



Court allows Title IX claim to proceed against university in fraternity hazing death lawsuit

By Steven M. Richard

A Louisiana federal district court has denied a motion to dismiss a Title IX claim concerning a hazing death, which could result in an expansion of Title IX liability in the context of university oversight and supervision of fraternities. The lawsuit arose out of the tragic death of a male student early in his freshman year at Louisiana State University (“LSU”) in a hazing incident. The deceased student’s parents, suing individually and on his behalf, allege a Title IX violation, contending that fraternity members face greater risks of hazing harm at the university than sorority members. Plaintiffs assert that the university’s alleged disparate treatment of fraternity hazing is the operation of an alleged gender-biased policy that caused their son’s death and has created a heightened risk of injury to its male fraternity students generally. The ruling analyzed in this Alert may have precedential implications in similar Title IX lawsuits against colleges and universities nationally. See *Stephen M. Gruver and Rae Ann Gruver v. State of Louisiana through the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College*, Civil Action No. 18-772-SDD-EWD (M.D. La. July 19, 2019).

Factual background

Plaintiffs allege that, over the summer of 2017, LSU sent their son a publication encouraging that new students should consider participating in fraternity or sorority recruitment, while stressing that hazing is not tolerated at the university. Plaintiffs contend that their son followed the university’s suggestion, which ultimately resulted in his tragic death in September 2017 by hazing and forced alcohol consumption while pledging for a fraternity.

Plaintiffs’ allegations portray historical disparities in the manner in which the university has addressed the risks of hazing at fraternities compared to sororities. Specifically, plaintiffs allege that male students involved in the Greek fraternity system at LSU face a “risk of serious injury and death” and that, before their son’s death, “male students pledging LSU-recognized fraternities have died, been hospitalized on an emergency basis for dangerous alcohol consumption, and suffered broken ribs, cigarette burns, and other serious physical injuries.” Plaintiffs contend that the university has a “pattern and practice of responding differently to the hazing of male students than the hazing of female students,” portraying the hazing of female Greek students as “virtually nonexistent” compared to the “rampant” hazing of male Greek students. Additionally, plaintiffs

claim that, “[u]nlike LSU fraternities, LSU sororities, which restrict membership to female students, do not have a culture or long-documented history of dangerous hazing and misconduct” and “when LSU has received reports of hazing at its sororities, the sanctions LSU has imposed on the sororities have been significantly greater in length and degree than sanctions LSU generally imposes on fraternities for comparable misconduct.”

Plaintiffs assert that the university has acted with deliberate indifference to the risks of injury and death to male Greek students, resulting in entirely different and unequal access to educational opportunities and benefits offered by the university’s Greek life. Plaintiffs sued LSU under Title IX. LSU moved to dismiss the complaint, arguing that plaintiffs have failed to state a claim and lack standing to sue under Title IX, and LSU is shielded from suit by Eleventh Amendment immunity.

Analysis

In its ruling denying the motion to dismiss, the court rejected LSU’s argument that, as an arm of the State of Louisiana, the university is shielded by sovereign immunity under the Eleventh Amendment. Specifically, 42 U.S.C. § 2000d-7(a)(1) conditions receipt of Title IX funds on a state’s waiver of immunity. The university’s acceptance of federal funding sufficiently constituted a knowing waiver of Eleventh Amendment immunity. Also, the court was not persuaded by LSU’s arguments that plaintiffs lacked standing to sue, noting that they have sufficiently pled an injury, as well as causation (that the injury was fairly traceable to LSU’s alleged policy), and redressability that could be achieved in the lawsuit.

Turning to the merits of the Title IX claim, the court noted “[t]here are two avenues to pursue a [private right of action] under Title IX: one based on an institution’s official policy of intentional discrimination on the basis of sex and one that seeks to hold an institution liable for teacher-on-student or student-on-student sexual harassment.” Analyzing the Supreme Court’s Title IX precedent and interpretive rulings in other jurisdictions, the court found plausible allegations of intentional gender-based discrimination. Plaintiffs sufficiently pled that the university’s alleged practice of ignoring male hazing complaints satisfies “deliberate indifference,” especially where the practice allegedly derives from its own policy. In evaluating a heightened risk claim as pled by plaintiffs, a primary concern involves whether “the alleged custom or policy inflicted the injury” asserted in the lawsuit.

Here, the court concluded that plaintiffs have plausibly alleged that the university misinformed incoming male students about the risks of hazing in fraternities, had actual notice of prior hazing violations in fraternities, and failed to address the hazing issues for Greek males as aggressively as it has done in identifying and correcting hazing issues in sororities, thereby intentionally providing greater protections to female students. The court concluded that, if the pled facts are proven, a jury may infer that the university’s policy constituted intentional gender discrimination and created avoidable heightened risks to Greek male students of serious injury or death by hazing in violation of Title IX.

Takeaways

The ruling reinforces that colleges and universities must treat fraternities and sororities similarly in policies, resources, and remedial actions, especially in their prevention of and response to hazing incidents. Policies regarding Greek life must be written in gender neutral terms and applied equally to both fraternities and sororities. Additionally, colleges and universities must be aware of state legislation addressing anti-hazing efforts. Florida, for example, has enacted legislation enabling

prosecutors to charge fraternity and sorority members who were not present for a hazing activity, but participated in its planning of the organization's event.

It is important to note that the LSU case is not a final adjudication of the Title IX claim, as plaintiffs' allegations were accepted as true during the initial motion to dismiss stage and the university will defend itself moving forward with record evidence, particularly as to matters regarding its policies and customs. Nonetheless, in allowing this novel Title IX theory of liability to proceed, the court has potentially opened wide-avenues of discovery pertaining to the historical oversight of Greek life, as well as detailed investigation of other hazing events and the university's responses in each instance. With the tragic reality that a hazing injury or death can occur even in the face of proactive prevention initiatives, this motion to dismiss ruling will likely be cited as support for similar Title IX suits, especially where a plaintiff can plead plausible allegations suggesting possible gender-based disparities in a college or university's preventative measures or responsive actions between fraternities and sororities. The ruling serves as an important reminder of the liability challenges facing institutions in Greek life, especially as schools approach the start of their academic years when hazing incidents are at their highest risk.

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