

Title IX Litigation Alert

September 15, 2017

Key Points

- A federal court in Ohio has held that published writings of a university Title IX administrator provide sufficient evidence of bias to permit a civil suit by a penalized student to go forward.
- Denial of equitable procedural rights to accused students may likewise increase the risk of a successful civil claim.
- Failure to vet Title IX administrators with regard to evidence of possible gender bias may increase litigation risk.

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Lawsuit Claiming Gender Bias in Title IX Investigation Allowed to Go Forward

On September 13, 2017, a federal judge in Ohio denied Case Western Reserve University's motion to dismiss a lawsuit claiming gender bias in a Title IX investigation. According to the John Doe plaintiff, one of Case Western's Deputy Title IX Coordinators was biased against accused male students, causing John Doe to be wrongly held responsible for sexual misconduct involving a female student.

The complaint alleges that, when John Doe was a sophomore at Case Western in 2014, he engaged in consensual sexual activity with a female freshman he was dating. They broke up shortly after the incident, and, at the urging of a friend, the female student reported the incident to the University's Deputy Title IX Coordinator a few weeks later. John Doe was ultimately found responsible for sexual misconduct, prohibited from having any contact with the female student, permanently banned from campus housing and suspended for three years.

The Deputy Title IX Coordinator, who was primarily responsible for all aspects of the investigation and testified at the hearing, had recently written a doctoral dissertation titled "The Dangerous Reality: Sexual Risk Taking Among College Women." According to the complaint, the dissertation reflected the Deputy Title IX Coordinator's view that male students are always responsible when sexual misconduct occurs. John Doe claims that this gender bias caused an incorrect outcome in his case because, among other things, the Deputy Title IX Coordinator did not permit him to respond to more than a dozen witness statements, did not give him the opportunity to have adequate assistance or legal representation during the proceedings, and did not afford him reasonable academic accommodations similar to those provided to the female student. John Doe also claims that the coordinator intentionally overlooked evidence that contradicted the female student's accusations. As further evidence of her bias against male students,

John Doe points out that Title IX complaints more than doubled during the Deputy Title IX Coordinator's tenure.

While the standard for surviving a motion to dismiss is relatively low—the plaintiff needed to plead only a plausible case of gender bias—the court cited the Deputy Title IX Coordinator's doctoral dissertation as support for moving the case to the next stage: full-blown, and likely costly, civil discovery. It remains to be seen whether John Doe will ultimately be able to prove the gender bias that he claims existed, but this case demonstrates that even the appearance of gender bias in Title IX proceedings can lead to litigation. It is therefore critically important for colleges and universities to vet Title IX administrators in order to properly assess their risk for similar gender bias claims.

Notably, the complaint cites the Department of Education's 2011 Dear Colleague Letter as a source of pressure on Case Western to discipline accused male students or risk loss of federal funding. While that allegation was not sufficient to withstand Case Western's motion to dismiss the plaintiff's 14th Amendment due process claim in this case, given Case Western's status as a private university, Secretary of Education Betsy DeVos raised similar concerns about the due process rights of accused students in [a major policy address last week](#). She announced that the Department of Education's Office of Civil Rights plans to revise the 2011 Dear Colleague Letter's guidance after a public comment period.

The case is *John Doe v. Case Western Reserve University, et al.*, No. 1:17 CV 414 (N.D. Ohio).

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