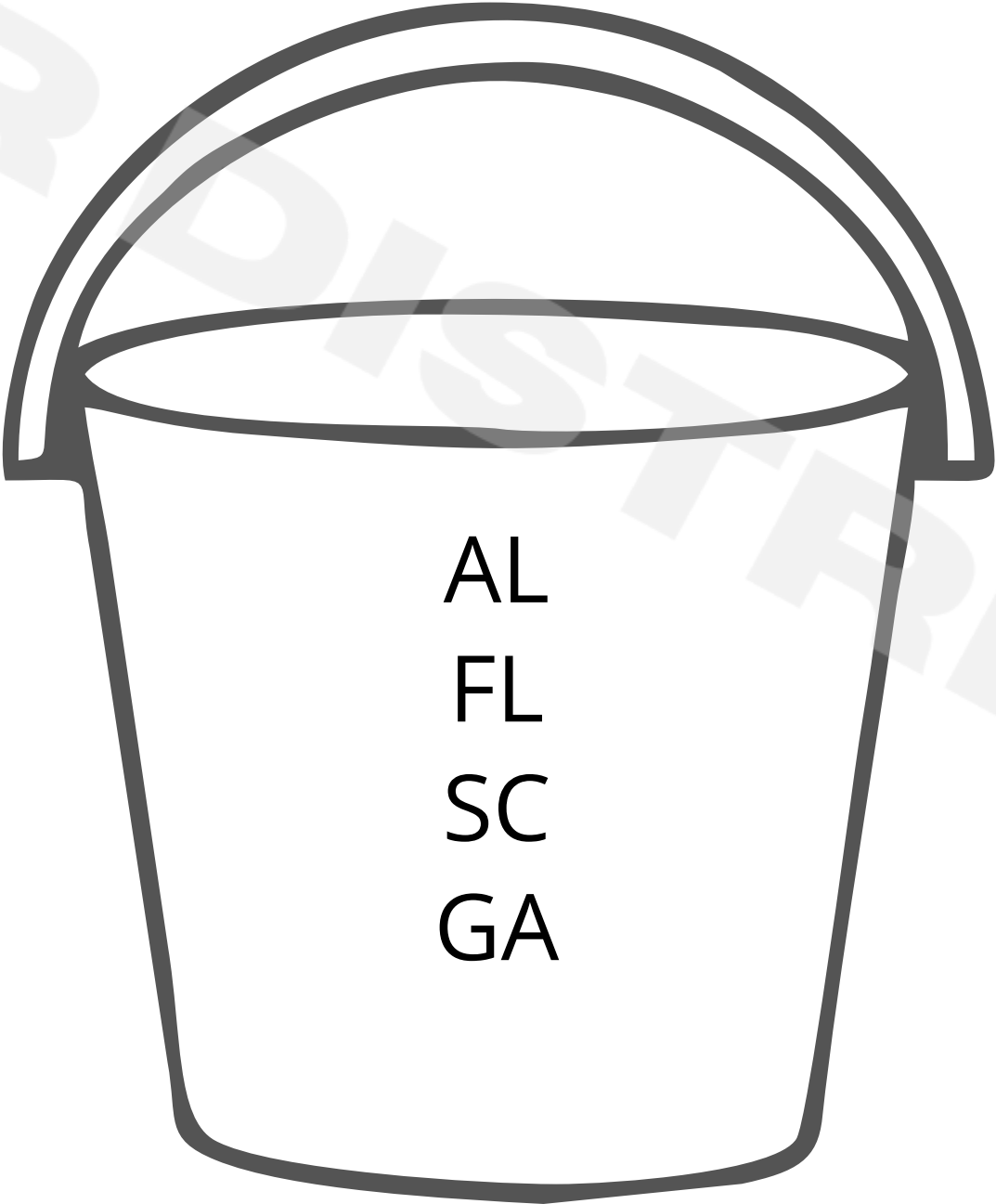
# LITIGATION CHALLENGES



# LITIGATION STATES WITH INJUNCTION (2020)

# LITIGATION STATES INJUNCTION DENIED THEN OVERTURNED (2020)

# NON-LITIGATION STATES (2024 but KS...)



# KANSAS DECISION

“Accordingly, it is hereby ordered that the United States Department of Education, Miguel Cardona, Secretary of U.S. Dept. of Education, the United States Department of Justice, Merrick Garland, Attorney General of the United States . . . are ENJOINED from implementing, enacting, enforcing, or taking any action to enforce the Final Rule promulgated by the Department of Education titled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance” . . . set to become effective on August 1, 2024, against Kansas, Alaska, Utah, Wyoming, K.R.’s school, **the schools attended by the members of Young America’s Foundation or Female Athletes United, as well as the schools attended by the children of the members of Moms for Liberty.**”

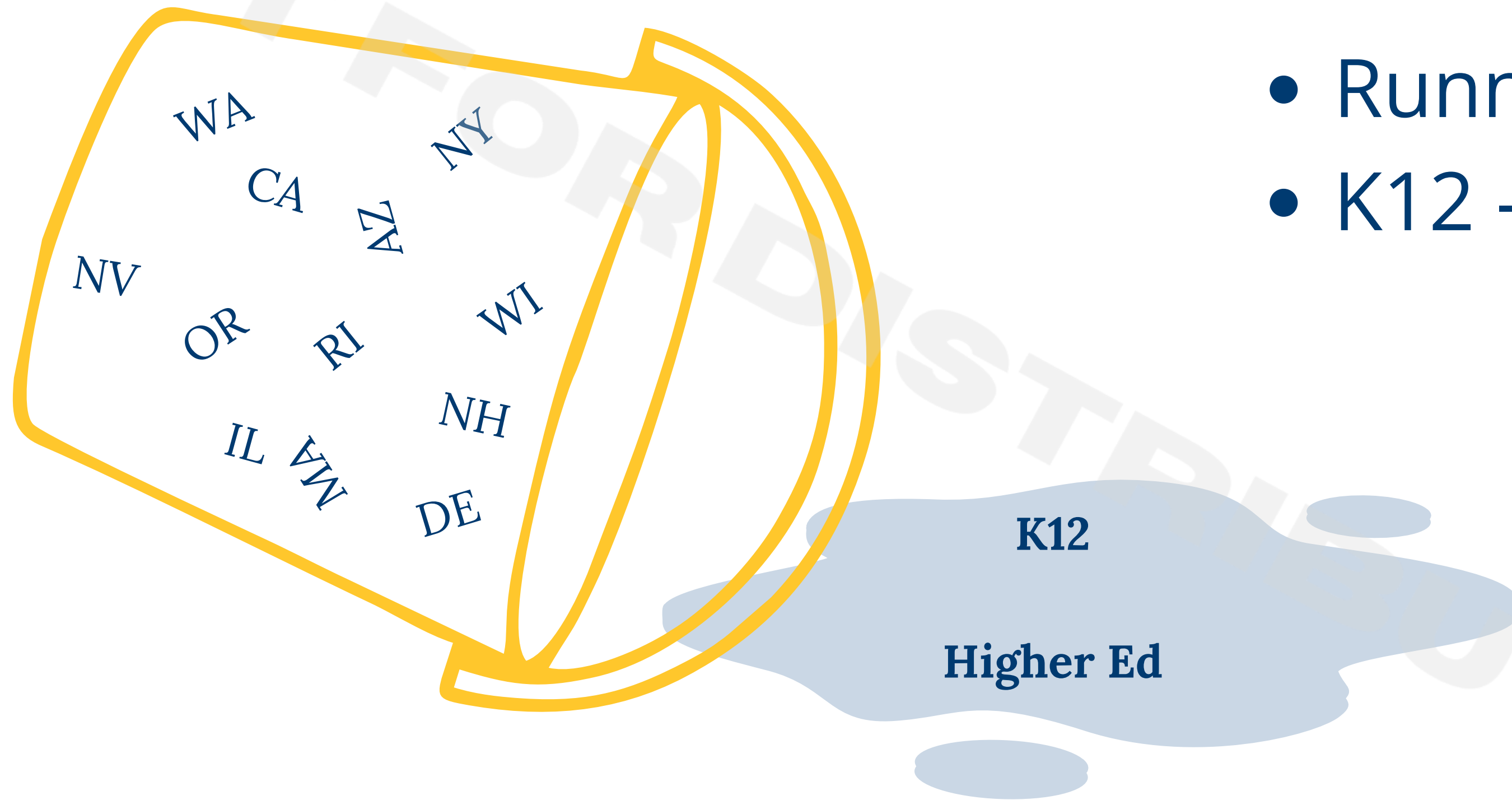
"Finally, nothing in this order limits the ability of any school to adopt or follow its own policies, or otherwise comply with applicable state or local laws or rules regarding the subjects addressed herein. Rather, it simply prohibits Defendants from demanding compliance with the Final Rule by the schools affected by this order, or imposing any consequences for such schools’ failure to comply with the Final Rule." p. 45-46





# KANSAS DECISION

- Running List
- K12 - "schools"



# ALABAMA DECISION (AL, SC, GA, FL)



## ***July 30th: Injunction Denied***

Court denies injunction



## ***July 31: Administrative Stay by Court of Appeals***

Court grants administrative stay.  
Pandemonium.



## ***July 31: ED seeks clarification***

Interprets ruling to only impact AL, SC,  
FL and GA



## ***August 1: Implementation Day***

All briefing by the parties is in for the  
case as of yesterday

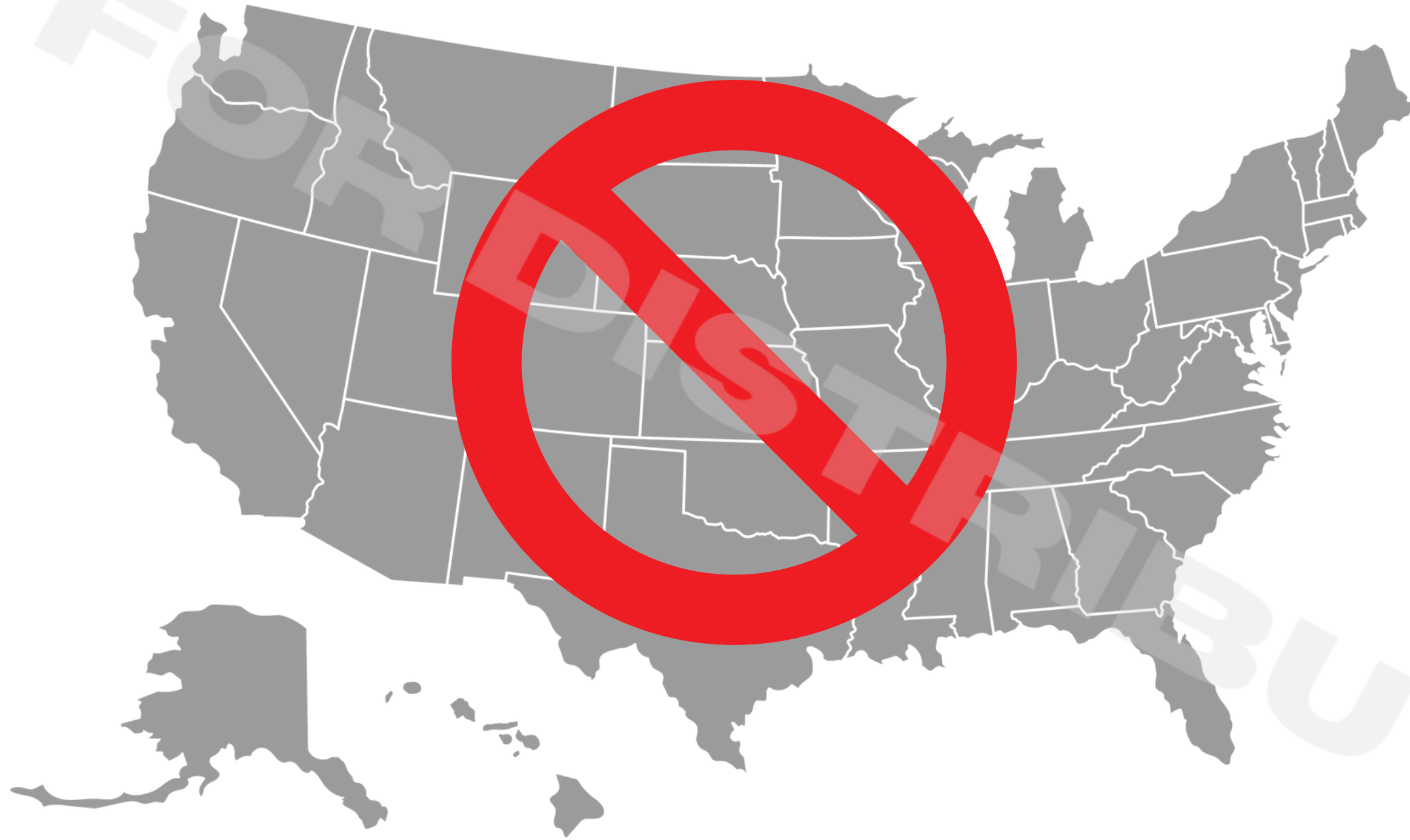


# ALABAMA DISTRICT COURT JUDGE

"Across the ten lawsuits, seven States filed suit in district courts outside their home circuit court of appeals. Alaska, Idaho, and Montana lie within the Ninth Circuit but joined lawsuits filed in district courts within the Fifth and Tenth Circuits; South Carolina, Virginia, and West Virginia lie within the Fourth Circuit but joined lawsuits filed in district courts within the Sixth and Eleventh Circuits; and Indiana, a State within the Seventh Circuit, joined a lawsuit filed in a district court within the Sixth Circuit. (See doc. 1) (South Carolina); Louisiana, no. 24-563, doc. 1 (W.D. La.) (Montana and Idaho); Kansas, no. 24-4041, doc. 1 (D. Kan.) (Alaska); Tennessee, no. 24-72, doc. 1 (E.D. Ky.) (Indiana, Virginia, and West Virginia); see also Geographic Boundaries of the U.S. Courts of Appeals and U.S. Dist. Courts, [https://www.uscourts.gov/sites/default/files/u.s.\\_federal\\_courts\\_circuit\\_map\\_1.pdf](https://www.uscourts.gov/sites/default/files/u.s._federal_courts_circuit_map_1.pdf) [<https://perma.cc/NVK4-K3R3>]. **Notably, the States that filed outside of their designated circuits are States whose designated circuit has issued binding precedent contrary to the positions they take here.** See Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586 (4th Cir. 2020); Grabowski v. Arizona Bd. of Regents, 69 F.4th 1110 (9th Cir. 2023); Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034 (7th Cir. 2017), abrogated on other grounds as recognized by Ill. Republican Party v. Pritzker, 973 F.3d 760, 762 (7th Cir. 2020); A.C. ex rel. M.C. v. Metro. Sch. Dist. of Martinsville, 75 F.4th 760 (7th Cir. 2023). South Carolina, a plaintiff here, neither mentions nor addresses its binding Fourth Circuit precedent." p.6-7



# NATIONWIDE STAY/INJUNCTION?



# U.S. SUPREME COURT



Biden administration moved to ask U.S. Supreme Court to partially set aside two lower-court injunctions that block the Department of Education's new Title IX regulation. (LA/TN cases)



Argue that the lower courts incorrectly blocked provisions on gender identity, but the administration was not seeking to set aside the injunctions with respect to the SOGI language for now.



Filed on the court's emergency docket

# OTHER CONSIDERATIONS



Do not comply orders/directives



2021 notice of interpretation re: SOGI challenged and ruled on in some states, but some litigation states never challenged it and OCR is enforcing in states without exemption  
UT, WY, VA, ND, FL, IA



# DEPARTMENT OF EDUCATION/ OCR RESOURCE



The April 2024 Title IX regulation, which is codified in the Code of Federal Regulations at 34 CFR Part 106, is enforced by the Department's Office for Civil Rights (OCR) and is effective on August 1, 2024. As of July 31, 2024, pursuant to Federal court orders, the Department is currently enjoined from enforcing the 2024 Final Rule in the states of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming; the Department is also currently enjoined from enforcing the 2024 Final Rule at the schools on the list located at <https://www2.ed.gov/about/offices/list/ocr/docs/list-of-schools-enjoined-from-2024-t9-rule.pdf>. Per Court order, this list of schools may be supplemented in the future. The Final Rule and these resources do not currently apply in those states and schools. Pending further court orders, the Department's Title IX Regulations, as amended in 2020 (2020 Title IX Final Rule) remain in effect in those states and schools.



# REMINDERS:



Litigation does not move quickly



Injunctions are the beginning, can technically be lifted at any time



Appeals of decisions have happened, and will continue to occur



Stay close with your counsel as changes occur





# REGARDLESS OF YOUR PATH, REMEMBER THE 5 FOUNDATIONAL PRINCIPLES OF TITLE IX



# ACCESS

- Short federal law, complex in implementation
- Access for your students/employees to education program or activity free from discrimination based on sex



# SUPPORT

- Supportive measures fundamental
- Ensure access
- Continued focus no matter your path



# SUPPORT FIRST- SUPPORT ALWAYS



**During Investigation**  
Counseling,  
Assignments, Tests,  
Absences, Heads  
up Report is  
Coming

**Decision Making**  
Time to Respond,  
Notice  
Determination to  
be Released

## **Triage/Intake**

Immediate Needs,  
Safety Planning,  
No Contact  
Directives

## **Re-evaluate**

Change of  
Semester, Change  
of Extracurriculars,  
etc.

## **Post Determination**

Regardless of the  
Outcome

The Party Declines Support?

No thanks...  
Stop here?  
NOT ALWAYS

# THE WHAT IF

The Faculty/Teacher/  
Staff Member Says No

When to push?  
Is there any alternative?



# LEAD WITH CAN

## Make an Impact

Change the narrative. Don't show up with a problem, show up with a solution.

How CAN we make this work?

How CAN I provide this support?

How CAN I make this change?

# EQUITY

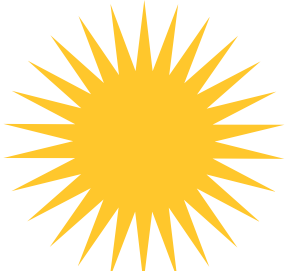
- Cornerstone Title IX principle
- Process free from conflict of interest/bias
- Consider from report/notification to resolution - how you communicate with parties, implement supportive measures, assign investigators/DMs etc.



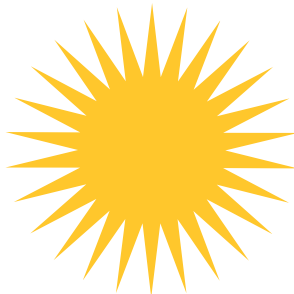
# WAYS TO CREATE/ENSURE EQUITY



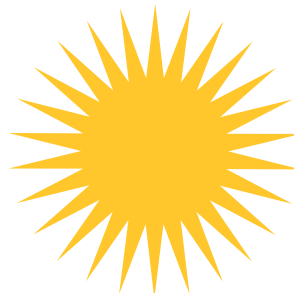
Assess your Title IX Team - who is serving in what role



Communications with the parties -  
trauma informed approach



Transparency in the process



Mutli-faceted - policy/procedures/practices





# EDUCATION/PREVENTION

- Education and prevention efforts key
- Training, training, training – community and Title IX team



# EDUCATION AND PREVENTION

## This is NOT the time to press pause!

Training your team is mandated under the regs and vital to assisting them in doing the work.

## Don't forget the community

Educating the community allows for more accurate reporting, the ability to provide support and so much more!



## Your website is an asset or a barrier

Think like a student, parent or employee.

## Think outside of Title IX

Consider overlap of departments and areas at your school/institution.

## Title IX Coordinators – Be visible!

Title IX Coordinators are the leader of the Title IX team and the on-the-ground Title IX expert.

# RESPOND

- Do something in response to reports
- Your policy is your guide
- Be transparent on which policy you are using
- Keep moving









# BONUS: COMMUNITY

- Connection with colleagues
- Care for yourself and each other



# FINAL THOUGHTS.....

-  Stay focused on your role and what you can control.
-  No one has all of the answers.
-  Consult with counsel!
-  If you are staying under 2020, make sure your 2020 efforts are shored up!
-  If you are working under 2024, be ready for an increase in Title IX matters.
-  Your path may be different from other colleagues, but the heart of the work is universal.





# The ICS Dual Certification Guarantee

*Receive training on both the 2020 and 2024 Title IX regulations in any ICS training.*





# COMMUNITY PARTNERS

*HIGHER ED*



*K-12*





# Questions?

