

Higher Education: Title IX Litigation Update

Erin Butcher and Melissa Carleton
December 15, 2025



Your Presenters



Erin Butcher



Melissa Carleton

- We are not giving you legal advice.
- Many of these cases may still be in appeals – stay tuned.
- Some of these cases *still* predate the 2020 regulations.
- Consult with your legal counsel regarding how best to address a specific situation.
- Feel free to ask general questions and hypotheticals.
- There are a variety of stakeholders listening, so please keep that in mind as you submit questions.
- Watch your inbox for a link to the slides!

Agenda

- Cases brought by Student Complainants
- Cases brought by Student Respondents
- Cases brought by Employees
- Title IX Athletics

Quick Reminder

- Pay the closest attention to the Supreme Court, your Circuit Court, and your District Court, as these decisions are "precedential," which means future courts are supposed to follow the same logic.
- All other decisions are "persuasive." The persuasiveness depends on how thoughtful the decision is, and how similar the facts are to your own.
- Your District Court might prefer to look first to case law from other District Courts in your Circuit.
- We are not second-guessing parties or attorneys in these cases. Today we are focusing on how courts have construed facts and what they have said about those facts as construed, so as to help Title IX team members better implement their procedures.

Another Quick Reminder

- The information considered by the Court will depend on how far along the case is at the time of the decision.
- Motion to Dismiss – If we assume everything in the plaintiff's complaint is true, do they have a case?
- Motion for Summary Judgment – Court can make findings of fact based on what is in the record now that depositions and other discovery has taken place.
- Appeal – Look to whether this is an appeal of a motion to dismiss, or an appeal for motion for summary judgment, and that will tell you whether we are working with established facts.

Cases Brought By Student Complainants



- Fourth Circuit: Maryland, Virginia, West Virginia, North Carolina, and South Carolina
- Complainant alleged University's response to her report of sexual assault by a fellow student at an off-campus residence amounted to deliberate indifference, and that University retaliated against her for reporting sexual harassment
 - University's Title IX evaluation committee determined the assault did not fall within its jurisdiction – it was off-campus and was not part of a University-sponsored activity
 - University then referred the matter to its student conduct office
 - Respondent was placed on probation, had to complete alcohol education course, and had to complete community service
 - Complainant was charged with “underage consumption” – she accepted voluntary resolution under which she received essentially the same discipline as Respondent
- The Fourth Circuit Court of Appeals affirmed district court's decision to grant summary judgment in favor of the University

- Deliberate indifference: University not liable under Title IX for its purportedly indifferent response because it did not have substantial control over the context of the harassment
 - Assault occurred at a private, off-campus residence unconnected to any University-sponsored program, organization, or event;
 - University had no prior knowledge of the post-game party, did not exercise any supervision or control over the location or those present, and did not have any opportunity to intervene or prevent the assault on Complainant
 - While Complainant reported about Respondent's behavior during the investigation, University did not have prior knowledge
 - "The critical inquiry. . . is whether the University had the authority to supervise, regulate, or prevent the harassing conduct, not merely whether it occurred near the campus."
- Retaliation
 - Complainant did not produce sufficient evidence for a reasonable jury to conclude University's stated reason for the underage drinking charge—Complainant's confession during investigation—was false or in retaliation for her reporting harassment

Student brought action alleging the University's decision to readmit star football player after expelling him for sexually assaulting female students demonstrated deliberate indifference to harassment that she had suffered, in violation of Title IX.

The Court of Appeals held:

- ~~• As matter of first impression, single incident of student on student sexual harassment may be sufficiently pervasive to create title IX liability.~~
- ~~• Fact issues remained as to whether harassment the student experienced was sufficiently egregious as to be pervasive.~~
- ~~• Fact issues remained as to whether the student was deprived of educational opportunities and benefits as result of harassment.~~
- ~~• Fact issues remained as to whether the university's decision to readmit the football player after jury acquitted him of sexual assault was clearly unreasonable.~~
- Petition for hearing en banc granted – on Sept. 22, 2025, 7th Circuit vacated panel's opinion and judgment issued July 11, 2025

- Complainants Jane Roe and Karen Soe alleged deliberate indifference to student-on-student sexual harassment and claimed that the University maintained a policy of deliberate indifference to reports of sexual misconduct, which created a hostile environment and heightened risk of harassment
- They alleged the University failed to provide adequate supervision and that accusations against Respondent were common knowledge among faculty
- Complainants sought clarification on whether they had plausibly stated a 'before' claim for Title IX liability and objected to the denial of their discovery requests for University-wide information on harassment incidents

- The Court:
 - Granted Complainants' motion for clarification, holding that they had only stated a viable claim for an 'after' theory of liability under Title IX, not a 'before' claim.
 - Found Complainants failed to plausibly allege that the University's response to a single report of misconduct was so clearly unreasonable as to constitute a policy of deliberate indifference.
 - Overruled Complainants' objections to the magistrate judge's order denying their discovery requests, finding that the requests were not proportional to the needs of the case
 - Concluded that the Complainants' discovery requests were an attempt to embark on a "fishing expedition"

- Former student-athletes brought action against public university under Title IX, alleging university-employed athletic-team doctor sexually abused them while the university turned a blind eye to their complaints of the doctor's abuse over many years.
 - Parallel with discovery, the parties sought a ruling on whether emotional-distress damages were available.
- The District Court held:
 - The traditional-availability test for statutes subject to contract-law analogy straightforwardly forecloses emotional-distress damages for private Title IX suits

Gagnon v. Maharishi International Univ.,

2025 WL 2651288 (S.D. Iowa) (9.16.2025) (Slide 1 of 2)



Scope of Title IX's protections when invoked by individual not enrolled in or employed by educational institution individual seeks to hold accountable

- Complainant asserted three Title IX claims against University based on allegations that University mishandled her complaint of sexual misconduct by an employee with whom she had a relationship
- Complainant was neither enrolled in nor employed by the University, but regularly used campus facilities
- Court granted University's motion to dismiss
 - Complainant conceded procedural non-compliance does not constitute a recognized cause of action under Title IX

Gagnon v. Maharishi International Univ.

(Slide 2 of 2)



- Complainant lacked standing to bring the Title IX retaliation and deliberate indifference claims
 - Deliberate indifference - Complainant cannot assert claims on behalf of others
 - Cannot assert claim on her own behalf - Eighth Circuit has declined to extend Title IX claims to prospective students; Complainant concedes that she is neither a student nor an employee of University; and she did not allege she was excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of sex under any education program or activity
- Complainant also failed to state plausible claim for retaliation or deliberate indifference
 - University investigated complaint over two months and issued seven-page dismissal letter – undermining Complainant’s argument that summary dismissal of complaint was adverse action

- Plaintiff filed a lawsuit against the Board of Supervisors of the University of Louisiana System and other defendants, alleging sexual misconduct of a student who transferred from LSU to ULL and later to Tech. Plaintiff claimed ULS's deliberate indifference to the student's actions increased her risk of being assaulted and that ULS failed to investigate or discipline the student adequately.
- The court:
 - granted the plaintiff's motion for partial summary judgment, finding that ULS had actual knowledge of the risk posed by the student and denied ULS's motion for summary judgment.
 - recognized the plaintiff's heightened risk claim under Title IX, finding that ULS had actual knowledge of the student's arrest for forcible rape and that ULS had control over the student.
 - found that whether ULS was deliberately indifferent was a question for the jury.
 - found the plaintiff's post-report claim was not time-barred and that a reasonable jury could find ULS deliberately indifferent.
 - denied ULS's claims of immunity and found that ULS owed a duty to the plaintiff under Act 172.

- First-year medical student expelled Complainant for academic dishonesty
- Complainant alleged University discriminated against her based on sex in violation of Title IX
 - She argued University's proffered reason for expelling her--cheating--was pretextual because the University did not expel three male students who committed academic dishonesty around the same time
 - University responded that the male students were not expelled because, unlike Complainant, they acknowledged they cheated, accepted responsibility, and expressed remorse
 - Court ruled there was uncontested evidence that the male students admitted to academic dishonesty and accepted responsibility, and there was ample evidence that Complainant did no such thing
 - "On this record, no reasonable jury could conclude that Howard expelled Smith because of her sex as opposed to Howard's proffered reason"

- A student who was dismissed from the private university's certified registered nurse anesthetist program brought action for sex discrimination and disability discrimination against defendants including anesthesia practice (ASPA) that oversaw clinical internship in connection with such program, arguing she was held to higher disciplinary standards than nonpregnant students
- ASPA moved for summary judgment, arguing it was not an educational institution receiving federal financial assistance subject to Title IX, and was not student's employer under Title VII and the ADA
- The District Court held the internship at ASPA was not an educational program within the scope of Title IX, and ASPA did not receive qualifying federal financial assistance
 - While internship was part of University's curriculum, ASPA did not provide instructors, administer exams, grade students, or receive tuition
 - Medicare and Medicaid payments to ASPA were not considered qualifying federal financial assistance for Title IX purposes

- A former high school student, who trained and competed with the diving club at the University, brought Title IX action against the University, alleging that it failed to protect her from sexual abuse and assault committed by her diving coach when she was a minor.
- The Court of Appeals held that Ohio's two-year limitations period for personal injury actions applied to student's Title IX claim against the University.

Cases Brought By Student Respondents



- Respondent Doe and Complainant Roe filed student conduct complaints against one another, and Complainant Roe then filed a Title IX complaint against Respondent; Respondent was eventually adjudicated responsible for sexual misconduct
- Respondent argues this finding was the result of illegal discrimination and unfair disciplinary procedures
- University moved to dismiss
 - Title IX – Court ruled Respondent established a plausible inference of sex-based discrimination
 - Ninth Circuit looks to allegations of background indicia of sex discrimination combined with allegations concerning the case against Respondent

- Background indicia –
 - University faced history of being under investigation by DEO regarding Title IX investigations
 - University faced two DOE Office of Civil Rights complaints and investigations that “were contemporaneous to the underlying incident”
 - Majority of individuals reporting sexual misconduct in 2023 were females against males, resulting in a disproportionate number of males being found responsible
 - University faced history of accusations from students that University was not doing enough when sexual misconduct reported
 - Ongoing protests resulting in University caving to pressure and meeting the demands requested by females

- Specific facts/allegations from Respondent's case
 - Respondent alleged University closed Complainant Roe's student conduct case because it recognized the conduct complained of fell under Title IX, despite being the same conduct Respondent complained of
 - Alleged his complaint against Complainant Roe was investigated only for physical harm and harassment, not sexual misconduct
 - After Respondent was initially found not responsible for sexual misconduct, Complainant Roe appealed and advised University she would pursue Title IX and Clery Act claims
 - After Respondent was again found not responsible, University granted Complainant Roe "an impermissible second appeal" – Respondent was then found responsible and suspended for one year
- The Court ruled these allegations were consistent with allegation that University treated male respondents in sexual misconduct disciplinary proceedings differently
- Respondent failed to state a § 1983 claim against individual defendants as it relates to due process, but Court denied University's MTD as it relates to Equal Protection Clause

- Respondent, expelled for sexual misconduct, alleged the University discriminated against him during the investigation and disciplinary process because he is male
 - After the Title IX investigation, hearing, and appeal process was complete, a jury found Respondent not guilty of related criminal charges
 - Respondent then submitted a petition for restoration of rights to the University – the Chancellor granted the petition and Respondent was readmitted
 - The Chancellor’s decision noted additional information from the criminal trial, as well as police reports, that were unavailable to the University during the Title IX investigation, committee findings, and administrative appeals
 - The Chancellor determined that a preponderance of the evidence no longer supported a finding that Respondent committed third-degree sexual assault, but did still show Respondent sexually harassed Complainants by enlisting a teammate to photograph them without Complainants’ consent

Question for the court at summary judgment: Whether a reasonable juror could conclude that the University discriminated against Respondent on the basis of his sex when it investigated the sexual assault allegations against him, found him responsible, and expelled him

- Public pressure and federal guidance on Title IX and Sexual Violence in 2011 and 2014
 - Evidence of public pressure is not enough on its own to support claim of discrimination – specific facts required to support inference the disciplinary decision was motivated at least partly by Respondent’s sex
- Investigation and disciplinary process
 - Procedural irregularities cited by Respondent “do not come close to those alleged in *Purdue University* or in any other case like it”
 - Refusal to stay Title IX proceedings until resolution of criminal proceedings –
 - No evidence that University agreed to adjourn a misconduct hearing in similar circumstances because a women requested it
 - Respondent did not cite any authority that a decision to proceed under Title IX in these circumstances is evidence of gender bias
 - University had legitimate, non-discriminatory reason for moving forward - the obligations imposed by Title IX itself to investigate and resolve such allegations promptly

- Investigation and disciplinary process, cont.
 - Fact that investigator encouraged collaboration between the two Complainants – Court noted that it agreed investigator should have not permitted Complainant 2 to read the other Complainant’s statement before obtaining an independent statement, but this error was not evidence of discrimination against Respondent
 - Investigator’s failure to obtain evidence from DA’s office or police department – University did attempt to obtain the evidence but were unable to do so
 - Failure to reschedule hearing for Respondent’s chose advocate – While Court agreed University should have rescheduled hearing, the record does not support Respondent’s assertion that University intentionally scheduled the hearing date so that his preferred advocate could not attend in deference to the Complainants’ requests
- Court noted that Respondent had the evidence he argued should have been considered, but made a strategic decision not to give it to the University for consideration

- Respondent sought a TRO to halt disciplinary proceedings initiated in response to four complaints of alleged sexual misconduct occurring off-campus and outside university programs
- Respondent advanced an apparent Title IX claim of impermissible discrimination under a theory of “deliberate indifference”
 - Respondent could not attack the disciplinary proceedings based on “erroneous outcome” or “selective enforcement” because there has not yet been an outcome or enforcement
 - Contrary to Plaintiff's suggestion that this theory of liability may apply to a school's response upon learning of and investigating any ‘potential discrimination based on sex,’ . . . courts presented with the question have consistently held application of the ‘deliberate indifference’ theory to be restricted to evaluation of a school's response to complaints of sexual harassment, specifically.”
 - Request for TRO denied

- University had not updated policy to allow panel to consider statements from non-participants – but it did anyway without providing notice to the parties
- Complainant did not appear at the hearing, but her statements were considered
- The Supreme Court, Appellate Division held:
 - The university failed to substantially comply with its own procedures concerning the student's right to cross-examination, prejudicing student, and the determination that the disciplinary suspension was appropriate required annulment.
 - The university's student conduct board should have applied standard of affirmative consent to sexual activity based on actions, rather than “verbal consent” when making determination on the disciplinary suspension.

Pampu v. Wingo, 446 S.C. 236; 918 S.E.2d 717 (S.C. Ct. App., 6.11.2025) (Slide 1 of 1)



- A student brought a defamation and civil conspiracy action against a fellow fraternity pledge brother, his girlfriend, and her father regarding statements made about the student's sexual encounter with the pledge brother's girlfriend at a fraternity party.
 - The jury rendered a verdict in favor of the father on the civil conspiracy claim and for the student on all remaining claims.
- The Court of Appeals held:
 - the student's settlement of his breach of contract claim against the University precluded him from asserting that the pledge brother and his girlfriend conspired to tortiously interfere with the University's contract with him.
 - there was no evidence that the University breached its contract with the student or that he suffered damages, which are required to support his claim for conspiracy to tortiously interfere with the University's contract.
 - the federal court's adoption of the student's settlement agreement with the University established the truth of the defendants' statements that the student committed sexual assault and rape because it specifically reinstated the Board finding against him, precluding his defamation claims.
 - the University's student disciplinary proceedings qualified as a "contested case" under the Administrative Procedure Act and the hearing board's finding that the student should have known that the pledge brother's girlfriend was intoxicated and did not have the capacity to consent to any sexual contact collaterally stopped the student from relitigating the issue of consent.

Cases Brought By Employees



- A private fencing coach (Plaintiff) sued the University and various employees for Title IX deliberate indifference to discrimination and exclusion from university programs and activities, as well as state law claims
 - Plaintiff alleged on a return flight from a fencing tournament, the University's assistant fencing coach sexually harassed her
 - District court dismissed suit, holding the private coach was outside Title IX's zone of interest and state law claims were untimely or implausible
- Third Circuit Court of Appeals ruled that some of Plaintiff's claims against University were within the zone of interests protected by Title IX

- Did the funding recipient exercise substantial control over the individual who mistreats the plaintiff based on sex?
 - Plaintiff alleged assistant coach was representing University on work travel – this allows the reasonable inference that University exercised substantial control over him for purposes of Title IX
 - Retaliation claims – it was reasonable to infer University had substantial control over its fencing coaches and, as their employer, had the power to order them to refrain from the retaliation campaign

- Did the Title IX funding recipient have substantial control over “the context” in which the mistreatment occurred or manifested?
 - Flight from fencing tournament – complaint lacked allegations about University's control over the flight to provide a basis for inferring University had substantial control over that setting
 - Retaliation campaign allegedly orchestrated nationwide and was widespread – it was reasonable to infer that at least some conversations occurred in University offices, while fencing coaches were on campus, or at University fencing events
 - Retaliation campaign alleged to have manifested in settings over which University had substantial control, including Plaintiff's exclusion from University-hosted fencing events
 - Not reasonable to infer that University exercised substantial control of events University merely participated in, or the hiring decisions of other Universities,
 - But, if Plaintiff's exclusion from events, lost employment opportunities, or loss of her students could be tied back to conversations occurring in a context over which University had substantial control, then those components of her claim would also be within Title IX's zone of interests.

***Kluge v. Brownsburg Community School Corporation*, 150 F.4th 792 (7th Circuit, 8.05.2025) (Slide 1 of 1)**



- Teacher alleged school violated Title VII by failing to accommodate his religious objection to referring to transgender students by their preferred names and pronouns.
- Seventh Circuit initially affirmed district court's summary judgment ruling in favor of school, but vacated and remanded in light of U.S. Supreme Court's decision in *Groff v. DeJoy* (2023)
- District court again ruled that accommodating the teacher by allowing him to refer to students by their last names only imposed an undue burden on the school
- Seventh Circuit concluded there were material factual disputes about whether "last name" accommodation disrupted learning environment or whether complaints were an undue hardship on school's educational mission
- Seventh Circuit found that the last-name accommodation did not expose the school to an unreasonable risk of Title IX liability –
 - "We therefore cannot conclude that Kluge, just by adhering to the last-name-only practice, 'treated [transgender students] worse' than their classmates, or subjected them to 'increased stigmatization.' Without those showings, our circuit's precedent that Brownsburg offers is materially different. The accommodation thus did not place the school "on the 'razor's edge' of legal liability."

Cases Brought Involving Athletics



Myers v. Stephen F. Austin State Univ., 794

F.Supp.3d 402 (E.D. Tex., 8.01.2025) (Slide 1 of 2)



- Female student-athletes brought class action against University for violations of Title IX, after University announced (in May 2025) the elimination of the varsity women's beach volleyball and bowling teams, in addition to the men's and women's golf teams
- The District Court granted Plaintiffs' emergency motion for preliminary injunction and ordered the University to preserve the women's beach volleyball team, women's bowling team, women's golf team, and all other women's varsity teams at the University while the case is pending

Title IX Framework and Relevant Analysis:

- Plaintiffs argued Court should rely upon Dept. of Education's 1979 Policy Interpretation and 1996 Policy Guidance, which articulates a three-part test for equal participation opportunities under Title IX
- University argued the three-part test should not apply because, pursuant to *Loper Bright* and *Kisor*, the Court should analyze the plain meaning of Title IX and the 1975 Title IX implementing regulations
- As a matter of first impression, District Court would defer to Department of Education's (DOE) interpretation of its Title IX implementing regulation

- University appealed to Fifth Circuit Court of Appeals, asking the court to vacate the injunction
 - On December 4, 2025, the Fifth Circuit granted University's request and vacated the injunction
 - Agreed with University that the injunction failed to meet the specificity requirement of Rule 65(D) of the Federal Rules of Civil Procedure
 - "By requiring SFA simply to 'preserve' the three women's teams at issue, without further elaboration, the injunction does not inform SFA in reasonable detail what it must do."
 - Fifth Circuit remanded to district court, but did not express an opinion on whether a preliminary injunction should issue or what the terms should be

(Case No. 25-40487; 2025 WL 3488841.)

Female Athletes United v. Ellison, 2025 WL 2682386 (D. Minn., 9.19.2025) (Slide 1 of 1)

- Female Athletes United (FAU) brought suit alleging a bylaw adopted by the Minnesota State High School League allowing students to participate in athletics and fine arts consistent with their gender identity or expression violated Title IX.
 - FAU argued that allowing transgender girls to compete in single-sex girls' sports created an uneven playing field that discriminated against girls. FAU specifically alleged that a transgender girl had been allowed to participate in high school softball, which they argued resulted in ineffective accommodation of their members' interests and unequal treatment compared to boys' sports.
- The court:
 - denied FAU's motion for a preliminary injunction to stop the enforcement of the bylaw.
 - concluded that while FAU had Article III standing to bring the case, it had not shown a likelihood of success on the merits of its Title IX claims.
 - found that Title IX does not afford a private right of action for disparate-impact claims, which was the basis of FAU's argument, and FAU failed to demonstrate that the bylaw-created disparities are substantial enough to deny effective accommodation or equal treatment under Title IX.

State of West Virginia v. B.P.J.* and *Little v. Hecox

(U.S. S. Ct., No. 24-38, petition granted 7.03.2025) (Slide 1 of 1)



U.S. Supreme Court to review two circuit court opinions addressing whether transgender students have the right to join sports teams for girls

- Questions presented:
 1. Whether Title IX prevents a state from consistently designating girls' and boys' sports teams based on biological sex determined at birth.
 2. Whether the Equal Protection Clause prevents a state from offering separate boys' and girls' sports teams based on biological sex determined at birth.
 3. Whether laws that seek to protect women's and girls' sports by limiting participation to women and girls based on sex violate the Equal Protection Clause of the Fourteenth Amendment.
- Set for argument Jan. 13, 2026

Gender Identity

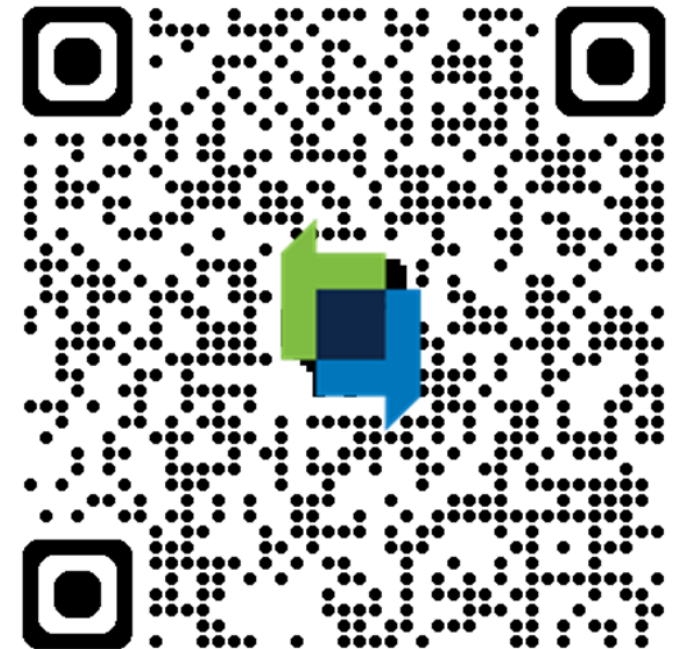
- U.S. Department of Education Announces the University of Pennsylvania Has Entered into a Resolution Agreement to Resolve its Title IX Violations (July 1, 2025)
- Brown University (July 30, 2025)
 - Includes: “Addressing compliance with Title IX, including ‘male’ and ‘female’ designations for athletics and on-campus housing, consistent with NCAA requirements and Brown’s current policies, as well as provisions on gender-affirming care for minors”
- Wagner College (Aug. 1, 2025)
- Northwestern University (Nov. 28, 2025)
 - “Per the agreement, Northwestern will adhere to federal policies, including Title IX. That includes providing ‘safe and fair opportunities for women, including single-sex housing for any woman, defined on the basis of sex, who requests such accommodations, and all-female sports, locker rooms and showering facilities.’”

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- February 26th at 1:00 – Informal Resolution
- March 26th at 1:00 – Transferrable Skills for Title IX and Title VI Investigators
- April 23rd at 1:00 – Legal History of Title IX
- May 28th at 1:00 – Title IX Litigation Update



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