



Campuses and the Courts Column July 9, 2020

Summary of Recent Case Law

Summarized by [Leslee Morris, J.D.](#), Senior Associate TNG and ATIXA Advisory Board

[Doe v. Princeton Univ., No. 3:20-CV-4352-BRM-TJB, 2020 WL 2097991](#)

(D.N.J. May 1, 2020)

- John Doe and Jane Roe dated while students at Princeton, with the relationship ending in the summer of 2019. Subsequently, Roe reported that Doe had been physically abusive during the relationship. A panel conducted an investigation, and based on cross-allegations, deliberated about whether either party had violated the Intimate Partner Violence policy. The panel concluded that there was sufficient information to substantiate five incidents of abuse alleged by Roe, but insufficient information to substantiate any incident of abuse alleged by Doe. The panel found Roe “very credible” and Doe not credible. Doe was expelled.
- Doe sued Princeton on April 15, 2020, alleging that Princeton violated Title IX. Doe filed a motion for a temporary restraining order (TRO) which would have prevented Princeton from enforcing the expulsion while the lawsuit was pending.
- The District Court for the District of New Jersey denied Doe’s request for a TRO, finding that Doe was unlikely to succeed in his claims against the university.
- Doe’s Title IX claim focused on a theory of erroneous outcome, asserting that Princeton’s actions were motivated by gender bias and that he and Roe were treated differently throughout the investigation, and that her account was given credibility while his account was not, which resulted in an erroneous finding. However, the court reasoned that Doe made “conclusory allegations” of gender bias, rather than alleging “specific instances of gender bias” throughout the proceeding, and that Doe failed to show that sex was the reason for any differential treatment as between the parties.
- The court noted that Doe had been given an opportunity to cross-examine Roe via submitted written questions, which was adequate process for a private university.
- Doe also alleged selective enforcement, arguing that Princeton differently investigated claims the parties had made against one another, and responded differently to cross-violations of a NCO.
- The court found that in order to conclude that Princeton held men to a different standard than women, a “male plaintiff must demonstrate that a female was in circumstances sufficiently similar to his own and was treated more favorably” by the university.
- The court determined that Doe did not demonstrate that Roe was “treated favorably”, and that the parties “had the same opportunities to submit proposed questions, written responses, and additional information”. The court ruled that Doe’s argument was unlikely to succeed.

- Finally, the court determined that Doe would not suffer irreparable harm as a result of the expulsion continuing while Doe’s lawsuit proceeds, and that should he succeed on the merits of his case, he would only have suffered a temporary delay in his education analogous to a suspension, which does not rise to the level of irreparable harm.

[Doe 1v. Baylor Univ., No. 6:16-CV-173-RP, 2020 WL 1557742](#)

(W.D. Tex. Apr. 1, 2020)

- In a case originating in 2016, fifteen former students at Baylor alleged that the university responded to their individual reports of sexual assault by a Baylor student with deliberate indifference. Plaintiffs sued Baylor, with all fifteen plaintiffs requesting “actual damages, compensatory damages, nominal damages, punitive damages, court and litigation costs, expert fees, attorneys’ fees, statutory interest and injunctive relief.”
- The requested injunctive relief consisted of a proposed mandatory injunction ordering Baylor “to refrain from unlawful discrimination and/or retaliation, ordering Defendant to undertake and rectify any and all Title IX violations and/or inequities, ordering Defendant and its athletic department to refrain from creating and condoning a hostile sexual harassment and/or discrimination environment against individuals on the basis of sex by immediately ceasing deliberate indifference to sexual assaults; and cease interference with the disciplinary process in favor of students who were charged with sexual assault.”
- In January of 2020, Baylor submitted a motion to dismiss Plaintiffs’ claims for injunctive relief and punitive damages.
- The court held that Plaintiffs’ claims for specific injunctive relief such as adjustments to Plaintiffs’ academic records survived a motion to dismiss, but Plaintiffs’ claims for prospective injunctive relief such as policy relief and an opportunity to re-take a class failed because all Plaintiffs have now graduated or withdrawn from Baylor and Plaintiffs did not demonstrate that they are likely to return, therefore there is no “real and immediate threat of repeated injury.” The court so ruled despite two Plaintiffs indicating that they had not yet graduated from Baylor and sought to do so.
- With respect to punitive damages, Baylor argued that punitive damages are not available under Title IX “as a matter of law.” In support of this position, Baylor cited a 2002 case in which the Supreme Court held that punitive damages are not available in an action under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act (*Barnes v. Gorman*, 536 U.S. 181 (2002)) and several courts which followed *Barnes*. Plaintiffs responded that no binding authority prohibits such damages in an intentional Title IX action.
- Although the court acknowledged there is no binding authority on point, it found that there is no real dispute or unsettled question of law, and that if the question came before the Supreme Court, it is “all but certain” that the Supreme Court would answer that Title IX does not allow punitive damages in a private right of action under Title IX in accordance with *Barnes*. Accordingly, the court granted Baylor’s motion to dismiss Plaintiffs’ claim for punitive damages.

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