

UE ON APPEAL

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WINTER 2020



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U.S. Court of Appeals for the Sixth Circuit

Student-on-Student Title IX Claims: To Plead and Prove Further Harassment or Mere “Vulnerability” to Further Harassment? That Is the Question.

The U.S. Supreme Court first established a student’s right to bring a private cause of action against a school in a student-on-student sexual harassment case — based on the theory of “deliberate indifference” — in its 1999 decision in Davis v. Monroe County Board of Education. Since then, courts have disagreed on some of the elements necessary to establish liability under Title IX, including requirements that the harassment be “pervasive” and that the school’s response must “cause” the injury. The Sixth Circuit — the latest circuit to weigh in on these issues — narrows Title IX obligations with the Kollaritsch decision, which creates a clear circuit split.

STUDENT VICTIMS OF ALLEGED SEXUAL ASSAULT COMPLAIN ABOUT INVESTIGATION

Four female students at Michigan State University separately alleged male students had sexually assaulted them. In each case, the female student reported the alleged assault to campus police and the proper authorities, which began investigating. The plaintiffs alleged that the university’s response in each case was inadequate, caused them physical and emotional harm, and denied them educational opportunities under Title IX. Specifically, they complained that the investigations took too long and that they continued to encounter or fear that they would encounter their perpetrators, rendering them “more vulnerable” to harassment on campus and interfering with their educational experiences. The district court agreed that such allegations were sufficient to state a claim based on a “deliberate indifference” theory and withstand the university’s motion to dismiss. The university appealed.

THE SIXTH CIRCUIT’S INTERPRETATION OF DAVIS

A basic understanding of the Supreme Court’s *Davis* decision is essential to understanding the Sixth Circuit’s reasoning. The *Davis* court held that a school only may be held liable under Title IX when it is deliberately indifferent to sexual harassment of which it has “actual knowledge, that is 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 school.”

Looking to the *Davis* decision, the Sixth Circuit stated that “pervasive” means “systemic” or “widespread,” or at least multiple incidents of harassment; thus a single act of harassment by one student against another cannot form the basis for an actionable claim. As to the “causation” requirement, the Sixth Circuit read *Davis* to require that the school’s deliberate indifference subjected the alleged victim to further actionable harassment. In so holding, the Sixth Circuit analyzed a statement from *Davis* that “the deliberate indifference must, at a minimum, [1] cause students to undergo harassment or [2] make them liable or vulnerable to it.” Based on its reading of the entire *Davis* decision, the Sixth Circuit interpreted that statement to mean that further harassment is required in any event, but a school’s causation of that further harassment could be established in one of two ways — a detrimental action that foments or instigates further harassment; or inaction that makes the victim vulnerable to and/or unprotected from the further harassment that ensues.

Here, the plaintiffs alleged that the university’s investigation and its “inadequate” response to their allegations left them more vulnerable to harassment. The plaintiffs did not allege experiencing further harassment after reporting the assaults to the university. The Sixth Circuit held that to state a viable deliberate indifference claim under Title IX, plaintiffs must plead, and ultimately prove, the following:

- An incident of actionable sexual harassment
- The university’s knowledge of it
- Some further incident of actionable sexual harassment
- That the further harassment would not have happened but for the objective unreasonableness (deliberate indifference) of the university’s response
- That the Title IX injury was attributable to the further harassment

Here, the *Kollaritsch* plaintiffs did not plead and could not show further incidents of actionable sexual harassment. Thus, they failed to establish causation necessary to support their Title IX claims.

In rejecting the plaintiffs’ claims, *Kollaritsch* holds that a student victim’s fear of encountering the respondent is not enough to support a deliberate indifference claim under Title IX. To hold the school responsible on a “deliberate indifference” theory, complainants must show, among other things, that they suffered a further incident of actionable sexual misconduct or actionable harassment.

THE BOTTOM LINE



The *Kollaritsch* decision makes clear that a student victim’s “subjective dissatisfaction with the school’s response is immaterial to whether the school’s response caused the claimed Title IX violation.” The Sixth Circuit further held that the plaintiff “must plead, and ultimately prove, that the school had actual knowledge of actionable sexual harassment and that the school’s deliberate indifference to it resulted in further actionable sexual harassment” that caused the victim to suffer Title IX injuries.

This holding rejects the analysis of the Tenth Circuit in a 2019 decision, *Farmer v. Kansas State Univ.* (KSU), which interpreted *Davis* broadly to hold that Title IX only requires a student to show that a school’s “clearly unreasonable” response made them more vulnerable to harassment. As the Tenth Circuit stated, “We conclude, therefore, that a Title IX plaintiff must allege, at a minimum, that the funding recipient’s deliberate indifference caused her to be vulnerable to further harassment. Plaintiffs have met that pleading requirement here by alleging, among other things, that KSU’s deliberate indifference caused them objectively to fear encountering their unchecked assailants on campus, which in turn caused Plaintiffs to stop participating in the educational opportunities KSU offered its students.”

It will be interesting to see how courts address the split in the circuits regarding the vulnerability argument.

Time will tell whether the plaintiffs here will petition for certiorari and, if so, whether the Supreme Court will choose to accept the appeal to resolve the circuit split.

Kollaritsch v. Michigan State Univ. Board of Trustees, 944 F.3d 613 (6th Cir. Dec. 12, 2019), petition for reh’g. *en banc* denied (Feb. 2, 2020).



RELATED UE RESOURCE

- *Prevention and Protection Podcast: Recent Developments in Title IX Caselaw*

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Where's the Cause? Student Fails to Link Bias Against Perpetrators With Gender Bias

When a school faces a Title IX lawsuit, an initial strategic decision is whether to file a motion to dismiss, for which the court will assume the truth of the plaintiff's allegations. Strictly applying pleading standards, the district court in this case granted the university's motion to dismiss for failure to state a claim, finding, among other things, that the plaintiff's conclusory allegations of gender bias were insufficient to meet the requisite causation element. The case is now pending on appeal before the U.S. Court of Appeals for the Sixth Circuit.

STUDENT TWICE ACCUSED OF VIOLATING SEXUAL MISCONDUCT POLICY AND EXPELLED AFTER LIVE HEARING

John Doe was a first-year medical student at Michigan State University's (MSU's) College of Human Medicine in Spring 2016. Doe attended the Med Ball, an annual social event to celebrate the end of the school year, where he had sex with Jane Roe 1 and, later in the evening, engaged in sexual contact with Jane Roe 2. In February 2018, when all three students were due to begin clinical rotations, Roe 1 and Roe 2 requested not to be placed with Doe and separately met with an assistant dean to discuss their requests. Roe 1 and Roe 2 explained their encounters with Doe on the night of the ball. The assistant dean reported the incidents to the university's Office of Institutional Equity (OIE).

OIE's investigation concluded that Doe's sexual encounters with Roe 1 and Roe 2 were nonconsensual and violated the university's Relationship Violence and Sexual Misconduct Policy (RVSMP). MSU issued Doe an interim suspension.

Doe appealed, and MSU agreed that he was entitled to an in-person hearing in light of the Sixth Circuit's decision in *Doe v. Baum*. An Administrative Law Judge (ALJ) presided over the hearing, and counsel represented Doe. Doe testified twice, cross-examined all witnesses, and was permitted to introduce all evidence he sought to present except for polygraph results and testimony from his then-girlfriend about his "good sexual morals." The ALJ, however, let Roe 1 refuse to answer certain cross-examination questions. The ALJ found by a preponderance of the evidence that Doe violated the RVSMP in his encounters with Roe 1 and Roe 2.

MSU's dean of students recommended Doe be dismissed from the university. Doe filed an appeal, which was denied. He was expelled.

FAILURE TO CONNECT GENDER BIAS WITH HIS DISCIPLINARY PROCEEDING RESULTS IN DISMISSAL OF STUDENT'S LAWSUIT

Doe filed suit against MSU, contending it reached an erroneous outcome in his case (in violation of Title IX) and violated his due process and equal protection rights. He asserted alleged defects in the university's Title IX proceeding, including a single inconsistency between the investigator's and ALJ's findings, alleged motivations of Roe 1 and Roe 2 to make false allegations against him to protect their existing relationships, alleged errors in the presentation of evidence at the hearing, and the alleged bias of MSU in favor of students who accuse other students of sexual misconduct.

The court granted the university's motion to dismiss, emphasizing that to sufficiently allege an erroneous outcome claim, a plaintiff must plead facts specific to their disciplinary proceeding and draw the distinction between victim/perpetrator and gender bias. A plaintiff's allegations must "cast some articulable doubt" on the accuracy of the outcome of the disciplinary proceedings *and* demonstrate a causal connection between the flawed outcome and gender bias. The court determined that the alleged errors in the proceedings were insufficient to cast doubt on the proceedings' accuracy and, regardless, Doe failed to show the requisite causal bias between the outcome and gender bias.

Doe's assertions in support of gender bias were conclusory, at best. He alleged MSU is biased against perpetrators. The court rejected the idea that evidence of bias against the accused in sexual misconduct hearings equates to bias against men and, regardless, Doe failed to make any such link. External pressure on a university alone is similarly insufficient to evidence gender bias. Doe's sweeping arguments that defendants were biased against perpetrators, that MSU was under external pressure, and that the ALJ was biased against him for failing to permit the introduction of certain evidence was insufficient to link the outcome of his disciplinary proceeding with gender bias.

The court also rejected Doe's due process and equal protection claims. Doe contended that MSU's use of different burdens of proof violated the equal protection clause, but he did not allege that the rights of any suspect class were violated. He also failed to allege that a woman who engaged in the same type of conduct was treated differently. On Doe's cross-examination-based due process challenge, the court held that, under *Baum*, Doe

did not have an absolute right to have all questions answered, as long as he was permitted to pursue some form of cross-examination allowing the factfinder to judge witness credibility.

Doe has appealed the dismissal of his lawsuit to the U.S. Court of Appeals for the Sixth Circuit both with respect to the granting of MSU's motion to dismiss and on the grounds that the district court should have allowed him to file a second amended complaint, which he contends would have provided sufficient additional evidence to preclude the dismissal of his claims.

THE BOTTOM LINE



Schools will want to evaluate the viability of a motion to dismiss for failure to state a claim based on their Circuit's in-

terpretation of pleading requirements for Title IX erroneous outcome claims and anticipate a possible appeal should their motion to dismiss be granted.

In a strict application of pleading requirements, this district court held that a student's mere recitation of alleged errors in the proceedings, bias against perpetrators, and external pressure for the school to aggressively pursue sexual assault cases does not provide the requisite causal connection between a disciplinary proceeding's outcome and gender bias.

Doe v. Mich. State Univ., Case No. 1:19-cv-226 (W.D. Mich. Dec. 10, 2019), appeal docketed, No. 20-1043 (6th Cir. Jan. 20, 2020).



RELATED UE RESOURCES

- *Prevention and Protection Podcast: Recent Developments in Title IX Case Law*
- *A Review of Student-Perpetrator Sexual Assault Claims with Losses*

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U.S. Court of Appeals for the Fifth Circuit

Out of Time: Employee's Discrimination Case Dismissed for Failure to Exhaust Administrative Remedies

When a charging party fails to sufficiently put an employer on notice of the alleged discriminatory activity, he fails to exhaust administrative prerequisites necessary to pursue employment discrimination causes of action.

EMPLOYEE ALLEGES HARASSMENT AND DISABILITY DISCRIMINATION

Larry Owens was employed as an instructional support associate at Brookhaven College, a school within the Dallas County Community College District. During his employment, he became close to a professor who, over time, wanted a more physical relationship. Owens contends that when he declined, the professor used her position to make his life at work difficult.

In 2005, Owens sustained injuries in a motorcycle accident. Upon his return to work, an alleged series of escalating incidents of harassment by the professor led Owens to take medical leave on the recommendation of his psychologist. He contended that he sought accommodations that would allow

him to return to work, such as a transfer to another department away from the coworker. In May 2011, the college district terminated his employment.

Owens sent a letter to the Equal Employment Opportunity Commission (EEOC), describing the alleged incidents of harassment and contending that his termination was a direct result of his request that the college address his concerns regarding the professor. The Aug. 21, 2011, letter was signed but not sworn.

Owens completed an EEOC intake questionnaire two months later. In it, he claimed to have been subjected to harassment by the coworker in 2005 because of his motorcycle injuries, but he did not complain about his termination.

The EEOC instructed Owens' attorney to complete a formal charge of discrimination. The EEOC did not receive the charge — which alleged wrongful termination — until Oct. 17, 2012. After a lengthy EEOC investigation, Owens filed suit, asserting that his termination violated Title VII and the Americans with Disabilities Act (ADA).

CLAIMS ARE BARRED IF NOT TIMELY RAISED IN AN ADMINISTRATIVE CHARGE

Before filing a Title VII or ADA lawsuit, a plaintiff must exhaust administrative remedies by filing a charge with the EEOC that identifies the employment practices being challenged. Courts review charges based on claims in the administrative charge itself and by the scope of the EEOC investigation that can reasonably be expected to grow out of the charge. The charge itself must be descriptive enough to put an employer on notice of potential violations and give the employer a chance to remedy those violations. The district court dismissed Owens' complaint for failure to state a claim for discriminatory termination, concluding his claims were time barred.

The central question for the Fifth Circuit was when Owens submitted his "charge" to the EEOC. In Texas, a plaintiff must file a written and sworn EEOC charge within 300 days of the alleged unlawful act. The EEOC considers a charge filed when it receives the document and permits plaintiffs who file a written charge that does not conform to its requirements to later cure those defects. When a plaintiff cures a defect, it relates back to the date the charge was first received.

Owens contended that his October 2011 intake questionnaire qualified as a charge and that the October 2012 charge should therefore relate back to that earlier filing date, which

would render his challenge to his May 2011 termination timely. In his briefing to the court, however, he did not rely on his August 2011 letter.

The Fifth Circuit affirmed the dismissal of his complaint. Owens' intake form could not be used as the initial date of the charge because it did not contain any allegations or hints of wrongful termination. As such, a charge of wrongful termination could not be reasonably expected to grow out of allegations contained in the questionnaire, which only alleged that the co-worker harassed Owens and thereby induced his medical leave.

THE BOTTOM LINE



Although the EEOC permits charging parties to cure deficiencies in their administrative charge, relating the date back to when the initial charge was filed, certain allegations are time barred if a plaintiff does not sufficiently cure the deficiency or if the employer does not receive sufficient notice about the alleged discriminatory activity. Exhaustion of administrative prerequisites is necessary to pursue a Title VII or ADA claim and institutions should analyze whether a plaintiff has done so when facing a charge of discrimination.

Owens v. Dallas Cty. Cmty. College District, Case No. 19-10037 (5th Cir. Dec. 10, 2019).

U.S. Court of Appeals for the Eighth Circuit

No Discrimination in Dismissal of Tenure-Track Professor who had Sexual Relationship With Former Student Days After Graduation

In a pithy per curiam opinion, the U.S. Court of Appeals for the Eighth Circuit affirms a strong Minnesota district court opinion granting summary judgment to the college on a professor's challenge to her dismissal on multiple bases, including disability discrimination and failure to accommodate a disability.

PROFESSOR DISCHARGED FOR SEXUAL ACTIVITY WITH NEW GRADUATE

Kristin Naca was a tenure-track assistant professor of poetry at Minnesota-based Macalester College in 2001 when she was diagnosed with chronic valley fever, a long-term illness causing chronic pain and fatigue. She requested accommodations including time off and a research assistant, which the college largely granted

through the interactive process. Naca was on track for tenure until May 2015, when Jane Doe, a former student who had served as Naca's work-study assistant, made a written complaint to the college that Naca had engaged in a sexual relationship with her.

The college found, and Naca acknowledged, that about 10 days before Doe graduated, Naca invited Doe to her home and discussed their mutual sexual attraction, including asking Doe, "Do you want me to make a pass at you?" Three days after Doe graduated, Naca and Doe began a sexual relationship.

The provost recommended terminating Naca for violating the college's policies on student-teacher relationships. The college's Faculty Personnel Committee (FPC) and the president agreed. Macalester's disciplinary process entitled Naca to

a formal investigation, a hearing, and at least five layers of review, which Naca received before the college fired her.

Naca sued, originally alleging 35 separate counts including claims under federal and state law for failure to accommodate and discrimination on the basis of disability, sex, race/ancestry (Puerto Rican), religion (Santeria), and sexual orientation. Macalester filed a motion to dismiss, which eliminated about two-thirds of the counts. After discovery was completed, the district court granted Macalester's motion for summary judgment on the remaining counts. Naca appealed with respect to her disability discrimination and failure to accommodate claims.

EIGHTH CIRCUIT AFFIRMS: NO CAT'S PAW, PRETEXT, OR FAILURE TO ACCOMMODATE

After a *de novo* review, the Eighth Circuit affirmed that the district court properly dismissed all claims as lacking "sufficient facts to be plausible."

First, the court rejected Naca's "cat's paw" theory, in which she argued that the departing provost, who handled her requests for reasonable accommodations and the initial response to Doe's allegations, improperly influenced the incoming provost, the FPC, and the college president to terminate Naca on the basis of her disability. The court refused to consider this argument on the grounds that Naca had not raised at the district court level any allegations that the former provost had influenced the decision-makers who fired her.

Second, with respect to the disability discrimination claim, the Eighth Circuit, quoting from the district court summary judgment decision, confirmed that Naca had not established a *prima facie* case of discrimination and, in any event, that Macalester had articulated a legitimate, non-discriminatory reason for her termination — her sexual relationship with Doe.

According to the summary judgment decision: "Nothing about the circumstances of this case gives rise to an inference of discrimination. In May 2015, when Doe made her complaint, Macalester was beginning the process of approving Naca for tenure. Up to that point, Naca's career was progressing smooth-

ly. What changed after May 2015 was not Doe's race/ancestry, sex, sexual orientation, or religion; what changed is that a former student made a formal complaint of sexual misconduct."

The Eighth Circuit likewise found that Naca had not countered with sufficient evidence of pretext, again citing the district court opinion rejecting Naca's arguments about comparators she alleged were treated more favorably, alleged procedural irregularities in the dismissal proceedings, and alleged "shifting explanations" for the college's decisions.

Finally, the Eighth Circuit affirmed summary judgment on the failure to accommodate claim under Section 504 of the Rehabilitation Act of 1973. Although Naca argued she had not been granted all the accommodations she allegedly sought, she admitted that with the accommodations provided, she was performing the essential functions of an assistant professor.

This admission defeated her claim as a matter of law.

THE BOTTOM LINE



This case acts as a reminder on several fronts:

- Review your policies about sexual activity between faculty and students. A best practice is to ensure that such conduct is prohibited with respect to current students and others for whom a disparity in the relationship will continue (such as submission of final grades or a graduate's need for continued professional support, advice, and recommendations).
- Remember that a thorough and thoughtful review process, in accordance with your institution's faculty disciplinary policy, is critical in any faculty termination.
- Understand that disability discrimination laws do not require a school to grant each of an employee's requested or preferred accommodations, but only those needed to enable them to perform the job's essential functions.

Naca v. Macalester College, 947 F.3d 500 (8th Cir. Jan. 16, 2020).



RELATED UE RESOURCES

- *Employee-on-Student Sexual Harassment Claims in Higher Education*
- *Action Guide for Improving Sexual Abuse Prevention and Response Efforts: Higher Education*

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Professor's Retaliatory Animus Cannot Be Imputed to College in Student's Title IX Retaliation Claim

A student unsuccessfully relies on agency principles to impute a professor's retaliatory motive to the college in a Title IX retaliation case. The U.S. Court of Appeals for the Sixth Circuit finds the cat's paw theory of causation inconsistent with Supreme Court Title IX precedent and insufficient to establish liability in a retaliation claim.

STUDENT REBUFFS PROFESSOR'S ADVANCES AND IS THEN ACCUSED OF CHEATING

Prianka Bose enrolled as a freshman at Tennessee-based Rhodes College in 2013. During her sophomore year, she was accepted into an early selection program at another institution's medical school. The program guaranteed Bose admission without taking the MCAT if she met certain requirements, including maintaining at 3.6 GPA and receiving at least a B- in science courses.

According to the Sixth Circuit's opinion, which draws inferences in favor of Bose's narrative of events:

Bose successfully completed Organic Chemistry I, taught by Professor Roberto de la Salud Bea. Bea subsequently approached Bose on campus over the summer, asking her personal questions and moving closer to her while they spoke. Bose stepped back to create space between them and told Bea she had to go. Bea invited her to dinner; she declined.

Bose took Bea's Organic Chemistry II class the following semester. During the term, Bea complimented Bose on her appearance and paid her more attention than other students.

Bose often used the option of taking tests and quizzes early in Bea's office, an option offered to all students. Bea would leave his laptop on his desk, logged in and accessible without inputting a password, when he left his office to teach other classes. In November 2015, after Bose took a quiz in Bea's office, Bea noticed the quiz's answer key open on his laptop and began to suspect Bose was cheating.

A couple weeks later, Bose confronted Bea and said his personal questions made her uncomfortable and she wanted to keep their relationship strictly professional. When Bose next took an exam in Bea's office, he logged out of his laptop before leaving the room. Bose scored 74% on the exam, about

20% lower than any prior quiz or test score. The next week, for the first time, Bea rebuffed Bose's request for help with some practice problems.

Bea told a colleague he suspected Bose of cheating. Taking his colleague's advice, Bea created a fake answer key for an upcoming quiz with credible, though incorrect, answers. Bose took the quiz in Bea's office, where Bea left his laptop accessible. Her answers matched the fake answer key precisely. Later that day, Bea emailed administrators and accused Bose of cheating.

After an investigation and hearing, the college's Honor Council, comprised of students to adjudicate code of conduct violations, determined Bose had violated the Honor Code and voted to expel her. Bose's appeal was denied.

In February 2016, Bose filed a Title IX complaint alleging sexual harassment by Bea. A Title IX investigator determined the allegations could not be sustained.

Bose subsequently filed suit against the college and Bea in federal court. The court granted the college's motion for summary judgment, and Bose appealed.

COURT ADDRESSES PROPRIETY OF APPLYING CAT'S PAW THEORY OF CAUSATION

The Sixth Circuit addressed an issue of first impression in this case: whether a student can assert a viable Title IX retaliation claim against her college by seeking to impute to the institution a professor's alleged retaliatory motive.

Bose relied upon this "cat's paw" theory of causation, which links the discriminatory motive of one actor to the adverse action of another. She contended that after she opposed Bea's unwelcome attention by confronting him and asking him to "keep things professional," he retaliated by taking her before the Honor Council on false allegations of cheating. As noted by the court, there is no individual liability under Title IX, so Bose could not use Title IX to sue Bea directly for his alleged retaliatory act. Further, the adverse school-related action pointed to by Bose was her expulsion by the college, not Bea, yet there was no evidence that the college itself (or the Honor Council) harbored any discriminatory motive against Bose.

Although Bose attempted to draw the requisite causal connection between her opposition to Bea's unwelcome conduct and her expulsion by Rhodes, the court rejected the cat's paw theory's applicability to Title IX retaliation cases. Citing the seminal U.S. Supreme Court decision *Gebser v. Lago Vista Independent School District*, the Sixth Circuit reiterated that Title IX liability requires the institution itself to be deliberately indifferent, and that agency principles cannot be used to impute liability to a school for the conduct of its employees.

Under a cat's paw theory, knowledge and discriminatory intent are imputed, and the decision-maker need not have notice of the subordinate's discriminatory purpose to be held liable. Thus, because cat's paw liability does not require either actual notice to the college or any "official decision" by it, the court concluded that applying the theory in Title IX claims would wrongfully invoke agency principles to give rise to Title IX liability, which is inconsistent with Supreme Court Title IX precedent.

THE BOTTOM LINE



In rejecting the applicability of the cat's paw theory — usually applied to claims asserted against employers in Family and Medical Leave Act (FMLA), Title VII, and Age Discrimination in Employment (ADEA) cases — to Title IX claims, the Sixth Circuit clarified the requisite allegations sufficient to state a cause of action for retaliation in violation of Title IX.

Notably, the court declined to address Bose's more direct deliberate indifference claim, that Rhodes failed to respond properly after she reported Bea's alleged retaliation, determining Bose did not properly raise this claim on appeal. In *dicta*, the court also noted, as an overriding legal issue, that judicial decisions do not clarify whether deliberate indifference to retaliation is an actionable claim under Title IX but declined to address the issue in its opinion.

Bose v. Rhodes College, et al., 947 F.3d 983 (6th Cir. Jan. 28, 2020).

STAY TUNED

Sovereign immunity: *The Texas Supreme Court granted review of an appellate court decision that University of the Incarnate Word, a private university, is not entitled to sovereign immunity in lawsuits challenging the actions of its police department performing a governmental-type law enforcement*

function. Oral argument took place in December 2019 and a decision will be forthcoming.

University of the Incarnate Word v. Redus, No. 04-15-00120-CV (Tex. App. Mar. 7, 2018), appeal docketed, No. 18-0351 (Tex. Apr. 17, 2018).



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