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Title IX Summit

Sixth Annual Title IX Summit

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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?

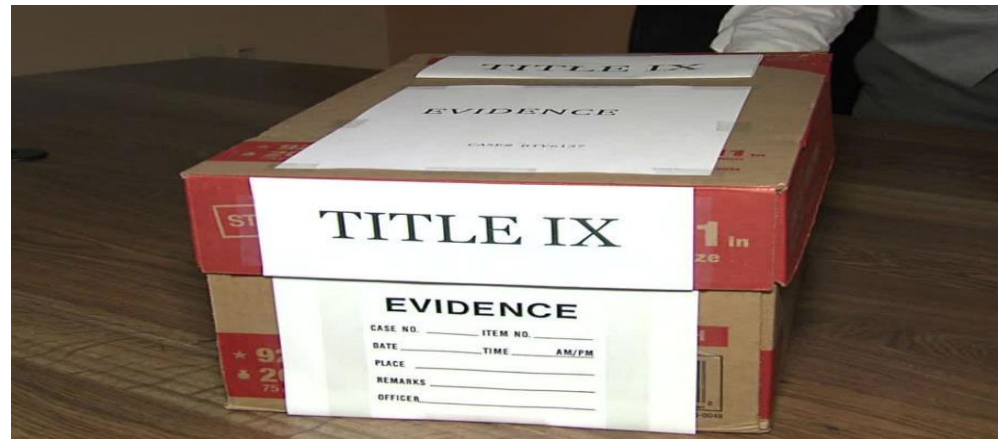
Title IX & Sexual Assaults

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)

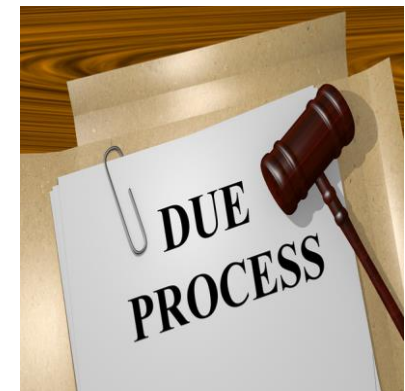
Doe v. University of Miami, et als.
Slip op, 17-3396 (6th Cir. 2/9/18)

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 expressly 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.

***Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)**

Title VII interpretation of “discrimination based on sex.”

***Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)**

U.S. Court of Appeals for the Seventh Circuit – *Kimberly Hively v. Ivy Tech Community College*, No. 15-1720 (7th Cir. April 4, 2017)

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

***Johnston v. Univ. of Pittsburgh*, 97 F. Supp. 3d 657 (W.D. Pa. 2015) (Gibson, J.) (finding plaintiff did not state a claim under Title IX or the Equal Protection Clause)**

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



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