



Seventh Circuit adopts a relaxed pleading standard for Title IX claims

By Eliza T. Davis and Kacey Houston Walker

The Seventh Circuit recently reversed a district court's dismissal of a complaint against Purdue University by a student claiming that the University violated his rights under the Fourteenth Amendment and Title IX in disciplining him for alleged sexual misconduct. The court's ruling continues the recent trend of focusing on due-process protections in campus sexual-misconduct cases, highlighting the perils of permitting a claimant not to appear for a disciplinary hearing and underscoring the respondent's right to exculpatory evidence, including witness testimony. It also employed a new, arguably more-relaxed and flexible, framework for evaluating the plausibility of Title IX claims at the motion-to-dismiss stage. Here are key aspects and implications of the ruling.

Background

The plaintiff in *John Doe v. Purdue University*, Case No. 17-3565 (7th Cir. June 28, 2019), was accused of sexual misconduct by a fellow undergraduate student, prompting the University to commence an investigation into his conduct under the school's disciplinary procedures. Two investigators conducted an investigation into the claimant's allegations and prepared a report at the direction of the University's Dean of Students and Title IX Coordinator. The plaintiff was permitted to submit a written response to the claimant's allegations and was allowed the assistance of a "supporter" at any meeting with the investigators. The plaintiff denied the allegations, and provided details he contended were exculpatory about his relationship with the claimant and her conduct toward him after the alleged assault. He also provided the investigators with friendly text messages with the claimant that seemed to belie her story, as well as a list of more than 30 people who could speak to his integrity.

The investigators submitted their report to a three-person Advisory Committee panel. Consistent with Purdue's policy at the time, the University neither provided the plaintiff with a copy of the report nor shared its contents with him. In fact, the University only afforded the plaintiff the opportunity to review the investigators' report moments before his hearing.

The claimant did not appear before the Advisory Committee panel and did not provide a written statement. Instead, the director of the Center for Advocacy, Response, and Education (CARE) — a University center dedicated to supporting victims of sexual violence — wrote a letter to the

Advisory Committee summarizing the claimant's allegations. During the hearing, two members of the Advisory Committee panel admitted to not having read the investigators' report. Moreover, the Advisory Committee prevented the plaintiff from presenting witnesses, including character witnesses and a roommate who claimed to have been present during the alleged assault.

After the hearing, the Title IX Coordinator sent the plaintiff a letter explaining that she found him responsible by a preponderance of the evidence and suspended him for one academic year. The plaintiff appealed the decision to the University's Vice President for Ethics and Compliance, who asked the Title IX Coordinator to identify the factual basis for her determination. The Title IX Coordinator sent a revised letter, noting that she did not find the plaintiff credible and found the claimant credible. The Vice President upheld the determination and sanctions.

The plaintiff sued the University and a number of its officials, arguing that the University's disciplinary procedures violated his right to due process by not disclosing its evidence against him and failing to allow his witnesses to testify on his behalf. The plaintiff also claimed that the University discriminated against him on the basis of sex in violation of Title IX by imposing a punishment infected by sex bias. The district court dismissed the plaintiff's claims. The Seventh Circuit reversed, finding that the plaintiff sufficiently alleged plausible violations of the Fourteenth Amendment and Title IX at the motion-to-dismiss stage.

The Seventh Circuit's Ruling

Due Process

In a unanimous three-judge decision written by Judge Amy Coney Barrett (believed to be a potential future United States Supreme Court nominee), the Seventh Circuit first considered whether the University deprived the plaintiff of a property or liberty interest when it found him responsible for sexual violence and suspended him. The Seventh Circuit does not recognize a generalized property interest in a college education (though it acknowledged a circuit split in this regard) and found that Indiana law did not create such an interest. The court also found that the plaintiff had not adequately alleged that the University failed to honor any particular contractual promise to establish a protected property interest.

But the court found that the plaintiff had established a basis for his due-process claim by alleging that the University had deprived him of a protected liberty interest in pursuing his occupation of choice. Applying the "stigma plus" test, the court held that the plaintiff had sufficiently pleaded stigma by alleging that the University had informed the Navy about the guilty finding, and further pleaded the requisite change in legal status by alleging that the disclosure led to the plaintiff's expulsion from the Navy ROTC program in which he was enrolled.

Having identified a protected liberty interest that the University allegedly infringed, the court determined that the plaintiff had stated a due-process claim against the University. It noted that the circumstances entitled the plaintiff "to relatively formal procedures," yet the University's process "fell short of what even a high school must provide to a student facing a days-long suspension." Of particular concern to the court were the University's failure to disclose its evidence to the plaintiff and its determination that the claimant was more credible than the plaintiff despite her failure to testify or even provide a sworn statement concerning her allegations. The court noted that the plaintiff had offered specific impeachment evidence to cast doubt on his accuser's credibility, but the Title IX Coordinator and the Advisory Panel refused even to consider it. Further, because two of the three panel members admitted at the hearing that they had not read the investigative report and thus seemed to have held the plaintiff responsible based on the accusation

rather than the evidence, the hearing appeared to have been a sham. The court, citing the Sixth Circuit's ruling in *Doe v. Baum*, 903 F.3d 575, 581 (6th Cir. 2018), did not reach the issue of whether the plaintiff was entitled to cross-examine the claimant because it held that he had otherwise alleged procedural deficiencies sufficient to survive a motion to dismiss his due-process claim.

Injunctive Relief

The court affirmed the dismissal of the plaintiff's claim to enjoin the University from violating due process in its investigation and adjudication of other sexual-misconduct complaints on the ground that the plaintiff lacked standing to bring it. "What Plaintiff really seeks to do," the court concluded, "is champion the rights of other men at Purdue who might be investigated for sexual misconduct using the flawed procedures that he describes in his complaint. That is a no-go[.]" The court also found that the plaintiff lacked standing to challenge the conditions of re-entry imposed on him by the University because he had not alleged that he intended to return. Finally, while the plaintiff had not specifically sought an order in his pleading to expunge the finding of responsibility from his disciplinary record, the court ordered that the issue should be addressed as part of the remand of the case back to the district court for further proceedings.

Title IX

Turning to the plaintiff's Title IX claim, the court considered the various doctrinal tests applied by other circuits — primarily "erroneous outcome" and "selective enforcement" and, in some instances, "deliberate indifference" and "archaic assumptions" — and concluded that those tests "simply describe ways in which a plaintiff might show that sex was a motivating factor in a University's decision to discipline a student." It determined that, when evaluating the pleadings, it is more appropriate "to ask the question more directly: do the alleged facts, if true, raise a plausible inference" of discrimination "on the basis of sex"?

The Seventh Circuit held that the plaintiff had alleged facts to support a reasonable inference that the University's reaction to the April 4, 2011 "Dear Colleague" letter issued by the U.S. Department of Education, coupled with the fear of losing federal funding for not complying with its guidance, could have created a financial motive for the University to discriminate against men in its investigation of sexual-assault complaints. In this regard, the Seventh Circuit joined other courts in holding that allegations concerning the effect of the Dear Colleague letter — when combined with other facts tending to show that an institution acted at least partly on the basis of sex in a particular case — can plausibly support a claim for violation of Title IX worthy of further development in discovery.

In the plaintiff's case, the allegation that CARE had posted a *Washington Post* article titled "Alcohol isn't the cause of campus sexual assault. Men are" to its Facebook page, among other allegations, supported the inference that the University may have blamed men as a class for sexual assault, rather than the individuals who commit sexual assault. On these alleged facts, the court concluded, the plaintiff pled a plausible claim that the Title IX Coordinator chose to believe the claimant because she is a woman and to disbelieve the plaintiff because he is a man, and that the University's disciplinary decision discriminated against him on the basis of sex in violation of Title IX.

Takeaways

The Seventh Circuit's ruling in *Purdue University* continues the recent trend highlighting the importance of due-process protections in the investigation and adjudication of campus sexual-assault claims (particularly — but, [as we have reported](#), not exclusively — at public institutions). *Purdue University* confirmed that respondent-plaintiffs in the Seventh Circuit may look to the

“stigma plus” test to establish a protected liberty interest in a college or University education where they claim to be stigmatized by an institution’s disciplinary decision and suffer a change in legal status as a result. Where a plaintiff can show such an interest, *Purdue University* joins a number of recent decisions underscoring an institution’s obligation to provide opportunities for sexual-misconduct respondents to have access to exculpatory evidence and challenge the allegations of the accuser.

Although the Seventh Circuit did not weigh in on the hot-button issue of whether due process requires the opportunity for cross-examination, we expect that the increased focus on that and other procedural protections for respondents will continue as we await new final regulations addressing these issues from the Department of Education.

Purdue University also provides the latest example of some courts’ increasing inclination to allow alleged Title IX violations to survive motions to dismiss and proceed to discovery. In construing the plaintiff’s pleading against the University, the Seventh Circuit eschewed doctrinal tests, including the often-applied erroneous-outcome and selective-enforcement theories that have been employed in other circuits. The Seventh Circuit’s approach, in theory, lowers the bar for respondent-plaintiffs by eliminating the elements of those tests in favor of simply inquiring whether the facts raise a plausible inference of discrimination on the basis of sex. This doctrinal streamlining suggests that colleges and universities defending Title IX claims in the Seventh Circuit may face more wide-ranging allegations in pleadings with less predictability concerning the likelihood of succeeding on a motion to dismiss the complaint.

Further, institutions in the Seventh Circuit may find that Title IX claims arising out of sexual-misconduct cases adjudicated against the backdrop of the now-rescinded 2011 Dear Colleague letter are more likely to survive motions to dismiss, where plaintiffs allege other facts concerning the campus environment and activism leading to an alleged anti-male bias in disciplinary policies and processes. Increasingly, colleges and universities must formulate their litigation defense strategies with the expectation that due-process and Title IX lawsuits will survive at least through the summary judgment stage (after expensive and often-expansive discovery), and may even reach trial because the discovery record may be filled with disputed material facts.

We will continue to monitor and report on developments in this area as the legal landscape continues to shift and as institutions look ahead to the Department of Education’s forthcoming Title IX regulations imposing procedural requirements for the administration of campus sexual-misconduct cases.

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