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Ineffective Remedial Measures Expose Institutions to Liability Under Title IX

BY BRIAN MULLIN • APRIL 27, 2017

Institutions are shielded from liability under Title IX when they take timely and reasonable measures in response to claims of sexual harassment. However, institutions can be held liable for subsequent conduct if they fail to take action when on notice that existing measures are ineffective. Wills v. Brown Univ., 184 F.3d 20, 26 (1st Cir. 1999); Vance v. Spencer City Pub. Sch. Dist., 231 F.3d 253, 260 (6th Cir. 2000) (“[w]here a school district has actual knowledge that its efforts to remediate are ineffective, and it continues to use those same methods to no avail, such district has failed to act reasonably in light of the known circumstances”).

For example, in Leader v. Harvard University Board of Overseers (D. Mass. Mar. 17, 2017), the Court allowed a former student’s Title IX claim to move forward based on allegations that the school took no action to address her complaints of continuing harassment during the course of the school’s investigation into her initial complaint of sexual harassment. The Court noted that although the school may have met its obligation to respond to the student’s initial complaint, the allegations that the school failed to effectively respond to harassment occurring after her initial complaint were sufficient to allow her Title IX claim to survive a motion to dismiss. Id. at 10.

Client Tip: *Institutions should review measures taken in response to sexual misconduct claims to ensure their effectiveness and communicate with complainants both during Title IX proceedings and following the outcome of the process in order to monitor changes in circumstances which may require modification of existing interim and remedial measures or the implementation of new measures.*