

NEXT GENERATION TEXAS

SAFE SCHOOLS AND FAIR STANDARDS

WRITTEN BY **Cameron Abrams**
September 2026



TABLE OF CONTENTS

Introduction | Page 3

Background | Page 4

The Legal Development of Harassment Standards in Higher Education | Page 4

Federal Title IX Enactment | Page 5

Campus-Specific Federal Guidance and Legislation | Page 5

Title VI Standards | Page 6

Texas Statutory Framework | Page 8

Policy Recommendations | Page 9

Defining Harassment in Education Code | Page 9

Statutory Definitions of Title VI and Title IX Harassment | Page 9

Establish Uniform Institutional Enforcement Standards | Page 10

Establish Standard for Evaluating Conduct | Page 10

Preserve Free Speech Protections Alongside Student Protections | Page 10

Conclusion | Page 11

References | Page 12

SAFE SCHOOLS AND FAIR STANDARDS

WRITTEN BY Cameron Abrams

KEY POINTS

- **Texas's higher education code** is not aligned with Supreme Court precedent on the correct standards for defining harassment.
- **Texas statute does not** define what makes conduct "severe," "persistent," or "pervasive."
- **The existing legal framework** should remain intact but needs updated definitions that protect both free speech and students from harassment.

INTRODUCTION

"The core of what constitutes liberty for Americans today, especially for those who call themselves liberals, is embodied in the First Amendment," writes Walter Burns, political theorist and constitutional scholar, in the opening line of the preface to his book *The First Amendment and the Future of American Democracy*. He adds that beyond "free elections" and "representation," it is the First Amendment that is truly "closer to defining what it means to be an American today" ([Burns, 1976](#)).

However, since 1789 (when the Bill of Rights was ratified), the First Amendment has faced severe scrutiny. Free speech on college campuses, especially, has been subject to challenges on the grounds of "trigger warnings," "safe spaces," and "micro-aggressions," with each new epithet being used as a rhetorical attack by ideological opponents to rival opinions.

The Texas Legislature, to their credit, has taken an active approach in addressing some of these issues. In 2019, Governor Greg Abbott signed Senate Bill (SB) 18 ([SB 18, 2019](#)), which added to the state code the recognition of free speech on college campuses, thus "ensuring that all persons may assemble peaceably on the campuses of institutions of higher education for expressive activities, including to listen to or observe the expressive activities of others" ([Tex. Education Code, Sec. 51.9315](#)).

Additionally, in 2023, lawmakers passed SB 17 ([SB 17, 2023](#)), which banned diversity, equity, and inclusion offices on college campuses. Then in 2025, in the wake of increased campus demonstrations and protests, the Legislature passed SB 2972 ([SB 2972](#)), which sought to tamp down on disruptive campus activities, including where and

when certain demonstrations can occur on college campuses.

Public universities have found themselves at a crossroads. Protecting students from unlawful discrimination while preserving constitutionally protected rights to free speech and academic inquiry, and preventing harassment, is primarily overseen by a federal agency, the Office of Civil Rights (OCR), through its enforcement of Title IX and Title VI regulations. Yet the administrative guidance and evolving institutional compliance structures have continued to oscillate under different circumstances.

Currently, Texas law governing “sexual harassment” in higher education relies on statutory definitions adopted in 2019 through SB 212 and House Bill (HB) 1735 ([Texas Higher Education Coordinating Board, 2020](#)). These statutes established mandatory reporting requirements and required institutions of higher education to adopt formal misconduct policies.

While the legislation addressed serious gaps in reporting procedures, the statutory definition of harassment incorporated language that diverges from the constitutional standard articulated by the Supreme Court of the United States and from the federal Title IX regulatory framework currently governing higher education institutions. Specifically, Texas Education Code §51.251 defines sexual harassment in the educational context as conduct that is “sufficiently severe, persistent, or pervasive” such that it interferes with a student’s ability to participate in educational programs ([Texas Education Code §51.25](#)). This disjunctive formulation allows disciplinary processes to be triggered by conduct that satisfies only one of these conditions. The Supreme Court’s precedent in *Davis v. Monroe County Board of Education* (1999) requires a significantly narrower threshold. Under *Davis*, the OCR defined actionable harassment as severe, pervasive, and objectively offensive, such that it effectively denies a student equal access to educational opportunities ([U.S. Department of Education, 2020](#)).

The divergence between Texas law (i.e., “or”) and the constitutional standard (i.e., “and”) creates institutional consequences for universities and can produce administrative over-reporting, resource diversion within Title IX offices, and potential chilling effects on academic discourse. The problem has become more visible as courts have increasingly scrutinized campus speech regulations and as federal Title IX enforcement has returned to the 2020 regulatory framework after courts rejected the Department of Education’s (DOE) 2024 rule.

For Title VI harassment based on race, ethnicity, color, or national origin, no separate statute exists in the Texas Education Code. Instead, Texas universities that receive federal financial assistance create institutional student codes of conduct that mirror federal nondiscrimination policies. The absence of a state code creates a cafeteria of definitions among Texas’s 35 public universities.

Texas can resolve these tensions through targeted statutory amendments. Narrowing the definition of harassment to reflect the *Davis* standard would align state law with U.S. Supreme Court precedent, reduce unnecessary reporting burdens, and preserve both campus safety and freedom of expression. Additionally, the Texas Education Code should define harassment based on race, ethnicity, color, or national origin to close this ambiguity while preserving both campus safety and freedom of expression.

BACKGROUND

[The Legal Development of Harassment Standards in Higher Education](#)

Modern harassment law in higher education developed alongside broader changes in the legal relationship between universities and students. For much of the nineteenth and early twentieth centuries, colleges operated under the doctrine of *in loco parentis*, a framework that treated the university as standing “in the place of the parent” regarding student discipline and conduct. Under this doctrine, courts largely insulated universities from legal scrutiny. Institutions possessed broad authority to

regulate student behavior, impose disciplinary sanctions, and control campus life with minimal judicial oversight. As Peter F. Lake explains, “The college stepped—at least in part—into this parental immunity. When a college deliberately regulated or disciplined a student—allegedly denying that student intangible, civil, or economic rights—the courts used *in loco parentis* to immunize the college” (1999, p. 5).

However, the legal framework began to unravel in the mid-twentieth century as higher-education students increasingly argued for their constitutional rights, and courts gradually rejected the assumption that universities could exercise parental authority without legal constraints (Rutter & Mintz, 2019). In *Dixon v. Alabama State Board of Education* (1961), the Fifth Circuit held that students at public colleges are entitled to procedural due process before expulsion. The Supreme Court further reinforced student rights in *Healy v. James* (1972), emphasizing that the college campus functions as a “marketplace of ideas” where First Amendment protections apply. Similarly, *Papish v. Board of Curators of the University of Missouri* (1973) held that universities may not punish students for speech merely because it is considered offensive or indecent (Saraby, 2009).

Federal Title IX Enactment

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in federally funded educational programs. Cole and Back (2019) explain that while “harassment” on the basis of sex is not explicitly mentioned in federal statute, both federal agencies and the U.S. Supreme Court have made determinations that “conduct” that can be understood as harassment can be a “violation of the statute,” and both teachers and students “can be held responsible” when harassment is identified.

Major developments occurred in *Franklin v. Gwinnett County Public Schools* (1992), in which the Supreme Court held that monetary damages are available for Title IX violations. In *Gebser v. Lago Vista Independent School District* (1998), the Court held that a funding recipient may be liable only when an official with

authority to address misconduct has actual knowledge of harassment and responds with deliberate indifference. The Court refined the standard further in *Davis v. Monroe County Board of Education* (1999), which addressed student-on-student harassment (Cole & Back, 2019).

The *Davis* framework established a high threshold for institutional liability, thereby reflecting the need to protect both students from discrimination and universities from liability for isolated incidents or protected speech. Title IX required colleges and universities that received federal funds to investigate complaints, adopt grievance procedures, and take steps to prevent discriminatory environments that could interfere with students’ access to education.

Campus-Specific Federal Guidance and Legislation

In addition to Title IX and the expansion of the enforcement to encompass sexual harassment, a number of other federal statutes shaped the modern campus misconduct framework. In 2001, the DOE’s OCR issued “Revised Sexual Harassment Guidance,” instructing institutions to “take prompt and effective action calculated to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects” (Cole & Back, 2019). The regulatory landscape changed even more following the DOE’s 2011 Dear Colleague Letter, which made explicit that universities should focus on sexual harassment in a student-to-student context. Additionally, a 2014 directive provided examples under which universities can identify and “deter sexual harassment proactively on campus” (Cole, 2019).

In 2020, the DOE issued comprehensive Title IX regulations establishing “for the first time” a binding federal definition of sexual harassment that is applicable to public university disciplinary proceedings (U.S. Department of Education, Office for Civil Rights, n.d.).

However, in April 2024, the Biden Administration's DOE issued a final rule overhauling Title IX regulations, set to take effect August 1, 2024. The new rules broadened the definition of sex-based harassment to include harassment based on "sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity" ([FIRE, 2024](#)). They also expanded the definition of "hostile environment harassment" to cover unwelcome sex-based conduct that, based on the totality of the circumstances, is "subjectively and objectively" offensive and sufficiently "severe or pervasive" to limit or deny a person's ability to participate in or benefit from an educational program.

But on January 9, 2025, the U.S. District Court for the Eastern District of Kentucky, in *State of Tennessee et al. v. Cardona*, vacated the Biden Administration's 2024 Title IX regulations in their entirety on a nationwide basis ([Atkins et al., 2025](#)). The court found that the DOE impermissibly expanded the definition of "on the basis of sex" to include gender identity: "The Biden administration's radical attempt to redefine sex not only tossed fairness, safety, and privacy for female students out the window, it also threatened free speech and parental rights," the Alliance Defending Freedom stated after the ruling ([Alliance Defending Freedom, 2025](#)). With the 2024 regulations vacated, the DOE reverted to enforcing Title IX under the 2020 regulatory framework.

TITLE VI STANDARDS

Just as Title IX grew out of the Civil Rights Act of 1964, so did Title VI. Title VI is the federal regulation prohibiting discrimination based on race, color, or national origin. In higher education, Title VI applies to institutions that receive federal funds. The Department of Education's OCR is charged with oversight and enforcement of Title VI. The *Davis* standard of harassment being "so severe, pervasive, and objectively offensive" holds for Title VI following the U.S. Supreme Court's decision. Lower courts have consistently upheld the *Davis* standard as the definition of harassment under Title VI ([Cole, 2026](#)). The *Davis* standard referenced in court opinions has made

clear various parameters necessary for a violation, which include, but are not limited to, that a violation requires proof of a "systemic" denial of access to education and that there is documented "regular and continuous harassment" being incurred. A university can be found liable for a Title VI violation when no safeguard measures are in place to address the harassment.

Harassment in this context, according to the Department of Education, can "take many forms." The broad nature of this includes everything from "slurs," "taunts," "stereotypes," "name-calling," or "other hateful conduct" that can prompt an investigation from the OCR. The public universities themselves must properly respond to claims of a Title VI harassment claim, including taking "prompt and effective" action to resolve the conditions that created a "hostile environment, prevent its recurrence, and, as appropriate, remedy its effects" ([U.S. Department of Education, 2025a](#)).

But unlike Title IX, Texas state statute does not address Title VI. Instead, compliance is left to the universities themselves, where the regulatory guidelines for students are found in Code of Conduct handbooks. What is addressed in the Texas Education Code is the penal code definition of "harassment" that falls under Sec. 42.07. The Texas Education Code refers to Title VI in what constitutes "nondiscrimination regulations" and states that the coordinating board "shall make" the necessary regulations to comply with federal regulations. Most recently, during the 89th Legislative Session, Senate Bill 187 was filed, which sought to create in the state education code a process through which students can submit harassment claims on the basis of race, color, or ethnicity at their university, but the bill was not given a reading in the Senate Education K-16 Committee.

Universities across the state have created their own internal offices to oversee Title VI. For example, the University of Texas at Austin has a Department of Investigation and Adjudication ([University of Texas at Austin, n.d.](#)).

Following the passage of a variety of higher education-related laws during the 89th Legislative Session, Gov. Greg Abbott created the “Office of the Ombudsman” within the Texas Higher Education Coordinating Board and has appointed a “Director of Institutional Policy and Oversight,” who will assess complaints and investigate a range of different higher education policies—including potential speech and harassment violations.

University oversight divisions that supervise harassment claims have been criticized by FIRE for overbroadly enforcing “bias” speech that routinely targets “political affiliation or speech as a potential bias, inviting reports of and investigations into political speech by law enforcement and student conduct administrators” (FIRE, 2017).

This criticism stems from the Texas Education Code’s lack of a clear definition of race, ethnicity, color, and national origin harassment. As a result, to comply with federal regulations, universities in Texas have developed a wide range of standards.

One example compares Texas A&M University, where the “student rules” adhere to the Davis standard, with UT Austin, where they do not include the Davis standard definition of harassment.

The differences created by the missing definition in state code and universities’ ability to create their own standards to comply with federal regulations were most starkly on display when the non-profit legal group Speech First challenged, and eventually settled, its lawsuit against the University of Houston’s (UH) anti-discrimination policy. The Speech First complaint involved the UH “harassment” policy that had included examples that could create violations such as “[m]inor verbal and nonverbal slights, snubs, annoyances, insults, or isolated incidents including, but not limited to microaggressions.” Additionally, the legal filing included how the University’s Deputy General Counsel at UH explained to a group of students about the subjectively ambiguous term “hate speech” and that due to how the

UH student code of conduct is worded, it would not be “permitted by the University” (*Speech First, Inc., v. Khator*, 2022).

Campus speech policies at Texas universities have routinely been challenged on the grounds that they “chill” freedom of speech. In 2023, Speech First challenged Texas State University’s speech codes. The lawsuit argued that the university’s “harassment” policy had gone “well beyond” the Davis standard and thus created vague standards. The case is currently ongoing (*Speech First*, 2023).

In 2025, the new Trump Administration shone a brighter spotlight on addressing Title VI violations. DOE Secretary Linda McMahon announced in March 2025 that the agency had sent letters to 60 universities across the country that were currently under investigation for potentially allowing “Title IV violations relating to antisemitic harassment and discrimination” (U.S. Department of Education, 2025b).

When overbroad definitions are instantiated and enforced, free speech is chilled. Both Title IV and Title XI—but most erroneously in the ability for universities to create their own definitions of speech “harassment” on the basis of race, ethnicity, color, and national origin—have created an untenable situation for students and faculty alike.

Fractionous campus speech culture becomes apparent when politically moderate and conservative faculty report that they are “worried” their reputation could be damaged “because someone misunderstands something they have said or done.” Many also report they are at risk of “losing their jobs” for speech. FIRE found that just 17% of “liberal” faculty hide their political beliefs, as compared to the whopping 55% of “conservative” faculty (Honeycutt, 2024).

Under Chapter 51, Sec. 51.9315 of the Texas Education Code, “expressive activities” fall under the definition of “protected expression on campus.” With SB 18, passed in 2019, Texas sought to make freedom of speech the main tenet of university culture.

Additionally, during the 89th Legislative Session, SB 2972, also known as the “Campus Protection Act,” was passed, clarifying which types of campus activities, including certain protests and demonstrations, can occur.

Unfortunately, despite these efforts—as the research above documents—campus free speech remains hostile on the grounds of potential harassment claims. Fixing the misalignment between the Title IX Davis standard and the missing Title VI definition in the Education Code would resolve many of the free-speech chilling effects of current college campus culture.

TEXAS STATUTORY FRAMEWORK

The federal framework for governing Texas higher education has been shaped primarily under Title IX of the Education Amendments of 1972. Alongside these federal requirements, the Texas Legislature has enacted several state-level statutory mandates. The 86th Texas Legislature expanded the state’s existing sexual assault legislation with the adoption of SB 212 (2019) and HB 1735 (2019).

SB 212 was codified as Subchapter E-2 of Chapter 51 of the Texas Education Code (§§ 51.251–51.260) with the definitional provision, § 51.251, establishing the operative terms governing the entire subchapter, which includes the definition of “sexual harassment” in the “education context” as “unwelcome, sex-based” conduct that is “sufficiently severe, persistent, or pervasive” to interfere with a “student’s ability to participate in educational programs or activities”—a standard that tracks but supplements the federal framework developed under Title IX case law.

The most novel feature of SB 212 is the reporting requirement that includes how all employees of public and private postsecondary institutions are to report to their Title IX Coordinator any information they reasonably believe constitutes sexual harassment, sexual assault, dating violence, or stalking—which includes secondhand information or

rumors—regardless of whether the incident occurred on or off campus or whether the parties involved are affiliated with the institution ([Texas State University, n.d.](#)). The two exceptions to the law apply when employees are victims of the reported conduct or when they hear disclosures at a public awareness event sponsored by the university or a university-affiliated student organization.

House Bill 1735, the companion measure to SB 212, was codified as Subchapter E-3 of Chapter 51 of the Texas Education Code §§ 51.281–51.291 and addressed institutional policy and victim support. The law expands requirements for institutional sexual assault policies to mandate the inclusion of sexual harassment, dating violence, and stalking, and applies these requirements to all “public and private postsecondary educational institutions,” authorizing a civil penalty for noncompliance. The bill requires each institution to develop and implement a “comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking,” as well as requiring higher education institutions to “adopt a policy on sexual harassment” that includes “definitions” and “sanctions” for “prohibited behavior” ([HB 1735, 2019](#)).

Through SB 212 and HB 1735, the rulemaking authority is delegated to the Texas Higher Education Coordinating Board (THECB). The THECB promulgated implementing rules codified as Texas Administrative Code, Chapter 3, Subchapter A. It established a Title IX Training Advisory Committee (pursuant to TAC Chapter 1, Subchapter DD) to develop recommended training materials for all persons required to report under the statute, as well as for Title IX coordinators and deputy Title IX coordinators across Texas institutions of higher education.

Following the Biden Administration’s issuance of federal rules in 2024 that redefined sex discrimination and sex-based harassment to be based on sex stereotypes, pregnancy, gender identity, and sexual orientation, Governor Greg Abbott issued a letter “condemning [Biden’s] recent revision of Title

IX, which forces schools to treat biological men as women” ([Office of the Texas Governor, 2024](#)). The letter also instructed the Texas Education Agency to halt changes to state compliance with the federal regulations, in conjunction with a lawsuit filed by Texas Attorney General Ken Paxton, who challenged the new federal regulations ([Texas Education Agency, 2024](#)).

Following the reinstatement of the 2020 regulations, Texas institutions of higher education are now required to align their policies with the existing framework while continuing to comply with the state’s own mandatory reporting obligations under SB 212 and the THECB’s implementing rules.

POLICY RECOMMENDATIONS

Texas does not require a wholesale restructuring of its higher education harassment framework, as the existing statutes already provide a functioning system of reporting obligations, institutional accountability, and student protections. The primary deficiency lies in the statutory definition of sexual harassment, the lack of a definition that covers Title VI in the Education Code, and the absence of uniform standards guiding institutional enforcement.

Defining Harassment in Education Code

The primary definition of “harassment” in the Texas Education Code is related to “sexual harassment.” For a specific definition of harassment, the Texas Education Code refers to the Penal Code definition of harassment. Because of this, universities across the state have created their own broad definitions of “harassment” in student codes of conduct, which has produced a varying array of different standards. The Texas Legislature can resolve the tension between criminal harassment and harassment in the education context by adopting a clear standard in the Education Code for “harassment.”

An example comes from Oklahoma. In 2020, Oklahoma adopted a definition of “harassment” as: “means only that expression that is unwelcome, so severe, pervasive and subjectively and objectively

offensive that a student is effectively denied equal access to educational opportunities or benefits provided by the public institution of higher education” ([SB 361, 2019](#)). The Oklahoma bill provides a definition for “materially and substantially disrupts.”

Additionally, SB 361 provides clear guardrails for campus speech: “Nothing in this section shall enable individuals to engage in conduct that intentionally, materially and substantially disrupts another person’s expressive activity if that activity is occurring in a campus space reserved for that activity under the exclusive use or control of a particular group.”

Freedom of speech and expression on college campuses is one of the bulwarks of a free society and the promotion of the marketplace of ideas. While the Texas Legislature has taken positive steps toward that goal, the last gap to fill is a higher-education-specific definition of “harassment,” which, in turn, will provide clear guardrails for ideas and speech that have historically been punished for falling outside the progressive milieu of public higher education.

Statutory Definitions of Title VI and Title IX Harassment

The Texas Legislature should revise Texas Education Code § 51.251—which currently defines sexual harassment in the education context as conduct that is “sufficiently severe, persistent, or pervasive” such that it interferes with a student’s ability to participate in or benefit from educational programs or activities—by replacing that disjunctive formulation with the conjunctive standard established by the Supreme Court. The current “or” language permits disciplinary action when conduct satisfies only one of three criteria—a threshold lower than what the Constitution requires and one that creates institutional exposure to over-enforcement and chilling of protected academic expression.

A Title VI definition is absent in the Texas Education Code. The Texas Legislature can remedy this gap by providing a definition that covers the Davis standard as applied to Title VI. More simply, the Texas Legislature can define “harassment” broadly in higher education by providing a definition tailored to the education context, outside the Penal Code definition.

The recommended amendment replaces “severe, persistent, or pervasive” with “severe, pervasive, and objectively offensive,” narrowing the statutory definition to track this constitutional floor, eliminating “persistent” as a standalone basis for discipline, and adding the “objectively offensive” element that *Davis* requires. This change also aligns Texas law with the reinstated 2020 federal Title IX regulations, which define harassment as conduct that a reasonable person would find so severe, pervasive, and objectively offensive as to effectively deny a person equal educational access, thereby ensuring that state and federal standards operate in tandem.

Establish Uniform Institutional Enforcement Standards

The Texas Legislature should direct the Texas Higher Education Coordinating Board (which already has rulemaking authority) to issue standardized guidance clarifying what threshold of reported conduct obligates institutions to initiate a formal investigation, distinct from the mandatory reporting duty imposed on all employees under Texas Education Code § 51.252. Under § 51.252, employees must promptly report any incident they “reasonably believe” constitutes sexual harassment, assault, dating violence, or stalking. The statute provides no parallel guidance to Title IX offices on when a reported incident must escalate to formal investigation, leaving that determination entirely to institutional discretion.

This gap produces inconsistent enforcement across Texas universities and risks diverting Title IX office resources toward reports that do not approach the constitutional threshold established in *Davis*. Standardized guidance would promote uniformity across institutions, reduce resource diversion within Title

IX offices, and ensure that investigative processes are calibrated to the constitutional floor without requiring any amendment to existing law.

Establish Standard for Evaluating Conduct

Texas Education Code § 51.251 should be amended to require that alleged conduct be assessed from the perspective of a reasonable person in the complainant’s position, considering the totality of the circumstances. The current statute provides no interpretive guidance on how terms such as “severe” or “objectively offensive” should be applied, consequently leaving determinations to institutional discretion and producing inconsistent outcomes across Texas universities. Adopting a reasonable person standard—a legal precedent that has been applied since 1837 and is a fixture of common law—would promote uniformity across institutions, reduce subjective interpretations that vary by administrator or campus, and provide clearer expectations for students and faculty. Statutory language should specify that “reasonable person” refers to a person in the same circumstances as the complainant to prevent the standard from collapsing into subjectivity.

Preserve Free Speech Protections Alongside Student Protections

Any statutory amendments to Texas Education Code § 51.251 should include an explicit savings clause affirming that the harassment framework does not authorize institutional discipline for expression that, while offensive, does not meet the conjunctive threshold of severe, pervasive, and objectively offensive conduct established in *Davis*. Court precedent establishes that offensive expression falling below the *Davis* threshold is constitutionally protected, and that institutional discipline premised on broad or vague statutory language (such as the current disjunctive “severe, persistent, or pervasive” standard) risks chilling exactly the kind of academic discourse these decisions protect.

A statutory savings clause—such as a sentence to §51.251 that states, “Nothing in this subchapter

shall be construed to prohibit or penalize speech or expression protected by the First Amendment to the United States Constitution”—would make explicit what the Constitution already requires, providing institutions with clear guidance, insulating Texas universities from First Amendment challenges, and reinforcing that the purpose of state code is to remedy genuine discrimination.

CONCLUSION

College campuses have historically been at the forefront of the free-speech debate. In recent years, that fact has not changed. The Texas Legislature has remained at the tip of the spear in addressing what does and does not cross the line. What determines harassment—both sexual and racial

harassment—has continued to fluctuate due to differing Presidential administrations. But with the *Davis* standard of harassment determined by the U.S. Supreme Court, there is finally a clear definition. Texas can, and should, update its definition for “sexual harassment” in the state education code, as well as create a Title VI definition for race, ethnicity, and national origin harassment so as to dispense with the current ambiguity in state law. Issues of speech harassment broadly can be solved by the Texas Legislature adopting an education-context-specific definition; a definition that protects free speech and expression while also providing the necessary guardrails for what is, and is not, permissible. Protecting freedom of speech is an essential feature of our republican form of government. ■

REFERENCES

- Abbott, G. (2024, April 29). *Governor Abbott condemns President Biden's illegal rewrite of Title IX*. Office of the Texas Governor. <https://gov.texas.gov/news/post/governor-abbott-condemns-president-bidens-illegal-rewrite-of-title-ix>
- Alliance Defending Freedom. (2025, January 9). *Victory for women, girls: Federal court rejects Biden admin redefinition of 'sex' in Title IX across country*. <https://adfmedia.org/press-release/victory-women-girls-federal-court-rejects-biden-admin-redefinition-sex-title-ix/>
- Atkins, L., Baillie, K., Nelson Foy, K., Pennington, J., Quan, A., Wagner Ogletree, B., Deakins, Nash, Smoak & Stewart, P.C. (2025, January 10). *U.S. Department of Education's 2024 Title IX final rule addressing sex-based discrimination and sexual harassment vacated*. The National Law Review. <https://natlawreview.com/article/us-department-educations-2024-title-ix-final-rule-addressing-sex-based>
- Back, C. J., & Cole, J. P. (2019, April 12). *Title IX and sexual harassment: Private rights of action, administrative enforcement, and proposed regulations* (CRS Report No. R45685). Congressional Research Service. <https://www.congress.gov/crs-product/R45685>
- Berns, W. (1985). *The First Amendment and the future of American democracy*. Regnery Gateway. <https://www.aei.org/research-products/book/the-first-amendment-and-the-future-of-american-democracy/>
- Cole, J. P. (2019, March 4). *Title IX and sexual harassment: Education Department proposes new regulations* (CRS Legal Sidebar No. LSB10268). Congressional Research Service. <https://www.congress.gov/crs-product/LSB10268>
- Cole, J. P. (2026, January 27). *Title VI and Peer-to-Peer Racial Harassment at School: Federal Appellate Decisions*. Congressional Research Service. https://www.congress.gov/crs_external_products/LSB/PDF/LSB11087/LSB11087.3.pdf
- Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629 (1999). <https://supreme.justia.com/cases/federal/us/526/629/>
- Dixon v. Alabama State Board of Education*, 186 F. Supp. 945 (M.D. Ala. 1960). <https://law.justia.com/cases/federal/district-courts/FSupp/186/945/2374127/>
- Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992). <https://supreme.justia.com/cases/federal/us/503/60/>
- Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274 (1998). <https://supreme.justia.com/cases/federal/us/524/274/>
- HB 1735. Enrolled. 86th Texas Legislature. Regular. (2019). <https://capitol.texas.gov/tlodocs/86R/billtext/html/HB01735F.HTM>
- Healy v. James*, 408 U.S. 169 (1972). <https://supreme.justia.com/cases/federal/us/408/169/>

- Honeycutt, N. (2024). *Silence in the Classroom: The 2024 FIRE Faculty Survey Report*. The Foundation for Individual Rights and Expression. <https://www.fire.org/sites/default/files/2024/12/Faculty-Report-2024-Final.pdf>
- Lake, P. F. (1999). The rise of duty and the fall of in loco parentis and other protective tort doctrines in higher education law. *Missouri Law Review*, 64(1), 1–42. https://scholarship.law.missouri.edu/mlr/vol64/iss1/6/?utm_
- Office for Civil Rights, Department of Education. (2020, May 19) *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*. <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal?utm>
- Papish v. Board of Curators*, 410 U.S. 667 (1973). <https://supreme.justia.com/cases/federal/us/410/667/>
- Rutter, M. P., & Mintz, S (2019, October 11). *Reimagining in loco parentis*. Inside Higher Ed. <https://www.insidehighered.com/blogs/higher-ed-gamma/reimagining-loco-parentis>
- Sarabyn, K. (2009, April 7). *The Twenty-Sixth Amendment: Resolving the federal circuit split over college students' First Amendment rights*. Foundation for Individual Rights and Expression. <https://www.fire.org/news/twenty-sixth-amendment-resolving-federal-circuit-split-over-college-students-first-amendment>
- SB 18. Enrolled. 86th Texas Legislature. Regular Session. (2019). <https://capitol.texas.gov/tlodocs/86R/billtext/html/SB00018F.htm>
- SB 17. Enrolled. 88th Texas Legislature. Regular Session. (2023). <https://legiscan.com/TX/text/SB17/id/2820276/Texas-2023-SB17-Enrolled.html>
- SB 361. Enrolled. Oklahoma Legislature. Regular. (2020). [https://www.oklegislature.gov/cf_pdf/2019-20 ENR/SB/SB361 ENR.PDF?utm](https://www.oklegislature.gov/cf_pdf/2019-20%20ENR/SB/SB361%20ENR.PDF?utm)
- SB 2972. Enrolled. 89th Texas Legislature. Regular Session. (2025). <https://capitol.texas.gov/tlodocs/89R/billtext/html/SB02972F.htm>
- Shibley, R. (2024, August 1). *New Title IX regs are a confusing mess that threaten student rights*. Foundation for Individual Rights and Expression. <https://www.fire.org/news/new-title-ix-regs-are-confusing-mess-threaten-student-rights>
- Speech First, Inc., v. Khator*, No. 4:22-cv-00582 (2022). https://speechfirst.org/wp-content/uploads/2022/02/1_Complaint.pdf
- Speech First. (2023, April 13). *Texas State University: Speech First v. McCall et al.* <https://speechfirst.org/case/texas-state-university/>
- Texas Education Agency. (2024, June 13). *Title IX regulations*. <https://tea.texas.gov/about-tea/news-and-multimedia/correspondence/taa-letters/title-ix-regulations>
- Texas Education Code, Chapter 51. <https://tcss.legis.texas.gov/resources/ED/htm/ED.51.htm>

- Texas Higher Education Coordinating Board. (2020, April 13). *Frequently asked questions—THECB Title IX training: SB 212 and HB 1735, 86th Legislature*. <https://reportcenter.highered.texas.gov/training-materials/faq-title-ix-mandatory-reporting/>
- Texas State University, The Office of Equal Opportunity and Title IX. (n.d.). *SB 212: Mandatory reporting*. Retrieved July 27, 2026, from <https://compliance.txst.edu/oeotix/learn-more/senatebill212faq.html>
- The Foundation for Individual Rights and Expression (FIRE). (2017). *Report on Bias Reporting Systems*. <https://www.fire.org/research-learn/bias-response-team-report-2017>
- The Foundation for Individual Rights and Expression (FIRE). (2024). *U.S. Department of Education Title IX Final Rules April 2024*. https://www.fire.org/research-learn/us-department-education-title-ix-final-rules-april-2024?_gl=1*589btc*_gcl_au*NDM2MzE3My4xNzczMDc3MjE4*_ga*Njc0ODE5OTAwLjE3NzMwNzcyMTg.*_ga_5TVTVIMZ9T*cZE3NzQyMjk0NjgkbzYkZzEkdDE3NzQyMzlxNzckajU5JGwwJGgw*_ga_3YZ853ZL74*cZE3NzQyMjk0NjgkbzYkZzEkdDE3NzQyMzlxNzYkajYwJGwwJGgw
- The University of Texas at Austin. (n.d.). *Department of Investigation and Adjudication*. University Risk and Compliance Services. Retrieved July 27, 2026, from <https://compliance.utexas.edu/programs/dia>
- U.S. Department of Education. (2020, May 19). *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*. Federal Register. <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>
- U.S. Department of Education. (2025a, June 25). *Frequently asked questions: Race, color, and national origin discrimination*. <https://www.ed.gov/laws-and-policy/civil-rights-laws/race-color-and-national-origin-discrimination/frequently-asked-questions-race-color-and-national-origin-discrimination> _
- U.S. Department of Education. (2025b, March 10). *U.S. Department of Education's Office for Civil Rights sends letters to 60 universities under investigation for antisemitic discrimination and harassment*. <https://www.ed.gov/about/news/press-release/us-department-of-educations-office-civil-rights-sends-letters-60-universities-under-investigation-antisemitic-discrimination-and-harassment>
- U.S. Department of Education, Office for Civil Rights. (n.d.). *U.S. Department of Education Title IX final rule overview*. Retrieved July 27, 2026, from <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/titleix-overview.pdf>

ABOUT THE AUTHOR



Cameron Abrams is a policy analyst for Next Generation Texas at the Texas Public Policy Foundation. After graduating with a bachelor's degree in Psychology from Tabor College, Cameron completed a master's degree from University of the Pacific. In his free time, you will find him either reading or training for an endurance running event.

