Proskauer’s Higher Education Group Releases A Report On Lawsuits Brought By Students Accused Of Sexual Misconduct

Title IX of the Education Amendments Act of 1972 requires that all education programs or activities that receive federal funding enact policies and procedures to prevent sex discrimination, including sexual harassment, sexual assault and other acts of sexual misconduct.

Courts have established that Title IX provides an implied cause of action for both injured parties and students accused of Title IX violations. Lawsuits commenced by students against colleges and universities have increased, generating significant (negative) publicity for the school, its administration, faculty and other personnel. This report reviews 130 federal and state court complaints filed by students across the country between January 2011 and December 2016 who claim violation of their rights during a Title IX investigation and/or adjudication. We analyzed these complaints to determine the claims made, the principal allegations made (including allegations of “mistakes” by institutions) and the outcomes reported to extract data that may be beneficial to higher learning institutions.
Of 130 Cases Reviewed:

Alcohol or Drugs
Alcohol or drug use occurred in **56.9%** of cases

Greek Life
Greek Life was cited in **20%** of cases

International Students
In **7.7%** of cases, the accused was an international student
The sanctions imposed upon the accused student that resulted in litigation of the 130 cases:

- **43.9%** of cases were brought by students who had been suspended
- **41.5%** of cases were advanced by expelled students
- **14.6%** of cases were filed by students who received some other form of sanction
“Mistakes” Cited in the 130 Cases – A look at where schools allegedly made mistakes

- Violations of disciplinary procedures: 3.8%
- Improper/insufficient policies, or failure to conform to recorded policies: 17.7%
- Failures in the investigation: 46.9%
- Evidence of gender bias in investigation and/or hearing: 15.4%
- Other failures in hearing (evidentiary issues, failure to follow hearing protocol, impartiality of hearing board members): 46.2%
- Improper use or exclusion of witness testimony at hearing or in investigation: 12.3%
- Insufficient notice to accused of hearing/charges: 10%
- Insufficient/improper interim measures: 4.6%
- Insufficient/improper training of school personnel: 11.5%
- School made inappropriate public comments re: accused/incident: 6.9%
Legal Claims Advanced by the Accused

- Due Process (Federal or state constitution): 41.5%
- Violations of Title IX: 64.6%
- Violation of the Rehabilitation Act: 2.3%
- Breach of Contract: 61.5%
- Tortious interference with contract/prospective economic relations: 5.4%
- Negligence: 37.7%
- Breach of covenant of good faith and fair dealing: 26.9%
- Negligent/Intentional Infliction of Emotional Distress: 29.2%
- Defamation/False Light: 17.7%
- Estoppel: 31.5%
Was a Motion to Dismiss Brought By the School?

57.7% Yes

Where a Motion to Dismiss was Brought, What Happened?

- Motion Denied: 16%
- Motion Granted: 37.3%
- Partial Denial, Partial Grant: 25.3%
- Motion Pending: 16%
- Stipulation of Dismissal: 5.3%

Outcome

- 28.5% Case dismissed
- 24.6% Settled
- 46.9% On-going litigation*

* As of June 10, 2017.
Final Thoughts
Institutions need to understand their roles and responsibilities related to Title IX processes and procedures. From reputational damage and financial loss to the actual harm experienced by students, the cost of non-compliance or even perceived non-compliance is significant. To assist colleges and universities in developing best practices for proactive Title IX compliance, we pose the following questions for reflection:

• Has your institution engaged in an internal audit to assess compliance with Title IX requirements, with particular sensitivity to the “mistakes” cited in the cases reviewed as part of this report?

• Does your institution have a process in place to address and monitor administrative, case law and regulatory updates related to Title IX?

• Do your institution’s training programs satisfy federal, state and local regulatory requirements related to Title IX?

• Do your institution’s policies and practices related to Title IX investigations minimize the likelihood of future litigation by being balanced, transparent and sensitive to both parties’ educational rights?

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