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- Doe v. Alger, et al., Docket No. 15-cv-00035 (W.D. Va. 2018) (James Madison University) (citing *McBurney v. Cuccinelli*, 616 F.3d 393 (2010); *Constantine v. Rectors & Visitors of George Mason University*, 411 F.3d 474 (4th Cir. 2005).

| <u>Case Name</u> | Date Filed | Court | Procedural Posture & Holding | Issues: | |
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| <u>Nungesser v. Columbia</u> | 3/24/2017 | District Court SDNY | MTD: Motion Granted | Deliberate indifference: <ul style="list-style-type: none"> - Gender-based Harassment <ul style="list-style-type: none"> o Sex Discriminatory Terminology <ul style="list-style-type: none"> ▪ Court: In unspecified contexts, “Rapist” can constitute a gender-based discriminatory term, but not in the context of a victim accusing their assailant <ul style="list-style-type: none"> • “[Plaintiff] cannot invoke Title IX to censor the use of the terms ‘rapist’ and ‘rape’ by an alleged victim of the crime” - Deprivation of Access to Edu. Opportunities <ul style="list-style-type: none"> o Threatening or harassing social media posts not directly under the control of University cannot be counted as to the “Deliberate Indifference” of the university itself - Rehabilitation of Image in Wake of Sexual Assault Claim <ul style="list-style-type: none"> o “Title IX does not require educational institution to prevent defamation or to otherwise force its students to accept without challenge the results of its disciplinary processes.” | |
| <u>Wells v. Xavier</u> | 3/12/14 | District Court SDOH | MTD: Denied in Relevant Part | <ul style="list-style-type: none"> - Undue Public Pressure <ul style="list-style-type: none"> o Contemporaneous sexual assault accusations triggered | - |

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| <u>University</u> | | | | <p>an investigation by the OCR, which put pressure on the school to handle this case as an example</p> <ul style="list-style-type: none"> - Mishandled Investigation <ul style="list-style-type: none"> o A defective hearing was performed; Defendants denied plaintiff counsel, denied witnesses, and rushed to a judgment | |
| <u>Doe v. Amherst College</u> | 2017 | | | <ul style="list-style-type: none"> - Undue Public Pressure/Selective Enforcement <ul style="list-style-type: none"> o Doe established his gender was a motivating factor behind the College's decision to pursue disciplinary action against him (encouraged complainant to file a formal complaint against Doe, but when it learned complainant may have initiated sexual activity with Doe while he was "blacked out," College did not encourage him to file a complaint) and severity of his punishment was due to his gender because the College intended his punishment to appease campus activists | - |
| <u>Rolph v. Hobart and William Smith Colleges</u> | 2017 | District Court SDNY | | <ul style="list-style-type: none"> - Undue Public Pressure <ul style="list-style-type: none"> o Where a prior HWS sexual assault investigation generated criticism in <i>The New York Times</i> and a <i>Huffington Post</i> blog, there was allegation of the school investigation coming down harder on the accused to mitigate critical news coverage and public relations | - |
| <u>Yusuf v. Vassar College</u> | 1994 | 2 nd Circuit | | <ul style="list-style-type: none"> - History/Pattern of Bias <ul style="list-style-type: none"> o Yusuf cites Vassar's own history of potentially mishandling sexual harassment complaints: <p style="margin-left: 40px;">"males accused of sexual harassment at Vassar are 'historically and systematically' and 'invariably found guilty, regardless of the evidence, or lack thereof'"</p> | - |
| <u>Doe v. Miami University</u> | 2018 | Court of Appeals for the Sixth Circuit | | <ul style="list-style-type: none"> - History/Pattern of Bias <ul style="list-style-type: none"> o Doe alleges a history of gender discrimination based on sheer number and overwhelming majority of men investigated for sexual assault in the years prior by MU, as well as a history of investigating complaints against male students, but not female students. | - |

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| <u>Prasad v. Cornell University</u> | 2016 | District Court NDNY | | <ul style="list-style-type: none"> - Mishandled Investigation <ul style="list-style-type: none"> o Plaintiff alleged evidentiary weaknesses: failure to question witnesses about Jane’s outward signs of intoxication; accepted the Jane’s account of her level of intoxication despite contrary statements; misconstrued and misquoted witnesses' statements; drew prejudicial conclusions without sufficient evidentiary support; and cast Plaintiff's actions in highly inflammatory terms. Plaintiff also pointed to procedural flaws -- Cornell's “investigator model.” | - |
| <u>Doe v. Brown University</u> | 2017 | District Court, D. Rhode Island | MTD - Granted | <ul style="list-style-type: none"> - Non-University Student <ul style="list-style-type: none"> o Protection of Title IX is generally limited to students attending the offending school. No one at Brown had authority to take corrective action to end the discrimination that prevented Doe from continuing her classes at another university. | - |
| <u>K.T. v. Culver-Stockton University</u> | 2017 | Court of Appeals – 8 th Circuit | MTD - Granted | <ul style="list-style-type: none"> - Non-University Student <ul style="list-style-type: none"> o Junior in High school was visiting campus and went to on-campus frat party, where she was allegedly served alcohol and sexually abused. The school moved to dismiss on the basis that she was not a student at the university and therefore they did not have the proper authority over her to intervene | - |
| <u>Bailey v. New York Law School</u> | 2017 | Southern District of New York | MTD – Denied | <ul style="list-style-type: none"> - Retaliation <ul style="list-style-type: none"> o Bailey filed Title IX claim against Student Harasser Nesbit. School found him in violation, and took appropriate action in pursuance of the school’s Title IX policy. Seeking further action, Plaintiff called for another hearing, which was delayed unnecessarily. Dissatisfied with the severity of the sanctions, Bailey attempted to transfer schools, but could not receive a Letter of Recommendations from her school. Her following semester, she received the worst grades she had on record to date. | - |
| <u>Yu v. Vassar University</u> | 2015 | Southern District of | MTD - granted | <ul style="list-style-type: none"> - Selective Enforcement <ul style="list-style-type: none"> o “The record here is devoid of any evidence of gender | - |

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| | | New York | | bias, because Yu has not provided, any statements made by any Vassar official, that would evidence any sort of discriminatory intent. Yu has similarly failed to provide any statistical evidence that ‘males invariably lose’ when charged with sexual misconduct at Vassar. “ | |
| <u>Ritter v. Oklahoma City University</u> | 2016 | Western District of Oklahoma | MTD – denied | <ul style="list-style-type: none"> - Selective Enforcement <ul style="list-style-type: none"> o Plaintiff brought a selective enforcement claim based on the manner in which the investigation and disciplinary process were conducted, females facing comparable disciplinary charges have been treated more favorably than plaintiff and, because of his gender, the sanctions imposed on plaintiff were disproportionate to the severity of the charges levied against him. | - |
| <u>Williams v. Bd. Of Regents of Univ. Sys. Of Georgia</u> | 2007 | Court of Appeals, 11 th Circuit | | <ul style="list-style-type: none"> - Negligence by School <ul style="list-style-type: none"> o In the <i>Williams</i> case, the court was clear that the school’s knowledge of past sexual misconduct on another campus with a non-student was insufficient on its own to make the school liable for deliberate indifference. The university accumulated a series of missteps and failures to act that resulted in the potential exposure to liability under Title IX. In fact, the University of Georgia even failed to take the simple step of instructing the student about the sexual harassment policies despite his well-documented record of disciplinary responsibility and two criminal convictions for sexual misconduct at the prior school. | - |
| <u>Simpson v. University of Colorado Boulder</u> | 2007 | Court of Appeals, 10 th Circuit | | <ul style="list-style-type: none"> - Negligence by School <ul style="list-style-type: none"> o University (CU) students were assaulted at CU football party by Student-athletes and visiting high school recruit-athletes. Evidence suggests that school had history of sexual misconduct in similar situation, and had knowledge of the risk of these situations. Court held that school policies and decisions created a risk of assault “so obvious as to amount to deliberate indifference” | - |

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| <u>Hernandez v. Baylor University</u> | 2017 | District Court, D. of Rhode Island | MTD – dismissed | <ul style="list-style-type: none"> - Negligence by School <ul style="list-style-type: none"> o Non-compliance with certain DOE guidelines generally cannot, alone, demonstrate a school’s deliberate indifference, although they can still be consulted when assessing the appropriateness of a school’s response to reports of sexual assault. To subject a student to harassment a school needs only to make the student vulnerable to that harassment. Defendant’s deliberate indifference created an environment (vulnerability) in which football players could sexually assault women. | - |
| <u>Fox v. Pittsburg State University</u> | 2017 | District Court, D. of Kansas | Motion for renewed Judgment as a matter of law, for a new trial, or for remitter | <ul style="list-style-type: none"> - Negligence by School <ul style="list-style-type: none"> o Employee of PSU complained about the sexual harassment by her coworkers. Investigation was held off so as not to create a “firestorm,” sexual harassment training did not occur until after the alleged harassment, and ultimately, nothing was done to deter the conduct. Even after reporting of harassment to an “Appropriate Person,” the harassment only got worse, and no investigation was conducted. Courts successfully applied the test for Deliberate Indifference and denied motion for renewed judgment. Title IX claim upheld | - |
| <u>Doe v. Brown University</u> | 2016 | District Court, D. of Rhode island | Motion To Dismiss – Denied in relevant part | <ul style="list-style-type: none"> - Mishandled Investigation <ul style="list-style-type: none"> o Violations of investigatory policy as set forth in Student Handbook, include: <ul style="list-style-type: none"> ▪ No investigation prior to Plaintiff’s indefinite removal from campus (lack of interim measures) ▪ Poor communication by investigatory panel, not responding to requests to view evidence or time to respond to new evidence ▪ Failure to take into account or review portions of Plaintiff’s own evidence - History/Pattern of Bias <ul style="list-style-type: none"> o Specific allegations of gender bias, and not just bias against accused student include: | - |

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| | | | | <ul style="list-style-type: none"> ▪ Former employee statement that Brown has “loaded the dice against the boys” ▪ Former professor statement that “there is gender bias that is overwhelming at Brown” in regard to sexual misconduct <ul style="list-style-type: none"> - Unequal Enforcement Policies <ul style="list-style-type: none"> o In breach of contract claim, Plaintiff cites a failure to enforce the alcohol policy against Doe (notwithstanding her admission to underage drinking), but court dismisses claim as University makes no promise to enforce uniformly in Student Handbook | |
| <u>Sonnleitner v. York</u> | 2002 | United States Court of Appeals for the Seventh Circuit | Appeal of District Court holding that the officials were entitled to qualified immunity and that the employee had not stated a valid claim under § 1983. | <ul style="list-style-type: none"> - Not a title IX matter. (employment- due process matter) - Exceptions to 11th amendment qualified immunity: There are three specific exceptions to Eleventh Amendment state immunity to lawsuits in federal court: (1) Congress has abrogated the state's immunity from suit through an unequivocal expression of its intent to do so through a valid exercise of its power; (2) a state has properly waived its immunity and consented to suit in federal court; and (3) <u>the plaintiff seeks prospective equitable relief for ongoing violations of federal law under the Ex Parte Young doctrine.</u> | - |
| <u>Thomas v. Town of Chelmsford</u> | 2017 | United States District Court for the District of Massachusetts | | <ul style="list-style-type: none"> - Deliberate indifference: - Standard for hostile environment: The court held plaintiffs adequately stated a Title IX claim where there was evidence of extensive student-on-student sexual harassment for a whole school year, while much of the bullying was gender-neutral, plaintiffs presented evidence of pervasive sexual taunting sufficient to constitute a hostile educational environment because the alleged sexual taunting came in different forms from different students over an extended period of time, making the sexually charged hostile environment more repeated and pervasive. | - |
| <u>Schaefer v. Yongjie Fu</u> | 2017 | D. Mass. | motion to dismiss for failure to state a claim-granted in part | <ul style="list-style-type: none"> - To state a claim for harassment under Title IX: the alleged harassment must be so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the | - |

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| | | | | <p>school. The harassment must be based on sex.</p> <ul style="list-style-type: none"> - Although comment alluding to plaintiff's appearance is "based upon sex," a single comment does not constitute severe sexual harassment. Therefore, Title IX claim was dismissed for failure to state a claim upon which relief can be granted. | |
| <u>Shank v. Carleton Coll.</u> | 2017 | D. Minn. | motion to dismiss denied in part | <ul style="list-style-type: none"> - IIED prevailed: allegations were sufficient to state a claim of intentional infliction of emotional distress as Plaintiff has plausibly alleged that University coerced her into a one-on-one meeting with her assailant, knowing that such a meeting was likely to cause her severe emotional distress. - Title IX inadequate response: Court denied defendant's motion to dismiss Title IX claim where plaintiff . alleged that Carleton failed to advise her of her procedural and substantive rights; wrongfully denied her the ability to participate in the adjudicatory hearing against Student One; discouraged her from pursuing a formal complaint against Student Two; took only minimal action against her assailants; coerced her into a one-on-one meeting with Student One (who then took the opportunity to pressure her into lifting the only sanction of which she was aware); and did not even enforce the minimal sanctions that it had imposed. | - |
| <u>Fitzgerald v. Barnstable Sch. Comm.,</u> | 2009 | S. Ct. | student sought certiorari review - The Court reversed the court of appeals' judgment and remanded the case for further proceedings | <ul style="list-style-type: none"> - Parallel Title IX & EP can be brought by plaintiff: (remedies available to plaintiff) - the Court concluded that Title IX was not meant to be an exclusive mechanism for addressing gender discrimination in schools or a substitute for § 1983 suits as a means of enforcing constitutional rights. Accordingly, the Court held that § 1983 suits based on the Equal Protection Clause remained available to plaintiffs alleging unconstitutional gender discrimination in schools. | - |
| <u>Vega v. State Univ. of N.Y.</u> | 2000 | S.D.N.Y. | MTD granted | <ul style="list-style-type: none"> - Private Right of action to Title IX - an employee of an educational institution has no private right of action for employment discrimination under Title IX and he/she | - |

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| <u>Bd. of Trs.</u> | | | | must file Title VII instead. | |
| <u>Raggi v. Wegmans Food Mkts., Inc.</u> | 1991 | W.D.N.Y. | MTD granted | <ul style="list-style-type: none"> - Section 504 of the Federal Rehabilitation Act (Disability Discrimination) SOL: - The Rehabilitation Act does not, however, provide its own statute of limitations for actions brought pursuant to § 794. Under such circumstances, the court must "borrow" the most appropriate state statute of limitations. | - |
| <u>Franklin v. Gwinnett Cty. Pub. Sch.</u> | 1992 | S. Ct. | Court of Appeals affirmed dismissal. S. Ct. reversed and remanded. | <ul style="list-style-type: none"> - Title IX remedies- money damages: - A money damages remedy is available for an action brought to enforce Title IX of the Education Amendments of 1972. | - |
| <u>Palo v. Iowa Board of Regents</u> | 2014 | Iowa Dist. Ct. Story County | Motion for Review of Administrative Agency Denial of Stay – Granted | <ul style="list-style-type: none"> - Public School (Iowa State Univ.) basketball player – Irreparable Injury - Loss of college eligibility constitutes Irreparable Injury – “No next season.” | - |
| <u>Doe v. Occidental College</u> | 2014 | California Superior Court, Los Angeles County | Application for Stay of Administrative Sanctions – Granted | Stipulated Order. No discussion of merits. As a condition of granting a stay of the enforcement of sanctions, P agreed to not enroll in the school or be on campus for any reason. | |
| <u>Doe v. The Pennsylvania State Univ. et al,</u> | 2017 | U.S.D.C. Middle Dist. Of PA | Motion for Preliminary Injunction and TRO - Granted | <ul style="list-style-type: none"> - Male student, female accuser, sexual assault. - 14th Amend. Procedural Due Process - Violation of Title IX - School’s failure to ask questions submitted by P to Complainant may have contributed to due process violation. – Erroneous rejection of proposed questions constitutes a significant and unfair deviation for PSU’s procedure. Deprives right to cross-examine accuser. - Irreparable Harm exists where Plaintiff would have to explain, for the remainder of his professional life, why his education either ceased prior to completion or contains a gap. | - |
| <u>Doe v. The Pennsylvania</u> | 2018 | U.S.D.C. M.D. PA | MTD – related case to above. | <ul style="list-style-type: none"> - Public School - Title IX, 1983 | - |

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| <u>State University, et al</u> | | | | <ul style="list-style-type: none"> - Erroneous Outcome/Selective Enforcement - P adequately alleged due process claims against officials in individual capacities. - Court held that federal pressure to prosecute sexual assault, like accusations of a bias in favor of the accuser, supply an inference of, at most, a pro victim bias only. - PSU erroneously placed burden on Doe to prove innocence rather than accuser proving guilt. | |
| <u>Boermeester v. Carry, et al</u> | 2017 | Superior Ct. California, Los Angeles County | Stay of Administrative Action – TRO Granted | <ul style="list-style-type: none"> - TRO granted on the condition that P not enroll in school or be on campus for any reason. | - |
| <u>Doe v. PSU, et al,</u> | 2018 | U.S.D.C. Middle Dist. Of PA. | MTD – granted in part/denied in part | <ul style="list-style-type: none"> - Related to case above. Same action. - Due process claim against individuals was preserved. - Gender bias claims were preserved. Plaintiff made sufficient anti-male allegations. Allegations do not mean it actually happened, MTD phase. | - |
| <u>Roe v. Adams-Gaston, et al,</u> | 2018 | U.S.D.C. So. Dist. Of Ohio | Motion for Preliminary Injunction – PDP/1983 Granted | <ul style="list-style-type: none"> - Inability to cross-examine accusers - Accused students must have right to cross-examine adverse witnesses in credibility matters. - Admission of engaging in sexual conduct does not waive right to cross-examine adverse witnesses. <u>However</u>, admitting to a felony does – admitting to felony gives school independent basis to expel, independent of sexual assault allegations. - Interviews and statements given to investigator prior to hearing are not a constitutionally adequate substitute from cross-examining. Investigator not fact finder. - 1983 claim – <i>Ex Parte Young</i> exception applied to immunity defense because Roe’s 1983 claim is against Defendants in their official capacities, seeking prospective injunctive relief to end a continuing violation of federal law. | - |
| <u>Doe v. The George Washington University</u> | 2018 | U.S.D.C. Dist. Of Columbia | Motion for Partial Summary Judgment – Seeking to Compel Appellate | <ul style="list-style-type: none"> - Male student was found to have violated GWU’s policy. Complaint was made two years after incident. - GWU breached its contract with Student, policy required GWU to review appeals for viability before determination of merits. - Court held that GWU rejected Student’s appeal by determining | - |

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| | | | Review of School's determination – Granted | viability on merits, rather than determining viability of appeal as per policy requirements, then determining merits of appeal separately after viability established. | |
| <u>Doe v. George Washington University</u> | 2015 | U.S.D.C. Dist. of Columbia | TRO- Granted | - P established elements necessary to obtain TRO/Preliminary Injunction. | - |
| <u>Eagle Point Education Association v. Jackson County School Dist. No. 9</u> | 2018 | 9 th Cir. | Appeal of D.C.'s granting of SJ to Plaintiffs – SJ Affirmed | - 1 st Amendment Case - Government Speech doctrine is relevant to school policies if observers might reasonably have concluded that the School endorsed the contrary positions that the protesters sought to express. "Whether a government entity is speaking on its own behalf or is providing a forum for private speech." | - |
| <u>Dillon v. Boyce</u> | 1995 | E.D.N.Y. | MTD granted with leave to amend – MTD 1983 claims was denied | - Substantive Due Process - Hospital as arm of state was immune. - P failed to allege that procedures available to redress grievances were insufficient. - P alleged COA for substantial due process violation by alleging extremely arbitrary and abusive actions against her in the course of her employment. - Municipalities cannot be held liable for violations of 1983 on the grounds of respondeat superior. - A municipality may also be sued for a failure to train or supervise its employees in a fashion designed to prevent the violation of plaintiff's rights. Liability will only attach, however, if such failure evidences a deliberate indifference to those rights. | - |
| <u>Doe v. OSU, et al</u> | 2018 | S.D. OH, Eastern District | Motion to reconsider Order granting in part and denying in part Defendants' | - To prevail on a "selective enforcement" claim, P must show that a similarly-situated member of the opposite sex was treated more favorably than the Plaintiff due to his or her gender. - Actual notice of the alleged discrimination is an essential element of a deliberate indifference claim. | - |

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| | | | MTD | <ul style="list-style-type: none"> - Substantive Due Process claims are subject to “shocks the conscious” test. Where government action does not deprive a plaintiff of a particular constitutional guarantee or shock the conscious, that action survives the scythe of substantive due process is long as it is rationally related to a legitimate state interest. - Equal Protection claim was reinstated because P alleged that Jane Doe was not investigated despite Plaintiff’s allegations that she committed violations. - 1983 claims reinstated, <i>Ex Parte Young</i>. | |
| <u>Doe v. Timothy P. White, et al</u> | 2018 | California | Writ of mandate directing Respondents, including CSU, to set aside findings and sanctions | <ul style="list-style-type: none"> - P challenged Notice - Court held that notice letter failed to adduce the basis of Roe’s allegations, the date of alleged misconduct, or specific policies violated. Nor did it define affirmative consent. - Court held that P was not given copies of evidence against him before decision was made. - CSU’s policy violated fairness because it did not allow for an opportunity to question the Complainant or other witnesses. | - |
| <u>Doe v. St. Joseph’s University, et al</u> | 2018 | U.S.D.C. E.D.P.A. | Defendants’ MSJ denied without prejudice – Discovery is reopened and Defendants are to produce certain records. | <ul style="list-style-type: none"> - Defendants had to produce Roe’s disciplinary and mental health records because she made her mental health an issue in her complaint to the school. - Private School, St. Joseph University. | - |
| <u>Nokes v. Miami University</u> | 2017 | U.S.D.C. So. Dist. Of Ohio | Motion for Preliminary Injunction – Granted. | <ul style="list-style-type: none"> - Procedural Due Process violations. - Public School. - P alleged he was not provided with adequate notice, deprived of right to cross-examine adverse witnesses. - The Court “cannot and will not guess at: (1) how those absent witnesses would have fared during questioning; and (2) how the panel would have weighed the absent witnesses’ testimony” - “in other words, once a university directs a student to a broad certain code section, but limits the `specific’ conduct that is being investigated, can it credibly argue the student should still | - |

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| | | | | <p>be on notice that it must defend all possible violations of that section?"</p> <ul style="list-style-type: none"> - Showing how the outcome may have changed is not required to prevail. | |
| <u>Doe v. Marymount University, et al</u> | 2018 | U.S.D.C. E.D. of VA | MTD P's Title IX gender discrimination, BOC causes of action. Granted in part, denied in part. | <ul style="list-style-type: none"> - Erroneous Outcome. – P must allege (1) facts sufficient to case some articulable doubt on the accuracy of the outcome of the disciplinary proceeding; and (2) particularized...casual connection between the flawed outcome and gender bias. - Casting doubt on the accuracy of the outcome, procedural flaws in the investigatory and adjudicative process; inconsistencies or errors in written findings, pointing out gender bias. | - |
| <u>Rockwell v. William Paterson Univ.</u> | 2016 | Superior Court of New Jersey, Appellate Division | Expulsion for Physical Assault. Challenged Outcome of WUP's disciplinary hearing | <ul style="list-style-type: none"> - Court held that students received due process. - It is the federal and state constitutions that define what it required for due process, not the WUP student handbook. If the student received constitutional due process, being denied something in the handbook cannot be the basis for a procedural due process claim. | - |
| <u>Bleiler v. College of the Holy Cross</u> | 2013 | U.S.D.C. Dist. of MA | Title IX, D's MSJ – Granted | <ul style="list-style-type: none"> - For a private university, the court looks to whether the college was in compliance with its own policies or whether the college acted arbitrarily or capriciously. - P failed to cite competent evidence and specific facts that a reasonable jury could resolve his sex based Title IX claim in his favor. - No genuine dispute that school acted arbitrarily or capriciously. | - |
| <u>Doe v. Amherst College, et al</u> | 2014 | U.S.D.C. Dist. of MA | P's TRO application – denied | <ul style="list-style-type: none"> - Court held that the decision to withhold a diploma and the harm of lost wages is routinely compensated with monetary awards and is not irreparable. - P could establish his academic record through his academic transcript, which could be obtained. | - |
| <u>Doe v. University of Cincinnati, et al</u> | 2017 | 6 th Cir. | Appeal of decision to grant TRO/PI | <ul style="list-style-type: none"> - Failure to provide any way to confront accuser is fundamentally unfair. - The right to cross-examine complainant is a fundamental element of due process. | - |
| <u>Rossley v.</u> | 2017 | U.S.D.C. | Title IIV, MTD | <ul style="list-style-type: none"> - Ability to bring a third-party discrimination claim under ADA | - |

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| <u>Drake University, et al</u> | | So. Dist. of Iowa | | and Title IIV, P claimed he was wrongfully dismissed as a trustee as retaliation for accusing the university of discriminating against his disabled son. - Title IIV provided for 3 rd party claims. | |
| <u>Doe v. Samuel D. Glick, et al</u> | 2017 | Superior Court of CA, county of Los Angeles | Private School, Title IX, Petition to set aside suspension | - P was prejudiced by not being able to ask questions to the Complainant who did not attend Hearing. | - |
| <u>Jacobson v. Butterfly Blaise</u> | 2018 | N.Y. App. Div. 3 rd Dept. | Public School. Art. 78 | - School's incorrect definition for "Initiation" of sexual conduct was improper, and therefore could have produced erroneous results. - However, Court held that P's inability to cross-examine the accuser did not compromise his right to a fair hearing. - New York State Education Law §6444. | - |
| <u>Elias v. Rolling Stone, et al</u> | 2017 | 2 nd Cir. | Defamation – appeal of granted motion to dismiss defamation claims against Rolling Stone | - University of Virginia falsely reported Rolling Stone rape case. - Court held that certain Plaintiffs could maintain a claim for defamation because of certain details in the article which could lead the readers to believe the plaintiffs were rapists. | - |
| <u>Doe v. Univ. of Pennsylvania</u> | 2017 | U.S.D.C. E.D. PA | Ds' MTD Complaint, granted in part, denied in part. -Fairness/Training -Erroneous Outcome/Selective Enforcement /Deliberate Indifference. | - P did not receive any details in notice, only that he was accused of violating school's sexual violence policy. - Complainant changed her story re consent. - School determined P raped Complainant. - P stated a claim that the D breached the contractual requirement that it train Hearing Panel members to fulfill their responsibilities as adjudicators according to the procedures and policies outlined to comply with Title IX - Claim of failure to conduct a thorough investigation that included interviews of the complainant, respondent, witnesses and a review of documentation and physical evidence was allowed to continue. - Erroneous Outcome → P must allege particular circumstances suggesting that gender bias was a motivating factor behind erroneous finding. (claim remained) | - |

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| | | | | <ul style="list-style-type: none"> - Selective Enforcement → P must allege that a female was in circumstances sufficiently similar to his own and was treated more favorably by the school. Female student in same situation would not have been subjected to same disciplinary proceeding (Proceeds for discovery). - Deliberate Indifference → P has to demonstrate that an official of the institution who had the authority to institute corrective measures had actual notice of, and was deliberately indifferent to, the misconduct. The official’s response to the alleged gender bias must be clearly unreasonable in light of the known circumstances. (Dismissed). - Negligent Infliction of Emotion Distress Claim remained. | |
| <u>Schaer v. Brandeis University</u> | 2000 | Mass. Appellate Ct. | P’s claim for breach of contract and return for tuition – MTD, granted | <ul style="list-style-type: none"> - Private School. - For Breach of Contract COA, court used “the standard of reasonable expectation what meaning the party making the manifestation, the university, should reasonably expect the other party to give it. - P failed to state cause of action for breach of contract. | - |
| <u>Lent v. CCNH d/b/a Cortland Care Center</u> | 2015 | U.S.D.C. No. Dist. of NY | Title VII discrimination. Infliction of Emotion Distress. – Default – Determination of Damages | <ul style="list-style-type: none"> - P was sexually assaulted on CCNH premises for nearly two years but a fellow CCNH employee. - After P tried to kill herself, P told her supervisor of the assaults, supervisor didn’t believe her, did not assign separate shifts or accommodate. - Supervisor told P that accused was going to be on the same shift, and if P didn’t like it, she could resign. - Compensatory Damages are awarded by comparing awards on similar cases. - P can recover attorneys fees under Title VII. Not to be included in the statutory cap on damages. 42 USC §2000(e)-5(k). - Punitive Damages in title VII case are awarded when the employer discriminates with malice or with reckless indifference to the federally protected rights of an aggrieved individual. – Not available under NYHRL. Limited by maximum damage cap for Title VII claims. - Based on the: (1) the degree of reprehensibility of the defendant’s conduct; (2) the ratio of punitive damages to | - |

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| | | | | compensatory damages; and (3) sanctions for comparable conduct. \$50,000 cap in this case. | |
| <u>Doe v. The College of Wooster, et al</u> | 2017 | U.S.D.C. No. Dist. of Ohio | MTD/expedited discovery/Leave to file 2 nd AC – MTD Granted, | <ul style="list-style-type: none"> - Title IX, Breach of contract. - Erroneous outcome. - P did not set forth claim for gender discrimination under Title IX. P did not show that school would have treated a female accuser differently. - P’s breach of contract claim failed, he received due process. 30 days to bring charges after learning about incident does not protect a student from being adjudicated more than 30 days after learning about incident. - Only P’s claims against accuser for IIED and defamation remained. | - |
| <u>Doe v. Denison University, et al</u> | 2017 | U.S.D.C. E.D. Ohio | MTD- Title IX | <ul style="list-style-type: none"> - Deliberate Indifference/Erroneous Outcome. - Court refused to recognize deliberate indifference theory of recovery under Title IX. - Plaintiff could not establish any bias against males. - Plaintiff could not establish any gender based discrimination. - Plaintiff’s allegations state that he was treated unfairly but not sufficient to allege that his gender was the motivating factor behind that treatment. | - |
| <u>Doe v. Board of Regents of the University of Wisconsin System, et al</u> | 2018 | U.S.D.C. W.D. of Wisconsin | MTD | <ul style="list-style-type: none"> - No discussion past cover page. | - |
| <u>G.G. v. Gloucester County School Board</u> | 2017 | 4 th Cir. | Motion to vacate TRO/PI – Granted unopposed | <ul style="list-style-type: none"> - Transgender HS male Student, didn’t want to be segregated by using different bathroom, wanted to use male bathroom. - Banishment from boys’ bathroom becomes an enduring feature of P’s HS experience. | - |
| <u>Cobb v. University of</u> | 1999 | U.S.D.C. W.D. of VA | MTD- Motion granted in part/denied in part | <ul style="list-style-type: none"> - Expelled for academic cheating - Breach of contract claim dismissed - P was not notified of exact charges until he returned for fall | - |

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| <u>Virginia, et al</u> | | | | semester, lost all of summer break to prepare. This delay was enough to defeat elements of a MTD. | |
| <u>MccLeod v. Duke University</u> | 2014 | North Carolina Superior Court | Injunctive Relief, damages | <ul style="list-style-type: none"> - Private School - P demonstrated likelihood of success on the merits that he was deprived of material rights related to misconduct allegations against him and the resulting disciplinary process. - | - |
| <u>Doe v. Trustees of Boston College, et al</u> | 2018 | 1 st Cir. | Appeal of Ds' MSJ which was granted. – Affirmed in part, vacated in part | <ul style="list-style-type: none"> - Private School. - P was found responsible for assault and battery. Request for appeal denied by BC. - A criminal proceeding was dropped against P when he presented video evidence that he did not assault accuser. - BC did not wait for criminal process to be resolved before issuing sanction. - Court held that BC's policy did not require it to wait for criminal case to be resolved/production of exculpatory tape. - "If Board had decided to wait for the alleged critical evidence, the delay could have caused B.C. to breach its contractual obligation to resolve the complaint within 60days" - Claim of interference with board's decision was reinstated after B.C. official expressed concern over the possibility of a "no finding outcome" - School's communication with "alternative culprit" who was called as a witness may have resulted in an "unfair procedure" – Genuine issue of fact with respect to P's breach of contract claim, basic fairness. - Erroneous outcome claim was dismissed. Could not show gender bias was motivating factor. | - |
| <u>Pederson, et al, v. Louisiana State University, et al</u> | 2000 | 5 th Cir. | LSU violated Title IX by failing to accommodate effectively the interests and abilities of female students. | <ul style="list-style-type: none"> - Public School - Title IX – Discrimination against Women, intercollegiate athletic competition. - In order to establish standing under a Title IX effective accommodation claim, a party need only demonstrate that she is "able and ready" to compete for a position on the unfielded team. - By accepting federal funds under Title IX, States waive 11th | - |

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| | | | | Amendment immunity. | |
| <u>Doe v. University of California Santa Barbara et al</u> | 2017 | Superior Court of California, Santa Barbara County | Motion to stay enforcement of suspension - granted | <ul style="list-style-type: none"> - P was suspended before he started as a student, based on edited video that showed him possibly hitting girlfriend. - Suspended without any notice, or any hearing. - Criminal charges against P were dropped after girlfriend admitted that P never hit her. - There was a hearing, USCB upheld suspension despite exculpatory evidence. UCSB had not concluded investigation by the time the case was brought. - UCSB's delay in completing its investigation was egregious. - School failed to show or attempt to show less restrictive interim measures that would allow P to continue his education while the investigation was continuing. - P is entitled to know all evidence against him. | - |
| <u>Neal v. Colorado State University, et al,</u> | 2017 | U.S.D.C. Dist. of Colorado | MTD – granted in part | <ul style="list-style-type: none"> - Erroneous outcome. - Gender Bias - P alleged gender bias and inaccuracy of outcome. - Failure to take accuser's statement that encounter was consensual, motivation not to be disciplined, conflict of interest, short notice for informal hearing, failure to set a formal hearing. - Procedural Due Process claim – CSU biased in order to retain federal funding. - Not having a hearing with witnesses. - BOC claim remained - | - |
| <u>State of Connecticut v. Khan</u> | 2018 | Superior Court, District of New Haven | | <ul style="list-style-type: none"> - Whether Yale's police department operates in accordance with constitutional duties incumbent on all law enforcement or whether it is a de facto arm of campus bureaucracy. - Yale's campus police gives protected student data to local law enforcement so it can selectively disclose inculpatory facts to the state's attorney and defense, while hiding behind Title IX. - Yale Police Department is arm of the state and due process applies. - Yale Police Department committed Brady Violation. - Yale Administrators fall within the Ambit of State Action. | - |

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| | | | | <ul style="list-style-type: none"> - (1) The entity acts pursuant to the coercive power of the state or is controlled by the state (the compulsion test); (2) when the state provides significant encouragement to the entity, the entity is a willful participant in joint activity with the state, or the entity's functions are entwined with state policies (the joint action test or close nexus test); or (3) when the entity has been delegated a public function by the state (the public function test). - Yale's police department met all three tests. | |
| <u>Zimmerman, et al v. Poly Prep County Day School, et al</u> | 2012 | E.D.N.Y. | MTD – Granted in part/denied in part | <ul style="list-style-type: none"> - Former students at private school and school's summer camp brought action against school, board and administrators alleging prior sexual assault by football coach. - To plead a cause of action for RICO, a P must plead: (1) the d's violation of 18 U.S.C. §1964(c); (2) an injury to the P's business or property; and (3) causation of the injury by the defendant's violation. - To state a claim for a violation of the RICO statute, P must plead (1) conduct; (2) of an enterprise; (3) through a pattern; and (4) of racketeering. - School cannot be a RICO person. - Title IX claims have a 3 year statute of limitations. Accrues from when P knows or has reason to know of injury which is the basis for action. - Can be tolled if D fraudulently conceals injury. → Court tolled SOL in this action. - Due diligence on the part of the plaintiff bringing the action is an essential element for the applicability of the doctrine of equitable estoppel. P must bring action within a reasonable time after the facts giving rise to the estoppel have ceased to be operational. | - |
| <u>Karasek, et al, v. Regents of the University of California, et</u> | 2015 | U.S.D.C. N.D. of CA | MTD 2 nd Amended Complaint - granted as to two of the plaintiffs with 60 days to | <ul style="list-style-type: none"> - Title IX deliberate indifference. - School did not inform accusers re disciplinary procedures, results, sanctions. - Court rejected Ds' argument that Ps failed to state a cause of action because P's failed to allege that they suffered any further affirmative acts of harassment after reporting their respective | - |

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| <u>al</u> | | | amend. | <ul style="list-style-type: none"> - assaults. - P (Butler's) argument that she was forced to avoid classes with accused attacker was sufficient to support Title IX cause of action. | |
| <u>Lation v. Fetner Properties, Inc. et al</u> | 2017 | S.D.N.Y. | Motion for default judgment/MTD | <ul style="list-style-type: none"> - Workplace harassment. Title VII - Under Federal and NYCHRL, an individual must exercise some degree of control over an employee to qualify as his employer. - | - |
| <u>Kent Literary Club of Wesleyan University at Middletown, et al. v. Wesleyan University, et al.</u> | 2017 | Connecticut Superior Court, Middlesex County | MSJ – Denied on all counts. | <ul style="list-style-type: none"> - Breach of contract. College unilaterally canceled fraternity's housing contract. - University had policy that required undergraduate students live in housing approved by university. - Fraternity did not submit necessary paperwork on time because school represented that all male fraternity had three years to co-educate. - Triable issue of fact regarding whether fraternity relied on the defendants' statements that they had three years to fully coeducate house in order to remain in program housing. - Violation of Connecticut Unfair Trade Practices Act §42-110(b) CUTPA. | - |
| <u>Walker v. Tomey, et al</u> | 2017 | N.D.N.Y. | Motion for Sanctions/Cross-Motion for leave to amend | <ul style="list-style-type: none"> - Title VII. - Deprivation of due process in connection with restrictions on her employment as a Spanish language court interpreter. - P was arrested for unlawful grand jury disclosure regarding information contained in a letter she translated. She was removed from assignments. Found not guilty after trial. Not automatically reinstated to registry for assignments. - In order to state a stigma-plus claim, a P must establish 3 elements – 1) must show that the government made stigmatizing statements about him that call into question P's good name, reputation, honor or integrity; 2) the stigmatizing statements were made public; 3) the stigmatizing statements were made concurrently in time to P's dismissal from government employment. - In order to state a claim against a §1983 government official in | - |

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| | | | | his official capacity, P must plead 1) an official policy or custom that 2) causes the plaintiff to be subjected to 3) a denial of a constitutional right. | |
| <u>Garcia v. SUNY Health Science Center</u> | 2001 | 2d Cir. | Protected Speech | - The public concern limit on public employee First Amendment rights does not apply to graduate students, even though graduate students are commonly employees as well as students of their college. | - |
| <u>Pinard v. Clatskanie School Dist.</u> | 2006 | 9 th Cir. | Protected Speech | - High school students need not show their speech addresses a matter of public concern in order to be protected by the First Amendment. | - |
| <u>Thonen v. Jenkins</u> | 1973 | 4 th Cir. | Protected Speech | - Free speech in college is broader than in high school. - Free speech in college is “coextensive” with society at large.” | - |
| <u>Bystrom v. Fridley High Sch.</u> | 1987 | 8 th Cir. | Protected Speech | - Few college students are minors, and colleges are traditionally places of virtually unlimited free expression. | - |
| <u>Bouvang v. NYG Capital LLC, et al</u> | 2017 | S.D.N.Y. | Attorney’s failure to attend settlement conference | - Not related to subject matter. | - |
| <u>George v. Professional Disposables International, et al</u> | 2017 | S.D.N.Y. | Defendants’ Motion for reconsideration of denial of their MSJ was denied | - Title VII - Court rejected Defendants’ “cat’s paw” argument - Refers to a situation in which an employee is fired or subjected to some other adverse employment action by a supervisor who himself has no discriminatory motive, but who has been manipulated by a subordinate who does have such a motive and intended to bring about the adverse employment action. - A Title VII plaintiff is entitled to succeed, even absent evidence of illegitimate bias on the part of the ultimate decision maker, so long as the individual shown to have the impermissible bias played a meaningful role in the decision making process. | - |
| <u>Doe v.</u> | 2017 | Sup. Ct. | Art. 78 | - Title IX. | - |

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| <u>Rensselaer Polytechnic Institute, et al</u> | | Rensselaer County | | <ul style="list-style-type: none"> - P was not a student at RPI. Went to another school. Accused by RPI student for being abusive and rape. - RPI determined more likely than not that P had violated their Sexual Misconduct policy. - Court held that RPI did not have jurisdiction over P due to the terms of its Title IX policy, since P was not an RPI student. - Home school can encourage visiting school to take action/not invite visiting school to campus. - School has to consider effects of off campus assault even if assault did not occur in educational program or school sponsored event. | |
| <u>Doe v. Carry, et al</u> | 2017 | Superior Court, California, Los Angeles Co. | TRO | <ul style="list-style-type: none"> - Private School, Title IX- USC - School was biased against P. Fair hearing. - USC intentionally avoided interviewing only first hand witness. - School accused P of misrepresenting evidence. Court found that the school went out of its way to expel P. - USC's Title IX officer was heard on the phone badmouthing P. Title IX officer held an adversarial position to P. - A P who establishes an unacceptable probability of actual bias on the part of those who have actual decision making power over their claims may successfully prevail on a claim that he or she was deprived of a fair hearing. | - |
| <u>Doe v. Carry, et al</u> | 2016 | Superior Court, California, Los Angeles Co. | TRO for stay of administrative action – granted | <ul style="list-style-type: none"> - Court granted TRO application because it was not satisfied that a stay was against public interest. | - |
| <u>Doe v. Carry, et al</u> | 2015 | Superior Court, California, Los Angeles | TRO for stay - granted | <ul style="list-style-type: none"> - Listing of sanctions attached. | - |
| <u>Doe v. Alger, et al</u> | 2017 | U.S.D.C. W.D. Virginia | Liability/Remedy for Deprivation of property right without due process | <ul style="list-style-type: none"> - James Madison Univ. – Public School - P found not responsible, Roe appealed decision. - Court has broad discretion in deciding remedy. - The typical remedy for a violation of due process is more process. → A new hearing with constitutional protections. | - |

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| | | | | <ul style="list-style-type: none"> - Destruction of records is appropriate. Destruction, rather than sealing, of documents would put Doe in the same position he was before hearing. - School prohibited from putting notation on records. | |
| <u>Doe v. Alger, et al</u> | 2016 | U.S.D.C. W.D. Virginia | Underlying case. | <ul style="list-style-type: none"> - JMU, due process. - Court found violations – Appeal Board provided no reason for its decision to reverse not responsible finding. Without hearing any testimony, lack of explanation made it impossible to tell whether appeal board applied the wrong standard for gauging consent. | - |
| <u>Dixon v. Allee, et al</u> | 2015 | Superior Court, California, Los Angeles | TRO stay of enforcement | <ul style="list-style-type: none"> - No discussion of merits. | - |
| <u>Doe v. Middlebury College,</u> | 2015 | U.S.D.C. Dist. of Vermont | Preliminary Injunction – Granted. | <ul style="list-style-type: none"> - P is Middlebury Student, accused by non-student for assault at a different college. - Another university had already investigated the complaint and found not responsible. Middlebury conducted second investigation. - Accuser did not appeal other school’s decision. - Middlebury cherry picked evidence to find P guilty. Expelled P. - Court held that Middlebury had no authority to investigate a case already decided by other school. - Court found that Middlebury could not conduct a <i>de novo</i> review. - Middlebury trained its personnel to discriminate against men. | - |
| <u>Robinson v. Wichita State University, et al</u> | 2018 | U.S.D.C. Dist. of Kansas | Ds’ MTD – Granted in part/denied in part | <ul style="list-style-type: none"> - Title IX employment retaliation - P was WSU’s Vice President for Campus Life and Univ. Relations – Oversaw Title IX compliance. – Terminated - To succeed on a Title IX retaliation claim, the P must establish: (1) the employer took an adverse employment action against the plaintiff; (2) plaintiff engaged in protected activity; (3) the employer adversely affected P’s employment because of P’s protected activity. - If the employee steps outside of the scope of his job duties, either threatens to or files an action adverse to them employer, | - |

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| | | | | <p>asserting their rights, that's protective activity.</p> <ul style="list-style-type: none"> - Title IX claim survived. - P properly alleged deprivation of his liberty interest without due process. - The elements of a claim for false light invasion of privacy are: (1) that publication of some kind must be made to a third party; (2) that the publication must falsely represent the person; and (3) that representation must be highly offensive to a reasonable person. | |
| <u>Doe v. The Ohio State University, et al</u> | 2018 | SU.S.D.C. So. Dist. of Ohio | P's motion to reconsider Order granting and denying D' MTD | <ul style="list-style-type: none"> - Selective enforcement, P must establish that a similarly-situated member of the opposite sex was treated more favorably than the P due to his or her gender. – Dismissed in this case. - Court reinstated equal protection claim. P alleged that he was treated differently, under the same facts and circumstances, then a member of the opposite gender. | - |
| <u>Doe v. Brandeis University</u> | 2016 | U.S.D.C. Dist. of MA | MTD | <ul style="list-style-type: none"> - Private School - School tried P under new Title IX policy, when allegations took place is 2013, during a policy that included more rights and hearings and opportunities, different definitions of sexual misconduct. - Court held that School had substantially impaired the accused student's rights to a fair and impartial process by using the term "victim" in policy when that is to be a determination after the hearing. - Failure to provide P access to Report within 45 days was a material breach of contract that prevented him from effectively appealing the Special Examiner's findings. - Claim that a job offer was rescinded because of information disclosed by Special Examiner remained. - Claim that school did not provide basic fairness remained. - School failed to provide procedural protections. - Failure to inform P of charges had an adverse effect. - Failure to allow for counsel was a violation. - Failure to allow for confrontation of accuser. - Lower standard of proof for sexual offenses tilted the playing field against students. | - |

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| | | | | <ul style="list-style-type: none"> - To state claim for negligent supervision/retention, P must state that employer assigned employee to position or duty which they had no previous experience or training. School knew or should have known that there were problems indicating employee's unfitness. | |
| <p><u>John Doe v. the Regents of the University of California (UCSB)</u></p> | 2018 | Court of appeals of the state of California- 2 nd appellate district | Overtured lower court; Writ of Administrative mandate granted, awarded costs on appeal. | <ul style="list-style-type: none"> - The court held that respondent was denied a fair hearing, in violation of due process, where he was denied access to critical (RAPE kit) evidence; denied the opportunity to cross-examine witnesses; and denied the opportunity to present evidence in his defense. - Re meaningful legal representation the court stated "a student, whose counsel cannot actively participate, is set up for failure because he or she lacks the legal training and experience to respond effectively to formal evidentiary objections." | <ul style="list-style-type: none"> - denied the opportunity to present witnesses or cross-examine Jane about side effects of her medication when combined with alcohol, including side effects such as paralysis and night terrors. These side effects were consistent with John's theory of the case, witness statements from the night in question. - full contents of the SART report were never provided to John - not allowed opportunity to cross-examine |

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| | | | | | <p>the detective about the fu SART repo</p> <ul style="list-style-type: none"> - Committee selectively applied the rules of evidence to prevent Job from presenting certain evidence (n expert testimony o medication his own defense, wh allowing improper evidence against him (detective testimony allowed on part of unproducece SART repo violation of best eviden - Appellant's prayer for relief "the t court's judgment denying a v |
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| | | | | | of mandate upholding UCSB's findings and suspension should be reversed with directions to the trial court issue a writ of mandate directing that the findings and suspension be vacated, the findings and suspension not appear on John's academic record." |
| <u>J. Lee v. The University of New Mexico</u> | 2018 | US District Court for the district of New Mexico | | <ul style="list-style-type: none"> - The court found that Plaintiff's allegations plausibly support a finding that his sexual misconduct investigation resolved into a problem of credibility such that a formal or evidentiary hearing, to include the cross-examination of witnesses and presentation of evidence in his defense, is essential to basic fairness. - Re evidentiary standard: "the Court concludes that preponderance of the evidence is not the proper standard for disciplinary investigations such as the one that led to Lee's expulsion, given the significant consequences of having a permanent notation such as the one UNM placed on Lee's transcript. That UNM provides an evidentiary hearing in cases of alleged non-sexual misconduct but not in cases of alleged sexual misconduct supports Lee's | - |

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| | | | | <p>claim that the process he received was constitutionally inadequate.”</p> <ul style="list-style-type: none"> - dismissed Lee’s claim against the individual administrators on grounds of qualified immunity | |
| <u>John Doe v. The University of Southern Mississippi</u> | 9/26/2018 | U.S.D.C Southern Dist. of Miss. Eastern Division | P Emergency motion for Temporary Restraining Order and Injunctive Relief; granted in part | <ul style="list-style-type: none"> - Student P v. Public University D for erroneous outcome and due process - Challenges one year suspension for alleged sexual assault - P has liberty interest in higher education and reputation - Allowing student accused of sexual misconduct to be present for testimony and to ask questions costs University nothing in terms of resources - Cross-examination likely to be required in he said/she said case like this - Post-testimony rebuttal not a substitute for cross-examination - Granted order to reinstate as student of good standing during pendency of matter | - |
| <u>Pennsylvania v. Darold William Palmore (appellant)</u> | 9/5/2018 | Superior Court of Pennsylvania | D appeals judgement of sentence; vacate judgment and remand for new trial | <ul style="list-style-type: none"> - Criminal Case - Application of Rape Shield law in this sexual assault case violated confrontation clause - D was attempting to bring in victim’s past sexual conduct to attack her credibility not to portray V as promiscuous - 4 part inquiry for exception to rape shield law <ul style="list-style-type: none"> o Is proffered reason for introduction of past sexual conduct mere speculation? (if not goes to in camera hearing) o Evidence sought to be admitted relevant to D defense? o Evidence sought merely cumulative? o Evidence is more probative than prejudicial? - Here court erred in denying exception, D argued he told V’s BF she had cheated, and the allegation against D was to discredit him. Story goes to V credibility | <ul style="list-style-type: none"> - Accused argument that he confronted victim, and informed her BF about catching V cheating - Argues allegations V were to discredit his story about cheating - Relevant to defense b/c goes to credibility of V - Was not |

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| | | | | | <p>cumulative this was on way accuse could estab attack was fabricated</p> <ul style="list-style-type: none"> - Not using p sexual conc as an unfair character attack, will inflame mi of jurors, m probative |
| <u>John Doe v. The Ohio State University</u> | | U.S.D.C. Southern District of Ohio Eastern Division | Motion to reconsider order granting D motion to dismiss; granted in part | <ul style="list-style-type: none"> - Public School - Motion to reconsider Title IX claims, including selective enforcement and deliberate indifference denied because no change of law to justify reconsideration - Substantive and Procedural Due Process denied because no change of law to justify - Equal protection motion for reconsideration granted | <ul style="list-style-type: none"> - Equal protection claim based on allegation J had sex with John when was too intoxicated consent, but OSU took r action again her - |
| <u>SurvJustice Inc. v. Devos</u> | 10/1/18 | U.S.D.C. Northern District of California | MTD; granted | <ul style="list-style-type: none"> - Allegations insufficient to show standing to bring EP claim - 2017 Guidance not a 'final agency action' for purposes of Administrative Procedure Act - Insufficient allegations that D acted outside their authority for ultra vires claim | <ul style="list-style-type: none"> - EP claim fa to invoke th party stand - Dear Collee letter did no create any r legal oblig b/c discretionar |

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| | | | | | <p>language, largely relying on the school of thought that Title IX is ultra vires.</p> <ul style="list-style-type: none"> - Ultra vires claim was merely conclusory - Plaintiff's violation of Title IX against non-profits with mission to assist sexual assault victims and argued that changes in policy forced them to divert resources, and chilled reporting among their clients |
| <u>Doe v. Baylor Univ.</u> | 9/29/18 | U.S.D.C. Western District of Texas | MTD; denied in part | <ul style="list-style-type: none"> - Multiple Jane Does v. Private school - Facts alleged supported Title IX claim for official policy of discrimination; and deliberate indifference - Does not need to allege specific instances of further harassment after initial assaults, school only needs to make the student vulnerable to harassment to 'subject' them to harassment. - Even if student leaves the university, can still argue discrimination because harassment has foreclosed opportunity to continue attending - Assault does not have to happen on campus for school to have substantial control - 'Official policy' can be shown through policy or custom analogous to municipal cases | <ul style="list-style-type: none"> - All Jane Does alleged facts that Baylor discouraged victims reporting the assaults, failed to adequately investigate the assaults, misled victims, and lied about reporting and accommodation options, and |

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| | | | | | obstructed access to medical and mental health treatment. Baylor's response to reports unreasonable and support policy or custom of s applying po discriminat y |
| <u>Doe V. Baum</u> <u>903F.3d 575</u> <u>(2018)</u> | 10/11/2018 | U.S.C.A 6 th Cir. | Appeals lower court dismissal; Reversed on appeal | <ul style="list-style-type: none"> - State University - Due Process and Title IX - Where the credibility of witnesses is in dispute and material to the outcome, due process requires cross-examination - Being labeled a sex offender by a university has both an immediate and lasting impact on a student's life (high cost to student) - Cost of school holding a hearing is low (minimal burden to school) - Erroneous outcome requires: Cast some articulable doubt on accuracy of the proceedings; and demonstrate a particularized causal connection between the flawed outcome and gender bias - Archaic assumptions does not apply here, reserved for athletic cases - Deliberate indifference does not apply, designed for plaintiffs alleging sexual harassment not biased disciplinary process | <ul style="list-style-type: none"> - Accuser claimed she was too dru to consent t sex at party Doe said no indication s was too dru or that his advances w unwelcome - No hearing held, decisio based solel off investigativ report whic itself recommend finding in f |

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| | | | | | <ul style="list-style-type: none"> - of Doe - Not allowing cross examination enough to create doubt on accuracy of outcome - Federal investigation into compliance with Title IX and negative media attention, combined with school only crediting female witnesses while discrediting male witnesses enough to demonstrate gender bias MTD stage |
| <p><u>Doe v. Syracuse Univ. 2018 U.S. Dist. Lexis 157586</u></p> | 9/16/18 | U.S.D.C. N.D.N.Y. | MTD; denied re title IX, granted re breach of K and negligence | <ul style="list-style-type: none"> - Private College - Title IX claims of Erroneous outcome and Selective Enforcement survive MTD - Erroneous outcome supported by articulable doubt on accuracy b/c of inconsistent account from Roe, credited Roe instead of Doe despite finding him credible and Roe account 'splotchy'. Gender bias because of outside pressure | <ul style="list-style-type: none"> - Alleged background Syracuse university pressure from student body media, OCI because of |

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| | | | | <ul style="list-style-type: none"> - Selective enforcement claim supported by University sua sponte taking action against Doe, while not also taking action against Roe when both deemed to intoxicated to consent - No breach of K claim can be based on broad provisions stating student will be treated in a 'fundamentally fair' manner. - NY does not recognize claim for negligent prosecution or investigation - No duty of care arises out of accreditation standards | <p>failure to properly address concerns of sexual assault against female students</p> <ul style="list-style-type: none"> - Had already been warned twice by OCR about being under investigation for handling sexual abuse complaints and OCR visiting Syracuse contemporaneously with Doe's disciplinary proceeding - This pressure caused Syracuse to appease, ignored flaws and inconsistencies in Roe's description - Doe and Roe had engaged in consensual |
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| | | | | | <p>sexual con</p> <p>on number</p> <p>past occasi</p> <p>discussed v</p> <p>text meetin</p> <p>at frat party</p> <ul style="list-style-type: none"> - Witnesses s the two go Doe's room both appear intoxicated coherent - Inference o discriminat intent supported b Syracuse University siding with Roe & expelling D to appease OCR and a student bod - OCR investigati student ang w/ Syracus handling of abuse claim supports inference o discrim inte for expellin male acc'd |
| <u>Doe v. Brown</u> | 8/27/18 | U.S.D.C. RI | MTD; denied in | - Continuing violation doctrine from <i>Morgan</i> is applicable to | - Continuing |

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| <p><u>Univ. 2018</u> <u>U.S. Dist.</u> <u>LEXIS</u> <u>144967</u></p> | | | <p>part</p> | <p>Title IX</p> <ul style="list-style-type: none"> - Counts 1 and 2 alleged hostile environment and/or sexual harassment survives - Count 3 erroneous outcome claim dismissed b/c outside SOL - Count 4 selective enforcement claim dismissed - Count 5 Title VI claim of racial discrimination falls under continuing violation and survives - Deliberate indifference plausible, school only responded to and enforced sanctions based on Jane complaints while ignoring John's. School knew but ignored fact Jane was violating confidentiality calling John a rapist and sexual predator on campus - Claims of erroneous outcome for 2nd hearing dismissed because Brown closed that investigation - Selective enforcement survives - IIED claim survives because plausible the 2nd investigation was racially motivated, which is extreme and outrageous behavior, which was proximate cause of John's emotional distress resulting in depression and a suicide attempt - Breach of code of conduct claim dismissed because failed to exhaust remedies - Separation order violated John's reasonable expectations under Code, old allegation, John could not have posed an immediate threat as a result - Right to timely determination not violated, 92 days reasonable considering academic calendar - Viable claim for breach of K means viable claim for implied duty of good faith and fair dealing | <p>violation allows claim outside SO be brought. "provided t an act contributing the claim occurs with the filing period, the entire time period of th hostile environment may be considered"</p> <ul style="list-style-type: none"> - Outcome of investigation and selective enforcement occurred outside SO had sufficient notice to pl these cause the time, - Count 5 survived because allegations of discrimination extended in non-time barred period (referring to |
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| | | | | | <ul style="list-style-type: none"> - John as ‘Bo - Code of conduct allowed John to appeal decision but chose not to and thus did not exhaust remedies (did not believe it would have been futile) - Title IX claim outside SO can be still brought upon continuing violation doctrine if linked to conduct within the 3-year anchor period |
| <u>Haug v. SUNY Potsdam, 2018 WL 5046075</u> | 10/18/18 | NY Court of Appeals | reversed | <ul style="list-style-type: none"> - In Haug, the Court of Appeals held that the Appellate Division erred in concluding SUNY Potsdam’s determination was not supported by substantial evidence. They noted that the substantial evidence standard is a minimal standard and it is less than a preponderance of the evidence. Upon judicial review, courts must accord deference to the findings of the administrative decision-maker because it is the province of the Hearing Board to resolve any conflicts in the evidence and make credibility determinations. | - |
| <u>B.B. v. The New School, 2018 WL</u> | 4/30/18 | S.D.N.Y. | MTD granted | <ul style="list-style-type: none"> - Private non-profit university - Erroneous outcome dismissed because failure to allege specific facts, merely conclusory allegations which were contradicted | - |

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| <u>2316342</u> | | | | by the supporting evidence - Chose not to exercise supplemental jurisdiction over state law claims after dismissing federal claims - Remand state law claims to state court - | |
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