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Critical Court Decisions & Legal Developments in Title IX and BIT

Case Law Review



Session Facilitators



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Content Advisory

The content and discussion in this course will necessarily engage with sexual harassment, sex discrimination, violence, self-harm, suicide, and other associated topics that can evoke strong emotional responses.

Your facilitators may offer examples or discuss cases that emulate the language and vocabulary that Title IX or behavioral intervention/threat assessment practitioners may encounter in their roles, including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

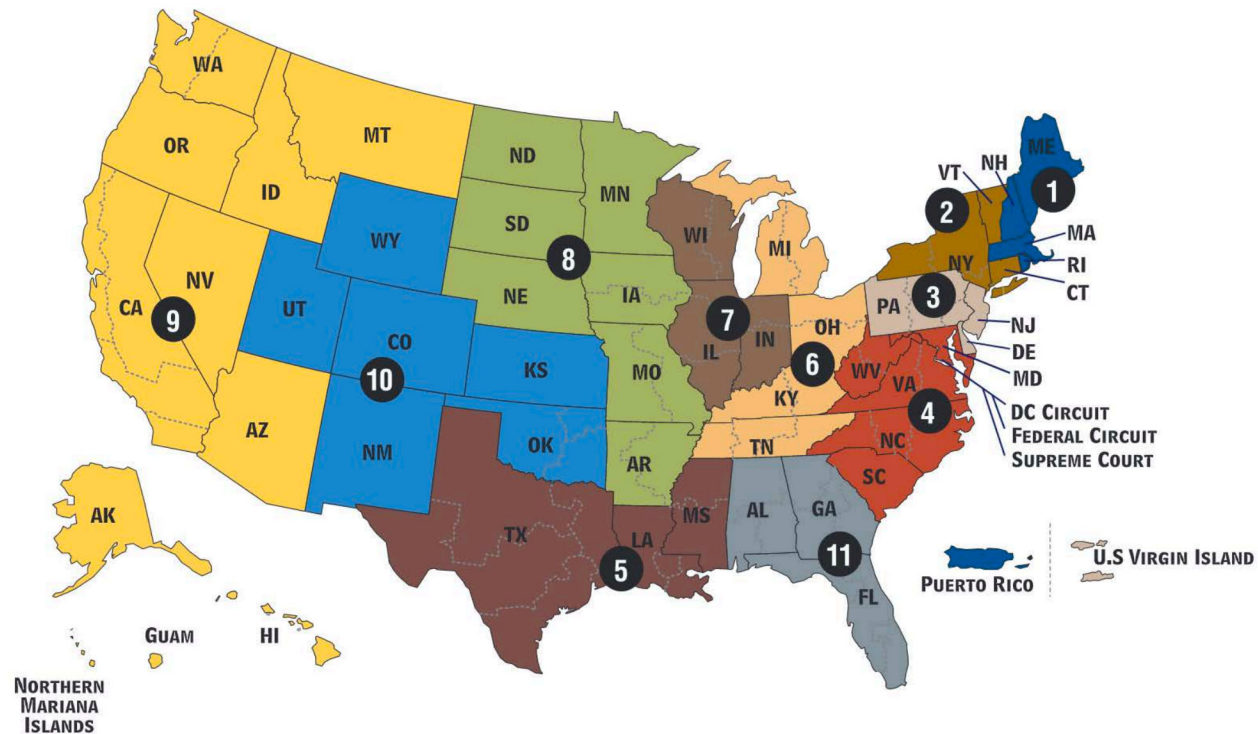
Setting the Table

- We will be discussing cases that have not gone all the way to trial
 - Since pre-trial settlements are common, the real legal battles are in pre-trial motions
 - In pre-trial motions, the court assumes the allegations are true
 - Motion to Dismiss (MTD) v. Motion for Summary Judgement (MSJ)
- For the purposes of this session, we assume the allegations are true
 - Facts discussed have not been proven to be true
- **Note: This session does not provide legal advice**

Map of Circuit Courts of Appeal

Geographic Boundaries

of United States Courts of Appeals and United States District Courts



Source: https://www.uscourts.gov/sites/default/files/u.s._federal_courts_circuit_map_1.pdf



Title IX Deliberate Indifference

Arana v. University of Wisconsin, 142 F.4th 992 (7th Cir. 2025)

Blair v. Appomattox County School Board, 147 F.4th 484 (4th Cir. 2025)

Arana v. Wisconsin

- Plaintiff alleged sexual assault by a member of the football team, Quintez Cephus in 2017
 - Cephus found responsible and expelled
- Criminal charges led to acquittal
- Cephus filed a petition for readmission with UW's Chancellor
 - In his petition, he described exculpatory evidence from trial, but that had not been submitted in the campus process.
 - UW did not want to wait for the actual trial transcript
- Did not speak to Plaintiff about the readmission decision but did “receive input” from donors and football team
- Chancellor vacated the Title IX findings and Cephus was readmitted

Arana v. Wisconsin

- Plaintiff returned to campus a few weeks later; shared with administration her concern he would violate the NCO
- Feeling unsupported by UW, Plaintiff
 - Missed class
 - Did not access the union or other communal spaces
 - Avoided certain parts of campus
 - Reduced her attendance at sorority events
 - Returned home to Chicago more frequently
 - Transferred from advanced courses to easier courses
 - Worked longer hours to attain the same grades

Arana v. Wisconsin

- UW argued that the court should grant its motion for summary judgment because:
 - One instance of sexual harassment cannot be considered pervasive per *Davis*
 - Plaintiff was not deprived of educational opportunities
 - UW's response was not deliberately indifferent
- The court rejected those arguments, finding that the impacts she experienced were a “deprivation” in the meaning of the statute
- Takeaways
 - Pressure campaigns and Title IX do not mix
 - Criminal court outcomes do not necessarily displace administrative findings
 - Involvement of senior officials without Title IX training
 - Develop policy on consideration of new evidence post-process

Blair v. Appomattox

- S.B. was a 14-year-old trans student using the boys' bathroom at her school
- Harassed and threatened by boys on bus, in the bathrooms, in the hallways
 - Subjected to “profane epithets,” threats of sexual and physical assaults, touching her, shoving her, inappropriate touching
- School on notice of incidents, and did some investigation of the incidents on the bus, but did not interview the alleged respondents
- Grandparent (adoptive parent) unaware of S.B.'s transition
- School then responded by having S.B. use nurse's restroom

Blair v. Appomattox

- Court examined whether the school had been deliberately indifferent in its response
 - A key component was whether the school engaged in efforts that were **reasonably calculated** to end the harassment
- School did not:
 - Report to the District's Title IX Coordinator to coordinate the response
 - Interview the boys accused of the harassing behavior or take any action regarding the boys
 - Check in on S.B.'s welfare amidst continued harassment
- The school was not entirely unresponsive, but did not engage in actions reasonably calculated to end the harassment

Blair v. Appomattox

- Takeaways
 - Response should not be piecemeal
 - Ensure that school administrators report to the Title IX Coordinator
 - Response must be effective to stop, prevent, and remedy
 - “Deliberate indifference” is a high bar, but this standard brings the standard down to earth...response must be **effective**

Title VI Hostile Environment

Landau v. Haverford College, 2025 WL 35469 (E.D. Pa 2025)

Ricketts v. Wake County Public School System, 125 F.4th 507 (4th Cir. 2025)

Landau v. Haverford

- One alumna, two anonymous students, and a group of Jewish members of Haverford's community brought a lawsuit against Haverford on the grounds that it fostered a **hostile environment** in violation of Title VI
 - “Bastion of antisemitism that is tolerated and at times perpetuated by the College”
 - Alleged incidents creating hostile environment where facts could support that Haverford was on notice:
 - Dean of Students' public statements following the October 7th attack
 - Posters advertising a Shabbat dinner and discussion were torn down
- Impacts of alleged hostile environment:
 - Lost friends
 - Experienced harassment
 - Changed their routines
 - Missed out on seminal Haverford experiences

Landau v. Haverford

Court held:

- Plaintiffs could not show Haverford was on **notice** of many of the incidents that comprise the complaint and/or that they would rise to the level of a discriminatory environment
 - Requires actual knowledge
 - Plaintiffs did not plead that Haverford was **deliberate indifferent** to known incidents
- Court uses “severe, pervasive, and objectively offensive” and “severe or pervasive” language
- Plaintiffs could not **aggregate** the experiences of many Jewish people at Haverford to demonstrate the hostility endured by the collective
 - Plaintiffs could not show personal awareness of specific instances of harassment
- Complaint did not explain how criticism of Israel or promotion of Palestinian cause “veered” into **antisemitism**
 - “Deciphering when criticism of Israel or promotion of the Palestinian cause veers into antisemitism is necessarily a fact specific endeavor”

Ricketts v. Wake Cty. Public School System

- Plaintiff is a Black high school sophomore who ran for student council, reported many problems with how the school ran elections, notably the repeated omission of black candidates from the ballot
 - Alleged discrimination in how the election was run, but also then experienced subsequent racial harassment during and after the school elections from peers
 - Alleged various examples of retaliation from school officials after the election
 - Both plaintiff and her mother reported to the school; one incident of significant vandalism to campaign materials would have been visible to school administrators

Ricketts v. Wake Cty. Public School System

- Title VI claims are “parallel” and “operate in the same manner” as Title IX claims
 - Severe, pervasive, objectively offensive
 - The behavior experienced rose above “simple acts” of teasing or name calling among schoolchildren
 - School had was on notice and had disciplinary authority to address the alleged harassment and institute corrective measures
 - Deliberate indifference in response
 - School not entirely unresponsive but ultimately corrected the ballot exclusion but did failed to engage in efforts **reasonably calculated** to end the harassment
 - School’s response to Plaintiff’s reports were to “come see” an administrator to discuss the issue



Behavioral Intervention and Threat Assessment

State v. Cuomo, 231 N.Y.S.3d 673 (2025)

Adams v. The Vanderbilt University, 2024 WL 1182861

Zhang v. Emory University, 2025 WL 1482873

Cuomo v. State of New York

- Student murder in a Binghamton University residence hall
- BU had a Threat Assessment Policy in place, overseen by the Dean of Students
- Assailant made threatening statements about victim to counselor in BU Counseling Center in the months prior to the attack
 - Initial record is unclear on whether procedures were in place governing a counselor's referral to the Threat Assessment team
- Estate brought negligence claim to recover for wrongful death, arguing that University breached duty of care to the victim
- University could have a duty to warn or protect under these circumstances; remanded for further proceedings
 - Counselors can have a duty to third parties, in limited circumstances, to take reasonable steps to prevent harm when the provider knows the patient poses a credible threat of violence

Adams v. Vanderbilt & Zhang v. Emory

- Both cases deal with student deaths by suicide
 - In both cases parents allege that the University knew of the student's threat of harm to self and failed to take affirmative steps to intervene
- Both cases query whether the applicable state law negligence standard requires a special duty to university students, and whether university exercised reasonable care
 - Under TN law: Does public policy suggest imposing an affirmative duty of care, and was the risk of harm foreseeable?
 - Under GA law: Established Georgia law has a heightened liability standard in cases involving suicide; however, it was not plausible that the faculty member should have foreseen the risk of suicide on these facts



Title VII Religious Accommodation

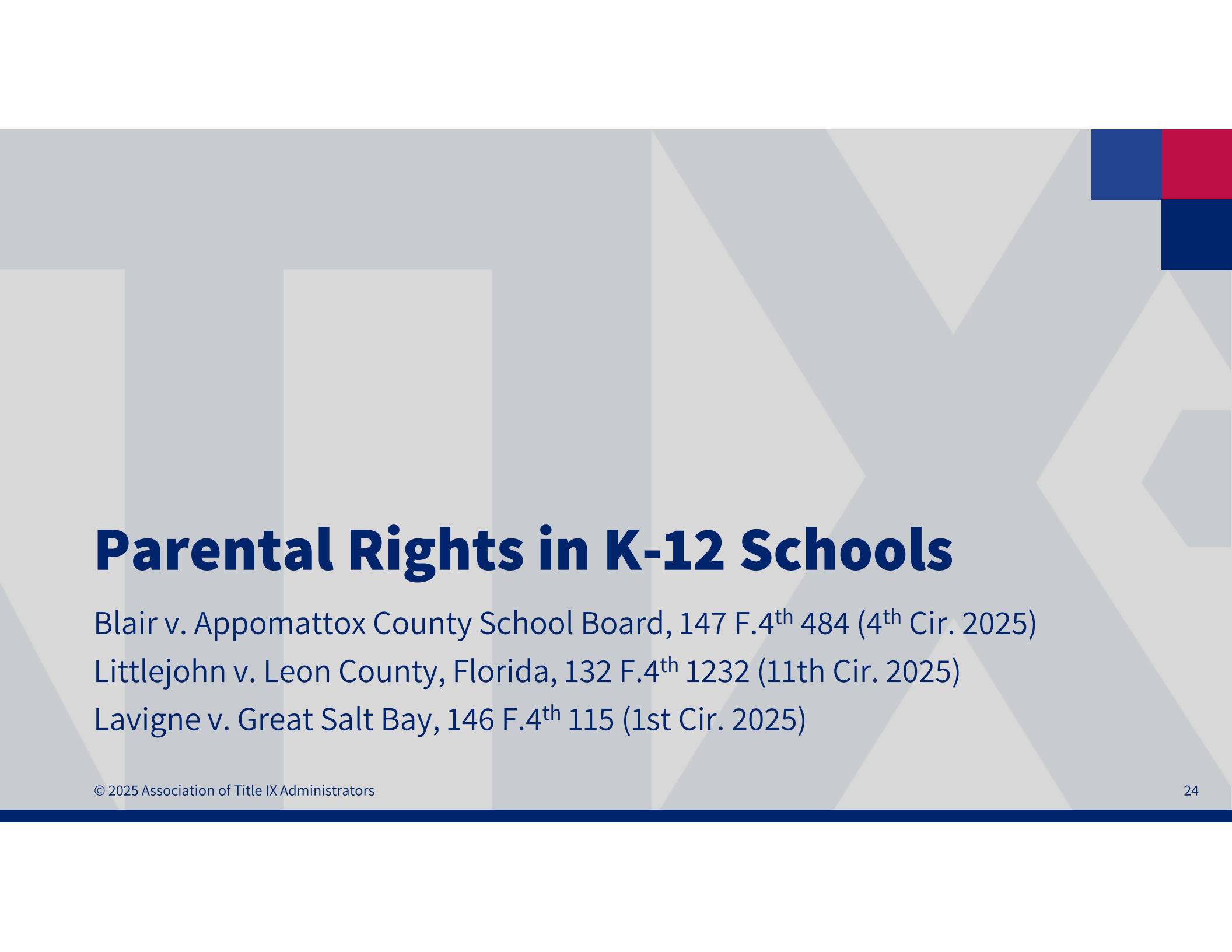
Kluge v. Brownsburg Community School Corporation, 2025 WL 2218112 (7th Cir. 2025)

Kluge v. Brownsburg Community School Corp.

- Brownsburg initiated a Name Policy requiring teachers call students by their first names as appearing in their database
 - For trans students, the database listed their new name if they had changed it
- Kluge objected to the policy on religious grounds
 - Received accommodation to call students by their last names
 - School rescinded the accommodation after one year, citing complaints
 - Kluge could adhere to the Name Policy or be terminated
 - Kluge resigned and sued under Title VII for failure to accommodate his religion and retaliation

Kluge v. Brownsburg Community School Corp.

- Kluge's lawsuit was originally dismissed by the federal courts
 - Under the previous Title VII standard that required an employer to accommodate unless doing so would impose an **undue hardship** on the business
 - Undue hardship was anything that required an employer to “bear more than a *de minimis* cost”
- U.S. Supreme Court decided *Groff v. DeJoy* in 2023
 - The new standard for undue hardship requires an employer to show that granting an accommodation would result in **substantial disruption or substantial increased costs**
 - A hardship is more severe than a burden
 - Undue implies something excessive or unjustifiable
 - Undue hardship on the “educational mission” must be substantiated and not just speculative



Parental Rights in K-12 Schools

Blair v. Appomattox County School Board, 147 F.4th 484 (4th Cir. 2025)

Littlejohn v. Leon County, Florida, 132 F.4th 1232 (11th Cir. 2025)

Lavigne v. Great Salt Bay, 146 F.4th 115 (1st Cir. 2025)

***Blair* on Parents' Rights**

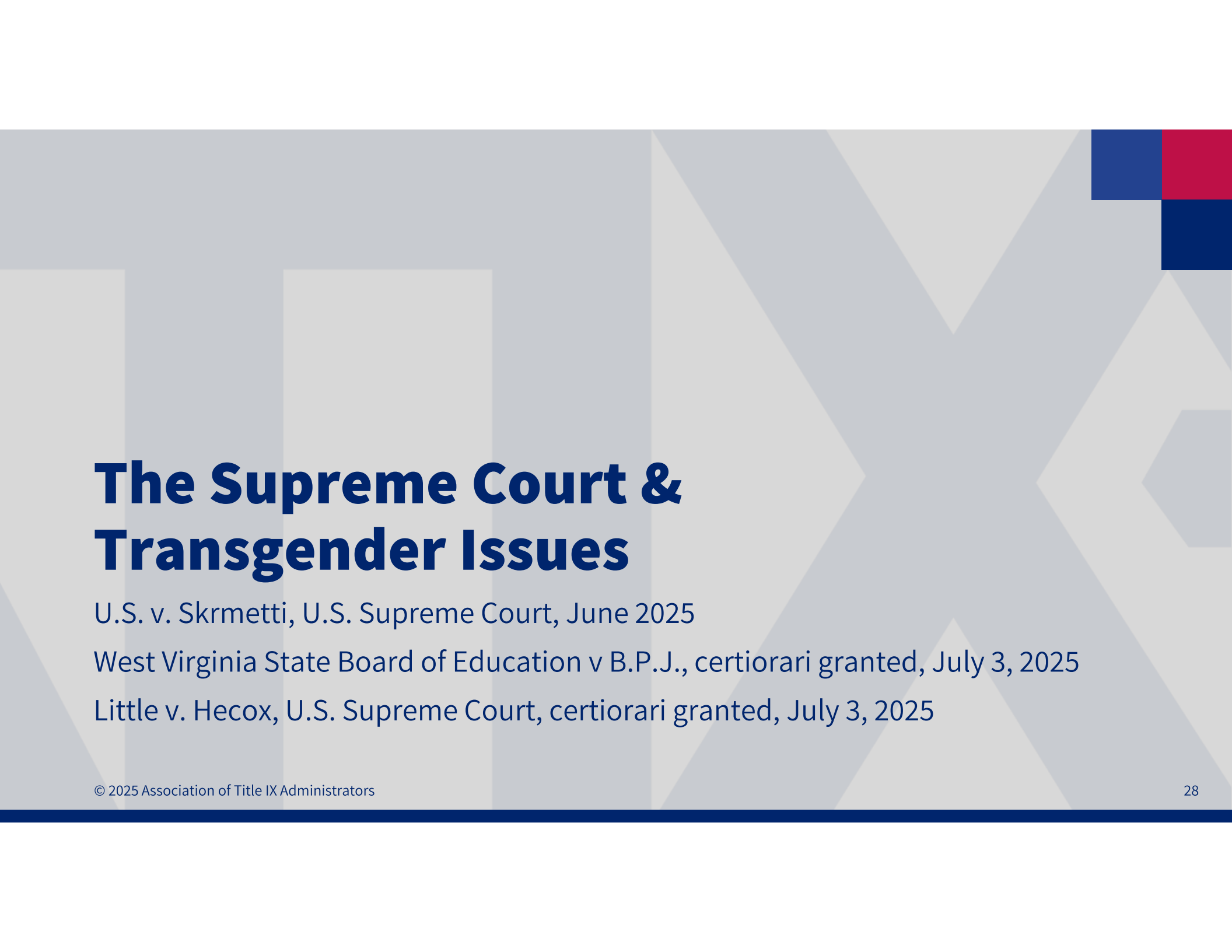
- S.B.'s grandmother did not know that her child had confided to school officials regarding her gender identity, including the request to use a male name, male pronouns, and bathroom use
- School counselor continued to use S.B.'s birthname when speaking to the grandmother
- Grandmother found a hall pass with S.B.'s new name, and S.B. then told her grandmother that she was identifying as a boy at school.
- Grandmother claimed that the school violated her fundamental rights to family privacy
- Claim failed
 - Court held that there is no clearly established right currently to be notified of a child's gender preferences

Other Parents' Rights Cases (*Littlejohn* - 11th Cir. and *Lavigne* – 1st Cir.)

- Middle schoolers approached administrators for social transitions in school
- Both schools had written policies allowing for the development of a student-specific transition plan, and not expressly requiring parent notification
 - In *Lavigne*, the mother also alleged that the school counselor provided the child with a chest binder
- In both cases, parents claimed the school purposely withheld information from parents
- Analysis differs depending on arguments made by the parents, but in both cases, claims against the school fail

Takeaways

- Rapidly-evolving area of law, but no court has clearly upheld constitutional rights of familial privacy and/or “care, custody, control” arguments have not been persuasive
- Consider having written policies for supporting transgender students
 - Connect to your state civil rights law (if applicable in your jurisdiction)
- Remember that parents/guardians can request to review/inspect written records under FERPA
 - Follow FERPA policies; ED has opened investigations in some states



The Supreme Court & Transgender Issues

U.S. v. Skrmetti, U.S. Supreme Court, June 2025

West Virginia State Board of Education v B.P.J., certiorari granted, July 3, 2025

Little v. Hecox, U.S. Supreme Court, certiorari granted, July 3, 2025

Looking Ahead

- Supreme Court decided *Skrametti* in June 2025
 - Transgender individuals access to certain medical care
 - Court's analysis focused on the law's distinction on age and medical purpose rather than transgender status and therefore survives rational basis review
 - Declined to decide whether transgender individuals are a protected category under the Equal Protection Clause
 - Anticipate more activity related to state laws regarding medical care
- Supreme Court to hear argument in *BPJ*, likely will know result in June 2026
 - K-12 athletics and transgender participation
 - West Virginia law
 - Supreme Court planned to hear *Hecox* alongside *BPJ*, but the Plaintiff wants to drop the case



Questions?