Civil Rights Litigation and Enforcement for Victims of Gender Violence

Presenter: Cari Simon
Bode & Fierberg School Violence Law
ph: (202) 828-4100
em: csimon@bode.com
website: schoolviolencelaw.com
In the news
1 in 5 female students has been a victim of sexual assault or attempted sexual assault while at college.

By someone the victim knows 90%
Reporting Rape, and Wishing She Hadn’t
How One College Handled a Sexual Assault Complaint

Federal lawsuit filed against Wesleyan in sexual assault case

Lawsuits Filed Against Suspended Georgia Tech 'Rapebait' Fraternity

Hanover College Told Rape Victim That Attempting To Have Her Alleged Rapist Punished Is Harassment

UNC Faces Federal Investigation Into Retaliation Complaint By Sexual Assault Survivor
Title IX Amendment to the Higher Education Act of 1972

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal assistance.
Enforcing Title IX

- Federal Investigations
- Civil Litigation

Standards and Remedies
The Victim’s Perspective

- Criminal Justice
- Social Life
- Personal Safety
- Housing
- Disciplinary Proceedings
- Employment
- Academics and Student Life
Life Cycle of Campus Sexual Assault and School Response

- Prevention
- Intervention
- Accommodation
- Investigation
- Adjudication
- Sanction
- Enforcement
Dear Colleague Letter (April 4, 2011)

“If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to

- eliminate the harassment,
- prevent its recurrence,
- and address its effects.”
Title IX: OCR guidance and enforcement

- 2001 Guidance
  - Professor on Student Harassment

- April 4, 2011 Dear Colleague Letter
  - Student on Student Harassment
  - Preponderance Standard

- 2014 Question and Answers

- Retaliation Guidance

- Recent enforcement letters

- Title IX Coordinator Packet
Accommodations and Remedies

- Safety
- Academic success and grades
- Housing
- Transportation
- Employment
- Financial impact
Campus Disciplinary Proceedings

- Prompt and equitable grievance procedure
- Preponderance of the evidence
- Trained investigators and adjudicators
- “Advisor of Choice” (Campus SaVE)
Davis v. Monroe County Board of Education (1999, S. Ct.)

- Sexual harassment, severe, pervasive, AND objectively such that they are effectively denied access to the benefit or opportunity
- Actual Knowledge
- Deliberate Indifference
Title IX Case Law

- Kelly v. Yale University (March 2003, CT).
  - Yale denied request for dorm and class change.
  - A reasonable jury could find that further encounters at school between student and rapist could create a severe and pervasive hostile environment.
  - Failing to accommodate (housing/academic) = deliberate indifference
Title IX Case Law

  - Same-sex harassment based on gender stereotypes
  - Einstein’s definition of insanity
Williams v. University of Georgia (March 2006, 11th Cir.)

- Athletic dept. liable under Title IX - ceded control over one of its programs, the athletic department, to UGAA
- Recruitment of the rapist despite knowledge of his prior sexual misconduct = act of discrimination
Simpson v. Univ. of Colo. Boulder (10th Cir. 2007)

- “Actual knowledge” – Reasonable jury could find from program offering athletes a “good time” even absent evidence of prior sexual assault
- “Deliberate indifference” – Can be a “policy” evidencing “indifference” to potential consequences, not just act/omission directed to specific occurrence
Title IX Case Law

- Doe v. Forest Hills School Dist. (March 2015, MI)
  - “Just like failing to train a police officer on when to use his or her gun, failing to train a school principal on how to investigate sexual assault allegations constitutes deliberate indifference.”
Institutions: Common Law Duties/Claims

- **Negligence:**
  - Duty to Warn / Protect
  - Negligent Supervision / hiring
  - Premises Liability; University-owned housing/building

- **Fraud/Misrepresentation**

- **Intentional Torts**
  - Punitive Damages / Insurance Coverage
Selected Litigation Issues: Representing Student Victims

- **Understanding Trauma**
  - Trauma and memory
  - Secondary Trauma

- **Campus**
  - Title IX right to accommodations
  - Safety/freedom from fear
  - Academic

- **Privacy**
  - Press
  - Pseudonym

- **Federal Investigation**
Selected Litigation Issues: Discovery

- **Universities**
  - Offices: Judicial, Greek, Student Affairs, Campus Police, etc.
  - Text (if went to police), new media
  - University computer network
  - Video Surveillance

- **Greek Entities**
  - Websites, Policies (describes relationship)
  - Past misconduct at fraternity (foreseeability, duty)

- **Clery Act Statistics**
  - Knowledge

- **Family Educational Rights and Privacy Act (FERPA)**
  - Access to student records
Selected Litigation Issues: Damages/Remedies

- **Compensatory**
  - Physical/emotional pain
  - Medical/psychiatric expenses
  - Lost wages, tuition, scholarships
  - Housing costs, moving expenses

- **Punitive**
  - Reckless disregard for the safety of others:
  - Campus/student safety paramount value

- **Equitable/Institutional**
  - Policy and personnel changes
  - Training
  - Attorney’s Fees
Thank you

Q & A

Contact: Cari Simon
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