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## Seventh Circuit affirms dismissal of Title IX claims under its “direct question” pleading standard

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Following its recent decision in *John Doe v. Purdue University*, 928 F.3d 652 (7th Cir. 2019), the Seventh Circuit issued its latest ruling on an appeal by a respondent in a campus sexual-misconduct case in *John Doe v. Columbia College Chicago*, Case No. 18-1869 (7th Cir. Aug. 13, 2019). In *Purdue University*, the Seventh Circuit declined to impose “doctrinal tests” on Title IX and stated its preference to analyze a complaint’s allegations through a direct question: “do the alleged facts, if true, raise a plausible inference that the university discriminated against [plaintiff] ‘on the basis of sex?’” *Columbia College* demonstrates that *Purdue University* does not excuse plaintiffs from pleading “something more” than a campus environment concerned with sexual-assault issues to survive a motion to dismiss claims of discrimination on the basis of sex. Below, we review the key aspects of the Seventh Circuit’s decision in *Columbia College* and place it in the context of the court’s earlier ruling in *Purdue University*.

### Background

The plaintiff in *Columbia College* and his accuser were both students at Columbia when the accuser filed a complaint with the college alleging that she and the plaintiff had a sexual encounter to which she did not consent. The college investigated the allegations through an appointed staff member and concluded that there was sufficient evidence for a reasonable hearing panel to find that the plaintiff had violated the school’s sexual-misconduct policy. Columbia’s Title IX coordinator provided the plaintiff with the college’s hearing procedures policy and informed him that he would be given written notice of the date, time, and place of the hearing and the names of the hearing officers, and that he had a right to review the investigative materials. In subsequent communications, the Title IX coordinator reminded the plaintiff that he could submit evidence in defense of the claimant’s allegations and, further, that if he provided any evidence of discrimination or bias by a Columbia employee in connection with the investigation, the college would promptly investigate it.

Meanwhile, as the college’s disciplinary process unfolded, the plaintiff alleged that he had been physically assaulted and verbally harassed by the claimant and her friends since the incident. Columbia requested the names of the individuals involved, which the plaintiff refused to provide, and a college official met with the plaintiff twice to address the security concerns he expressed.

Prior to the hearing, the plaintiff was afforded the opportunity to review a copy of the claimant's submissions and responded to them in writing. He also submitted his own evidence, including screen shots of text messages and a toxicology report that he had paid an expert to prepare. All of this evidence was submitted to the hearing panel.

Following the hearing, the panel found by a preponderance of the evidence that the plaintiff violated the college's sexual misconduct policy, but also found that there was insufficient evidence to support two of the claimant's allegations. Based on its findings, the panel suspended the plaintiff for the 2016–17 academic year.

The plaintiff appealed his suspension. When he complained that the appeals officer appointed to hear the case had been involved in a documentary regarding survival of sexual assault, the college replaced that appeals officer with one to whom the plaintiff did not object. Nonetheless, the appeals officer upheld the panel's findings and discipline.

The plaintiff filed suit against his accuser and the college alleging violations of Title IX and a number of state-law claims, including breach of contract. The district court dismissed each of those claims, and the Seventh Circuit upheld the dismissals on appeal.

## **The Seventh Circuit's ruling**

### ***Title IX claims***

#### **a. Discrimination**

[We previously reported](#) that the Seventh Circuit's recent decision in *Purdue University* ushered in a new standard for district courts evaluating a plaintiff's claim of discrimination in violation of Title IX on a motion to dismiss: instead of applying the various doctrinal tests favored by other circuits, courts in the Seventh Circuit now ask whether "the alleged facts, if true, raise a plausible inference" of discrimination "on the basis of sex." In *Purdue University*, the Seventh Circuit reversed the district court's dismissal of the plaintiff's Title IX claim because it found that the plaintiff had alleged facts sufficient to show that Purdue had acted at least partly on the basis of sex—coupled with facts suggesting that the April 4, 2011 "Dear Colleague" letter issued by the U.S. Department of Education had created a financial motive for the university to discriminate against men in its investigation of sexual-assault complaints—to support an inference of discrimination.

In *Columbia College*, however, the Seventh Circuit found that the plaintiff did not allege the requisite additional facts. Although the plaintiff contended that Columbia had implemented "anti-male policies" in response to the Dear Colleague letter, pressure from Office for Civil Rights investigations, and on-campus programming on the subject of sexual assault, the court held that "[a] plaintiff cannot rely on these generalized allegations alone . . . , but must combine them with facts particular to his case to survive a motion to dismiss." The court distinguished the facts alleged in the case at bar from those it found sufficient to state a Title IX claim in *Purdue University*, in which the plaintiff alleged several procedural irregularities that made his claim of gender discrimination plausible.

In *Columbia College*, in contrast, the plaintiff failed to "allege the particularized 'something more' that is required to survive a motion to dismiss." Although the plaintiff claimed that Columbia demonstrated anti-male bias by restricting his access to relevant investigation documents, the court pointed out that "this allegation is divorced from gender," and that the plaintiff had, in fact,

accessed the investigative materials before the hearing. The court likewise rejected the plaintiff's contention that the board's decision was against the weight of the evidence; that allegation also did not imply that the board's decision was based on his gender, especially in light of the fact that the panel found some of the claims against him were substantiated and others were not. Based on these facts, the court ruled that there was "simply no way to plausibly infer that Columbia's investigation or adjudication was tainted by an anti-male bias."

#### **b. Sexual harassment**

The court also affirmed dismissal of the plaintiff's sexual-harassment claim, which alleged that he had been subjected to a hostile environment based on his gender. Although the plaintiff claimed to have been the target of certain acts of physical and verbal harassment, the court found that "these acts were directed at Doe not because of his gender, but because the individuals believed he raped someone."

Further, the court noted, the plaintiff did not allege that Columbia acted with deliberate indifference; instead, the pleadings showed that the college was responsive to his security concerns, addressed his complaints, and investigated his claims. Since the plaintiff did not allege that the harassment continued after his initial complaints or that the college's response was otherwise deficient, the court held that his peer-harassment claim was properly dismissed.

#### **c. Retaliation**

The court likewise affirmed the dismissal of each of the plaintiff's two claims of retaliation under Title IX. First, it found that the plaintiff alleged no facts to indicate that Columbia had suspended the plaintiff not because it found that he violated the school's sexual misconduct policy, but because he attempted to defend himself in the disciplinary proceedings against him. Second, the court rejected the plaintiff's allegation that Columbia retaliated against him by failing to discipline the claimant and her friends for their alleged harassing behavior, as the plaintiff's submissions showed that the college diligently investigated his complaints.

#### ***Breach-of-contract claim***

The Seventh Circuit also upheld the dismissal of the plaintiff's claim that Columbia breached its contract with him by violating its own policies and procedures in failing to provide him with an impartial investigation and adjudication. Under Illinois law, a college and its students have a contractual relationship on the terms set forth in the school's catalogs and bulletins, but a claim for breach of such a contract requires that the institution's decision be arbitrary, capricious, or made in bad faith. The plaintiff's pleadings failed to meet that high burden because they did not support a plausible inference that the college acted arbitrarily or was biased against him.

### **Takeaways**

In the wake of *Purdue University*, the Seventh Circuit's decision in *Columbia College* provides further guidance on how courts in that circuit will analyze Title IX claims at the pleading stage. The *Columbia College* decision makes clear that the Title IX pleading standard announced in *Purdue University* requires more than generalized allegations about the climate on campus to support a claim for gender-based discrimination. Plaintiffs who seek to challenge the results of sexual misconduct disciplinary proceedings against them cannot simply point to the 2011 Dear Colleague letter and events on campus raising awareness of sexual assault to support their claims. Thus, despite the increasing trend of courts allowing Title IX respondent claims to survive motions to

dismiss, *Columbia College* reminds litigants that bare-bones pleadings that do not allege specific facts to raise a plausible inference of discrimination will not suffice.

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