

# TITLE IX SEXUAL ASSAULT & HARASSMENT TRAINING WEBINAR

TEXAS K-12 SCHOOLS



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PAID ADVERTISTMENT**



# FISHER PHILLIPS EDUCATION PRACTICE GROUP



<b>OVERVIEW</b>	<b>ATTORNEYS</b>	<b>EXPERIENCE</b>	<b>INSIGHTS</b>
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## Education

**When it comes to helping your educational institution stay on the right side of the law with your faculty, staff, and students, you'll want lawyers who are best in class when it comes to understanding the unique issues and dynamics presented by the school environment.**

The core mission of the Fisher Phillips Education Practice Group is to help administrators of K-12 educational institutions understand and meet your legal obligations to faculty, staff, and students under state and federal law. We recognize that each decision made in the school environment – from application and admission to termination and expulsion – affects your relationship with students, parents, faculty, and staff. We help you understand your rights and responsibilities associated with each decision, and assist in achieving the best possible results at every step.



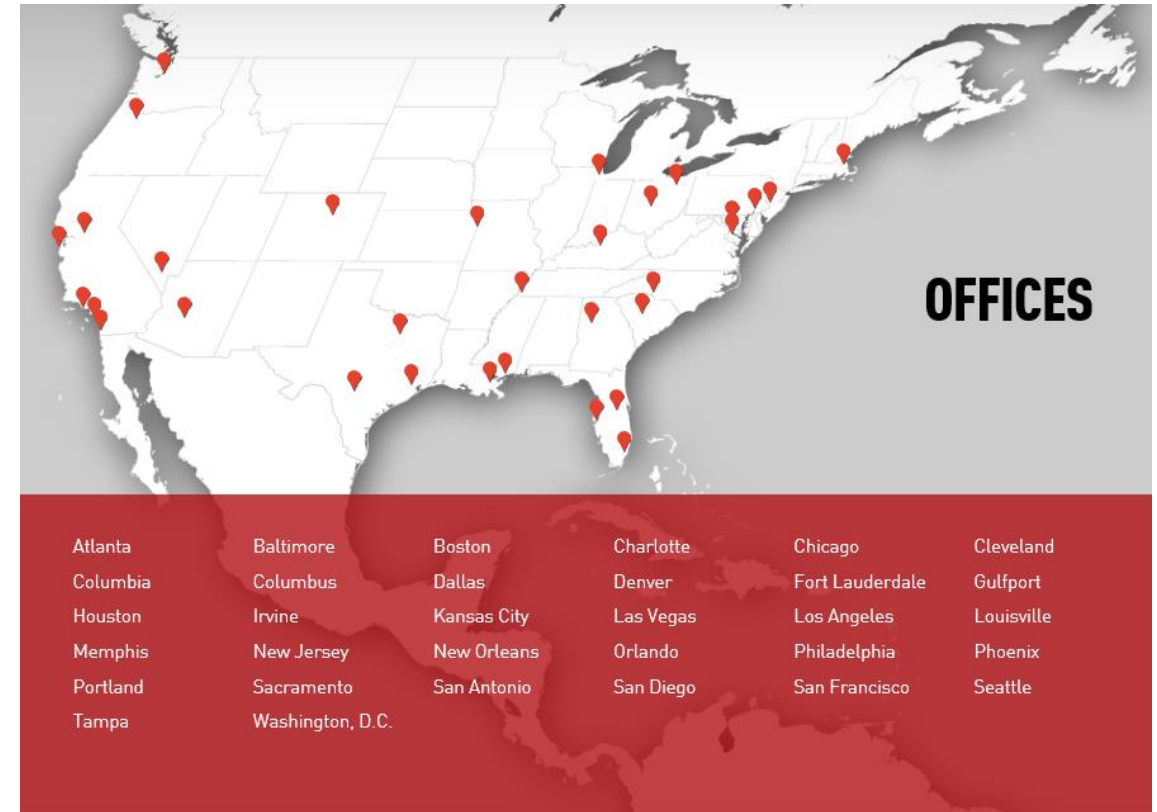
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# FISHER & PHILLIPS TITLE IX SERVICES

- TRAINING
- POLICY REVIEW
- LITIGATION DEFENSE
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# TODAY'S WEBINAR AGENDA

1. TITLE IX, THE BASICS
2. DEPARTMENT OF EDUCATION COMPLIANCE REVIEWS
3. SUMMARY OF RELEVANT TITLE IX LITIGATION DEVELOPMENTS
4. PRACTICAL COMPLIANCE RECOMMENDATIONS







An infographic on a dark blue background with a grid pattern. At the top, a white-bordered box contains the text "UNDERGRADUATE FEMALE STUDENTS". Below this, there are four stylized female icons: the first is yellow, and the other three are white. At the bottom, another white-bordered box contains the text "VICTIMS OF SEXUAL ASSAULT OR MISCONDUCT". The background of the infographic shows a blurred image of a person walking on a campus path.



**THAT'S  
WHERE  
WE ARE.**

**WHERE ARE  
WE GOING?**



# INCAPACITATED AND FORCIBLE RAPE OF COLLEGE WOMEN

*JOURNAL OF ADOLESCENT  
HEALTH, 2015*

BEFORE COLLEGE,  
**15.4%** OF WOMEN IDENTIFIED AS  
BEING A VICTIM OF AN ATTEMPTED  
OR COMPLETED **FORCIBLE RAPE**

BEFORE COLLEGE,  
**17.5%** HAD EXPERIENCED AN  
ATTEMPTED OR COMPLETED  
**INCAPACITATED RAPE**



## High Schools and Middle Schools Are Failing Victims of Sexual Assault

The issues college campuses are facing are evident in primary and secondary education as well.



Unlike federally funded colleges, high schools are not required to report sexual assault statistics.



### OPINION

## Title IX Expansion, Coming Soon To An Elementary School Near You

**BILL FREZZA**  
Fellow, Competitive  
Enterprise Institute

10:06 AM 05/12/2015



# TITLE IX, THE BASICS

# TITLE IX & SEX ASSAULT: *READER'S DIGEST* VERSION

## TITLE IX PASSED IN 1972.

- Original text is 37 words: cannot discriminate on basis of sex in education programs

## INITIALLY FOR ATHLETICS

- Thousands of pages in regulations and regulatory guidance initially focused on athletics

## 2001 DCL: TITLE IX

- Bars sex harassment

## 2011 DCL: SEX ASSAULT IS A FORM OF SEX DISCRIMINATION/HARASSMENT

- Triggers various institutional obligations



# SUMMARY

## SEXUAL VIOLENCE IS A FORM OF SEX DISCRIMINATION.

- “This problem is NOT LIMITED TO COLLEGE. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at PUBLIC HIGH SCHOOLS.”
- “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.”



# PROCEDURAL REQUIREMENTS

1. DISSEMINATE A **NOTICE OF NONDISCRIMINATION**
2. DESIGNATE AT LEAST ONE EMPLOYEE TO **COORDINATE** EFFORTS TO COMPLY WITH AND CARRY OUT RESPONSIBILITIES UNDER TITLE IX
3. ADOPT AND PUBLISH **GRIEVANCE PROCEDURES** PROVIDING FOR PROMPT AND EQUITABLE RESOLUTION OF STUDENT AND EMPLOYEE SEX DISCRIMINATION COMPLAINTS



# POLICY REQUIREMENT HIGHLIGHTS

- GRIEVANCE PROCEDURES MUST APPLY TO SEX DISCRIMINATION COMPLAINTS FILED BY STUDENTS AGAINST SCHOOL EMPLOYEES, OTHER STUDENTS, OR **THIRD PARTIES**
- “IN CASES INVOLVING ALLEGATIONS OF SEXUAL ASSAULT, **MEDIATION IS NOT APPROPRIATE** EVEN ON A VOLUNTARY BASIS”
- NOTICE TO STUDENTS, **PARENTS** OF ELEMENTARY AND SECONDARY STUDENTS, AND EMPLOYEES OF THE GRIEVANCE PROCEDURES





# POLICY REQUIREMENTS

- ADEQUATE, RELIABLE, AND IMPARTIAL INVESTIGATION OF COMPLAINTS, INCLUDING THE OPPORTUNITY FOR **BOTH PARTIES** TO PRESENT WITNESSES AND OTHER EVIDENCE
- DESIGNATED AND REASONABLY PROMPT **TIME FRAMES** FOR THE MAJOR STAGES OF THE COMPLAINT PROCESS
- **NOTICE** TO PARTIES OF THE OUTCOME OF THE COMPLAINT



# POLICY REQUIREMENTS

- ASSURANCE THAT THE SCHOOL WILL TAKE STEPS TO **PREVENT RECURRENCE** OF ANY HARASSMENT AND TO CORRECT ITS DISCRIMINATORY EFFECTS ON THE COMPLAINANT (AND OTHERS)
- **CRIMINAL INVESTIGATION** INTO ALLEGATIONS OF SEXUAL VIOLENCE DOES NOT RELIEVE SCHOOL OF ITS DUTY UNDER TITLE IX
- **PREPONDERANCE OF THE EVIDENCE** STANDARD TO EVALUATE

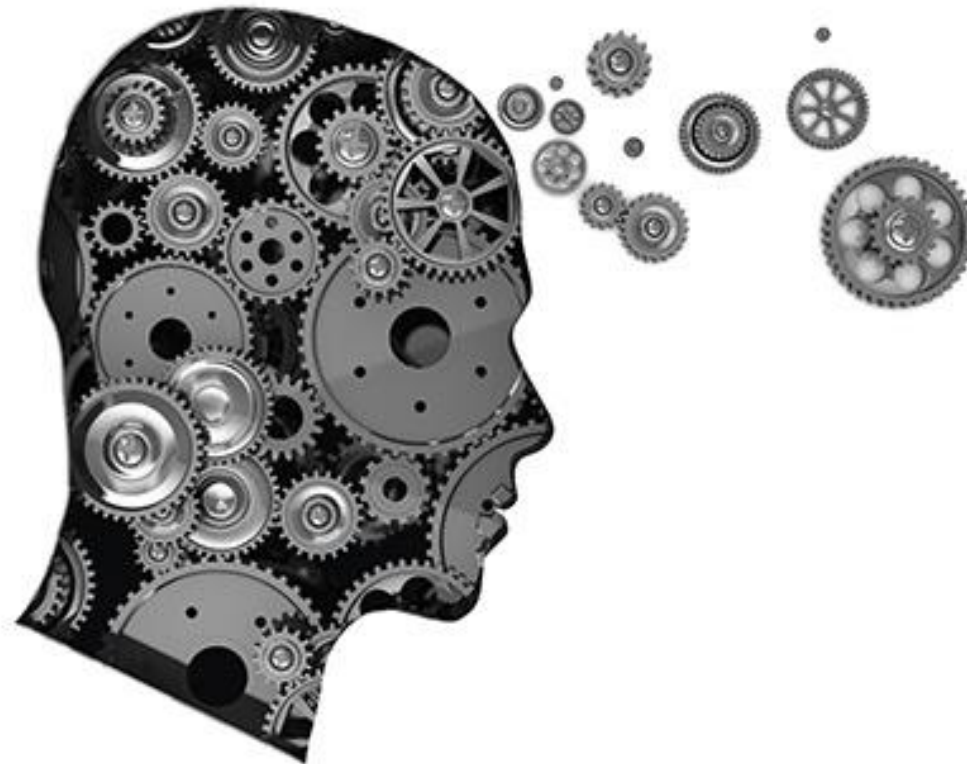


# REMEDIES AND INTERIM ACTION

- “TITLE IX REQUIRES A SCHOOL TO TAKE STEPS TO PROTECT THE COMPLAINANT AS NECESSARY, INCLUDING TAKING **INTERIM STEPS** BEFORE THE FINAL OUTCOME OF THE INVESTIGATION.”
- “SCHOOLS SHOULD BE AWARE THAT COMPLAINTS OF SEXUAL HARASSMENT OR VIOLENCE MAY BE FOLLOWED BY RETALIATION BY THE ALLEGED PERPETRATOR OR HIS OR HER ASSOCIATES . . . SCHOOLS MUST HAVE POLICIES AND PROCEDURES IN PLACE TO PROTECT AGAINST **RETALIATORY HARASSMENT.**”



# SWITCHING GEARS



# NEW “DEAR COLLEAGUE” LETTER ON TRANSGENDER STUDENTS

- TITLE IX PROHIBITS DISCRIMINATION ON THE BASIS OF GENDER IDENTITY, INCLUDING TRANSGENDER STATUS
- SCHOOLS MUST TREAT THE STUDENT CONSISTENT WITH STUDENT’S GENDER IDENTITY
- NO MEDICAL DIAGNOSIS OR TREATMENT REQUIREMENT THAT STUDENTS MUST MEET AS A PREREQUISITE



# TWO PRACTICAL TAKEAWAYS

- **RESTROOMS AND LOCKER ROOMS:** A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity.
- **ATHLETICS:** Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport. A school may not, however, adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (*i.e.*, The same gender identity) or others' discomfort with transgender students.





# Eleven States Sue Federal Government to Keep Trans Kids Out of School Bathrooms

By Mark Joseph Stern

## 11 states sue over federal directive on transgender bathroom use in public schools

**Greg Abbott**  [@GregAbbott\\_TX](#) 

Texas will sue to stop Obama's transgender directive to schools. Thanks [@KenPaxtonTX](#) [#tcot](#) [#txlege](#) [#PJNET](#) [news4sanantonio.com/news/local/tex...](#)

11:08 AM - 25 May 2016



**Texas, 10 other states sue over Obama's transgender directive**

Texas and 10 other states are suing the Obama administration over a new directive about transgender students in public schools. [The news4sanantonio.com](#)

  681  929



A new sticker designates a gender neutral bathroom at Nathan Hale high school on May 17, 2016, in Seattle. (Elaine Thompson / AP)

By **Tribune news services** · **Contact Reporter**

MAY 25, 2016, 4:34 PM | WASHINGTON




# A REVIEW OF RECENT K-12 TITLE IX COMPLIANCE REVIEWS



# DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS




**Rebecca Klein** · Become a fan · [✉](#) [🐦](#) [👍](#)  
 Rebecca.Klein@huffingtonpost.com

## Department Of Education Investigating K-12 School Districts For Mishandling Sexual Assault

Posted: 11/18/2014 3:21 pm EST | Updated: 11/18/2014 3:59 pm EST



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While colleges around the country are [facing heightened federal scrutiny](#) about their handling of sexual assault cases, a number of K-12 school districts are also under investigation for the same reason.

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# TIP OF THE ICEBERG?

WE BELIEVE THERE ARE  
**45 ACTIVE INVESTIGATIONS**  
OF K-12 DISTRICTS AT THIS  
POINT



# HILLSBOROUGH COUNTY SCHOOL DISTRICT

OCR DOCKET NUMBER 04-  
09-5002



Hillsborough County

PUBLIC SCHOOLS

*Excellence in Education*



# HILLSBOROUGH COUNTY SCHOOL DISTRICT

- **THIRD LARGEST SCHOOL DISTRICT IN FLORIDA AND 8<sup>TH</sup> LARGEST IN THE COUNTRY**
- **SELECTED FOR REVIEW BY DEPARTMENT OF EDUCATION ON JUNE 11, 2009**
- **COMPLETED IN AUGUST OF 2011**

## Hillsborough County has been under federal review for sexual harassment policies -- for years



Marlene Sokol, Times Staff Writer

Thursday, January 2, 2014 2:24pm

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TAMPA — For four years, the Hillsborough County school district has been the subject of a federal review of its sexual harassment practices. But the action has taken place well under the public's radar, and little is known about the circumstances that prompted it.

The matter received little if any media attention in 2007, when a female student complained of harassment at Middleton High School; or in 2009, when the district was notified that the U.S. Department of Education's civil rights office was conducting the review.

Nor was there any publicity in 2011, when the district entered into an agreement with the Department of Education to resolve the case by requiring dozens of steps be taken to make sure students' rights were protected.

But the case is still open, and the agreement is still in effect, federal officials confirm.

School district officials, interviewed shortly before the winter vacation, had little to say about the federal case. Mark West, who recently replaced the retiring Charles Rayburn as general manager of employee relations, said he was not familiar with the matter that is referenced in this sentence in the federal order:

*"By July 31, 2011, the district will expunge the female student's educational records of any discipline related to her reporting the 2007 incident at Middleton High School."*

And Rayburn did not return a reporter's calls.

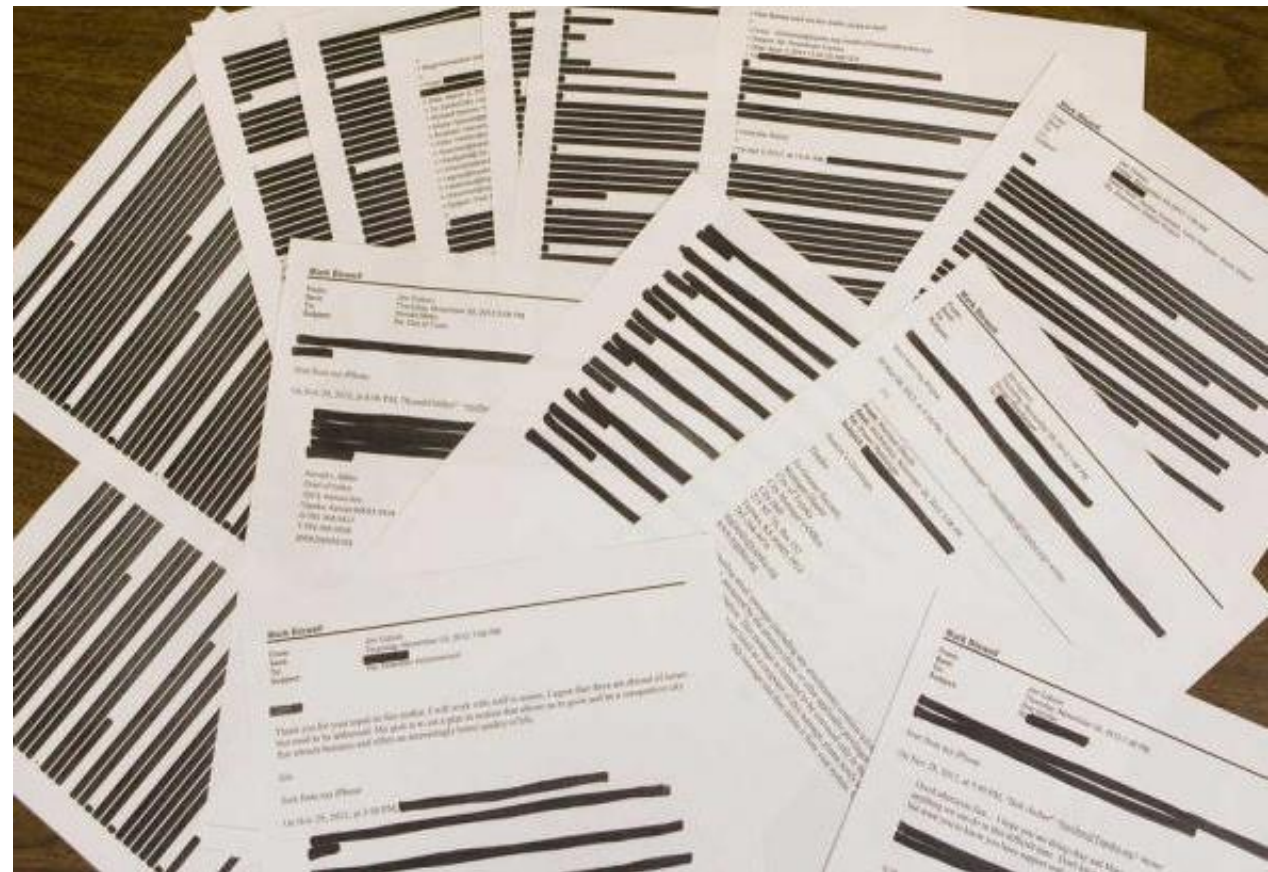
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Comments



# HILLSBOROUGH COUNTY SCHOOL DISTRICT

- All sex harassment and Title IX policies, including information on **WHEN AND HOW** policies were disseminated
- All publications which contain the district's Title IX **NOTICE OF DISCRIMINATION**
- "The name and contact information for the district's Title IX coordinator(s), a description of each coordinator's background and experience related to the Title IX coordinator responsibilities, and information regarding the coordinator's Title IX **TRAINING.**"
- Information on how the district **INFORMS PEOPLE** about who Title IX coordinator is and how to contact



# HILLSBOROUGH COUNTY SCHOOL DISTRICT

“A copy of the district’s **POLICIES AND PROCEDURES** for responding to complaints of sexual harassment, sex discrimination and/or sexual assault; documents describing or setting forth the **SERVICES THE DISTRICT PROVIDES** to the victims; documents describing **SANCTIONS** that may be imposed on students. Include a **DETAILED DESCRIPTION OF THE COMPLAINT PROCESS**, including each level of the process, the length of the process, and the types of records maintained. Also, identify the **NAMES AND TITLES OF DISTRICT STAFF** at each level of the process responsible for handling complaints.”



# HILLSBOROUGH COUNTY SCHOOL DISTRICT

- Copies of any informal or formal complaints . . . including records of oral complaints, made during the 2007-08 and 2008-09 school years.
- “For each complaint, provide a detailed description of the allegations raised; the complaint processing procedures followed and the length of the process; the names and titles of the individuals involved in the handling of the complaint; the final outcome of any investigation; and all actions taken by the district in response to the concerns raised.”
- Provide copies of logs, forms, letters, notes incident reports and other documents.





# HILLSBOROUGH COUNTY SCHOOL DISTRICT

“Provide the date of the most recent training provided to staff district-wide regarding sexual harassment. State who conducted the training and their qualifications. Also, provide documentation describing the content of the training (e.g., PowerPoint presentation notes, pamphlets, training materials) and a list of who attended and was invited to attend.”



# HILLSBOROUGH COUNTY SCHOOL DISTRICT

- Statement that retaliation is prohibited
- Name or title, office address, including email address, and telephone number of the individual with whom a complaint is to be filed
- Definitions and examples of what types of actions may constitute sex discrimination (including sexual harassment and sexual assault)
- Provision for prompt, adequate, and impartial investigation of all complaints, including the opportunity for the complainant and subject of the complaint to present witnesses and other evidence
- Timeframes for the major stages of the investigation



# HILLSBOROUGH COUNTY SCHOOL DISTRICT

- Written notification to the complainant and respondent of the outcome
- Assurance that the district will keep the complaint and investigation confidential to the extent possible
- Assurance that remedial action will be taken to address and resolve any found incident of discrimination and to prevent the recurrence of any discrimination
- Maintenance of all documentation of the complaint investigation and any corrective action in a system by school site and throughout the district
- Referral of the matter to law enforcement, when appropriate
- Interim preventive measures
- Assurance that the district will maintain on-going contact with the victim throughout the investigation





# ANOKA-HENNEPIN SCHOOL DISTRICT



ANOKA-HENNEPIN  
SCHOOLS  
*A future without limit*





# ANOKA-HENNEPIN SCHOOL DISTRICT

- **LARGEST SCHOOL DISTRICT IN MINNESOTA**, enrolling approximately 40,000 students in 24 elementary schools, six middle schools, five high schools, and nine alternative, transitional, or special needs programs.
- On Nov. 2, 2010, the U.S. Department of justice received a **COMPLAINT** alleging that a district **STUDENT** was being **HARASSED** by peers because the student did not act and dress in ways that conformed to traditional gender stereotypes.
- Sex discrimination for “not conforming to gender stereotypes”
- Multiple site visits, 60 interviews, reviewed 7,000 pages of documents.



# ANOKA-HENNEPIN SCHOOL DISTRICT

Multiple students **HARASSED ON BASIS OF SEX**

Students constantly harassed (some almost every day for years) because of their **FAILURE TO CONFORM TO GENDER STEREOTYPES.**

Female students reported being called “manly,” “guy,” or “he-she”; male students reported being called “girl,” and “gay boy,” and being told, “you’re a guy, act like it.”

A female student reported being told to “go kill herself” and students said they were threatened and subjected to physical assaults because of their nonconformity to gender stereotypes.



# ANOKA-HENNEPIN SCHOOL DISTRICT

Southern Poverty Law Center and the National Center for Lesbian Rights filed **FEDERAL LAWSUITS** in federal court on behalf of six students alleging that each student suffered severe and pervasive **GENDER-BASED HARASSMENT** and/or **HARASSMENT ON THE BASIS OF THEIR ACTUAL OR PERCEIVED SEXUAL ORIENTATION** in district schools.

After extensive negotiations, the parties entered into a **CONSENT DECREE** on March 5, 2012.



# ANOKA-HENNEPIN SCHOOL DISTRICT

- Review and improve its policies and procedures concerning harassment to address sex-based harassment, including harassment based on gender stereotypes by working with a consultant
- Hire or appoint a Title IX and Equity Coordinator
- Conduct training of all District faculty, staff and students on the issue of harassment
- Hire a Mental Health Consultant to assist students who are subjected to harassment
- Create an Anti-Bullying/Anti-Harassment Task Force and administer an Anti-Bullying Survey once per year
- Identify harassment “hot spots” and assign personnel to monitor these trouble areas
- Ensure that all of its middle and high schools have a peer leadership program addressing harassment
- Convene annual meetings between the Superintendent and students at every middle and high school in the District



# TEXAS K-12 TITLE IX LITIGATION







# TIFFANY WILLIAMS V. BOARD OF REGENTS OF UNIVERSITY OF GEORGIA

Student sexually assaulted by two students and withdrew from university

Campus disciplinary panel did not convene to render a decision for a year, and then decided not to sanction the three men, two of whom had already left the school

Ms. Williams filed a \$25 million lawsuit against the university, alleging that the university violated Title IX, stating that it recruited the player (Cole), even though it knew he had disciplinary and criminal problems at other colleges, specifically involving harassment of women



TIFFANY WILLIAMS V. BOARD OF REGENTS OF UNIVERSITY OF GEORGIA (11<sup>TH</sup> CIR. 2007)

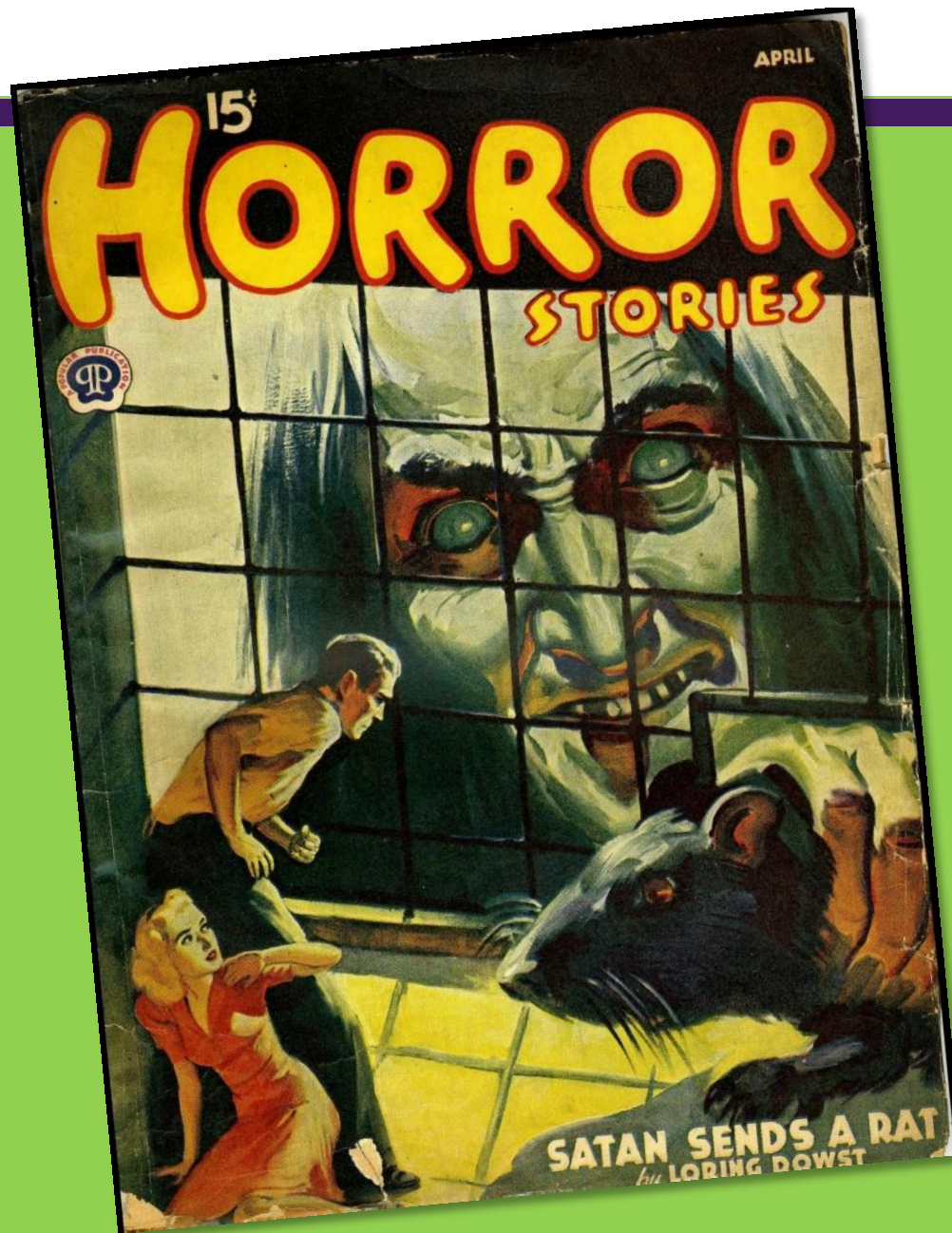
“**NARROW CIRCUMSTANCES**” = student can recover against university for student-on-student harassment

Two most important elements for viable claim: (1) “**appropriate person**” must have actual knowledge of discrimination and (2) “**deliberate indifference** to known acts of harassment”

**Deliberate indifference:** “analyze conduct of the [university], not the alleged harasser . . . [university] liable only if [its] deliberate indifference subjected the plaintiff to discrimination.”







# JANE DOE V. STATE OF HAWAII

## THE HAWAII SCHOOL FOR THE DEAF & BLIND CASE (2013)

- Jane Doe was robbed, forced to perform oral sex, and repeatedly sexually assaulted on campus by older students
- “For many years, the school has had a problem with certain students, some of whom called themselves the 'Ringleaders,' who on an ongoing basis bullied, terrorized, assaulted, robbed, sodomized, raped, anally raped, gang raped, and/or sexually attacked students who were younger and smaller.”
- “Students, including plaintiff Jane Doe, were coerced into submitting to anal sex with multiple members of the Ringleaders. ... A young girl at the school became pregnant, which was known to school officials. ... The Ringleaders coerced students into doing what the Ringleaders wanted by threats of violence and sexual attack, including sodomy and rape.”
- “At one point, a young girl in the presence of other students was coerced into giving oral sex to a member of the Ringleaders who filmed the act on his cell phone.”



### \$5.75 Million Settlement Awarded to Deaf and Blind Students Sexually Assaulted by Gang at Hawaii Public School

**BY MALIA ZIMMERMAN** - A young girl is forced to perform oral sex on an older boy while he films her with his cell phone camera and students at their school look on; another young girl becomes pregnant after she is raped by a male student at her school; a young boy is sodomized in the bathroom by an older student, but school administrators don't penalize the perpetrator; another child is sexually assaulted by five boys on campus, and nothing is done to stop them or punish them after the fact.

These are not scenarios from an *NBC's Law & Order: Special Victims Unit* episode – they are actual events that parents say took place at the **Hawaii School for the Deaf and Blind**, the state's only public school for children with these disabilities.

For more than a decade, some of the school's administrators and students covered up a terrible secret – young children between 12 and 16 years old were being terrorized - robbed, raped, sodomized and even gang raped on campus and on the school buses – not by employees, but by other children. There are just 80 children enrolled in the school, which is located on the edge of Waikiki, Hawaii's main tourism hub, and just across the street from the Honolulu Zoo.

One student heading a gang calling themselves the “**Ringleaders**” orchestrated the attacks, and students were ordered to participate as attackers or be retaliated against.



Hawaii School for the Deaf and Blind

# T.B. V. THE SCHOOL BOARD OF PALM BEACH COUNTY (2013)

## 15 YEAR OLD STUDENT RAPED A 3-YEAR OLD SPECIAL NEEDS GIRL ON A SCHOOL BUS

### Jury awards Pahokee girl sexually assaulted on school district bus \$1.7 million

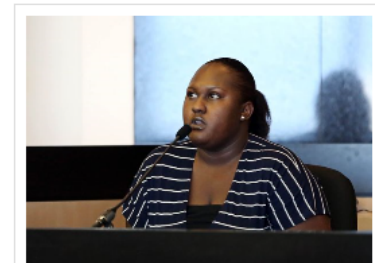
© 8:49 p.m. Wednesday, Feb. 6, 2013 | Filed in: Crime

**WEST PALM BEACH** — Minutes after a jury late Wednesday awarded a mentally challenged Pahokee girl \$1.7 million for the trauma she suffered when she was raped on a Palm Beach County school bus when she was 3, the girl's mother rushed toward those who had given her daughter a second chance.

"Wait," she called out just before they filed out the door. "I want to thank all of you."

In turn, she hugged each of the four women and two men who rejected the school board's claims that her daughter wasn't hurt by the 2007 attack. School board attorneys argued the girl was too young and too mentally disabled to understand what a 15-year-old emotionally disturbed youth did to her on the bus filled with special needs kids.

With tears streaming down her face, the



*Bus attendant Grenisha Williams testifies during a lawsuit accusing the Palm Beach County School Board of not protecting a 3 1/2-year-old autistic Pahokee girl from being raped by a teenager on a school bus, at the Palm Beach County Courthouse on January 30, 2013. (Richard Graulich/The Palm Beach Post)*



# DOE V. FOREST HILLS SCHOOL DISTRICT (W.D. MICH. 2015)

SECTION 1983 CLAIM: “DISTRICT FAILED TO TRAIN ITS EMPLOYEES ON HOW TO HANDLE SEXUAL HARASSMENT COMPLAINTS IN THE FACE OF THE OBVIOUS RISK THAT EMPLOYEES’ RESPONSES WOULD BE DEFICIENT IF THEY WERE NOT TRAINED.”

- Principal “admits that the District did not provide any training to its employees.”
- “Title IX coordinator did not have any significant training on how to handle sexual assault allegations. She noted that she attended a Title IX training five years prior to this incident, but it addressed only equal opportunities for women and she did not remember much of the training.”
- “At [Title IX’s Coordinator’s] deposition she was unsure whether Title IX applied to case of [sex assault].”
- Assistant principal “did not know that Title IX applied to sexual assault follow up and he stated that he never attended training about how to respond to sexual assault allegations.”
- “Even the superintendent did not recall having any training on Title IX, only general harassment issues, and didn’t think that the assault was a Title IX issue.”





# IMPORTANT NEW DECISION – FAILURE TO TRAIN

“IF THE SCHOOL ADMINISTRATORS HAD BEEN ADEQUATELY TRAINED IN THE OPTIMAL METHODS OF ADDRESSING SEXUAL ASSAULT COMPLAINTS . . . PLAINTIFF WOULD NOT HAVE SUFFERED THE INJURIES SHE ALLEGES.”

1. “Because [principal] admits that zero training was provided, there is no question that the . . . the **TRAINING WAS INADEQUATE.**”
2. “Plaintiff can also prove that the inadequate training was the result of the municipality’s deliberate indifference because it failed to provide that training when the foreseeable consequence was a violation of students’ equal protection rights.”

“Because sexual assault claims arise frequently in the public high school context, it is certainly foreseeable that the failure to train school staff on how to handle such claims would cause disastrous results. The Department of Education has made it clear to school administrators that training and proper responses to sexual assault claims are required . . . It is inevitable that these situations would arise at some point, and the complex Title IX requirements virtually ensure that an investigation done without any formal training would be deficient.”
3. “The record supports the theory that if the investigation had been done promptly or the school had addressed the issue among the student body or disseminated an appropriate sexual harassment policy, as the department of education recommends, it is likely that MM and the other students would not have continued to harass doe for the remainder of the school year based on speculation that doe lied about the assault.”



# KELLY V. ALLEN INDEPENDENT SCHOOL DISTRICT

## (5<sup>TH</sup> CIR. 2015) – KEY FACTS

- The Kellys alleged that their son, C.K., was subject to sex-based harassment at middle school by B.H.
- B.H. allegedly sexually assaulted a minor female in the spring of that year.
- C.K. reported that B.H. had taken his glasses and made him chase B.H. for them.
- He also alleged that “a few weeks ago several boys started ‘T-bagging everybody.’” Investigation corroborated C.K.'s allegation that B.H. hung his crotches in students' faces.
- C.K. also reported that B.H. had teased C.K. on many occasions, taunting him by saying things like "I love you" and "are you my boyfriend" and by taking his things.
- While C.K. was waiting for his mother to pick him up from school, K.M., a girl who was friends with B.H., pulled on the back of C.K.'s jacket and asked why C.K. was causing trouble for her friend.



# FIFTH CIRCUIT DECISION – CASE DISMISSED

Plaintiff suing a school district for student-on-student harassment must show that the district (1) had **ACTUAL KNOWLEDGE** of harassment, (2) harasser was under the **DISTRICT'S CONTROL**, (3) harassment was **BASED ON THE VICTIM'S SEX**, (4) harassment was so **SEVERE, PERVASIVE** that it effectively barred the victim's access to an educational opportunity or benefit," and (5) district was **DELIBERATELY INDIFFERENT** to the harassment

Actual knowledge: for liability to attach, "official must both be **AWARE OF FACTS** from which the inference could be drawn that a substantial risk of serious harm exists, and he must also **DRAW THAT INFERENCE**"

"The undisputed facts in the record lead to the conclusion that Allen ISD had **NO KNOWLEDGE OF FACTS** that would permit the inference that C.K. faced a substantial risk of serious harassment, and that no Allen ISD official in fact drew such an inference"





# CARMICHAEL V. GALBRAITH, 574 FED.APPX. 286 (5<sup>TH</sup> CIR. 2014)

- The Carmichaels' son, Jon, was a thirteen-year-old student at Loftin Middle School, who committed suicide after allegedly being bullied by his fellow students
- bullied throughout "[t]he 2009-2010 school year." According to the complaint, "[o]n numerous occasions, Jon was accosted by a group of boys in the locker room — oftentimes having his underwear removed — while Defendant Watts observed."
- During "[t]he last of these incidents . . . just before Spring Break — a few days before Jon took his life," members of the football team "stripped [Jon] nude and tied him up" and "placed [Jon] into a trash can" while calling him "fag," "queer," and "homo." As the complaint explains, "[a] number of students in the locker room observed this deplorable behavior," and one of these students "videotaped the attack and uploaded it to YouTube." Shortly thereafter, Jon committed suicide in March 2010.
- Complaint further alleges that numerous school officials were aware of and deliberately indifferent to the bullying, including numerous teachers, the bus driver, the school counselor, and other staff.
- Although the school district had policies in place for addressing bullying, those policies were allegedly ignored in Jon's case. One teacher, after being told by another teacher that she was concerned about the bullying, "essentially replied that 'boys will be boys' and told the teacher to leave it alone."



# FIFTH CIRCUIT OVERTURNS DISMISSAL OF CASE ON NARROW GROUNDS

- “In addition to the videotaped incident, in which the football team “stripped [Jon] nude and tied him up,” the complaint also refers to other “numerous occasions” on which “Jon was accosted by a group of boys in the locker room — oftentimes having his underwear removed — while Defendant Watts observed.”
- “The removal of a person's underwear without their consent on numerous occasions plausibly constitutes pervasive harassment of a sexual character.” “We therefore reverse the district court's dismissal of the Carmichaels’ Title IX claim on this narrow basis.”
- “We also need not address any of the other elements of the Carmichaels' Title IX claim, such as the adequacy of the school's responses to Jon's complaints, because neither the district court's opinion nor the defendant-appellees' briefs in the present appeal have addressed those aspects of this case.”

## Parents of Boy Who Killed Self After Bullying Can Sue

The parents of a 13-year-old boy who killed himself after being bullied in his Texas school can sue the school district, a federal appeals court has ruled. Jon Carmichael hanged himself in 2010 after months of what his parents claimed was non-stop bullying at the Joshua Independent School District that included being called homophobic slurs and being stripped of his underwear in a locker room.

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On June 19, the 5th Circuit Court of Appeals ruled the suit could go forward, and that the abuse could be considered sexual harassment even if both the victim and tormentors were male. “I just hope this saves some other children,” Jon’s grandmother, Charlotte Carmichael, told NBC News Saturday. “He was frustrated and [school officials] didn’t do anything to help him. That’s what they’re there for — they’re there to protect children.”



# DOE V. NORTHSIDE INDEPENDENT SCHOOL DISTRICT

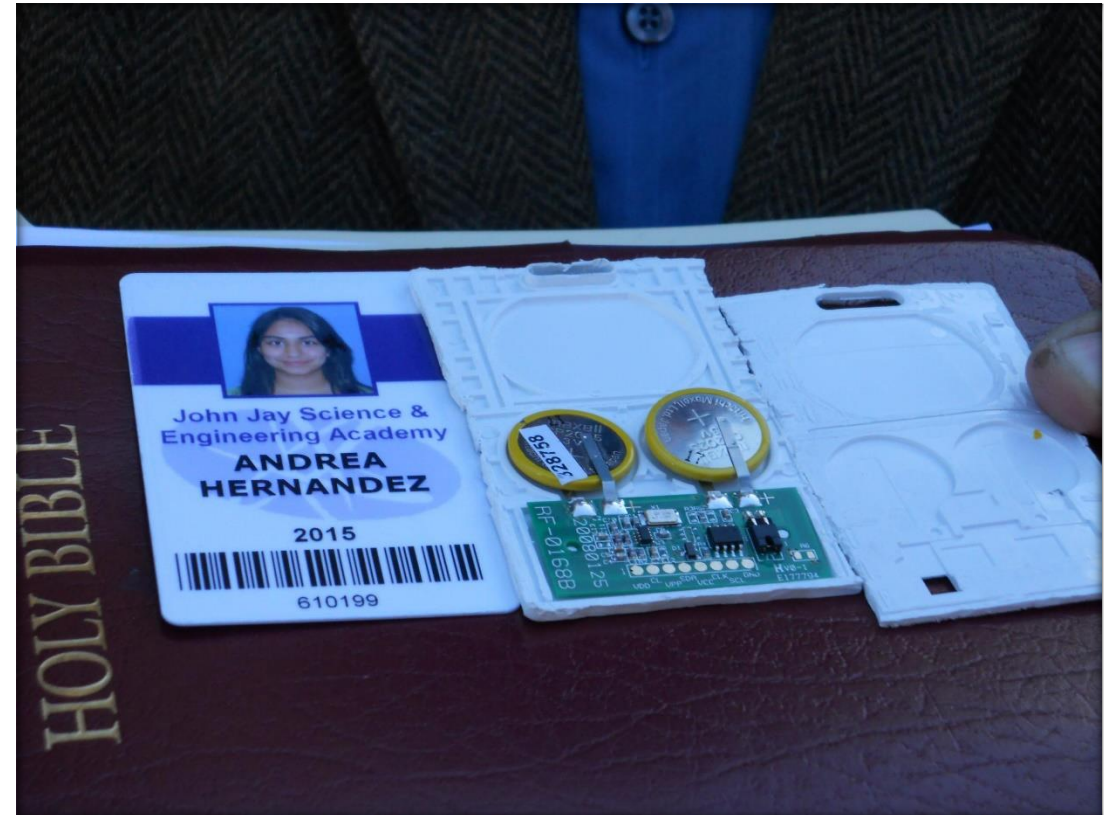
## (W.D. TEX. 2012) – KEY FACTS

Sarah Doe was a middle school student. Nora Martinez was a teacher at NISD's middle school. Sarah Doe's parents allege that on Jan. 23, 2011, they discovered that Nora Martinez was having an inappropriate relationship with Sarah. The next day they went to the school and relayed their concerns and showed school administrators the cell phone text messages that they discovered. Ms. Martinez admitted to an improper relationship and resigned her employment.

Plaintiffs alleged that as early as 2006, Ms. Martinez was using district computers to communicate with students via My Space and Facebook in violation of NISD policy.

Plaintiffs alleged that on Nov. 12, 2010, department coordinator Donna Rogers “observed and raised concerns about Ms. Martinez having students in her classroom and behind her desk after 4:00 p.m.” Sometime in late October or November, 2010, Ms. Rogers also counseled Ms. Martinez about sending texts to students.

Plaintiffs also alleged that in November or December 2010, a student informed school administration staff that an inappropriate relationship existed between Ms. Martinez and Sarah Doe. Plaintiffs further alleged that in November or December 2010, NISD officials reviewed a “surveillance video of Ms. Martinez and Sarah Doe exhibiting inappropriate physical contact after school hours and on school premises.”



# DISTRICT COURT DECISION – CASE DISMISSED

Regarding notice, District argued that it had no suspicion that Sarah Doe was being abused by Martinez until Jan. 24, 2011, the date her parents arrived at the school with cell phone in hand. Plaintiffs argued that based upon all the acts that took place since 2006, the district knew that Martinez was a child predator.

“This case is very tragic. An educator abused her position, befriended a vulnerable child, deferred acting until she gained the child's trust, and then took advantage of her. The law, however, only allows for recovery of damages from a school district if the school district had actual notice of the harassment and responded with deliberate indifference.”

Whether an official had actual notice is generally a question of fact. Actual notice, however, may be resolved as a matter of law where there is no genuine issue of material fact as to actual notice. The court holds that as a matter of law NISD did not have actual notice given the summary judgment evidence submitted by both sides.

No deliberate indifference either.







# WELLS V. XAVIER UNIVERSITY, 7 F. SUPP.3D 746 (S.D. OHIO 2014)

## ALLEGED SCAPEGOAT

The Xavier University Conduct Board found sophomore and basketball player Dezmine Wells responsible for “a serious violation of the Code of Student Conduct,” a fact it made known in a press release.

Wells claimed everyone understood “serious violation” meant sexual assault and, among other things sued for defamation.

He also alleged Xavier violated Title IX by reaching an erroneous outcome on the basis of sex and by engaging in deliberate indifference.



# WELLS V. XAVIER UNIVERSITY, 7 F. SUPP.3D 746 (S.D. OHIO 2014)

## CLAIMS SURVIVE MOTION TO DISMISS

“Plaintiff's erroneous outcome theory survives Defendants' challenge. Plaintiff's Complaint puts Defendants on adequate notice that he contends they have had a pattern of decision-making that has ultimately resulted in an alleged false outcome that he was guilty of rape. His Complaint, however, recounts Defendants having rushed to judgment, having failed to train UCB members, having ignored the Prosecutor, having denied Plaintiff counsel, and having denied Plaintiff witnesses. These actions came against Plaintiff, he contends, because he was a male accused of sexual assault.”





# WELLS V. XAVIER UNIVERSITY, 7 F. SUPP.3D 746 (S.D. OHIO 2014)

“With respect to deliberate indifference, the president knew of the allegations against Plaintiff, ignored warnings from the Prosecutor that such allegations were unfounded, allowed the defective hearing against Plaintiff with the goal of demonstrating to the OCR that Xavier was taking assault allegations seriously. “In the Court's view, these allegations are sufficient to put Defendants on adequate notice to the claim that Defendant Graham was deliberately indifferent to Plaintiff's rights.”

## Dez Wells, Xavier settle lawsuit

By Amanda Lee Meyers, The Associated Press 5:29 p.m. EDT April 24, 2014

*A former Xavier University basketball player has settled his lawsuit against the school over its handling of what he says was a false rape allegation.*



(Photo: Jim O'Connor-US PRESSWIRE)

**CINCINNATI** — A former Xavier University basketball player who was expelled over what he says was a false rape allegation has settled his lawsuit against the Cincinnati school over its handling of the case.

Federal Judge John Arthur dismissed Dez Wells' lawsuit, which had claimed that Xavier and its president used him as a scapegoat to demonstrate an aggressive response to sexual assault allegations in the wake of two unrelated federal investigations.

### STORY HIGHLIGHTS

• Xavier basketball star Dez

# HARRIS V. ST. JOSEPH'S UNIVERSITY, 2014 WL 1910242 (E.D. PA. MAY 13, 2014)

## MALE STUDENT SUES

Student suspended after the university found him responsible for raping another student.

Student sued alleging university's failure to follow its own procedure amounted to a breach of contract, and that the university violated his rights under Title IX.

Court dismisses Title IX claim since it did not sufficiently allege that the university was motivated by the plaintiff's sex in the manner that it investigated and adjudicated the accusation of rape.

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## Saint Joseph's University Sued for Bias by Accused Rapist

by Sophia Pearson and John Lauerman

July 9, 2013 – 11:01 PM CDT



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July 10 (Bloomberg) -- Saint Joseph's University, a private Catholic school in Philadelphia, was sued by a student suspended for an alleged rape over claims its sexual-assault policies virtually ensure that accused males will be found guilty.

# HARRIS V. ST. JOSEPH'S UNIVERSITY, 2014 WL 1910242 (E.D. PA. MAY 13, 2014)

## DEFAMATION

Breach of contract claim failed for relying on "conclusory and insufficient allegations" such as claiming that the university did not provide "fair" notice or employ "adequate" procedures rather than specifying what precisely amounted to a breach of contractual terms contained in the student handbook.

Court did not dismiss claim against the university for defamation. Harris alleged that the university defamed him by referring to him publically as a perpetrator of sexual assault while knowing this to be false. **If the university produces evidence that establishes its basis for believing that to be true, then it should be able to get that claim dismissed later at the summary judgment stage.**

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## Saint Joseph's University Sued for Bias by Accused Rapist

*by* Sophia Pearson and John Lauerman

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# LACK OF DUE PROCESS

- *Doe v. Regents of UC San Diego* (7/10/2015) (respondent not allowed to adequately confront and cross-examine witnesses – alleged victim was behind screen and only allowed 9 of 32 questions to be asked)
- *John Doe v. Rector & Visitors of George Mason Univ.* (E.D. Va., Feb. 25, 2016) (order granting Plaintiff's Motion for Summary Judgment. After being found "not responsible" for sexual misconduct by a university hearing panel, an appeals' officer reversed the panel's decision and expelled the Plaintiff. In awarding judgment to the Plaintiff, the Court concluded that George Mason University ("GMU") had not adequately given the Plaintiff notice of all the charges against him, nor had GMU afforded Plaintiff an adequate opportunity to be heard. The Court also found that GMU deviated from its policies and procedures during the appeals' process. Regarding Plaintiff's Free Speech claim, Plaintiff's expulsion was also based in part on a text message that Plaintiff sent Roe in which he threatened to kill himself if she did not respond. The Court concluded that the speech was protected.)





# TAKEAWAYS

- STARTING TO SEE AN INCREASE IN LITIGATION IN THIS AREA ON ALL SIDES WITH MORE AWARENESS OF ISSUE AND LESS BARRIERS TO COMPLAINTS
- TEXAS SCHOOLS HAVE LARGELY FARED WELL IN COURT (TO DATE)
- LIKELY TO SEE MORE CLAIMS FROM ACCUSED STUDENTS
- TRAINING HAS TO BE PRIORITIZED
- RETALIATION CLAIMS





# BEST PRACTICES FOR K-12 TITLE IX COORDINATORS



# EIGHT GENERAL RECOMMENDATIONS

- **ASSESSING POLICY** IN LIGHT OF REQUIREMENTS AND COMPLIANCE REVIEWS
- ALL **EMPLOYEES** SHOULD BE **TRAINED** ON THE BASICS OF THE INSTITUTIONAL POLICY, RESOLUTION PROCESS, AND HOW TO PROVIDE INFORMATION TO STUDENTS ABOUT THEIR OPTIONS FOR SUPPORT -- THIS CAN BE DONE IN AN ONLINE MODULE IF NECESSARY
- **COMMUNICATE PROCEDURES** WIDELY AND FOLLOW THEM
- THIS IS NOT A ONE-PERSON RESPONSIBILITY: A **TITLE IX TEAM** SHOULD BE DEVELOPED TO REVIEW AND REVISE POLICY, LEAD PREVENTION EFFORTS, AND ASSIST THE TITLE IX COORDINATOR



# EIGHT GENERAL RECOMMENDATIONS

- REGULAR TRAINING FOR ALL MEMBERS OF YOUR TITLE IX TEAM IS IMPERATIVE
- INVESTIGATORS MUST BE ABLE TO SET ASIDE OTHER RESPONSIBILITIES TO ENSURE THAT INVESTIGATIONS ARE PROMPT AND THOROUGH AND EQUITABLE
- INVESTIGATORS MUST BE TRAINED ON HOW TO INVESTIGATE COMPLAINTS IN A PROFESSIONAL AND TRAUMA INFORMED WAY
- MAINTAIN A DATABASE OF COMPLAINTS AND METICULOUS DOCUMENTATION ON HOW HANDLED



# ON NOTICE: FUNDAMENTAL PRINCIPLES

**PROMPT** – Investigation, considerations of interim measures, mandatory reporting requirements

**THOROUGH** – Institutional investigation must be comprehensive (all witnesses, all exhibits, all documentary evidence,) – no stone unturned

**EQUITABLE** – Impartial, conclusions come from facts, and with concerns about due process

**APPROPRIATE REMEDIAL ACTION**

**FOLLOW UP**



# OTHER MISCELLANEOUS ITEMS

- DEVELOP A TOP-NOTCH **RECORDKEEPING** SYSTEM  
(TRACK TRAINING, COMMUNICATIONS, PREVENTION,  
RESPONSES TO INDIVIDUAL CASES)
- KNOW WHEN TO **OUTSOURCE** AN INVESTIGATION
- REGARDING PREVENTION, CONSIDER ENGAGING **STUDENTS**
- TO MONITOR **SOCIAL MEDIA** OR NOT?





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