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Title IX: Where is it Today?

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Title IX: Where is it today?
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Title IX And The New Administration
Dear Colleague Letter

“2017 Q & A on Campus Sexual Misconduct”

Higher Standard of Proof—Clear and Convincing

Mediation

Modification of Appellate Rights

Timing for Investigations
SurvJustice v. DeVos, (Docket No. 3:18-cv-00535), ND Cal.

Alleges that department of Education and its leaders, including Secretary of Education Betsy DeVos, violated the Fifth Amendment’s due process protections and the Administrative Procedure Act.
“PROSPER Act”

Potential Suspension of Investigations
Transgender Students

Bathroom Access

Investigations
Title IX – Is the Tide Turning?
Title IX & Sexual Assaults

2011 Dear Colleague Letter

Obama Administration Guidelines

Rise in Lawsuits and Investigations
Challenges by Accusers under Obama Administration
Acquitted---but not cleared

Lower standard of proof means schools may still proceed
Yale University & Saifullah Kahn
Standard of Proof

John Doe v. University of Colorado, (D. Colo. 16-cv-01789)(questioning adherence to preponderance of evidence standard)
Doe  v. University of Miami, et als.  Slip op, 17-3396 (6th Cir. 2/9/18)

4 Theories of Potential Liability

Erroneous Outcome
Selective Enforcement
Deliberate Indifference
Archaic Assumptions
Due Process & Title IX

Z.I. v. University of Vanderbilt
John Doe v. Columbia University
John Doe v. Johnson & Wales University
Lawsuits by Accusers on the Rise

Occidental Univ. Definition of “Incapacitated”

USB—Trauma Based Approach

ISU—Suspended during investigation then cleared

Pomona Univ. to Pay Atty’s Fees
False Allegations

Ohio State Univ. Title IX Official Can Be Personally Liable

James Madison Univ. Magistrate recommends payment of $850,000 in legal fees
Other Causes of Action
Breach of Contract
Negligent Infliction of Emotional Distress
FERPA
Release of Information

Daily Tar Heels, et als v. UNC
LGBTQ & Title IX
Betsy DeVos & Jeff Sessions’ Position on LGBTQ Students

Review of Transgender Complaints on case by case basis
“Where students, including transgender students, are penalized or harassed for failing to conform to sex stereotypes, that is sex discrimination based on Title IX. In the case of bathrooms, however, longstanding regulations provide that separating facilities on the basis of sex is not a form of discrimination based on Title IX.” Elizabeth Hill, Spokesperson for Department of Education
No investigation of complaints regarding bathroom access for transgender students
The Costs to Schools

Wisconsin Settles Lawsuit $800,000

Pennsylvania Settles Federal Lawsuit
Federal Courts

*Whitaker v. Kenosha Unified School District*, (7th Cir. 2017, No. 16-3522)

*Students & Parents for Privacy v. US Department of Education*, (E.D. Ill., No. 16-4945, December 2017)
Titles VII & IX protected categories do **NOT** expresssly include sexual orientation or gender identity.

But ...

Several federal courts have held that Title VII includes claims based on sexual orientation or transgender status. Discrimination or harassment based on “sex stereotypes” about how a man or woman should behave is “sex” discrimination and violates the law.

Title VII interpretation of “discrimination based on sex.”


*Gloucester County School Board v. G.G.*, 822 F.3d 709 (2016)
State & Local Laws

Vermont: Schools, public buildings, restaurants, offices must have all gender access bathrooms

Hoboken, NJ: Mayor orders gender neutral bathrooms

Anchorage Alaska: Anti transgender bathroom bill rejected by voters
Questions