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BACK TO BASICS: A TITLE IX PRIMER

by Lindsey E. Albers

Title IX is a federal law under the Department of Education's 1972 Amendment that prohibits sex discrimination in educational programs, events, and activities that receive federal funding (yours is likely one). The brief 37-word law reads:

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.

While Title IX is a very short statute, Supreme Court decisions and guidance from the U.S. Department of Education have applied it broadly and in a variety of contexts.

In the past, Title IX's emphasis has been on girls' and women's access to athletics in education. However, Title IX also encompasses the following issues: sex-based harassment (sexual harassment, sexual violence, and gender-based harassment), other harassment and bullying, pregnant or parenting students, and retaliation. Under Title IX, schools are legally required to respond and remedy hostile educational environments, and failure to do so is a violation that risks a school's federal funding. Furthermore, schools may not retaliate against any person for opposing an unlawful educational practice or policy, or because a person made charges, testified, or participated in any complaint under Title IX.

Schools receiving federal funds have four primary responsibilities under Title IX:

Notice of Nondiscrimination.

Title IX requires that schools distribute a notice of nondiscrimination. This notice must be widely distributed, available, and easily accessible to the school community each year.

Title IX Coordinator.

Title IX requires every school that receives federal funding to have a Title IX Coordinator. The Title IX Coordinator is responsible for ensuring that a school is compliant with Title IX, coordinates the investigation and disciplinary process, and looks for patterns or systematic problems with compliance. The Coordinator may not sit on a disciplinary board or serve as legal counsel to the school and may not have any other job responsibility that creates a conflict of interest with their responsibilities under Title IX.

Clear Grievance Procedures.

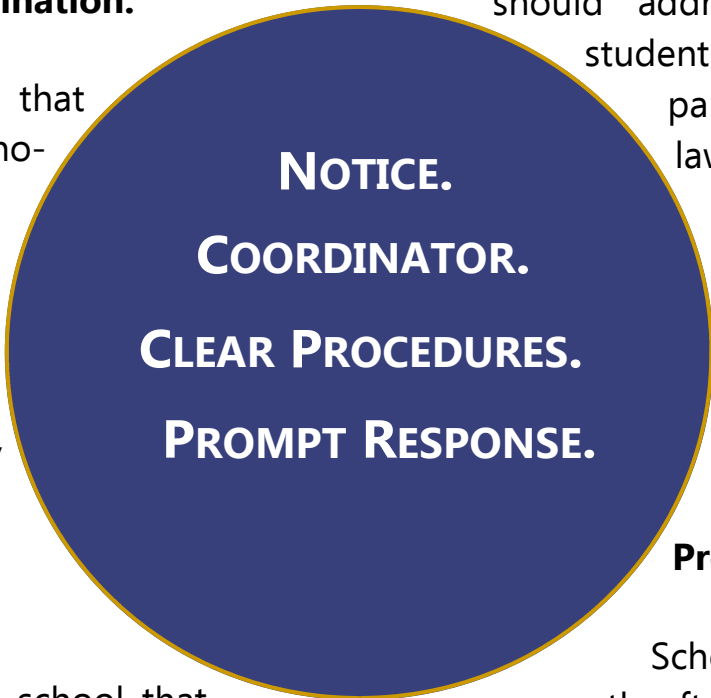
Schools are required to publish a grievance procedure outlining the complaint, investigation, and disciplinary process for addressing sex discrimination, sexual harassment, and sexual violence occurring within

a "education program or activity," which includes any building owned or controlled by a student organization. This procedure should address discrimination by students, employees, or third parties. School security or law enforcement must notify survivors of their rights to use the school's grievance procedure in addition to ability to file a criminal complaint.

Prompt Response.

Schools must respond promptly after receiving a complaint of sex discrimination, sexual harassment, or sexual violence to remedy any hostile educational environment created. A concurrent police investigation does not remove the school's responsibility to resolve a complaint under Title IX.

Note: A much-anticipated release of the new Title IX regulations has been postponed. The Office for Civil Rights announced a new target date of October 2023 to release both the Title IX regulations and the final rule related to Title IX athletics gender equity. Though that date has passed with no release of new regulations, these proposed amendments will concern the sexual harassment grievance procedure rule and gender identity in athletics. Currently, the earliest estimate for final rule publication is January 1, 2024,



with an effective/enforcement date typically 60-90 days from the publication date.

If you have questions about how to protect your students' rights and avoid Title IX violations, RFR is here to help. Your RFR attorney can guide you through crafting policies and practices that comply with this and other applicable law.

WHAT TO DO WHEN YOU MEET A FURRY


by Adam T. Heavin

INTRODUCTION

In recent years, “furries” have become more visible within societal and educational spheres. Furries are individuals who exhibit an interest in anthropomorphic animals—creatures depicted with human characteristics. Expression of this interest can take several forms including the donning of costumes or accessories reminiscent of animals, the use of online avatars, or engagement in related role-play community activities. As school administrators, you should be informed about furries and the potential legal considerations involved.

BACKGROUND ON FURRIES

The furry identity, and the collective “furry fandom,” are part of an emerging cultural phenomenon. Being a “furry” can mean a variety of things. Some furries merely consider themselves fans of anthropomorphic characters, as others may consider themselves fans of Star Trek or Harry Potter. ^[1] Other individuals identifying as furries may feel a strong connection with anthropomorphic entities, even identifying *as* an animal or other non-human creature to a certain extent. *Id.* These individuals often refer to themselves as “therians.” *Id.*



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school administrators, you
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[1] See Hal Herzog, Ph.D., *What's the Deal with "Furries?"*, PSYCH. TODAY, accessible at: <https://www.psychologytoday.com/us/blog/animals-and-us/201707/what-s-the-deal-furries> (last visited Oct. 18, 2023).

Another aspect of the furry identity is the creation of a "fursona." *Id.* A fursona is a furry-themed avatar that furries use to interact with others within the "furry fandom." *Id.* Fursonas typically consist of one or more animal species and may embody characteristics or traits the individual holds or to which they aspire. *Id.* An individual's furry identity may also be intertwined with other aspects of their identity such as gender and sexuality. *Id.* Research has also shown that furries are seven times more likely to identify as transgender and about five times more likely to be non-heterosexual. *Id.*

FURRIES IN EDUCATIONAL SETTINGS

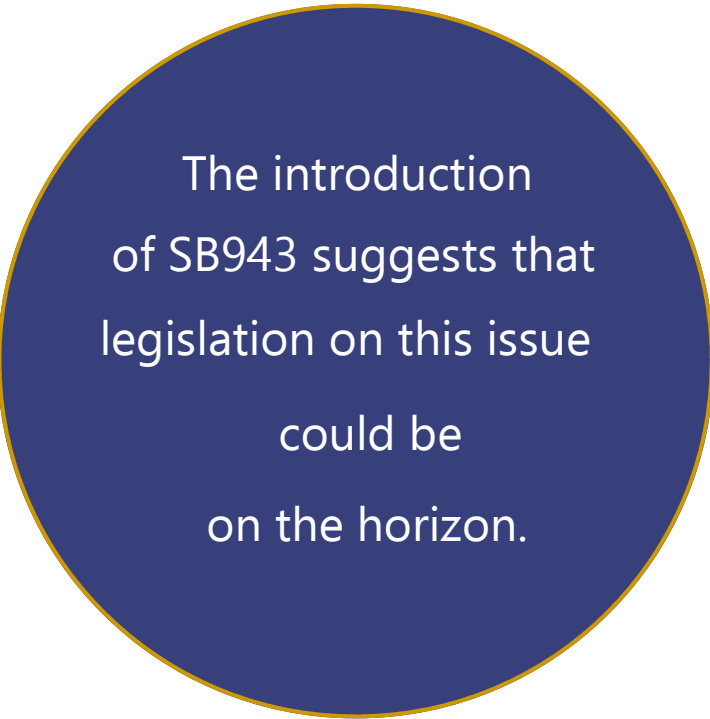
The presence of furries in schools has begun to emerge as a topic of discussion and debate. For example, Oklahoma Senate Bill 943 ("SB 943"), which was introduced in 2023 but did not pass, sought to

allow parents to withdraw their children from a public school that fits within the bill's definition of a "trigger district," a school district where certain behaviors or ideologies are tolerated or advanced—including school district employees that consider themselves furries. While it is unlikely that a bill like SB 943 will become law in the immediate future, its introduction suggests that legislation on this issue could be on the horizon.

In the future, some schools may face pressure or find it necessary to address concerns about furry-related behaviors or expressions. While many will argue that students identifying as furries should be allowed to express themselves freely, it is not hard to imagine how the presence of furry students could potentially disrupt the educational environment in a variety of ways. Here are just a few examples:

1. **Distraction:** The display of furry attributes such as costumes or accessories could potentially distract other students and divert attention away from lessons. Furthermore, if furry students engage in behavior that is distracting or disruptive (e.g., role-playing or making animal noises), it could interfere with your instructors' ability to maintain order and execute lesson plans.

2. **Inappropriateness:** Some may argue that furry costumes or behaviors could be seen as inappropriate for a school setting, especially if they do not adhere to the school's dress code or behavioral policies.



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There is also the possibility that some percentage of furry students may express themselves through their fursonas at school in a sexualized or otherwise inappropriate manner.

3. **Bullying:** A furry student is more likely to be the victim of teasing, bullying, or harassment, which could create a hostile or uncomfortable environment for all students.

4. **Communication Barriers:** If a furry student's expression includes wearing masks or other costume elements that hinder verbal or non-verbal communication, it might pose challenges in interactions with teachers and peers.

5. **Safety:** Some furies may express themselves by wearing a collar, utilizing a leash, walking on all fours, etc. Such expressions would justifiably raise safety and disruption concerns.

LEGAL IMPLICATIONS

The legal terrain surrounding furies in education settings is complex and nuanced. Legal considerations may revolve around anti-discrimination laws, freedom of expression rights, and dress code policies. The balance between individual rights to self-expression and your school's interest in maintaining a conducive learning environment is at the core of these legal issues. While current laws do not *specifically*

address furies, existing legal frameworks governing individual rights, discrimination, and related educational policies should be considered. In particular, First Amendment concerns are bound to be central to the issue. It is unclear how a furry student's speech or expressive conduct (i.e., wearing a tail or cat ears) would fall within the First Amendment analysis and how a court may analyze the issue. However, as always, a school district seeking to limit student speech or expressive conduct must balance its interest in doing so with the student's interest in the protected speech.



CONCLUSION

A school district's first priorities are always the safety and education of students. A school district with legitimate concerns regarding student safety or maintaining a conducive learning envi-

ronment would be well-advised to document those concerns prior to limiting or prohibiting a furry student's expressive conduct. But, just as in other aspects of freedom of speech and freedom of expression, those freedoms are not unlimited and may be regulated by school districts when appropriate.

If you have questions about how to navigate complex topics like this, RFR is here to help. Your RFR attorney can provide advice and guide you through crafting policies and practices that comply with applicable law.

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Chalkboard is a Rosenstien, Fist & Ringold publication that addresses current education law issues. *Chalkboard* is published monthly through the school year and is sent without charge to all education clients of Rosenstien, Fist & Ringold and all other persons who are interested in education law issues. We invite you to share *Chalkboard* with your friends and colleagues. We think you will find *Chalkboard* to be informative and helpful with the difficult task of operating our educational institutions.

Chalkboard is designed to provide current and accurate information regarding current education law issues. *Chalkboard* is not intended to provide legal or other professional advice to its readers. If legal advice or assistance is required, the services of a competent attorney familiar with education law issues should be sought.

We welcome your comments, criticisms and suggestions. Correspondence should be directed to: Rosenstien, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

Please use the form on www.rfrlaw.com (located on the *Chalkboard* page) to add or change *Chalkboard* e-mail addresses.



Lindsey was born and raised in California. She earned her Bachelor of Arts degree from the University of California at Davis and a Juris Doctorate from the University of Tulsa College of Law, where she graduated with Highest Honors in 2002. While in law school, Lindsey was a member of the Phi Delta Phi honors fraternity, Notes and Comments Editor of the Energy Law Journal, and recipient of the CALI Award for Excellence in Evidence. Lindsey has been selected as a Rising Star for Super Lawyers for the six years.



Lindsey E. Albers

insurance, products liability, transportation personal injury, and medical negligence. In addition to handling litigation matters, Lindsey drafts briefs and argues appellate issues before Oklahoma's appellate courts and the Oklahoma Supreme Court, as well as the Tenth Circuit Court of Appeals.

Lindsey was admitted to the Oklahoma Bar in 2002, and admitted to practice in U.S. District Courts for the Eastern, Northern, and Western Districts of Oklahoma, as well as the U.S. Court of Appeals for the Tenth Circuit,

Ms. Albers joined RFR as Of Counsel in 2023.

For two decades, Lindsey has represented clients in complex civil litigation, business disputes, bad faith

Nathan was born in Arizona and grew up in Russia, Northwest Oklahoma, and Phoenix. He received Bachelor of Arts degree from Oklahoma Baptist University where he graduated in 2019. He spent one year as a teacher and coach at a small public school in central Oklahoma. Nathan then attended law school at the University of Tulsa College of Law and graduated in 2023. While in law school, he was President of the Board of Advocates and recipient of the Order of the Barristers. Further, Nathan was a recipient of the CALI Award for Excellence in Civil Rights.



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Nathan was admitted to the Oklahoma Bar and joined the RFR Team as an Associate Attorney in 2023.