



INSTITUTIONAL
COMPLIANCE SOLUTIONS

Pertinent Litigation and Key Updates

Year End Review 2021

Higher Education

Disclaimer: This document is for informational purposes only and is not legal advice. It also does not contain a comprehensive analysis of each case and/or all pertinent cases from the year.

Liberty University Continues its Battle with Sexual Assault Claims

In November 29, 2021 an additional current student at Liberty University sued alleging the school mishandled her sexual assault case. This comes almost six months after twelve individuals sued Liberty University over mishandling their sexual harassment or rape claims. Both complaints allege that Liberty perpetuates ignoring sexual harassment and creates a false sense of security for students and the community.

Karasek v. Regents University of Southern California - April 14, 2021

After a reported sexual assault, the Plaintiff alleges that the “University systematically failed to educate its students about sexual assault and appropriate sexual interactions.” The Plaintiff further alleges that the policies at the school demonstrated a “deliberate indifference” to harassment. Court denies UC Berkeley's motion to dismiss and concludes that a school’s failure to provide training on sexual misconduct to students could increase risk of harm.

Former Emory Law Student Sues University for Sex Discrimination After Rape Report

Former Emory University Law Student is suing her law school in federal court alleging discrimination based on her sex during a rape investigation with a fellow student. The student claims that after her report, “her education and mental wellbeing were compromised” and that the school prioritized the perpetrator over her. Additionally, the plaintiff claims that the school did not give her any accommodations (virtual classes/counseling) and discouraged her from reporting.

Toxic Culture at UW-Madison

An engineering professor resigned after the Engineering Department at UW- Madison failed to investigate and take action despite multiple concerns and a student’s suicide. An internal investigation found that the professor had “hostile and intimidating” behavior that persisted from his hiring in 1997. The report also described decades of swearing, shouting, belittling, and verbal abuse on and off campus.

LSU Covered Up Reports of Sexual Misconduct and Dating Violence

Seven women filed a class lawsuit against LSU’s leadership claiming there was a deep conspiracy to cover allegations of misconduct and be deprived students of their rights under Due Process. The students accuse the school of “prioritizing reputation and football over the safety and welfare” of students. Petitioners are seeking \$5million in damages.

Former Student Awarded \$300k in Title IX Suit Against Chadron State

Grand jury awards student \$300k after holding that the College “failed to protect” the student after she reported her sexual assault to the school. The student alleged she was raped twice by a student and disclosed the incident with the Title IX coordinator. The student claimed she was asked questions like “why she did not scream” during the assault and was encouraged to transition to off campus/ remote learning while taking no action against the respondent. Despite the respondent’s admission that the he had violated the school’s sexual assault policy, the school did not follow through with its investigation.

University of Nebraska-Lincoln Lawsuits Continue to Develop

• Thomas v. Regents - July 7, 2020

- Plaintiffs, all female students, sue the University and Title IX office employees. In the complaint, students allege they were victims of sexual discrimination, and were victims of sexual harassment by male students. On June 11, 2021 the Department of Justice produced a letter of interest accusing the university of “misapplying Title IX.”

• Jane Doe v. Board of Regents of the University Nebraska - February 28, 2021

- A single female plaintiff claims she was harassed by her advisor and alleges that the Title IX office was deliberately indifferent to the plaintiff’s claims.
- January 5, 2022 Update: Judge dismisses Defendant’s motion to dismiss and decides the case can move forward

Utah State Student Sues School Alleging School Mishandled Rape Allegation

A student sues in federal court alleging that the school mishandled her report of rape despite the school’s reassurance. After the student reported the incident, and an investigation sustained her complaint against a male school athlete, the school’s president failed to take disciplinary action, citing “due process concerns.”

Richardson v. Northwestern University - January 29, 2021

Northwestern Athletic Director resigned after he receives backlash from sexual harassment case. The Plaintiff in Richardson claims that she had been groped and harassed by members of her cheer team and alumni. She further alleges that “she had been encouraged to mingling and taking photographs with donors” to get donations. The Plaintiff is suing alleging a Title IX violation because of a delay of a formal investigation after she made a formal complaint.

Doe v. Kentucky State University - December 13, 2021

Defendant was granted motion for summary judgement. Plaintiff claims that he was sexually assaulted by KSU employees on two occasions and sued via Title IX claiming “deliberate indifference.” Plaintiff alleged that KSUs response to the complaints were inadequate, but when the employee was placed on notice, the perpetrator was placed on administrative leave. The court also dismissed the plaintiff’s hostile education environment claim stating that two incidents did not constitute a pattern that altered his education.

Doe v. Bd. of Regents of University of Wisconsin - November 13, 2021

Plaintiff brought due process and Title IX claims against University after they overturned a prior Title IX finding that a “high profile” student was responsible for inappropriate conduct. Court allowed the plaintiff’s claim of “deliberate indifference” to continue because the plaintiff was forced to take classes and attend school with her perpetrator. Additionally, the Court held that the accused student's role on the football team was a “motivator” for the school’s determination.

Sexual Assault Claim Against University of Michigan's Robert Anderson

Starting in 2020, there have been hundreds of individual lawsuits and two class action lawsuits filed against the University in what is likely the most sexual abuse allegations against a single person. At last count by the press, there are approximately 1,000 survivors and more than 850 individual lawsuits. The University hired a law firm to conduct an investigation and in 2021 a report was released detailing the abuse and attempts by the University and athletics to suppress the allegations.

University of Utah Announced \$13.5M settlement with Family of Track Athlete

University of Utah announced that it would settle with the family of a slain track student for \$13.5M and acknowledged that her killing was preventable. The athlete was shot and killed by a man she had dated briefly in 2018. Prior to the incident, the athlete's family and friends had reached out to the University for help, only to be denied. The student's parents filed a Title IX Lawsuit in 2019.

Hall v. Millersville University- January 11, 2022

Hall family sued M.U after their daughter, a student, was murdered by her boyfriend in their dorm room. District court granted M.U summary judgement stating the school lacked notice. Third circuit reversed stating M.U in fact had adequate notice and could be liable under Title IX due to “deliberate indifference to known sexual harassment perpetuated by a non-student guest.”

LGBTQIA+ and Gender Based Discrimination

Appeals Court Upholds Settlement in Decades Old Title IX Case with Brown University

In October of 2021, a federal Court of Appeals upheld a decades-old settlement agreement between former Brown gymnastics and ice-hockey teams athletes and Brown University. The athletes sued Brown in the 1990s when multiple women's sports programs were cut from the school. The settlement required Brown to comply with Title IX and to offer significant athletic opportunities to women. Brown subsequently cut additional women's programs in 2020 and its athletes asked the court to reject the settlement agreement to protect their interests. In its opinion, the appeals court acknowledged that despite evolution of Title IX since the 1990s, the judge saw the settlement "marks a fitting conclusion" to Brown's prior litigation.

Faculty Opposed to Racial Injustice v. NYU - August 21, 2021

Court affirms dismissal of a student group's complaint of Title VI and IX's discrimination of NYU's Law Review publication. The Law review determined its editors utilized sex and race as factors for admission in addition to a traditional write on. This litigation arose when the law review utilized only 12/50 spots for women, minorities and LGBTQ members. On appeal, the court considered whether the student group had standing to sue NYU. Court concluded no because the Plaintiff failed to sufficiently demonstrate injuries to its members and the "harm was a statistical probability" not a requisite harm.

Klocke v. Watson- December 10, 2021

Court granted Plaintiff's petition for rehearing. Plaintiff and Defendant were in an altercation at the University of Texas at Arlington after the Plaintiff stated a homophobic slur at Defendant and encouraged him to commit suicide because he was gay. Defendant reported the incident to the Title IX office and the school determined that Plaintiff had violated the school's Title IX policy. Unfortunately, the Defendant died by suicide and his estate sued the School alleging "erroneous outcome". District court found for UTA and Plaintiff.

Gililand v. Southwestern Oregon Community College - December 3, 2021

Plaintiff is a former student at Southwestern Oregon Community College and told an instructor about her prior work as an "adult actress." After this disclosure, Plaintiff claims she was dismissed from the program due to "plagiarism and failing grades" and filed a complaint with the Title IX office. Plaintiff alleged that the plagiarism policy was "unfairly enforced."

UConn Women's Rowing Team Title IX Victory- December 29, 2021

UConn women's team settled with UConn after alleging various Title IX violations. These violations included unequal resources, financial assistance, and athletic resources. The settlement requires the rowing program to be monitored for at least 4 years.

NCAA Gender-Equity Review After Women's Basketball Championship

After the 2021 NCAA March Madness Competition in Women's Basketball, the NCAA commissioned a gender-equity review of all three championships.

University of Iowa Will Pay \$400,000 in Title IX Athletics Settlement

UI has agreed to settle for \$400k and to maintain a women's swimming/diving team for at least seven more years. Per the settlement agreement, the school must also hire an outside monitor who will report on the school's Title IX obligations moving forward. The suit arose when a Title IX complaint alleged UI Athletics of not providing female athletes the same opportunities, scholarships, and facilities/benefits as the men's teams. Under this agreement, the plaintiffs agreed to drop their lawsuit.

USC Violated Title IX within their "Song Girls Program"

USC internal investigation revealed that the head coach violated Title IX and the University's policies on sexual harassment. Under the coaches leadership, the members suffered verbal and emotional abuse, and the investigation revealed a "toxic culture of control." The investigation also showed consistent race and gender based discrimination among members leading to eating disorders, self harm, and alcohol/drug dependencies. The coach resigned in 2020.

Lia Thomas, A Trans* Swimmer at University of Pennsylvania Sets Records - News

Thomas an M to F trans* femme athlete has been shattering swimming records at the collegiate level. University of Pennsylvania has publicly supported Ms. Thomas and her right to compete in swimming events. Thomas currently ranks first in the U.S in women's 500 freestyle and 200 freestyle.

Title IX Lawsuit Seeks to Restore Men’s Gymnastics Team at University of Minnesota

The University of Minnesota Board of Regents voted to eliminate men’s gymnastics, indoor track and tennis and reduced spaces for female athletes to save 1.6 million and “address Title IX compliance issues.” The plaintiffs allege that the University did not have any compliance problems nor did it need to cut the men's team.

5 Student Athletes and Stanford Reach Settlement Over Title IX Lawsuit.

Under the settlement agreement, Stanford must do a comprehensive review of its athletics program by the 2023-24 academic year. The plan must also be publicly accessible no later than October 2022. In the initial complaint, five athletes claimed Stanford's cuts to the rowing, synchronized swimming, and squash teams during the pandemic would “[leave] an imbalance in the number of male and female athletes in its athletics programs.”

Portz v. St. Cloud State University- October 28, 2021

Court affirmed plaintiff’s bench trial against St. Cloud State University for a Title IX claim. Plaintiff was a member of the women’s tennis and skiing teams and claimed that the University violated Title IX when it cut athletic teams for budgetary reasons. Court found that before cutting the teams, the University evaluated “the allocation of treatment and benefits” among levels of athletics rather than evaluating the programs as a whole.

Title IX Investigations

Victim Rights Law Center et al v. Cardona- July 28, 2021

VRLC, an organization that represents sexual assault survivors (mostly students) sued the Secretary of Education to challenge Title IX's treatment of sexual assault proceedings. This suit is in response to the MA Supreme Court decision that allowed respondent's to access mental health records of sexual assault victims. The MA Federal District Court vacated 34 C.F.R 106.45 (b)(6)(i).

John Doe v. St Regents University of MN - June 1, 2021 - Respondent Litigation

Court reverses a lower court's dismissal of Plaintiffs' case due to finding a "high amount of internal pressure, investigator bias, and dubious investigative procedures." The court also found that the University inappropriately responded to "substantial pressure" and were biased against the Plaintiffs. They further allege that in response to a series of boycotts, the University was "pressured to corroborate the accusations."

Douglass v. GGCC - May 18, 2021

District court denies Defendant's motion to dismiss and determines that the Plaintiff was harassed and intimidated by a detective to prevent a Title IX inquiry. These tactics included a false arrest, threatening additional financial obligations, and emotional distress. Plaintiff also claims that Defendant attempted to prevent her from testifying truthfully about the Title IX allegations.

FSU Determines Three Professors Guilty of Sexual Misconduct of Students

An investigation revealed that several professors were engaging in inappropriate sexual behaviors with students. Behaviors included sending sexually explicit emails/ text, bartering sexual behaviors with students, and forcible touching. All three professors have subsequently resigned.

University of Michigan Creates new Office - Changing Sexual Assault Policy

U of M is making significant changes on how it investigates and resolves sexual assault claims. These changes involve making a new office, revisiting policies, and how to revoke tenure and benefits for professors facing accusations. Additionally, U of M will add a resolutions specialist, equity specialist, and an additional compliance team. The school states that these policies are meant to rebuild the trust in the academic community and to restructure the Title IX office.

Fraternity Issues

San Diego State University Sued by Fraternity Member

Graduate of San Diego State University claims the university wrongfully accused him of hazing during his membership in the Phi Gamma Delta. This issue arose when a student died during a fraternity event due to excessive alcohol consumption and a traumatic head injury. The fraternity was investigated and later expelled for violating SDSU's policy. Plaintiff hired an attorney, was prevented from graduating, and was suspended from the school. The Plaintiff rejected the settlement.

USC Students Protest Toxic Greek Life After Fraternity Suspended

After many complaints of sexual assault and drug use, USC suspended the fraternity - blocking it from hosting any events and activities. This decision came after six student field reports that they had been drugged at a fraternity house and one of them had been sexually assaulted. The LAPD apprehended the suspect but he was not arrested, questioned, or charged for the incident. Students are also pushing back on the sexual assault training, claiming it has not impacted the rape culture on campus.

Pregnancy Discrimination

Former Coach Sues Notre Dame for Pregnancy Discrimination

Former assistant swimming coach at Notre Dame sues the school for a "pattern of discrimination" during her pregnancy and after birth. The coach claims she was given less responsibilities when "she became visibly pregnant" and was criticized for taking time off when she experienced postpartum depression. When she complained, her contract was terminated.

Towson University Faces Bias Suit By Former Gymnastics Coach

Plaintiff alleges that she was fired because of her gender, pregnancy and in retaliation for reporting multiple incidents of discrimination to the school.

Additionally, Plaintiff alleges that when she complained about her own unequal treatment, she was replaced with a "less qualified male coach" after the school expressed it preferred "male" coaching.

Religious Exemption

Maxon and Brittsan v. Fuller Theological Seminary - December 13, 2021

Plaintiff argues that the District court erred in dismissing the complaint against Defendant because the institution does not fall within the Title IX religious exemption. Plaintiff believes that the exemption does not apply because the school has an independent and distinct board of directors. The court held that “religious exemptions encompasses...divinity schools, like Fuller that are controlled by their own religiously affiliated Board of Trustees.”

Elizabeth Hunter et. al v. Department of Education - March 29, 2021

- Students at religious colleges sued the Department of Education to challenge Title IX religious exemption. The complaint alleges that students attending faith-based colleges are “subject to harmful and discriminatory practices, including being sent to anti-gay counseling.” The Defendants filed a motion to dismiss in November, 2021.
- **Update: Student at Lincoln Christian University files to be a class member.**
The student alleges that the school discriminated against her by “directing her to either withdraw from classes or face disciplined” because she identified as trans.*
- **Update- January 7, 20222** - OCR Announces that it will launch a formal Title IX investigation of Lincoln Christian University in response to a complaint filed by Religious Exemption Accountability Project on behalf of the class members.

Respondent Litigation

Doe v. Saint John's University - October 27, 2021

Order granting Defendant's motion to Dismiss. Cross complaint and after investigation and an adjudication panel, Doe found responsible. The adjudication panel did not hold a hearing. Doe alleged gender bias, erroneous outcome (due to no hearing) under Title IX. Court noted Doe's argument that proceedings inconsistent with 2020 Title IX regulations, stating that the 2020 regulations do not apply retroactively.

Student Sues Michigan State Claiming Due Process / Title IX Violation

Football player sues the school claiming his Title IX and Due Process rights were violated when he was suspended from the football team before the conclusion of a Title IX investigation. The student claims the encounter was a consensual sexual encounter and his termination was "due to gender bias." The suit was subsequently dismissed.

Quintez Cephus Sues University of Wisconsin-Madison Claiming Due Process Violation - February 23, 2021

Former football athlete filed suit alleging his Due Process rights were violated when he was used as a "scapegoat" during a sexual assault investigation. The Plaintiff also claims the school breached his contract and violated Title IX provisions. The suit comes after the Plaintiff was suspended after his arrest for sexual assault charges.

Professor Sues After Wrongful Termination for Medical Issue

A professor sues Fordham after he was fired for performing a sexual act over Zoom. The Plaintiff claims he was fired after a "flawed investigation and was Denied Due Process and that the school rushed to judgement before a full independent review."

- **Update:** a student in the class also filed a complaint seeking to appeal her grade after she faced retaliation for releasing the video to the school.

Kalyango v. Ohio State University - Drops Title IX Due Process Complaint

Plaintiff claimed he was discriminated against on the basis of race, national origin, and terminated out of retaliation without Due Process. Asked for 75k in compensatory damages and an injunction. Plaintiff dismissed the case, April 29, 2021 after an agreement to bear their own costs associated with the suit.

Key Moments in 2021

- **Title IX Regulations Include Gender Identity**
- **Christine Grant- Title IX Pioneer Dies**
- **Student Athlete Compensation and Title IX (NCAA v. Alston)**
 - SCOTUS upheld a ruling that struck down NCAA's caps on benefits for student athletes. This opened the door for collegiate athletes to earn money on their name and likeness during their college career.
- **Lawsuits Increasing for Trans* Athletes**
- **Nassar Victims Reach \$380 Million Settlement with USA Gymnastics**
- **Congress Revisits ALERT Act**
 - Under the Accountability of Leaders in Education to Report Title IX Investigations Act, colleges that receive federal funding would need to certify to the DOE that its top leadership reviewed all employee related abuse investigations that were reported to the University's title IX coordinator. The school would also need to certify that there was no inappropriate influence.
- **OCR's Announcement Restricting Post Secondary School's Use of Statements by Parties and Witnesses - August 24, 2021.**
 - OCR announced that schools are no longer subject to 34 C.F.R §106.45 (b)(6) (i) that prohibits decision-makers in Title IX proceedings from considering any statement from a person who did not submit to cross-examination.
- **Statement on Whether NCAA Rules on Trans* Athletes Violate Title IX**
 - Texas attorney general issues a statement that NCAA's transgender athlete rules violate Title IX but the OCR disagrees.
- **White House Publishes National Strategy on Gender Equity and Equality**
 - supporting *Bostock* ruling.
 - Reinforcing Clery Act and Bystander Intervention
 - Improve response to sexual violence and trauma-informed practices.
- **NCAA Responds to Trans* Athlete Bans**

Looking Forward: Potential Issues in 2022

- **"Gender Plus" Bathrooms**
 - Chicago Public Schools implemented the "gender - plus" system for restrooms in their public schools. This came after CPS announced that children could use the restrooms that best fit their gender identity.
- **D.O.E Announced New Regulations Coming April 2022**
- **Several States Restrict Trans* Athletes From Playing Sports**
 - As of November 2021, 37 states have introduced bills aimed at restricting participation in school sports based on one's "biological sex." Currently 9 have been made into law.
- **Students for Fair Admissions v. Harvard University - November 12, 2020**
 - Topic: Affirmative Action Case/ DEI
 - SFFA claims that Harvard "unfairly considers" race in admissions such that it disproportionately affects AAPI student's admission prospects. Court of Appeals held that Harvard's policies did not violate the Constitution nor did it discriminate against AAPI students. The case is currently waiting to get picked up by SCOTUS.
- **Henry et al. v. Brown University et. al. - January 9, 2022**
 - Topic: Price Fixing/ Financial Aid
 - Former college students are suing top ivy league colleges- Yale, Georgetown, MIT, and others claiming they were involved in a "price fixing scheme" that favored wealthy applicants. Federal law permits colleges to collaborate on financial aid only if they are "need blind" (don't address a student's ability to afford tuition).The Plaintiff argues that such exemption does not apply when colleges are "conspiring" with one another.
- **Smithsonian Island Institute- Sexual Misconduct Scandal - 2020/2021**
 - Allegedly STRI was aware of some of the allegations- In 2020, eight women filed a formal complaint against a male staff scientist. This complaint triggered an internal investigation, but the results have not been published. Sixteen female scientists described a serious pattern of sexual misconduct by "high ranking" men the the institute. On April 27th an Open Letter was sent from the institute to the Smithsonian documenting the behavior

Institutional Compliance Solutions, LLC



INSTITUTIONAL
COMPLIANCE SOLUTIONS

711 Signal Mountain Rd, #108 Chattanooga, TN 37405
(423) 667-1838