

Conrad O'Brien

Title IX Legal Update in the DeVos Era: What's New (If Anything)?

Patricia M. Hamill
Conrad O'Brien, PC
phamill@conradobrien.com
(215) 864-8071

CAPE Institute



Patricia M. Hamill, Esq. - Partner, Conrad O'Brien PC

Patricia represents college students nationwide, and more recently college professors, who are subjected to campus disciplinary proceedings or who have been disciplined by their colleges for alleged sexual misconduct following such proceedings. Ms. Hamill often attempts to resolve cases behind the scenes. Where resolution cannot be achieved, she has filed lawsuits for breach of contract, violation of Title IX (or other civil rights statutes) and tort liability on the basis that colleges' investigation and adjudication procedures failed to ensure the students' fundamental due process rights, discriminated against them on the basis of sex and breached the schools' contractual obligations. Notably, Patricia was the lead attorney in *Doe v. Brandeis* in the District of Massachusetts, one of the most often cited cases in this area. Outside of the Title IX arena, Patricia is a commercial litigator who also represents clients regarding government investigations.

- Brief Title IX Overview
- Student Disciplinary Proceeding Overview
 - 2017 Interim Guidance
- Title IX Litigation Overview: Recent Trends and Cases
 - Questions

TITLE IX OVERVIEW

“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 financial assistance...”

- 20 U.S.C.1681 (“Title IX”)

- Guidance issued by the Department of Education's Office for Civil Rights in 2001 specifically incorporates principles of due process into Title IX with respect to university sexual misconduct proceedings.
- “The Constitution also guarantees due process to students in public and State-supported schools who are accused of certain types of infractions. The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding.”
- “Schools should be aware of these rights and their legal responsibilities to individuals accused of sexual harassment.”

- OCR's 2011 "Dear Colleague" Letter ("DCL")
- **Preponderance of Evidence Standard Instituted** ("a school's grievance procedures...must use a preponderance of evidence standard...Grievance procedures that use [a 'clear and convincing' standard] are not equitable under Title IX)
- No mediation
- No cross examination of parties
- Clearer guidance on optimal time frames



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

- “Questions and Answers on Title IX and Sexual Violence” (April 29, 2014)
- A “significant guidance document” providing additional guidance concerning institutions’ obligations under Title IX to address sexual violence and sexual harassment.
- Further clarified the legal requirements and guidance articulated in the DCL and included examples of “proactive efforts” that schools could take to prevent sexual misconduct.

STUDENT DISCIPLINARY PROCEEDINGS OVERVIEW

1. Notice
2. Investigation
3. Hearing (or Not)
4. Appeal