

## Third Circuit Finds Liability Under Title IX For Actions of Non-Students

By: Nancy Conrad, George C. Morrison and Joseph J. Lee  
2.3.22

Title IX of the Education Amendments Act of 1972 (Title IX) provides that “[n]o 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(a). Universities and colleges can be subject to a private right of action and can be liable for monetary damages in such a suit.

In January, the United States Court of Appeals for the Third Circuit ruled that a university can be held liable for the actions of a non-student guest under Title IX. The case involved a student who was murdered in her dorm room by her non-student boyfriend. The student’s parents brought a suit under Title IX against the University, and the United States District Court for the Eastern District of Pennsylvania granted summary judgment in the University’s favor. The District Court initially held that the University lacked notice that it could be found liable for the actions of a non-student guest.

In a precedential decision, the Third Circuit reversed the District Court’s holding. The Third Circuit noted Title IX provides that higher education institutions who receive federal funding may be held liable for intentional violations of the statute, and that an intentional violation of Title IX would include when an institution acts with deliberate indifference to known sexual harassment where the institution exercises substantial control over the context in which the harassment occurs and the harasser. The court also found support from the Office for Civil Rights guidance materials which provided that sexual harassment by third parties could result in liability, and from the University’s own Title IX policy, which covered the conduct of visitors and third parties.

To be liable under Title IX for the actions of a non-student, the Third Circuit stated that the institution would need to have “substantial control over both the harasser and the context in which the known harassment occurs” and that it “would have to know of the harassment and ultimately respond in a manner that is clearly unreasonable.” Colleges and universities should note that while they would likely not face any liability for the actions of a random visitor who sets foot on campus and harasses students, they should take swift action when they become aware of any instances of harassment. In this case, the resident assistant of the student/victim’s dorm observed the harassing behavior several months before the murder and filed an incident report with a University Title IX Coordinator. Further, in another incident where the harasser refused to leave the campus, a University police officer was contacted to remove the harasser and did not create an incident report until after the student’s murder at the direction of a supervisor.

Members of the Higher Education group at White and Williams are available to assist colleges and universities with issues related to Title IX policies and litigation under Title IX. If you have questions, please contact Nancy Conrad ([conradn@whiteandwilliams.com](mailto:conradn@whiteandwilliams.com); 610.782.4909), George C. Morrison ([morrison@whiteandwilliams.com](mailto:morrisong@whiteandwilliams.com); 610.782.4911); Joseph J. Lee ([leejo@whiteandwilliams.com](mailto:leejo@whiteandwilliams.com); 610.782.4958), or another member of the Higher Education Group.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.