First Circuit Rules That Title IX Does Not Cover Claim by Non-Student

BY ROBERT G. YOUNG • AUGUST 14, 2018

On July 18, the First Circuit Court of Appeals decided in *Doe v. Brown University*, et al. that a non-student could not bring a Title IX claim against an institution for failure to investigate an alleged sexual assault committed by students enrolled at the institution. In that case, a student from Providence College alleged that she was assaulted by three members of the Brown University football team and that, when she complained to Brown about the matter, the university initially agreed to investigate the matter. However, the university subsequently abandoned its investigation (for reasons that were unclear in the opinion) and did not pursue disciplinary action against the three students.

The Providence College student filed a lawsuit claiming that Brown University violated Title IX by failing to investigate and remedy the alleged sexual assault. The First Circuit, however, dismissed the case. Drawing on prior Supreme Court precedent, the First Circuit noted that Title IX applies only to those participating, or intending to participate, in an institution's educational program or activity. Since the plaintiff was not a Brown University student, and had no intention of becoming a Brown University student, the Court reasoned that she could not maintain a Title IX claim against the institution.

Client Tip: Institutions may be able to breathe something of a sigh of relief knowing that individuals not affiliated with their programs or activities are unlikely to be able to pursue Title IX claims. Nevertheless, robust enforcement of an institution's Title IX procedures and remedies remains a critical element of the institution's compliance regime.

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