ICUT
INDEPENDENT COLLEGES & UNIVERSITIES OF TEXAS

2019 Title IX Compliance Conference

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New to Title IX

Title IX: The Basics

- 39 words
- Cannot discriminate on the basis of sex in education programs receiving federal funds
- Designate Title IX Coordinator
- Policies and Procedures
- Notice: Prompt, Equitable, Appropriate Response

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45 Years of Title IX History In Under Five Minutes

- Modeled after Title VI. Original concern was employment and admissions practices of universities.
- Impact on athletics became apparent early on and proponents beat back repeated attempts to water down legislation.
- Historically, regulatory agencies (HEW and ED) have been lackluster in enforcement.
- Changed significantly with Obama Administration.

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Obama Administration OCR

- Issue
- Ramp comp
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- Was r
- As a r Title I steps cases
- Discip aggre
- VAWA amendments

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Cannon v. University of Chicago (1979): Facts

- Geraldine Cannon was a nurse at Skokie Valley Hospital, the wife of a Chicago lawyer, and the mother of five children aged 12 to 21.
- Her lifelong dream was to become a doctor. It was a dream that was rekindled when her youngest child started elementary school and Cannon finally had the opportunity to return to school as a full-time student at Trinity College.
- Graduated with honors at age 39 and began applying to medical schools, including Univ. of Chicago's Pritzker School of Medicine.
- Cannon was denied admission in 1975.

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Cannon v. University of Chicago: Supreme Court

- "This case presents as a matter of first impression the issue of whether Title IX of the Education Amendments 1972 may be enforced in a federal civil action . . . ."
- Private cause of action was necessary to ensure that the "sweeping promise of Congress" to end sex discrimination in education was more than "merely an empty promise."
- **"Is [Title IX] an empty promise or will it be enforced and for the present, it simply must be enforced by the courts or it's not going to be enforced at all."**

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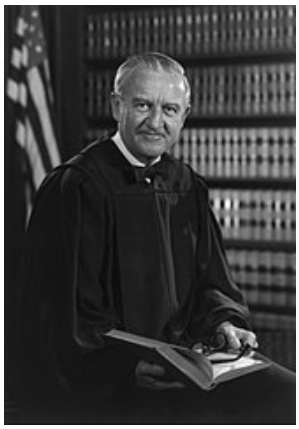
Cannon v. University of Chicago: Supreme Court

- 6-3 opinion crafted by Justice John Paul Stevens & included Justices Brennan & Rehnquist
- **Holding**: There *is* an implied cause of action for individuals to sue under Title IX.
- Title IX was patterned after Title VI and that "when Title IX was enacted, the critical language in Title VI had already been construed as creating a private remedy."
- The Supreme Court also accepted the argument advocated by John Cannon and also HEW that private enforcement was necessary to effectuate the purposes of the law.



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Franklin v. Gwinnett County (1992): Facts

- Christine Franklin was a student at North Gwinnett High School between September 1985 and August 1989. Franklin was subjected to continual sexual harassment beginning in the autumn of her tenth grade year (1986) from Andrew Hill, a coach and teacher employed by the district.
- The complaint further alleges that though they became aware of and investigated Hill's sexual harassment of Franklin and other female students, teachers and administrators took no action to halt it and discouraged Franklin from pressing charges against Hill.
- Hill ultimately resigned on condition that all matters pending against him be dropped. The school thereupon closed its investigation.

Franklin v. Gwinnett County: Issue & Holding

- Issue: Does Title IX implied right of action support a claim for monetary damages?
- Unanimous holding: "[W]e conclude that a damages remedy is available for an action brought to enforce Title IX."

THE NEW YORK TIMES LAW FRIDAY, JULY 31, 1992

Students Seeking Damages for Sex Bias

School Officials Around Nation View Lawsuits With Trepidation

By TAMAR LEWIN

...A Supreme Court ruling is fostering litigation.

...Lawsuits by students accusing schools of permitting harassment or sex discrimination are on the rise after a court ruling allowing students to seek damages. On Wednesday, Eve Brunson, 12, right, with her mother, Pat Schofield, filed a suit against the South Kortright Central School District in Delaware County, N.Y., asserting that a teacher allowed boys to wrap girls' bras and grab their breasts.

Gebser v. Lago Vista Indep. School District (1998)

- Gebser was assigned to classes taught by Waldrop. While visiting her home, Waldrop kissed and fondled Gebser. They had sexual intercourse on a number of occasions.
- In January 1993, police discovered Waldrop and Gebser engaging in sexual intercourse and arrested Waldrop. Lago Vista immediately terminated his employment.
- School district did not have an official grievance procedure for lodging sexual harassment complaints; nor had it issued a formal anti-harassment policy.

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High Court to Weigh Liability of Schools in Sexual Abuse of Student

By LINDA GREENHOUSE

WASHINGTON, Dec. 5 — The Supreme Court agreed today to decide when school districts can be found liable under Federal law for a teacher's sexual abuse of a student.

The issue, closely watched by school districts around the country, has divided the lower courts in the five years since the Supreme Court first ruled that individuals could sue for damages under a law that prohibits sex discrimination in educational institutions that receive Federal money. In interpreting that law, Title IX of the Education Amendments of 1972, to permit private lawsuits, the Justices did not specify how liability was to be determined.

The case the Court accepted today grew out of a yearlong affair between a teacher in a public high school near Austin, Tex., and one of his students, a 15-year-old girl who, with her mother, eventually brought a Title IX suit against the Lago Vista Independent School District.

Two lower Federal courts ruled for the school district, holding that it could not be found liable in the absence of "actual knowledge" on the part of school officials of the teacher's misconduct. This is the most protective standard the courts have applied in interpreting Title IX; at the other extreme, some courts have held districts automatically liable for sexual abuse of students by teachers.

This is the third case involving sexual abuse or harassment that the Court has accepted for decision this term, and it may not be the last. The Justices were asked last month to resolve another unsettled question under Title IX: the liability of a school district for sexual harassment of one student by another.

Last month, the Justices agreed to resolve a closely related issue in the context of the Federal law that prohibits sex discrimination in employment. The question in that case, Faragher v. Boca Raton, is the liability of an employer for a supervisor's sexual harassment of a lower-level employee. Just this week, in Oncale v. Sundowner Offshore Services, the Justices heard arguments on whether sexual harassment between people of the same sex can ever violate the employment law, Title VII of the Civil Rights Act of 1964.

The anti-discrimination laws involved in these disputes have been on the books for decades, raising the question of why so many cases posing such fundamental issues of interpretation and application have suddenly made their way onto the Court's docket.

The reason may be that only in the last few years have monetary damages become available as a remedy for people who can prove violations of the two laws: through the Supreme Court's interpretation of Title IX in a 1992 case, Franklin v. Gwinnett County, and through Congress's 1991 amendment to Title VII, making available compensatory and, in some cases, punitive damages, in addition to the back pay that was the only monetary remedy under the original Civil Rights Act. The prospect of substantial recoveries have made the laws more useful to plaintiffs and attractive to their lawyers just as lower courts have been struggling with what the laws actually mean.

In the case the Court accepted today, Doe v. Lago Vista Independent School District, No. 96-1866, school officials apparently had no knowledge of the affair between the student and teacher. The family's lawsuit asked the Federal District Court in San Antonio to apply a theory of strict liability, holding the district responsible for the wrongful acts of its teachers.

The district court ruled, however, that there could be no liability in the absence of "actual or constructive notice" on the part of school authorities. The United States Court of Appeals for the Fifth Circuit, in New Orleans, agreed, holding that there was no liability "unless an employee who has been invested by the school board with supervisory power over the offending employee actually knew of the abuse, had the power to end the abuse, and failed to do so."

In its appeal, the family told the Justices that because "the vast majority of instances of sexual abuse is subtler and more covert" than the Fifth Circuit's approach would encompass, the decision would have the effect of "virtually immunizing school districts from liability."

Last spring, the United States Department of Education issued guidelines for administrative enforcement of Title IX, under which a school district would be held liable if a teacher, even without officials' knowledge, "was aided in carrying out the sexual harassment of students by his or her position of authority with the institution."

In a second case today, the Court agreed to decide an important issue under the Anti-Terrorism and Effective Death Penalty Act of 1996, which imposed strict new deadlines on state prison inmates for petitions for habeas corpus in Federal court. In states that agree to make adequate legal representation available, inmates on death row get only 180 days in which to file.

The question in the case, Calderon v. Ashmus, No. 97-391, is whether death row inmates can sue a state pre-emptively for a declaration that the accelerated deadline should not apply because the state does not have an adequate representation system in place. California is arguing that it should have been held immune from such a suit, in which a group of more than 300 inmates prevailed in the United States Court of Appeals for the Ninth Circuit, in San Francisco.

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Gebser: Plaintiff's Argument

- Gebser and DOJ claimed that liability should be evaluated using the same standards plaintiffs use in employment sex harassment cases under Title VII.
- A "teacher is 'aided in carrying out the sexual harassment of students by his or her position of authority with the institution,' irrespective of whether school district officials had any knowledge of the harassment and irrespective of their response upon becoming aware."
- Alternatively, a school should be "liable for damages based on a theory of constructive notice, *i.e.*, where the district knew or 'should have known' about harassment but failed to uncover and eliminate it."

Gebser: The Rule

- An "appropriate person" . . . is, at a minimum, an official of the recipient entity with **authority to take corrective action** to end the discrimination.
- "Consequently, in cases like this one that do not involve official policy of the recipient entity, **we hold that a damages remedy will not lie under Title IX unless an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient's behalf has actual knowledge of discrimination in the recipient's programs and fails adequately to respond**."
- "[T]he response must amount to **deliberate indifference to discrimination**."

Jackson v. Birmingham Bd. of Ed. (2005)

- Roderick Jackson, a teacher in the Birmingham, Alabama, public schools, complained about sex discrimination in the high school's athletic program and was retaliated against.
- Sued pursuant to Title IX
- Does Title IX prohibit retaliation? Yes.

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"They should have done something right from the start," said Aurelia Davis of the harassment endured by her daughter LaShonda at school six years ago. The two posed yesterday at home in Forsyth, Ga.

THE VICTIM

When a Tormented Child Cried Stop

By DAVID FIRESTONE

ATLANTA, May 24 — LaShonda Davis was 16 when she told her mother it was time to hire a lawyer.

Her mother, Aurelia Davis, was bewildered at first. For months, LaShonda had been harassed by a boy in her fifth-grade class in Forsyth, Ga., about 50 miles southwest of Atlanta. The school, Hubbard Elementary, had not done anything to stop the boy, even though he had grown increasingly provocative, cursing against LaShonda and asking for sex.

But hiring a lawyer seemed drastic to Ms. Davis. Even today, after the United States Supreme Court handed down a significant ruling supporting the Davis family's contention that schools can be held liable for prolonged harassment, Ms. Davis was still appalled that the matter had required such high-level legal artillerie, and the support of women's rights groups.

"It should never have had to go all the way to the Supreme Court," said Ms. Davis, a fantastic title given in Forsyth who had never hired a lawyer before. "They should have done something right from the start. But they didn't have any kind of respect for my child, and they didn't want to admit that they were wrong in what they did."

A Georgia mother and daughter's six-year legal battle.

The harassment, which started in December 1992, went on almost every day for five months, Ms. Davis said. She said she complained to the teacher and the principal, but nothing was done until she called the sheriff and had the boy prosecuted.

He eventually pleaded guilty to sexual battery.

During those five months, Ms. Davis said, LaShonda grew increasingly upset and despondent, talking of suicide and having a difficult time keeping up. She is now 16 and a junior in high school.

School officials in Monroe County, which includes Hubbard, would not comment today, but the school board's lawyers have argued that Federal law never explicitly held schools responsible for preventing the harassment of one student by another.

That all changed today with the Court's 5-to-4 decision, which applies to any school in the nation that accepts Federal money. The Court's reasoning was based on an interpretation of Title IX, the 1972 law barring sexual discrimination at those schools, and occasioned an impassioned debate among the Justices over the degree to which the Federal Government should be involved in what Justice Anthony M. Kennedy in his dissenting opinion called "the routine problems of adolescence."

All of that is beside the point for Ms. Davis, who said she was also unconcerned about the monetary damages for which she is now eligible to sue. For her, it comes down to a much more basic principle.

"They make you send your kids to school, right? So don't you think they should protect them while they're there?"

A16 THE NEW YORK TIMES NATIONAL WEDNESDAY, JANUARY

Court Is Asked Not to Extend Harassment Law in Schools

By LINDA GREENHOUSE

WASHINGTON, Jan. 12 — The lawyer for a Georgia school board warned the Supreme Court today that school districts across the country would face dire financial consequences if the Court extended Federal sexual harassment law to apply to harassment of one student by another and made schools liable for failing to curb students' sexual misconduct.

In the closely watched case, the Justices appeared sympathetic to the school board's concerns — somewhat surprisingly so, in light of the Court's generous reading of sexual harassment law to a variety of other contexts.

This fifth sexual harassment case to come before the Court in the last 15 months is an appeal by a woman whose fifth-grade daughter was subjected to months of a male classmate's unwanted poking, grabbing and teasing while school administrators in Forsyth, Ga., refused to intervene.

Finally, the mother, Aurelia Davis, went to the police, and the boy pleaded guilty to sexual battery. Ms. Davis then sued the Monroe County Board of Education under Title IX of the Education Amendments of 1972, a Federal law that bars sex discrimination by schools that receive Federal money.

Last June, in another Title IX case, the Court ruled that schools could be liable for a teacher's sexual harassment of a student as long as top officials knew of the problem and did nothing to stop it.

That definition of liability appeared comfortably to fit the current case, with the one difference the harasser's identity as a fellow student rather than a teacher. But it quickly became evident today from the Justices' skeptical questions to Ms. Davis's lawyers that this difference might well mean all the difference in the world for the legal analysis.

Does teasing among young students necessarily amount to a Federal case?

How does one draw the line between harassment that amounts to sex discrimination and garden-variety teasing and flirting in the schoolyard, the Justices wanted to know.

"Little boys tease little girls through their years in school," Justice Sandra Day O'Connor told Verna L. Williams, representing Ms. Davis on behalf of the National Women's Law Center here. "Is every incident going to lead to a lawsuit?"

A "necessary consequence" of the plaintiff's argument, Justice Anthony M. Kennedy warned, was "a Federal code of conduct in every classroom in the country."

Justice Stephen G. Breyer, along with several other Justices, said the courts' experience in dealing with sexual harassment in the workplace was not easily transportable into the classroom. Behavior problems in school are appropriately handled by counseling, calling in the family, "discussion and mediation," Justice Breyer said, adding, "What's worrying is the gearing up of the great legal mechanism to replace that."

Ms. Williams and Barbara D. Underwood, a Deputy Solicitor General who presented the Government's argument in support of Ms. Davis, labored to allay the Justices' concerns.

"Ordinary teasing is not an actionable wrong," Ms. Underwood said, adding that the law would not apply unless the behavior was so "egregious" that the victim was effectively deprived of the ability to benefit from the educational program. In addition, she said, the school would not be expected to solve every problem, only to respond reasonably and appropriately.

W. Warren Plowden Jr., the school board's lawyer, would not accept those limitations on liability.

"No matter how high you set the bar," Mr. Plowden said, "once you open the door to these lawsuits, some Federal judge has to make a judgment on was the response enough."

Searching for a principle beyond the context of sexual harassment, Justice John Paul Stevens asked Mr. Plowden whether a school could be liable under Title IX if boys prevented girls from using a baseball field that had been set aside for them, while the school athletic director stood by and did nothing.

No, Mr. Plowden said, because the misconduct would be not the adult's but the children's.

Returning to sexual harassment, he said "the potential harm is exactly the same" for school liability because three-quarters of all girls and two-thirds of boys, in one study, had reported being sexually harassed between the 8th and 11th grades.

Justice Ruth Bader Ginsburg objected that "we don't know the definition of harassment" under that particular study. Justice Ginsburg said that while she understood the difficulty of drawing the line between innocent teasing and sexual harassment, "I don't understand why it's so hard" to evaluate the adequacy of a school's response.

Justice Ginsburg said there was a clear difference between simple negligence, for which a school would not be liable, and "deliberate indifference," the standard the Court adopted in the teacher harassment case last year. She defined deliberate indifference as "something you have to know and you don't do anything."

The case, Davis v. Monroe County Board of Education, No. 97-843, is an appeal from a 1997 ruling by the United States Court of Appeals for the 11th Circuit, in Atlanta. In dismissing the lawsuit, that court ruled that Title IX imposed no liability on schools for students' wrongdoing. The 7-to-4 decision overturned an earlier ruling in the case by a three-judge panel of the same court, which saw the issue differently and held that a school could be found liable for its officials' "failure to take action to stop the offensive acts of those over whom the officials exercised control."

Julie Underwood of the National School Board Association and W. Warren Plowden Jr., lawyer for the Monroe County Board of Education in Georgia outside the Supreme Court yesterday after oral arguments.

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Davis v. Monroe County Board of Education (1999): Holding

- "We consider here whether the misconduct identified in Gebser —deliberate indifference to known acts of harassment— amounts to an intentional violation of Title IX, capable of supporting a private damages action, when the harasser is a student rather than a teacher. We conclude that, in certain limited circumstances, it does."
- Recipients of federal funding may be liable "where the recipient is deliberately indifferent to known acts of student-on-student sexual harassment and the harasser is under the school's disciplinary authority."

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Davis: Majority Decision

- "School administrators will continue to enjoy the flexibility they require so long as funding recipients are deemed 'deliberately indifferent' to acts of student-on-student harassment only where the recipient's response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances."
- "The recipient must merely respond to known peer harassment in a manner that is not clearly unreasonable. This is not a mere 'reasonableness' standard, as the dissent assumes. In an appropriate case, there is no reason why courts, on a motion to dismiss, for summary judgment, or for a directed verdict, could not identify a response as not 'clearly unreasonable' as a matter of law."

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QUESTIONS?

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Title IX was patterned after:

Title VII

the Equal Protection Clause

Title VI

the Equal Rights Act Amendment

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The sole remedy explicitly provided by the text of Title IX for violating the statute is:

punitive damages

statutory penalties prescribed by Congress and adjusted for inflation

injunctive relief

termination of federal funds

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The Cannon v. University of Chicago case is significant because:

- it provides a private right of action to sue under Title IX
- it allows victims of discrimination to receive punitive damages if they can prove intentional discrimination
- it establishes a cause of action for disparate impact discrimination
- it recognizes that discrimination on the basis of sex is a crime

Title IX applies to:

- all educational programs
- all education programs or activities receiving Federal financial assistance
- only higher education programs or activities that receive Federal financial assistance
- education-related employers with more than 15 employees

There is a cap on damages in Title IX lawsuits.

True

False

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In order for a school to be liable under Title IX for teacher-on-student assault:

the assault must be severe and pervasive and commonly known to other students

an appropriate person must have knowledge of the assault and respond in a deliberately indifferent fashion

assault must be commonly known and not responded to appropriately

the teacher must be tenured

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In Davis v. Monroe County Board of Education, the court determined that school liability for peer-on-peer harassment is limited to:

- circumstances where the school exercises substantial control over both the harasser and the context in which the known harassment occurs
- circumstances where the school exercises absolute control over both the harasser and the context in which the known harassment occurs
- circumstances where the school exercises substantial control only over the harasser
- circumstances where the school should have known the harassment occurred

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Overview of ED's Proposed Regulations

"Era of Rule By Letter Is Over"

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ED's Enforcement Standard

- Adopts "deliberate indifference" standard from Supreme Court
- "Clearly unreasonable response"
- Substantially diminishes force of administrative enforcement
- Safe harbor

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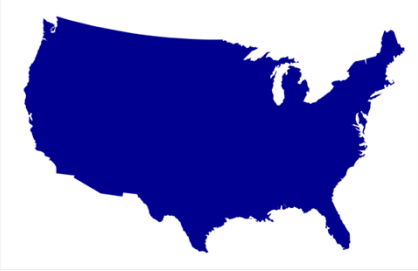
Title IX Jurisdiction



- Sexual misconduct occurring "under any education program or activity"
- Outside the USA is beyond jurisdiction
- Addressed under conduct code anyway?

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- ***Doe v. Brown University*** (1st Cir. 2018): Title IX protections do not extend to student who is not enrolled at the defendant institution or otherwise taking part in its educational programs or activities
- ***Doe v. University of Kentucky*** (E.D. Ky. 2019): Although plaintiff lived on defendant's campus and utilized lab and library services and alleged rape occurred on UK campus, plaintiff could not establish Title IX claim because she was not a UK student or enrolled in a UK educational program or activity.
- ***Farmer v. Kansas State Univ.*** (D. Kan. Mar. 17, 2017): Alleged assault of KSU student occurring at an off-campus fraternity house occurred within "an education program or activity" based on allegations that fraternity had faculty advisor, is subject to KSU rules, and is overseen by KSU Office of Greek Affairs.

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- ***NPRM:*** Although the regulations do not further define "in an education program or activity," the preamble references following factors:
  - ➢ Whether the conduct occurred in a location or in a context where the recipient owned the premises;
  - ➢ Whether recipient exercised oversight, supervision, or discipline; or
  - ➢ Whether recipient funded, sponsored, promoted, or endorsed the event or circumstance.

  - – ***Existing OCR Guidance*** (Sept 2017 Q&A): Based on recipient's degree of control over the harasser and environment in which harassment occurs; schools responsible for redressing a hostile environment on campus even if relates to off-campus activities.
  - – ***Prior OCR Guidance*** (2011 DCL, now withdrawn): Schools must process complaints, regardless of where conduct occurred; for off-campus conduct, emphasis placed on whether resulted in continuing effects in the educational setting. Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities.

Access to the Evidence

- Parties have right to review investigation file upon request
- All evidence "directly related" to allegations, even if school does not intend to rely on it
- Must be made available electronically before report is final

Standard of Proof

- Permits clear and convincing standard for sexual harassment cases
- May use POTE only if school uses POTE for conduct code violations that do not involve sexual harassment, but carry the same maximum disciplinary sanction
- Same standard of evidence must apply for complaints made against students and employees (including faculty)

Records Retention

- Three year records retention requirement for case files
- Three year records retention requirement for training materials of involved employees
- Parties have right of access

Training Requirements

- Institutions must provide training on:
  - The definition of sexual harassment
  - How to conduct an investigation (including hearings, if applicable)
  - The school's grievance process
- "[A]ny materials used to train coordinators, investigators, or decision-makers must not rely on sex stereotypes and instead promote impartial investigations and adjudications of sexual harassment."

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Live Hearings

- Colleges and universities must have live hearings for resolution of formal complaints
- Hearing officer/body cannot be the same as investigator
- Eliminates single-investigator model

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Cross-Examination

- Party's support person allowed to cross examine other party and witnesses
- Testimony of persons who refuse to submit to cross-examination is excluded
- Must provide support person for purposes of cross examination if party does not have one

What Is Next?

Lawmakers Examine Higher Ed's Response to Sexual Assault

Efforts to reauthorize the Higher Education Act could derail the education secretary's attempts to finalize rules regarding Title IX and campus sexual assault.

Sens. Lamar Alexander and Patty Murray questioned witnesses about campus sexual assault at a Senate hearing on Tuesday. TOM WILLIAMS/CQ ROLL CALL

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Senators Seek to Break Sexual Assault Impasse on Education Bill

Posted June 27, 2019
By Emily Wilkins

- Bipartisan group looks to balance accuser, accused rights
- Congress, Education Department working separately

A group of eight senators is working to tackle one of the most contentious issues in higher education—when and how colleges need to respond to allegations of sexual assault.

Senate Health, Education, Labor, and Pensions Chairman Lamar Alexander (R-Tenn.) and ranking member Patty Murray (D-Wash.) brought the group together in a quest to resolve potentially the biggest remaining obstacle to a bipartisan reauthorization of federal higher education programs.

"We're all looking for the same thing: an environment that encourages reporting when there is a problem and a process that gets at the truth and is fair to the person bringing a claim and fair to he person who is accused," said Sen. Tim Kaine (D-Va.), a member of the working group.

Murray and Alexander are members of the group, as well as Republicans Tim Scott(S.C.), Susan Collins (Maine), and Richard Burr (N.C.), and Democrats Kaine, Maggie Hassan (N.H.), and Tammy Baldwin (Wis.).

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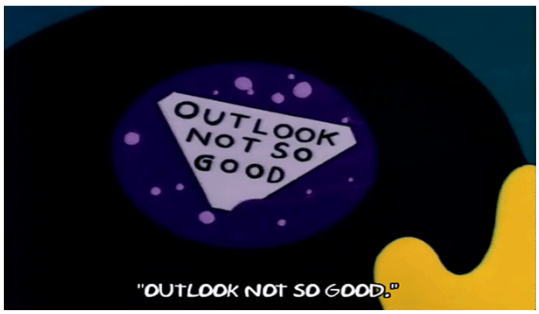
When Finalized?

- Review of comments by ED
- Litigation?
- Will we get final regulations in advance of school year?



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What Will Final Regulations Look Like?

LIBERTY UNIVERSITY
OFFICE *of the* PRESIDENT

January 24, 2019

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

VIA ELECTRONIC SUBMISSION

RE: Docket ID ED–2018–OCR–0064; Public Comment on Proposed Title IX Regulations

Dear Secretary DeVos:

Sincerely,

Jerry Falwell
President

Schools Say Betsy DeVos' Title IX Rule Changes Would Be A Total Nightmare

By TYLER KINGKADE | 2 months ago | f

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QUESTIONS?

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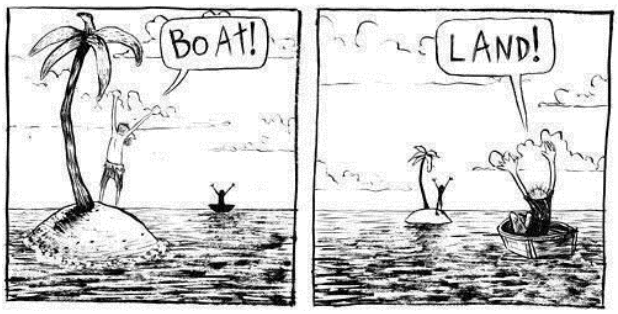
Title IX Case Law Update

Some Perspective on Sex Misconduct Litigation

- 12(b)(6) motions versus summary judgment
- It is imprecise to say "universities are losing tons of Title IX due process cases"
- Respondent litigation is like the bulk of litigation – the economics favor settlement (and even more so – damages are small)
- There is a lot of it
- Keeping apprised of circuit and state specific precedent



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Respondent Litigation

- Due Process
- Title IX ("Erroneous Outcome": Doubt + Gender Bias)
- Breach of Contract
- Other Tort Claims

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CELEBRITY
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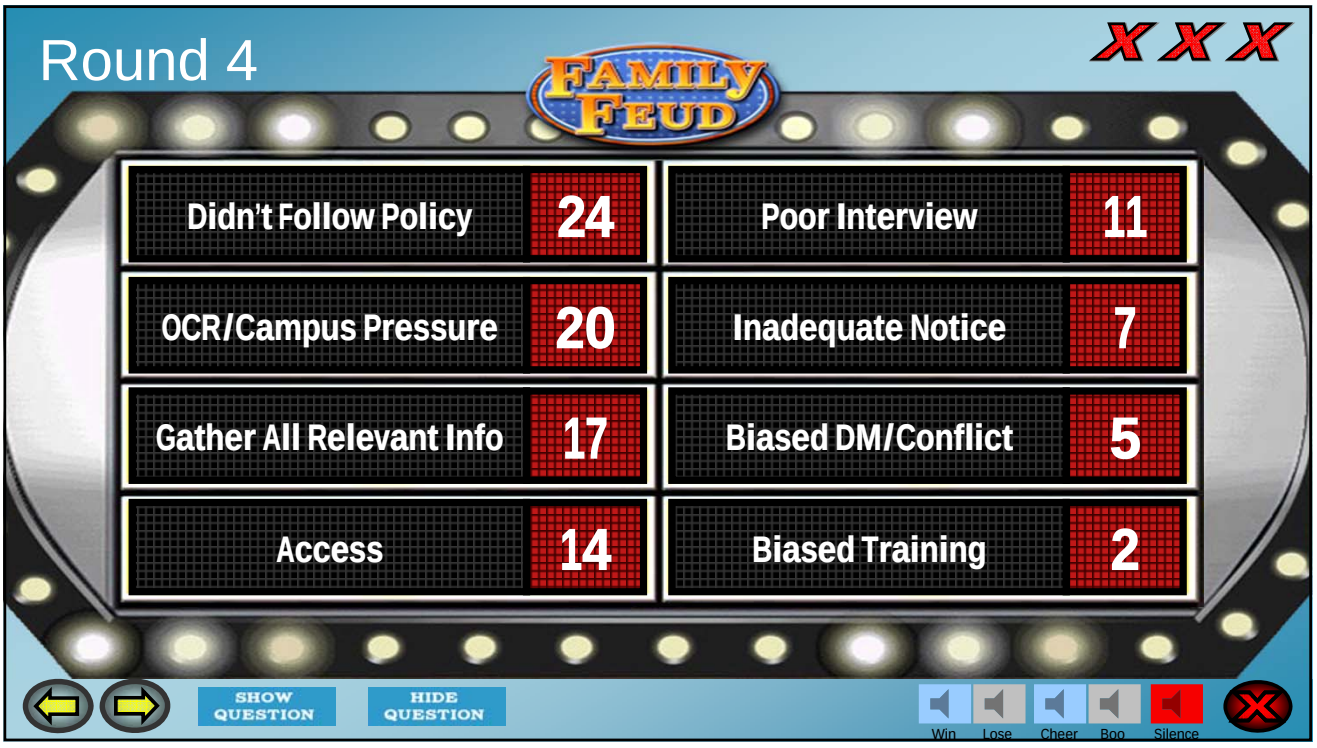
Round 4
X X X
FAMILY FEUD
Didn't Follow Policy 24
Poor Interview 11
OCR/Campus Pressure 20
Inadequate Notice 7
Gather All Relevant Info 17
Biased DM/Conflict 5
Access 14
Biased Training 2
SHOW QUESTION
HIDE QUESTION
Win
Lose
Cheer
Boo
Silence

In the
United States Court of Appeals
For the Seventh Circuit

No. 17-3565
JOHN DOE,
Plaintiff-Appellant,
v.
PURDUE UNIVERSITY, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Indiana, Hammond Division.
No. 2:17-cv-00033-PRC — **Paul R. Cherry**, *Magistrate Judge.*

ARGUED SEPTEMBER 18, 2018 — DECIDED JUNE 28, 2019

- "Two members of the panel candidly stated that they had not read the investigative report. The one who apparently had read it asked John accusatory questions that assumed his guilt. Because John had not seen the evidence, he could not address it."
- Title IX Coordinator "chose to credit Jane's account without hearing directly from her" and Jane "did not even submit a statement in her own words"

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PURDUE UNIVERSITY | Center for Advocacy, Response & Education
A DIVISION OF THE OFFICE OF THE DEAN OF STUDENTS

Alcohol isn't the cause of campus sexual assault. Men are.

The Washington Post
Democracy Dies in Darkness

Archived Information

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

HUSCH BLACKWELL

Doe v. Valencia College, et al. (11th Cir. Sep. 13, 2018)

Court backs suspension of Valencia College student in sexual harassment case

HUSCH BLACKWELL

Doe v. Colgate Univ., et al. (2d Cir. Jan. 15, 2019)

Judge Tosses Suit Against Colgate Univ. Over Expulsion for Sexual Misconduct

A lawsuit filed by an anonymous former student claiming that Colgate University unlawfully expelled him based on allegations of sexual abuse by three female students was dismissed Wednesday by a federal judge for the Northern District of New York.

By **Josefa Velasquez** | October 31, 2017 at 04:54 PM

- Erroneous Outcome under Title IX
- References to "female complainants" and "male respondents" in Title IX training reflected a statistical reality as opposed to gender bias.
- Likewise, the trainer's instruction to refer to "complainants" in the presence of respondents and "victims" or "survivors" in the presence of complainants reflected a "desire to be sensitive" as opposed to gender bias.
- Colgate's procedures did not discriminate against Plaintiff, even though Plaintiff was not afforded an opportunity to cross examine his anonymous accusers, because his accusers were similarly denied the opportunity to cross-examine Plaintiff.

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Due Process Cases

US Court of Appeals rules University must allow cross-examination in sexual assault cases

Friday, September 7, 2018 - 12:40pm

The Sixth Circuit Court of Appeals struck down the University of Michigan's sexual assault investigation model Friday Buy this photo

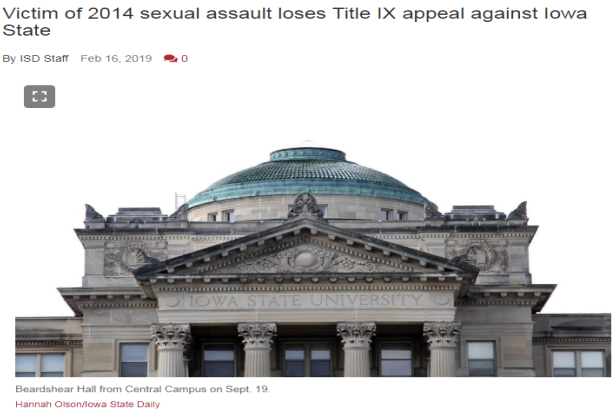
Doe v. Allee

COURT OF APPEAL
SECOND APPELLATE DISTRICT
STATE OF CALIFORNIA

- Due process requires live cross examination where severe discipline is possible and credibility matters
- Neutral arbiter required too

Maher v. Iowa State University (8th Cir. Feb. 15, 2019)

- Female former student sued state university alleging it was deliberately indifferent under Title IX when it refused to force student accused of sexually assaulting her to move until completion of investigation of her charges against him.



Victim of 2014 sexual assault loses Title IX appeal against Iowa State

By ISD Staff Feb 16, 2019 0

Beardshear Hall from Central Campus on Sept. 19.
Hannah Olson/Iowa State Daily

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Maher v. Iowa State University

- "A school is deliberately indifferent when its response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances."
- "This clearly unreasonable standard is intended to afford flexibility to school administrators."
- "[V]ictims of peer harassment do not "have a Title IX right to make particular remedial demands."
- "And while Maher's preference was that ISU move Whetstone, it was not deliberately indifferent for ISU to wait to take such action until the hearing process concluded because ISU was respecting Whetstone's procedural due process rights."
- "[D]issatisfaction with the school's response does not mean the school's response can be characterized as deliberate indifference."

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The Supreme Court just took up a set of very big cases on LGBTQ rights

The Supreme Court will hear big cases on LGBTQ rights — after an LGBTQ ally left the Court.

By German Lopez | @germanrlopez | german.lopez@vox.com | Apr 22, 2019, 12:00pm EDT

SHARE

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~$500 Million Settlement

EXECUTION VERSION

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the "Agreement") is made and entered into as of this __ day of July, 2018 (the "Effective Date"), by and between Plaintiffs and Derivative Plaintiffs (as defined below), on the one hand, and Michigan State University, the MSU Sports Medicine Clinic, the Board of Trustees of Michigan State University, Dr. Douglas Dietzel, Kathie Klages, Dr. Jeffrey Kovan, Dr. Brooke Lemmen, Kristine Moore, Lou Anna K. Simon, Dr. Gary Stollak, Dr. William Strampel, and Destiny Teachnor-Hauk, on the other hand.

RECITALS

WHEREAS, Plaintiffs filed the Actions (as defined below) against some or all of the MSU Defendants (as defined below); and

WHEREAS, Plaintiffs allege that Lawrence Nassar, a former employee of Michigan State University, sexually assaulted and abused them at various times and in various locations; and

WHEREAS, the MSU Defendants acknowledge that Lawrence Nassar admitted to engaging in criminal conduct involving sexual abuse; and

WHEREAS, Plaintiffs further allege that the MSU Defendants, or some of them, are liable for Lawrence Nassar's misconduct, abuse, and assault of Plaintiffs and any damages resulting therefrom; and

Larry Nassar and Why Your Institution Could Really Be Next

Published on January 29, 2018 | Edit article | View stats

Scott Schneider
Labor & Employment Law Partner, Head of Higher Educatio...
28 articles

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‘A big day for women’: Jury sides with Miller, orders UMD to pay $3.74 million

By Tom Olsen on Mar 15, 2018 at 8:12 p.m.

They do similar jobs as men but get paid less. Now 3 female coaches are fighting back

BY PABLO LOPEZ
plopez@fresnobee.com

January 24, 2018 04:35 PM
Updated January 25, 2018 07:13 AM

Three female coaches at Fresno City College and Reedley College have sued the State Center Community College District for gender discrimination, saying the district employs an unfair system that pays male coaches more money.

The three coaches also contend in their Fresno County Superior Court lawsuit that the district has violated Title IX, which prohibits discrimination based on sex in federally funded educational programs and activities.

In their lawsuit, the coaches claim that SCCCD “has a longstanding and pervasive policy, pattern and practice of gender discrimination and unequal treatment of female coaches, female athletes and female athletic programs.”

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“Skeleton” Claims

- Allegedly abused by Dr. Richard H. Strauss from 1979 to 1997 (Strauss dead since 2005)
- Independent investigation commissioned
- Investigators have interviewed more than 200 former students, 100 of whom accused Dr. Strauss of sexual misconduct, including former athletes from 14 different sports teams. Investigators expect to interview an additional 100 former students in the weeks to come
- **What happens next?**
- Harvard University, Rutgers University, the University of Pennsylvania, the University of Washington and the University of Hawaii

More Than 100 Former Ohio State Students Allege Sexual Misconduct

By Catie Edmondson

July 20, 2018

WASHINGTON — More than 100 former Ohio State University students have come forward with allegations that a team doctor and professor at the school committed some form of sexual misconduct with them, university officials announced Friday, as the university begins to grapple with the sheer scope of a scandal that continues to grow.

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QUESTIONS?

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Thank you!

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